Industrial Relations
Research Association

PROCEEDINGS OF THE 1961 SPRING MEETING

Chicago, Illinois
May 4 and 5, 1961

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Preface

The 1961 Spring Meeting of the IRRA was concerned with topics currently at the forefront of public attention in the field of labor and industrial relations. The problems of internal union government were viewed from the standpoints of the impact of the Labor-Management Reporting and Disclousure Act and the functioning of the Monitors in the Teamsters Union. The activities of the Department of Labor in the field of fair employment practices were discussed by a representative of the Department; and one session was focused on the current status of migratory labor, with emphasis on legislative proposals and union organizing campaigns. Three collective bargaining approaches to the questions of work rules and technological change were analyzed in the final session.

Also included in the program, but, of necessity, omitted from these Proceedings, was a session devoted to the use of the oral tradition, as recorded on tape and records, in the teaching of labor history. The Association is indebted to Mr. Archie Green, Librarian of the Institute of Labor and Industrial Relations, University of Illinois, for this interesting discussion.

As in previous years, a special note of thanks is due Commerce Clearing House, Inc., through whose courtesy these papers, originally included in the July, 1961 issue of the LABOR LAW JOURNAL, were reprinted for the benefit of IRRA members.

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Union Democracy and the LMRDA

By JOHN L. HOLCOMBE

Mr. Holcombe is currently serving as Commissioner of the Bureau of Labor-Management Reports in the Department of Labor.

A MAJOR PURPOSE of the Labor-Management Reporting and Disclosure Act of 1959 is to insure that labor organizations are democratically controlled by their members. Thus, beginning with a restatement of the Wagner Act policy that government is responsible for protecting employees' rights to engage in concerted activities and choose their own representative, the act, in its bill of rights and the election title, goes on to spell out certain basic precepts of the democratic government of unions.

Indeed, the entire structure of the act emphasizes democratic self-correction rather than governmental action. Except for offenses such as embezzlement, the malpractices which may be revealed by the reports filed with the bureau are not expected to be corrected by official federal steps. Rather, corrective action is expected from the members, using their power of the ballot in the election or removal of their officers, and by the democratic meeting process. Every congressional discussion of the election provisions of the act states and reiterates this theme.

Thus, the Senate Committe on Labor and Public Welfare, in presenting the Kennedy-Ervin Bill, stated that:

". . . Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs." [1]

The House Committee on Education and Labor, in reporting its bill, said:

"It needs no argument to demonstrate the importance of free and democratic union elections. . . . The responsiveness of union officers to the will of the members depends upon the frequency of elections and an honest count of the ballots. Guaranties of fairness will preserve the confidence of the public and the members in the integrity of union elections." [2]

The act's limited approval of trusteeships might seem to run counter to these guarantees of union democracy—and indeed there were proposals for forbidding trusteeships entirely. However, it soon became apparent that through proper use of the trusteeship device a parent organization could make a subordinate body more responsive to the will of the majority. Therefore the trusteeship title also conforms to the concept of democratic self-correction.

[1] S. Rept. 187, to accompany S. 1555 (Committee on Labor and Public Welfare), p. 7.

[2] H. R. Rept. 741 (Committee on Education and Labor), to accompany H. R. 8342, pp. 15-16.

Interpretation of the Act

Since the term "democracy" has meant many different things to different people, the Bureau of Labor-Management Reports has found itself facing some intriguing interpretive problems. Some of the election provisions of the LMRDA are clear and specific, but in others the Congress provided only general guidelines and left the details to be developed by administrative and judicial interpretation.

The act requires, for example, that a notice of a local union's election be mailed to each member at his last-known home address at least 15 days prior to the election. With respect to nominations, however, the law says only "a reasonable opportunity shall be given. . . ." To provide a reasonable *opportunity* to nominate, a labor organization must give reasonable *notice* to its members of the offices to be filled by the election, together with information regarding the time, place and proper form for submitting nominations. Unlike the notice of election, however, the notice for nominations need not be mailed to each member at his last-known home address 15 days prior to the time for nominations, so long as the notice is reasonably calculated to reach all members in good standing and actually provides reasonable opportunity for nominations to be made. A single notice announcing both nominations and elections is permissible if it simultaneously satisfies the statutory requirements for election notice and is given in sufficient time to permit reasonable opportunity for members to nominate and campaign for candidates. Further, the nomination and election may even be held at the same meeting, so long as all of the statutory qualifications are met.

Another provision of the law prohibits the use of certain union funds "to promote the candidacy of any person in an election subject to the provisions of this act." This phrase has caused some unions to wonder if they may continue to include a "battle page" or similar section in a union-financed newspaper in which every bona fide candidate may state his case. Whether publicity in the union newspaper promotes the candidacy of any person is obviously a fact to be determined in each case. However, informed opinion is essential to democracy; if a union newspaper makes available equal space to each bona fide candidate for any office, it would be difficult to show that this specific practice alone promoted the candidacy of any particular individual.

Some local unions have a governmental organization modeled on the industrial corporation. They do not provide for direct election of their officers, but do provide for the election of a board of directors which, in turn, chooses the officers. In some unions the entire membership elects the entire board; in others the membership is divided into units, usually plant units, and each unit elects its representative to the board of directors. Can either variant of this form of government meet the statutory requirements for democracy?

The naming of officers by a union's board of directors rather than by direct election raises problems of providing a sound democratic base. Moreover, this indirect method of choosing officers must be tested against the mandate of section 401(b) of the act:

"Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing."

Two important questions are involved: One is, "Who are the officers?" —the other is, "Have they been elected by the members in good standing?" It could be argued that the members of the board of directors are the

"officers." However, doubt is cast on this assumption by the definition contained in section 3(n) of the act. Here the term includes "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization and any member of its executive board or similar governing body." If we assume that the board of directors is the "executive board" then it would follow that all members of the board of directors are "officers." However, in a practical sense, responsibility for conduct of the affairs of the organization is vested in the named officers; i. e., the president, vice president, secretary, and treasurer. Thus the question is whether to allow a man to serve, for example, as chief financial officer of a local union when he has not stood for election to that particular post by vote of the local's membership. Conceivably, the membership may be content to have Jones serve as one of the 19 members of a board of directors, but totally unwilling for him to have prime responsibility for handling the funds of the organization. In looking at the problem of whether the officers have been elected by "the members in good standing" we have approached the two systems separately. In that system where segmented elections of directors are held, there is no doubt that the officers would not have been elected by the members in good standing since no member of the board has been voted upon by all of the membership. Each unit would have elected its director to the board. Thus we have concluded that, even assuming that the members of the board are the "officers," this method of electing is not permissible under the act.

The more difficult question is presented, however, by the system under which the entire membership elects the entire board. Here, if one assumes that the board constitutes the "officers," he would be forced to conclude that the election was by the members in good standing, since all would have been elected by the membership at large, rather than by segmented units. On the other hand, if one resolves the question of officer status in favor of named positions rather than total board, this method of electing would necessarily be an indirect election of officers which is forbidden by the act to local unions. We in the Department of Labor are presently wrestling with this problem. I share our dilemma with you as an indication of the difficult interpretation problems which are yet to be resolved.

Results of the Act to Date

To what extent has the act succeeded in its first 20 months in strengthening union democracy? It must be recognized that before the LMRDA, most unions had already provided for democratic elections in their constitutions and bylaws. Variations among unions existed, and continue to exist, in such matters as eligibility for voting and qualifications for office. Passage of the LMRDA did compel unions to scrutinize their procedures to insure their compliance with the letter of the law and perhaps the spirit as well.

Information is available to us concerning 32 major union conventions held since passage of the act. Virtually all of them have amended their election provisions. One international union, for example, formerly had several classifications of nonvoting members that severely curtailed the number of members eligible to vote for local union officers in 1958. The 1960 convention of this union abolished these voting restrictions, which were incompatible with the requirements of the act.

There is abundant evidence that the minimum election safeguards required

by the act are universally popular with the union rank and file. Reports from our area and regional directors indicate that where there was doubt before in many members' minds about the honesty of elections, there is now less doubt. Members know that if something is wrong they have a means of correction. Even losing candidates have told our field representatives they are now satisfied that, because of the act, they at least receive a "fair shake."

On the other hand, as of April of 1961, we had opened 596 investigations into allegations of election provisions violations. About five-sixths of these (501) have been closed, while approximately one-sixth (95) are still pending.

Seventy-nine of the cases were closed because of voluntary compliance. These were of two types:

In some, where the violation may not have affected the outcome of the election, the union agreed that a revision of its procedures was desirable. A number of these violations were highly technical. For example, a complaint was received that there had been a violation of the act regarding the 15-day notice requirement. A BLMR investigation established that although the notices were dated 15 days before the election, they were not postmarked until two days later. It was further determined that the name of the candidate for president and general chairman had been omitted from the ballot because there was no opposition for this position. Interviews with persons not voting in the election revealed that none of them had failed to vote because of the deficiency in the notice. Also, there was no evidence that the violations may have affected the outcome of the election. The union agreed to list all candidates on the official ballot in the future, whether or not they are opposed, and to insure that notices are sent in time to conform with the provisions of the act.

Other cases in which voluntary compliance was achieved involved substantial violations. In those instances, the union agreed that the results of the election may have been affected and took the necessary corrective action. In one local, for example, the members had *not* had an opportunity to nominate candidates for certain offices. Neither did these members receive any written notice of the election. The union agreed that the outcome may have been affected by these violations and offered to conduct a new election. The rerun was held in accordance with the requirements of the act, and the case was closed.

Where the bureau found violations, we first checked to determine that, within the union's internal appeal processes, the union appellate body had decided that there had been no improper or illegal action—at least within the three-month statutory period. A preliminary analysis of these cases indicates that there are areas in which unions can, with little additional effort, improve the handling of their own election contests. In some cases, the bureau reached a conclusion different from that of the union, simply because the union appeals body did not develop all the facts which were uncovered by the bureau. When the bureau brought these additional facts to the attention of the union, the union usually took corrective action. It appears, on the basis of this limited experience, that the union involved did not make a thorough investigation of the questioned election, but depended for the most part on the rank-and-file member to prove his own case. For example, in one case it was contended that campaign literature for the incumbents was mailed with the ballots at union ex-

pense. The international merely accepted the denial of the clerk who stuffed the envelopes. This is the point where our investigation began. It went on to establish that the clerk had not sealed the envelopes but had passed them on to another department for sealing and mailing. Upon further investigation several affidavits were obtained from the rank-and-file members that had received campaign literature favoring incumbents along with the ballot mailed to them by the union.

In nine cases, voluntary compliance could not be obtained and court action has had to be instituted. Even here it is anticipated that some of the unions involved will adopt the course of action taken by one union which has consented to the entry of a judgment voiding the challenged election and directing the holding of a new election under the supervision of the Secretary of Labor. Pursuant to this order of the U. S. District Court for the Southern District of Florida, the bureau on February 28, 1961, supervised the conduct of the first court-ordered election under the act. The union involved in this case represents employees of several shipyards in Jackonsville, Florida. Union members had been escorted to the polls and instructed in the manner and direction of the voting, thus violating provisions for the secret ballot. The complainant asked that the election be set aside, and that a new one be conducted under the supervision of the Secretary. After the suit was filed, the union consented to the entry of a decree and cooperated fully in conducting the new election.

Illustrative of the serious types of violations that have led to the institution of enforcement action are those which center on a failure to provide a truly secret ballot. In another secret ballot case taken to court, it was clear that the union failed to provide adequate safeguards. Ballots had been printed in excess of those required in the election and some were removed from the printer's package before the time for mailing. Voted ballots were returned to the custody of one of the candidates, who had possession of them for a considerable period before the time for counting of the ballots.

Another election investigation determined that union funds derived from dues and assessments were used to pay workers for promoting the candidacy of incumbent officers seeking re-election. In this same case it was found that a number of ineligible persons were permitted to vote in the election.

In still another case, a number of members in good standing were disqualified as candidates for office. This was contrary to the provision of the union's own constitution, which also was violated in that local officials permitted the national president to endorse certain candidates in the local's newspaper. Certain incumbent candidates were permitted to distribute campaign material, while this privilege was denied to their opponents.

Violations, we have found, also sometimes are based on the ugly practice of ballot stuffing. In one of our major cases, entire batches of ballots obviously marked by the same person with the same pencil were cast for the winning candidate. From the facts, it was evident that these votes could not have been attributed to any eligible voters, since there were considerably more votes than voters. In a more sophisticated case of ballot manipulation, the investigation which led to the filing of a suit indicates that, because of the lack of adequate safeguards, ballots were substituted after the polls had closed.

Litigation has been instituted to set aside elections not for mere technical

failures to comply with the requirements of the act. Rather, we have taken court action where it is evident that failure to provide adequate safeguards was buttressed by evidence that a fair election has not been held, that the outcome could have been affected and that self correction could not be achieved.

The Road Ahead

I do not intend to offer the impression that all problems have been solved, nor that there is complete agreement as to the objectives or the procedures devised to attain them. Let us look at some of the problems and criticisms.

It has been suggested, for instance, that the bureau should limit itself to the specific allegations, facts and evidence originally presented by the complainant. It cannot be assumed, however, that every complainant is a trained lawyer and skilled investigator. The purpose of the bureau and, I am sure, of almost every union is not just to dispose of complaints but to assure that the statutory election standards have been met. Therefore, we assume it is our duty in the administration of the statute to hear the members' inartificial and frequently unclear complaint, to ascertain by preliminary inquiry whether it alleges a violation of law and then to make a thorough and independent investigation as to whether the election was conducted in accordance with the act. When the investigation is completed, our conclusions are presented to the union so that it may initiate corrective action if it so desires. This procedure protects the rights of all union members to a legal election in every case, and at the same time affords the union a "last clear chance" to take corrective action. Similarly, where the investigation discloses a violation but there is no evidence that it may have affected the outcome, the case is closed but the union is advised of the violation so that it can correct procedures in future cases. It is hoped that unions to whom either of these types of violations are presented will re-examine both their election and appeals procedures to assure that they provide their members not only "a day in court" but a fair and legal election.

It is early to draw conclusions as to the effectiveness of the election enforcement provisions, but experience to date at least prompts a serious question. The Congress enacted several indicia of urgency in the election sections. In three months, the union must complete all stages of its appeal or be superseded as arbiter by the government. Congress further directed that the investigation of a complaint, weighing of the evidence, drafting of necessary legal papers, and bringing the civil action into court should all be completed in the brief period of 60 days from the date the complaint is filed. The problem, however, lies in the fact that there is no deadline once the case is filed with the court. Even though the courts have granted priority on their crowded dockets, it appears that action can usually be deferred throughout the contested term since, under the act, the "challenged election shall be presumed valid pending a final decision." Of the nine cases filed since last July the only one which has been settled was as a result of consent by the parties before trial actually started. None has yet come to trial. Thus, the urgent mandate of the Congress in Title IV can be and is being nullified. From our experience thus far, it is apparent that some faster way of resolving such cases must be found. Otherwise some officers who have been elected illegally will not be removed by statutory election procedures until their terms of office have been completed.

From time to time, a more basic, substantive problem is raised. A local president from the Midwest complains that the act will turn his position into that of a clerk, because union discipline is no longer possible. A New England management attorney foresees the breakdown of collective bargaining because the union negotiator, fearing to make any concession, feels compelled to refer every alternative to the membership. Conceivably, these might be just the plaints of parties to a cozy and uncomplicated relationship, but the same problem has occasionally been raised informally and on a philosophical plane. Will the democratic union remain a strong union? Does union democracy reduce the union officer or business agent to the status of messenger? Is it possible to conduct an orderly meeting in accordance with the act?

Upon exploration, these fears turn out to be based on projection of what might happen, rather than on specific experience. Also they frequently are colored by the wide variation in meaning that the word "democracy" takes on in our society—and not only with respect to unions. Sometimes the difficulty envisaged results from equating democracy with anarchy. It is supposed that every member will have the right to speak endlessly or that every member must individually be satisfied as to every detail of a proposed contract. Sometimes problems are posed on the theory that democracy means parochialism and precludes centralization of authority.

The act provides a much more practical concept of democracy. It provides that members shall have a right to express their views, but this does not abrogate the procedures for handling debate which are contained in *Robert's Rules of Order* and in many union constitutions. It provides for a right to nominate, but this too is subject to reasonable qualification uniformly imposed. It provides for a reasonable opportunity to campaign without the resources of the union being used to weight the scales in favor of any particular candidate. It provides for notice of the election, but again this right may be subject to reasonable qualifications, uniformly imposed. It provides for the right to vote in secret and it provides for information upon which to base an intelligent vote, both through the campaign guarantee and through the disclosure of essential information now required to be reported.

The law does not require unanimity but only that the minority be given a reasonable chance to make its case. It takes no stand either in favor of centralized authority or for decentralization of authority to the local level. It does not insist, as purists would, that the only democracy is a direct democracy. On the contrary, it specifically provides (except in local unions) for either direct election or representative election through conventions. The distribution of authority and responsibility is left to the union constitution. Even the trusteeship provisions of the act are not an exception to this principle. These merely require that powers given to locals by the union constitution cannot, except for certain specified causes, be abrogated on a nonuniform basis.

These are the essential "ground rules" of democracy—for a labor organization as well as for our general government. If this system weakens leadership to the extent that it cannot lead, or permits dissidents to hamstring group action, then indeed we are in trouble—and not only in the union movement. Admittedly the democratic system is not the simplest that could be devised, but what is the alternative? It has been said that "democracy is the worst form of government except for all of the others that have been tried." It

is particularly difficult to conceive of a workable alternative for unions which were devised to represent the majority of rank-and-file workers in negotiation with management. If the union does not represent the freely expressed will of the majority, then over the long run it can have little prestige or effectiveness.

The occasional complaints referred to earlier and all of our experience under the act indicate two areas where improvement is needed—aside from the obvious one of stamping out corruption in the relatively few cases where it occurs. First, in a democratic organization it is essential that the officers lead their members rather than simply issue orders.

Even more important is the realization by the rank-and-file members that their democratic rights are also responsibilities which cannot be irrevocably delegated to a leader or a small coterie of "activists." Secretary Goldberg has said that "this lack of participation, this willingness to let somebody else do it, is more responsible for the delinquencies that have occurred in the labor movement than any other single factor." Without such individual responsibility, all the efforts of dedicated union leadership and all the assistance that can be provided by government will be relatively ineffective. With it, our enforcement effort can be concentrated on the recalcitrant few; our major effort can then be put to a more constructive—and more pleasant—job of assisting union members, employers, and their representatives in improving the operations of the machinery for collective bargaining —a keystone in our democratic system.

[The End]

The Teamster Monitors and the Administration of the International Union

By SAM ROMER

The author is a labor reporter for the Minneapolis, Minnesota, *Tribune*.

A DISCUSSION of the impact of the board of monitors upon the administration of the International Brotherhood of Teamsters necessarily must range far and wide and inevitably leads the lay researcher into a maze of legalisms so compounded by the esoteric logic of lawyers that he must confess amazement and confusion. I propose to shun, whereever I can, such a path. For those whose interests take in legal jousting, I can recommend happily two excellent discussions of the subject—a review by Leonard B. Mandelbaum in the *Federal Bar Journal* [1] and an unsigned note in the *Yale Law Journal*.[2] *Cunningham, et al. v. English, et al.*, Civil Action 2361-57, began in September 1957 in the United States district court for

[1] "Leonard B. Mandelbaum, "The Teamster Monitorship: A Lesson for the Future," 20 *Federal Bar Journal* 125, Spring, 1960.

[2] "Monitors: A New Equitable Remedy?" 70 *Yale Law Journal* 103, November, 1960.

the District of Columbia and even now is still alive and kicking, although not for long. It has bounced like a ping-pong ball back and forth between the district court and the court of appeals and, on occasion, has gone up to the Supreme Court. It certainly has become one of the most litigated issues in the history of labor law and, if an inevitable reference to it is made herewith, I hope that the lawyers' union will forgive my trespass on its closed-shop preserves.

But let us place the facts first in some kind of chronological context. The Teamsters' seventeenth convention was scheduled to meet in Miami, Florida, September 30, 1957; the union's top leadership, including General President Dave Beck and seven of its 11 vice presidents, had been subjected to the spotlight of the Senate investigation of labor corruption. It also was on notice from the AFL-CIO executive council, issued on September 25, "to eliminate corrupt influences from the union and to remove and bar from any position or office, either appointive or elective, in the international union or any of its subordinate bodies, those who are responsible for these abuses." [3] And to cap its troubles, a group of 13 union members from New York had entered a class action in federal court, complaining of the imminency of a "rigged convention" and asking for appointment of a board of receivers to supervise the proceedings.[4] Judge F. Dickinson Letts, who thus began his trial of endurance, issued an order enjoining the convention until a decision was forthcoming. The union took its case to the court of appeals with Martin F. O'Donoghue, who later figured in this history in a contrary role, as one of its attorneys. The higher court vacated Lett's injunction. The Teamsters convention promptly proceeded to drop Beck and put in his place James R. Hoffa, its ninth vice president, who had become the principal target of the Senate probers.

Hoffa's election resulted, as most observers had predicted, in the suspension and eventual expulsion of the Teamsters from the AFL-CIO; it also brought in its wake a renewed plea by the 13 dissidents before Judge Letts asking that Hoffa be deposed and a new election ordered. Pending a trial on the merits, the judge issued a preliminary injunction barring Hoffa and other officers-elect from assuming office. The trial began in November, 1957, and the court heard evidence for 22 days concerning the alleged rigging of the convention to insure Hoffa's election. It is not our purpose here to decide the merit of the rigging charge, although it would not be amiss to suggest that an interested observer soon will have an opportunity to do this for himself. All he need do is compare the identity of the delegates to the forthcoming convention in July, all elected under the court-ordered conditions of secrecy and fairness, with those who were present in 1957. I daresay that more than 75 per cent of the delegates will be the same people. Then he can compare the results of the 1961 election with that of 1957 and the answer will become obvious. The rigging charge, in great measure, was born of sloppy administrative procedures and lax enforcement of technical constitutional provisions—conditions which had existed in the Teamsters union long before Beck and Hoffa.

After the plaintiffs had rested their case and before the union put in its defense, the two sides agreed on a

[3] Resolution of the AFL-CIO Executive Council, September 25, 1957, AFL-CIO Convention Proceedings, 1957, Vol. II, pp. 502-503.

[4] Source cited at footnote 1, at p. 126.

compromise settlement which made further testimony unnecessary. It came in the form of a consent decree issued by the court with agreement by both sides.[5] We will discuss later the substantive portions of this decree; suffice it for now that it permitted Hoffa and his fellow officers to assume their posts provisionally under the constitution as revised by the convention. It also provided for the appointment of a tripartite board of monitors to serve until a new convention could be held. That convention, the order declared, "shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention." One may well wonder why the union agreed to this arrangement, especially if he is blessed with second sight.

Judge Letts was to argue later that the consent order was signed "with the tacit understanding that the evidence tended to establish the claim that the convention was 'rigged' through corrupt practices [and] that the officials of the International Union and many of the locals were corrupt and a menace to the constitutional rights of the members." [6]

Nevertheless, I am persuaded that the union's decision was based more on a recognition of the internal situation of the organization rather than a "tacit understanding" of guilt. The injunction had converted the union leadership, headed by Beck, into a discredited "lame duck" board; five of its 11 members had voted against Hoffa and a sixth, Sidney L. Brennan of Minneapolis, could be counted with them despite his pro-Hoffa vote. The injunction had frustrated the convention's majority. Moreover, the law suit with its certain appeals presaged a period of months during which the minority would conduct the union's affairs. For Hoffa, it was an intolerable situation and one which cried out for relief.

The first board of monitors consisted of L. N. D. Wells, Jr., nominated by the union; Godfrey P. Schmidt, the attorney representing the dissidents; and Judge Nathan Cayton, retired from the District of Columbia bench, nominated jointly by both sides as chairman. Things apparently went well for the first four months; in his letter of resignation, Judge Cayton spoke of the "enlightened cooperation" of the union.[7] Mr. Schmidt was not as well satisfied; he complained that "cooperation can be purchased at too high a price" and that the monitors' majority "gave too full rein to the provisional officers." [8] The principal area of difference between Mr. Schmidt and his colleagues was whether, to use Mr. Schmidt's phrase, the monitors were in fact "limited receivers" and should on their own initiate and conduct investigations of union affairs. Judge Cayton was succeeded by Mr. O'Donoghue who, we will recall, had represented the union when the suit first was started. Events since have obscured the fact that Mr. O'Donoghue was suggested by the Teamsters and opposed by Mr. Schmidt; John Herling was expressing a general opinion when he called the appointment "this strange, cozy arrangement" and "a built-in-hole in the head." Edward Bennett Williams, general counsel for the union, indicated the union's thinking when he frankly told Judge Letts that Mr. O'Donoghue's many connections in

[5] Consent Order, *Cunningham, et al. v. English, et al., CA 2361-57,* U. S. D. C., District of Columbia, Jan. 31, 1958.

[6] Findings of Fact, *Cunningham,* February 9, 1959.

[7] Initial Report of Board of Monitors, Exhibit 1, p. 45.

[8] Source cited at footnote 8, Appendix 1, p. 166.

the AFL-CIO, not the least of which was his position as counsel for George Meany's Plumbers union, would help the Teamsters return to the merged labor movement.[9]

Mr. O'Donoghue, of course, disappointed both his sponsors and his critics. Where the consent order had empowered the monitors to "counsel with and make recommendations to" the union, he quickly assumed the role of master rather than advisor. Within a week after he took over the chairmanship, the monitors issued the first of a series of "Orders of Recommendation"—a device which Mandelbaum described as "a fascinating legal hybrid." [10] Mr. O'Donoghue declared and Judge Letts agreed with him that the board, as an agent of the court, had mandatory powers; however, he backed down from this contention before the appeals court and agreed that, in the event of noncompliance with any O. R., the monitors would seek an express court order directing the union to obey.[11] By the time this issue was settled by the appeals court, a year had gone by since Mr. O'Donoghue's advent. In the meanwhile, the union's General Executive Board, acting under the clear terms of the consent decree, decided to call a new convention. Mr. O'Donoghue objected and again Judge Letts upheld his point of view; the judge unilaterally amended the consent decree to delete from it the authority granted to the General Executive Board and transfer this power to the monitors. It is at this point that the logic of the law passes my comprehension. The consent agreement by its nature was a settlement entered into by contending parties before a decision had been reached on the merits of the dispute. Yet here we have a court setting aside the clear mandate of such an agreement without hearing any evidence that the union might have offered in its defense against the original complaint. But my lawyer friends tell me this is what happens when you come into court.

In any case, the decision of the court of appeals merely set the stage for another year of legal acrobatics. Mr. O'Donoghue had decided shortly after he became chairman that the monitors could accomplish what it had set out to do only by ousting Hoffa from the presidency—another interpretation of the consent decree which certainly had not been imagined by the union when it agreed to it. Since it was apparent that the union's General Executive Board—the only authorized body to try Hoffa under the constitution—would not do this, Mr. O'Donoghue called upon the court to execute this decision. But this was going too far and the court refused. Deprived of Hoffa's head as his trophy, Mr. O'Donoghue finally resigned in July, 1960. Before and after his resignation, the monitors became enmeshed in administrative tangles and the fabric began to fall apart. For a period, Judge Letts ordered the individual monitors to take a vacation while he tried to sort out the various motions, appeals, exceptions and orders. It took six months after Mr. O'Donoghue quit before Judge Letts had cleared away the deadwood and agreed to let the union hold this convention.

What did the monitors accomplish?

Rights of Individual Members. The consent decree empowered the monitors to review appeals taken to the General Executive Board from individual members and local unions "in order to insure the enforcement and protection of all rights of the indi-

[9] Minneapolis *Tribune*, May 22, 1958; Minneapolis *Star*, June 2, 1958.

[10] Source cited at footnote 1, at p. 128.

[11] U. S. Court of Appeals, District of Columbia, Case No. 14983. Decided June 10, 1959.

vidual members and subordinate bodies, as guaranteed by the provisions of the International constitution." It singled out four areas for particular attention:

(1)The right to vote periodically for elective officers.

(2) The right to honest advertised elections.

(3) The right to fair and uniform qualifications to stand for office.

(4) The right to freedom to express views at meetings.

The Teamsters' constitution includes within it a detailed outline of procedures governing union elections and the processing of trials and appeals. During the term of the monitorship, rules in both areas have been revised extensively in order to bring a greater degree of fairness and due process. In the case of election procedures, the spur was not so much that of the monitors as enactment of the Landrum-Griffin bill. Hoffa quickly gave the federal requirements the union's sanction although he had been involved in a protracted argument with the monitors over similar regulations. One of the issues on which Hoffa surrendered was that of voiding the constitutional provision governing the good standing of members on dues check-off. The union has required since 1940 continuous good standing for a two-year period prior to nomination for office. Good standing was defined in 1952 as requiring dues payments "on or before the first business day of the month, in advance." This resulted in a strange situation in some locals where union members paid dues through a check-off arrangement in the contract. If the company forwarded the dues payments after the first of the month, it invalidated the eligibility of most of the union members to run for office. The 1957 convention was aware of the situation but all it did, in effect, was to warn the member on check-off—if he had ambitions for union office—to pay one month's dues in advance to insure his good standing. The court's ruling, interestingly enough, upheld the 1957 amendment as a proper condition to effectuate the 1952 definition of good standing; however, it also held that the 1957 clause had not been promulgated properly and ordered in the interim that members on check-off be accepted in good standing despite delayed payment by their employers. The entire issue became moot with enactment of the Landrum-Griffin regulation outlawing such clauses.

The monitors deserve a greater degree of credit for their intervention in the area of trial and appeal procedures, although most of this should be attributed to the chairmanship of Judge Cayton. He quickly noted a lack of uniformity in appellate handling and convinced the union it should adopt procedures which would permit hearings in the local area, provide a stenographic transcript, require the appeals panel to hand down findings with its decision and allow the accused to amend the transcript, if necessary. Judge Cayton also proposed procedural guidelines for the conduct of trials at the local level, including provisions for detailed specification of charges, accurate summaries of the evidence and minutes with full opportunity for confrontation and cross-examination and requiring the trial board to make findings of fact.

The Teamsters constitution, like those of many other unions, is less than adequate in its provisions for fair hearing in local trials. Even the guidelines proposed by Judge Cayton are wanting in such a vital area as relating the penalty to the gravity of the offense. And, of course, the best of constitutional provisions are themselves subject to manipulation. Nevertheless, the monitors' guidelines mark a step forward in the preserva-

tion of member rights and it is to be hoped that the International will keep and extend them.

Local Union By-Laws. The monitors were instructed by the consent decree to draft a model code of by-laws for use by union locals and these were to be recommended to the locals by the General Executive Board. The requirement was necessitated by the fact that only half of some 900 local unions were governed by by-laws.[12] The only rules governing the other locals, to the extent that they were obeyed, were the provisions contained in the International constitution. This was the only provision of the consent decree which gave the monitors a task which it need not "counsel with and recommend to" the General Executive Board; it certainly was not a chore of any major magnitude. Yet the union complained after more than two years of monitorship that it had yet to receive a draft approved by the monitors. During the court debate, it accused the monitors of "foot-dragging" on this issue.[13] Final approval of the model code did not come until last December. The proposed by-laws certainly deserve the consideration of the union, if only that they differed in one significant respect from the common practice in many locals. This was in preserving for the local executive board the actual powers to manage the affairs of the union and supervise properly the activities of the full-time officers. The model code also incorporates within it many of the provisions set forth in the Landrum-Griffin law for local self government. Whatever importance it might have in the protection of union democracy, however, was diminished by the nature of the International's recommendation for its adoption. In his circular letter on the subject, Hoffa urged the submission of the proposed by-laws to the local membership but added that the local was free to retain any section of its present by-laws which it considered "superior or better adapted to the local situation." [14]

Fiduciary Standards. The consent decree instructed the union to review and, where needed, establish accounting and financial methods for all funds and properties. It further required union officers handling these funds to adhere to obligations imposed on fiduciaries. The monitors were authorized to recommend as to such procedures and adherence.

The general area can be discussed in two parts—the accounting practices and the fiduciary adherence. Under direction of the monitors, the accounting firm of Price, Waterhouse and Company surveyed the union's bookkeeping methods. Except in one sector, it found comparatively little to criticize. The exception concerned the failure of the union to maintain "complete authoritative records of members in good standing" and the firm recommended establishment of a detailed, name-by-name record-keeping system of dues collections at the International level.[15] Secretary-Treasurer John English protested that compliance with this recommendation would cost more than $330,000 in initial investment and increase record-keeping costs by $142,000 a year. The dispute was settled virtually on the union's terms: The International agreed to minor modifications of its accounting system, including procedures to guard against possible error by local secretary-treasurers, but resisted what English insisted was a wasteful duplicate of local-level membership records.[16] As an aside, it might be noted that this

[12] Source cited at footnote 7, Part I, p. 10.
[13] *International Teamster,* May, 1960, p. 20.
[14] *International Teamster,* Jan., 1961, p. 8.
[15] Initial Report etc., pp. 141-162.
[16] *International Teamster,* May, 1960, p. 20; *Teamsters New Service,* July 8, 1960.

controversy does much to destroy the popular conception of the Teamsters union as a monolothic dictatorship. Indeed, it illustrates the still-existent power of the local unions to deny the International officers a continual check on its good-standing membership except upon audit of local records.

The question of adherence to fiduciary standards constituted the thorniest area of relationship between the union and the monitors. Under Judge Cayton's chairmanship, the board had restricted itself to a requirement that proper bonding procedures be established, especially for local union secretary-treasurers and trustees.[17] This was done. However, Mr. O'Donoghue interpreted the authority of the monitors, as derived from the fiduciary standards clause, as sufficient to encompass "Orders of Recommendation" for a general investigation of any union officer accused of wrongdoing, even if the accusation was made not by a member but by the Senate committee. Many of the cases which became the subjects of extended litigation concerned this area and, in a few instances, resulted in court orders to the union to take specific action. But the final record as to reform is not impressive. There were some resignations and infrequent trials of those charged with misuse of funds. Court orders produced union trials in cases involving Philadelphia local No. 107, where the officers were charged with widespread financial malpractice, and Owen B. Brennan, Hoffa's close ally in Detroit, who was accused of using welfare funds to pay a boxer then under his management. So far, there have been no verdicts from these trials and, with the end of the monitorship, it is not difficult to predict what these will be. We have already noted that the court struck down an attempt by the monitors to oust Hoffa from office because of his involvement in the Sun Valley land episode, although he still faces a federal indictment on this score. Three cases arising out of the senate probe—Joseph Glimco of Chicago local 777, Harold Gross of Miami local 320 and Anthony Provenzano of Hoboken local 560—constituted the final attempt by Mr. O'Donoghue in September 1959 to enforce a house-cleaning. Of these, Gross has resigned and the new convention apparently indicates that the other two cases have been abandoned.

Conflict of Interest. The consent decree prohibited any union officer from having a conflicting financial interest in a company with which the union bargains collectively or to put himself in such a business position which might create such a conflict. Under the chairmanship of Judge Cayton, each of the international officers was asked by the monitors whether such a conflict existed. Each replied in the negative and the subject was dropped. Nothing was done which might disclose such conflicts at lower levels among officers of local unions and joint councils. Nevertheless, we can easily assume that violations, if any, have not been of any great moment. Certainly the relentless investigation conducted by the Senate committee would have spotlighted any serious conflicts. Indeed, the failure of Mr. O'Donoghue to pursue this line of inquiry is perhaps the best testimony as to the general adherence to this prohibition.

Trusteed Local Unions. One of the scandals which helped the public accept the charge of a "rigged convention" was the disclosure that 109 of the 894 locals within the union were under trusteeship—some of them since 1937. The consent decree therefore ordered the General Executive Board to review the status of trusteed local

[17] Source cited at footnote 7, Part I, p. 6.

unions "to the end that trusteeships be removed and self government restored with all deliberate speed consistent with the best interests of the membership of such locals." The monitors were instructed to "counsel with and make recommendations" toward this goal. During the first four months, considerable progress was achieved. Forty-one locals were released from trusteeship and preparations were under way in 22 others. Of the remaining locals, covering 3.4 per cent of the total membership, 23 had less than 1,000 members each and only one had more than 4,000.[18] But the machinery creaked to a halt after Mr. O'Donoghue assumed the chairmanship. First there was an argument over the check-off eligibility rule, then a dispute whether the American Arbitration Association should replace the Honest Ballot Association in some of the "pilot" elections to test ballot procedures. Only four more locals were restored to self government before December, 1960, when Judge Letts cleared this roadblock by approving election procedures for locals still under trusteeship. By the convention date, all except three or four locals will have elected their delegates as autonomous organizations.

Statistics are unavailable but I daresay that in most instances the elected officers will be the same persons who functioned in these posts under the trusteeship. There are exceptions, of course. In the case of Springfield, Missouri, Local 245, where the court ordered an audit but the records were destroyed before the auditors arrived, the membership—given an opportunity to make their own choice—promptly elected a new set of officers.

Constitutional Amendments. The consent decree authorized the monitors to propose, "after consultation with the General Executive Board," amendments to the International constitution for consideration by the forthcoming convention. This could well have been the most fruitful result of the monitorship. It would have allowed the monitors an unrivaled opportunity to make far-reaching suggestions for the solution of the problems involving membership rights. Unfortunately, this is the area in which least was done.

The court, in approving the call of the convention, also agreed to the submission of a number of constitutional amendments. However, none of these was proposed by the monitors and, in fact, they are merely some of the many changes which the union officers will propose in July. Incidentally, the court vetoed one of the suggested amendments—an interesting change which would allow officers and elected business agents to serve, *ex officio*, as delegates to future conventions.

Conclusion

It is not an impressive record of accomplishment. At the same time, the monitorship has not been an inexpensive experiment. The union's financial reports disclose that it spent $634,026 during the years of 1958 through 1960 on expenses directly credited to the monitors. In addition, it still has to pay disputed legal fees claimed by attorneys for the dissenters. During this same period, the union spent $1,609,063 for legal fees and expenses—a considerable part of which can be attributed to the *Cunningham* court case. These costs certainly were a major share of the operating deficit of $4,022,547 which the union amassed during these years.

It is not irrelevant to note that the consent decree gave no authority to the monitors in the area of collective

[18] *Teamsters New Service*, April 21, 1958.

bargaining where the union, under Hoffa's leadership, has achieved signal successes. There also has been some gains in membership, although less perhaps than might be surmised from membership figures announced when seasonal jobs are at their highest. A more accurate figure can be determined by examining average dues-paying membership as reflected in annual dues payments; for 1960, this disclosed average membership of 1,478,500. During 1957, the last year of the Beck regime, the comparable figure was 1,408,173. The difference of 70,000-plus members represents significant growth, coming as it does during a period of economic recession and when many unions suffered membership declines. But it has an attached price-tag. During these three years, the union spent some $5,470,000 in organizing campaign expenses—or more than $75 for each new member. During the five years of the Beck regime, the union gained some 280,000 members at a cost slightly under $5,000,000.

There also are some negative aspects to the monitorship we would do well to consider. During the period of Mr. O'Donoghue's chairmanship, the union leadership, with some justice, considered itself to be under attack collectively and this resulted in an artificial unity within the General Executive Board against the common enemy. There are natural divisions within the union, separating men with varying ambitions and social goals. The kind of attack the union endured with Hoffa as principal target prevented these diverse elements from asserting themselves. We thus approach the convention with a spirit of unity which is neither natural nor healthy in an organization like the Teamsters. How long it will take for the inherent rivalries within the union's now-united leadership to find normal outlets will depend upon the events between this and the next convention.

A more serious problem, from the public point of view, develops from the failure of the monitorship to accomplish very much that was constructive and the irritations within the union it aggravated during its three-year course. It probably will be a long while before we have another case where a major union voluntarily places itself under even the limited authority of a court-appointed board of monitors. For one thing, the Landrum-Griffin law now provides alternative methods which dissatisfied members can use to remedy their grievances. The February, 1959, decision by the court to amend unilaterally the consent agreement without hearing what evidence the union might have offered in the original trial indicates some of the perils to which a union becomes subject when it participates in this kind of arrangement. Nor have the monitors given us much to chew on in the area of internal administration. One of the continuing problems in this field, especially in relation to the rights and duties of members, arises out of the absence of an independent judiciary in the labor movement where there has been a traditional lack of separation between the executive and judicial branches of union government. Some observers, like myself, have welcomed the use by some unions of public review boards who can review disputed decisions without self-interest. It is a pity that the experience of the monitorship can only serve to slow any movement toward the establishment of public review boards.

In the final analysis, the decisions affecting the union must be made by the members of their properly elected representatives. Neither monitors nor public review boards can do this job. We can be certain that the 2,000 delegates who will attend the forth-

coming Teamsters' convention this July will be representative of the union's membership, active and indifferent. It is sad to report, then, the final chapter of the frustration of the monitorship. When the two sides discussed convention procedures last September, it was tentatively agreed that each delegate would receive a copy of the "comprehensive report" of the monitors—the final statement to the court of its three-year tenure. This would have represented disclosure at its best. The delegates could then make the decisions with the facts before them. But it was typical of the fiasco which accompanied the end of the monitorship that the board failed to get agreement on its final report and it was never submitted. The monitorship, it seems, must be laid to rest without even an obituary.

[The End]

Discussion of the Romer Paper

By LESTER ASHER

The author is a member of the Chicago law firm of Asher, Gubbins & Segall.

MR. ROMER'S PAPER has painted an excellent over-all picture of the litigation and the monitorship involving the Teamsters union. It seems to me to be a safe conclusion that the monitorship was a huge fiasco and a waste of union funds.

What is most significant, I believe, is the fact that everyone seems agreed that on July 3, 1961, James Hoffa will be re-elected president of the Teamsters and as of now it appears that there may be no opposition whatever.

It is important that we consider this question: How does it happen that in the face of the McClellan Committee findings, the expulsion from the AFL-CIO and the charges leveled by the monitors, as well as the publicity which surrounded all of these matters, there will be no change in the leadership of the Teamsters union?

The explanation, it seems to me, lies in the fact that the litigation and the monitorship violated all of the ideas concerning democracy in labor unions and responsiveness to the will of the majority which we have always talked about.

In an article dealing with "Union Democracy" which appeared in the *Harvard Law Review* for February, 1959, Archibald Cox, now Solicitor General of the United States, states:

"Apparently there were violations of the constitution and by-laws of the International Brotherhood of Teamsters in the choice of delegates for the 1957 convention, but many of these violations were technical ones and no one seriously believes that a majority of the members desire a different president."

As far as the membership is concerned, I believe that most Teamster members would ask themselves what was democratic about having a convention held up and later the officers enjoined from taking office upon the

request of thirteen members. None of the thirteen were leaders or outstanding trade union members and the lawyer who represented them was involved actively in representing employers, many of them in dealings with Teamster local unions. As the monitorship developed it seemed at various times that most of the plaintiffs were seeking a job, that each was striving to get something for himself out of the litigation. The attorneys' fees ran into fantastic amounts, and undoubtedly the objections to the fees and the pressure which was built up against paying them contributed substantially towards the settlement of the litigation and made possible scheduling of the convention.

It is significant that the Landrum-Griffin act adopted the statutory scheme that when an election is challenged, such challenged election is presumed to be valid and "in the interim the affairs of the organization shall be conducted by the officers elected." In the Teamster litigation, on the other hand, Judge Letts first restrained the holding of the convention. The court of appeals vacated this injunction. Thereupon the convention went ahead and Hoffa was elected, together with a new executive board. Pending the trial on the merits, Judge Letts issued a preliminary injunction barring Hoffa and the other newly-elected officers from assuming office. Thus, Beck and the old executive board retained leadership. This procedure was exactly opposite to the theory of the Landrum-Griffin act of 1959. Because of this impossible situation, Hoffa had to accept the monitorship or whatever other device could be agreed upon so he could recapture the presidency to which he had been elected.

The Landrum-Griffin scheme of keeping the challenged officers in their positions will also break down, as Commissioner Holcombe has suggested, unless the courts get in and out as quickly as possible and hear the case, order an election, or refuse to do so and uphold the contested election. The courts can undoubtedly act quickly if they want to do so, but if the Teamster litigation is a preview of what will happen, the Landrum-Griffin machinery will probably be ineffective. Certainly, in the Teamster litigation no one wanted to get in and out as quickly as possible and it appeared to be too big a situation, with far too much money involved in fees.

It is traditional in labor circles to be suspicious of lawyers and court proceedings. Union officials and members are constantly fearful of a sell-out and are disturbed by the time consumed in litigation, as well as the tremendous cost. For years labor leaders have been telling jokes about their lawyers and this has been an easy way to assure getting a laugh.

The Teamster monitorship has added materially to this lack of respect for lawyers and the courts. Much of the conduct engaged in by the parties to the Teamster litigation is hard to justify. During the course of the bitterly contested proceedings, parties to the litigation, as well as individual monitors, saw the judge on numerous occasions without giving notice to the other parties. There was no rule of good conduct which apparently was not violated in this case. One monitor, who was named by the plaintiff group, was removed from his post because he did not vote with the chairman on all issues. Without a hearing, he was removed by the court. Subsequently, the court of appeals reversed this removal of the monitor. One important result of the antics displayed during the course of the monitorship was to add materially to the distrust of lawyers and courts which has traditionally been expressed by union leaders and members.

The monitorship revealed another problem in the court regulation of trade unions which the Landrum-Griffin act has faced up to. The monitors were anxious to have honest elections conducted in local unions, particularly those coming out of trusteeship. Accordingly, the recommendation was made by the monitors that such elections of officers be supervised by some outside agency. Thereafter, a great deal of controversy arose as to whether these elections should be conducted by the Honest Ballot Association or the American Arbitration Association. Some of the stories spread by Teamster leaders regarding the fees which these outside organizations wanted to charge have frightened Teamster members away from the idea of outside supervision of elections forever.

In the elections of delegates to the July 3 convention, each local union has voted on this question of outside supervision. Here in Chicago I know of only one local union which has voted in favor of using some outside agency to supervise its election for delegates. This local union has engaged a professor at Loyola University and some of his assistants to supervise its election. The Landrum-Griffin act, taking a different approach, provides that if a court directs a new election, the election shall be held under the supervision of the Secretary of Labor.

The Landrum-Griffin act also contains the following provision with respect to court proceedings relating to contested elections:

"The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

In the light of the Teamsters monitorship, it can be expected that this statutory provision will present the possibility of future scandals with the attendant dissipation of union treasuries used to pay large scale fees for receivers and their attorneys. **[The End]**

Comments on the Holcombe and Romer Papers

By I. M. LIEBERMAN

Mr. Lieberman is the Employee Relations Director of the Toni Company.

MY REMARKS will be based upon two assumptions: (1) The question of democracy in internal union affairs is a matter of public concern and may be considered to be in the public domain; and (2) In the last 25 years, during the dramatic period of growth of unions in this country, the international unions have not demonstrated ability to cope adequately with their internal problems.

It is painfully apparent that the control and domination of both the Democratic party and the Democratic primary elections in Chicago by Mayor Daley pale by comparison to the control of national conventions and elections in many international unions by

the incumbent leadership group. Yet it is vital to this country—and to the free world as well—that there be strong and democratic trade unions in this country; unions that can serve as models for many newly industrialized nations and as evidence of the validity and vitality of a free and democratic society. In spite of ethical practices committees, adequate constitutional provisions (both before and after the Labor-Management Reporting and Disclosure Act), boards of public review and other devices, the evidence reveals no substantial change in the basic problem of total domination of some local and many international unions by small self-perpetuating groups.

Understanding the dynamics of development of self-perpetuating power complexes, it is reasonable to assume that the rights of the rank and file are jeopardized by this process. It is particularly discouraging to note therefore that many of our ablest scholars of the labor movement have not recognized the effect of a rigidly entrenched oligarchy on the rights of the rank and file. For example, a few years ago Philip Taft said: "The rights of members and their protection in the union seem on the whole adequate. . . . Whatever evidence one turns to, whether it is the disciplinary penalties in unions or the number of cases in the courts, one must conclude that the unions are handling the problem with more than reasonable satisfaction and that intervention by outside groups or government, except through the courts which are available at present, would impose needless burdens upon the unions. . . ."[1]

The nature of the collective bargaining process has been changed so that both bigness and centralized control are characteristic and essential ingredients for successful union achievement. In fact, from a management point of view, as has been ably described by George Brooks, the very bigness of unions has resulted in the development of statesmanship as well as responsibility on the part of the international unions' leadership.

Centralized control of course becomes more and more vital in view of the expertise required to evaluate the intricate issues arising in collective bargaining. It would be ridiculous for instance to expect any union rank and file group (or for that matter any group of factory supervisors) to make an intelligent choice between two pension programs based on a highly complex set of differing actuarial assumptions.

Commissioner Holcombe stated that sometimes problems are posed on the theory that democracy precludes centralization of authority. It is clear that in the complex arena of collective bargaining, decision making must be left to the union leadership. A leadership which abrogates this responsibility in the name of the "democratic process" is self-defeating and must inevitably lead its organization to failure.

The question of lack of participation and lack of assumption of responsibility by the membership in union affairs is worthy of considerable serious examination. One possibility of aiding in the solution of this problem would be to impose a majority quorum rule for certain classes of union decisions. This could be done preferably through amendment to union constitutions and by-laws or in the alternative (although far less desirable) through federal legislation. Another alternative might be the use of secret ballots mailed to the homes of all the members in good standing for not

[1] Philip Taft, *The Structure and Government of Labor Unions*, Harvard University Press, Cambridge, Mass., 1954, p. 245.

only the election of officers and other officials but also for purposes of major policy decisions relating to the internal organization—analogous to corporate proxy referendums.

Commissioner Holcombe stated that "Passage of the Labor-Management Reporting and Disclosure Act would compel unions to scrutinize their procedures to insure compliance with the letter of the law and perhaps the spirit as well." It is apparent that many unions have changed their constitutions, by-laws, election and convention procedures as a result of the statute. But has this made a difference in the real control of international organizations? Do members have more to say concerning basic policy? Are international elections in many unions less "rigged" than before? Are most union conventions, as Jack Barbash and others have characterized them, expertly managed and rehearsed affairs with the real convention decisions made off the floor? These questions and the lack of apparent effectiveness of the new law forces consideration of alternate and new approaches to the problem. There are two hypotheses which deserve careful analysis and scrutiny by the scholars of the labor movement. First, are we correct in equating the democratic process of our political form of government with those same processes popularly required in the trade unions? It is clear that John L. Lewis' oligarchial control of the United Mine Workers did not preclude a singularly effective, from the membership point of view, trade union. Walter Reuther found that the pristine democracy represented by annual conventions was a luxury which could lead to the UAW's ruin.

A second question deserving serious consideration is that of the very feasibility of internal union democracy. C. P. Magrath has argued convincingly that ". . . possibly useful answers to the difficult problem of union government begin with the recognition that union democracy is not one of those answers."[2] He contends further that, however unpleasant the reality, democracy is as inappropriate within the international headquarters of the UAW as it is in the front office of General Motors. It would be most inappropriate to examine these hypotheses superficially; they are worthy of careful exploration.

Some unions have sought vigorously for answers to the problem of internal democracy. Boards of public review and the principles enunciated by the Ethical Practices Committee are efforts to find the answers. The Labor-Management Reporting and Disclosure Act was in the eyes of many an unpleasant but necessary injection of federal authority into an area inadequately policed by the unions themselves. Nevertheless objective evaluation of the current state of union government indicates that none of the devices so far adopted have been successful.

Unless we are willing to assume that a union leadership which maintains its power through nepotism, strong-arm tactics, bribery and similar means is an acceptable leadership style for both union membership and the public, much remains to be done. Pro forma compliance with statutory regulations and lip service pronouncements of principle are insufficient. If the collective bargaining process and a vigorous trade movement are to remain as essential elements in a free society, new answers must be found.

[The End]

[2] C. Peter Magrath, "Democracy in Overalls: The Futile Quest for Union Democracy," 12 *Industrial and Labor Relations Review* 525, July, 1959.

The Job Ahead for the President's Committee on Equal Employment Opportunity

By JERRY R. HOLLEMAN

Mr. Holleman is now serving as Assistant Secretary of Labor and is the executive vice chairman of the President's Committee on Equal Employment Opportunity.

I APPRECIATE the opportunity to talk with this distinguished group today, both in my capacity as Assistant Secretary of Labor and in my capacity as executive vice chairman of the President's Committee on Equal Employment Opportunity. Also, I am thankful that your program chairman allowed me a wide latitude in the selection of a subject, because I am rather deeply involved these days in the problems posed in connection with the latter assignment. Accordingly, I would like to devote my time to discussing the new committee, its goals, its programs, and what it means to you who are interested in and working in industrial relations research.

Before I get into my subject, however, I would like to point out that my field of operations as Assistant Secretary is concerned primarily with employment security, apprenticeship and training, manpower projection and migratory farm labor responsibilities of the department. I know that many of you are extremely interested in some of these programs. In fact, I have seen a number of my department colleagues here or have heard they were here, and I know that our interests in these matters are mutual.

Let me say further that, although I will concentrate my discussion today on the Equal Employment Opportunity Committee, I will be happy to discuss any other aspects of the department's programs that you might desire to question me about.

As you undoubtedly know, the President's Committee on Equal Employment Opportunity was established by presidential order signed March 6, which became effective April 7. The committee—made up of 11 heads of government agencies and 14 public members—has as its chairman the Honorable Lyndon B. Johnson, Vice President of the United States, and as its vice chairman, the Honorable Arthur Goldberg, Secretary of Labor. The first meeting of the committee was held in the White House on April 11. It is not yet in full operation, but it is in operation.

Just yesterday, one of the first steps toward getting into full operation was completed. Committee members and committee representatives met with leaders of the principal international unions to discuss with them the responsibility of organized labor in making the President's order effective. The day before that we met with the top officers of the 50 biggest government contractors to go over the prob-

lem and the rules and regulations with them.

I am happy to report that the response from both contractors and from union leaders was excellent. We all recognize and realize that there is no simple way to accomplish the committee's objectives overnight. But we also know that, with the cooperation of government agencies, of management, of workers and of the communities in which these contracts are being fulfilled, we can make progress—and immediate progress—toward achieving those goals.

An effort on the part of the federal government to eliminate discrimination because of race, creed, color or national origin is nothing new. As a matter of fact, presidential orders aimed at eliminating such discrimination go back at least 20 years. And those orders by President Roosevelt of June 1941, have been succeeded by a series of additional orders by President Truman and by President Eisenhower.

Enforcement Power

What is new is the enforcement power provided in Executive Order 10925. There is one main difference between the orders that have gone before and Executive Order 10925 by President Kennedy. Previous orders instructed the government agencies to do something about discrimination in their own employment or by contractors with whom they did business, but, in the final analysis, enforcement was left up to the agencies. The new order retains for those agencies, enforcement power, but it also empowers the President's committee itself to investigate and to require compliance.

Now let me get one thing straight. I do not brandish this enforcement power as a threat. It is a weapon that I would just as soon the committee would never have to use. But it is a weapon which will be used if it becomes necessary in order to achieve the goals set out by the President.

Nor do I intend any criticism of the enforcement job done by the government agencies. As was to be expected, a more effective job of getting compliance by contractors and of complying in their own personnel policies was done by some agencies than by others. But there were inherent weaknesses in a system which required an agency to investigate itself. I think the weaknesses are obvious and need no further elaboration.

The previous committees—the President's Committee on Government Contracts and the President's Committee on Government Employment Policy—had no power of independent investigation and no power of enforcement. They depended on persuasion, mediation, conciliation, education. We, too, will place our major dependence on these same methods. But we are perfectly aware—and the agencies and contractors are fully aware—that this committee has additional powers.

As I said, I hope it will not be necessary to use those powers, but I assure you this committee means business. The President has set the goals and given the instructions; we intend to carry out those instructions in a sincere effort to achieve the goals.

Let us look for a moment at the President's order. It is too long to read to you in full, but we will be glad to send you copies on request to the committee at Washington 25, D. C.

In its preamble, the order points out that "a single governmental committee should be charged with the responsibility" for accomplishing the nondiscrimination objectives, and the order then proceeds to set up the committee.

With regard to employment by government agencies, the order reaffirms the previous order requiring the elimination of discrimination and calls for a study of current practices and policies and a survey of the present situation in the agencies. Later in the order, the committee is given the right to adopt such rules and regulations as it deems necessary to achieve this goal of nondiscrimination in government employment.

In the field of the obligation of government contractors and sub-contractors, the order is clear and specific. It requires government contracts to include a detailed clause guaranteeing nondiscrimination because of race, creed, color or national origin. This applies both to employees and to applicants for employment. It covers such fields as employment, upgrading, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. And there are requirements for compliance reports and other evidences of good faith compliance.

The order gives the contracting agencies primary responsibility for obtaining compliance, but it then extends the same powers to the committee itself.

The order does not limit itself to instructions and penalties. It provides for the award of a certificate of merit to contractors or organizations which make outstanding records in complying with the order. And the holder of a certificate of merit is relieved of the responsibility for making compliance reports so long as he keeps that certificate. Thus, a certificate is more than just a publicity gimmick. It relieves the employer of certain burdens.

As you no doubt are aware, it takes time to get the wheels of government rolling on a new effort such as this one. We have been faced with problems of financing, problems of personnel, problems of getting the rules and regulations in final form for publication and with many other of the usual and expected delays. Until the effective date of the order—April 7—we could do little but plan, but by the time the committee met on April 11, our plans had progressed to the point where some key personnel could get to work.

Analyzing Complaints

Meantime, the complaints had started piling up. By the time of the committee meeting, we had accumulated 72 new complaints, and we had 42 complaints left over from the previous committee. The task of analyzing and processing those complaints was started immediately, but it was necessary to hold up transmittal to the agencies concerned until the rules and regulations were perfected. That has now been done, and the necessary information is in the hands of the agencies. An agency has 30 days from the time of receipt of the complaint to investigate and act. The report of its disposition comes back to the committee, and the committee will then decide whether it should look into the matter on its own. Incidentally, when I say the "committee," I do not mean that every complaint or every action is a matter for consideration by the full committee. The full committee sets policies and takes such actions as it considers necessary, but the actual day-to-day operation of the committee's work—including investigation and compliance actions—is a staff job.

To date we have received a total of 187 complaints, 64 of them of discrimination in government agencies, 123 of them of discrimination in contract work. These are being processed as rapidly as possible, because we know full well that "justice delayed is justice denied." We do not intend to spend several years investigating a complaint—and that has

happened in some cases in the past. We will give the complainant and his employer a decision just as quickly as our facilities and personnel will permit.

There is one policy of the committee which I want to emphasize. We are not a publicity-seeking outfit. We do not intend to grab headlines by releasing information about complaints received. As I told the compliance officers from more than 40 agencies at a recent meeting: "We are not seeking credit; we are seeking effective implementation of the President's Order. The credit will belong to the agencies, the contractors, the employees and the communities."

Unfortunately, there are instances in which the committee has no control over the release of publicity concerning complaints. If a complainant or a group of complainants see fit to release to the newspapers the fact that they have filed complaints against certain employers or labor unions, the resulting publicity is beyond our control. But even in the face of such actions, we will maintain our policy of not disclosing information about the complaints.

We are not engaged in witch hunts. We will not assist those who would damage the reputation of an employer or an organization of employees without proper and thorough investigation. If there is fault, we intend to find it, but we will seek to get the fault corrected peacefully and quietly, without fanfare.

If it becomes necessary to use more forceful methods to correct the fault, we will use such methods—but only as a last resort. Then—and only then—will we make public the background which required such action.

Let me close by quoting what President Kennedy told the committee in the course of his remarks at the first meeting. I quote: "The Federal government spends billions of dollars a year and therefore this is a most powerful instrument for accomplishing the objective which we all seek. All of us agree that Federal money should not be spent in any way which encourages discrimination, but rather should be spend in such a way that it encourages the national goals of equal opportunity. And when Federal budgets are as large as they are, when they cover such a large percentage of employed people of this country, directly or indirectly, this quite obviously can be a very effective instrument to carry out the national objectives." Close quote.

I wholeheartedly agree with the statement and, to the best of my ability and the ability of the committee's staff, we intend to see to it that this is done. **[The End]**

The Migratory Worker in the Farm Economy

By LOUIS LEVINE

The author is a Deputy Director of the Bureau of Employment Security, U. S. Department of Labor.

I WISH TO CONGRATULATE the IRRA for including a panel on the migratory worker on the program for the spring session. There has been very little systematic research in this subject on the part of labor economists. Hopefully, the discussions here today may stimulate students to delve into such topics as the farm labor market, labor contracting in agriculture, the wage mechanism and employment security for farm labor. At the present time, relatively little is known on these subjects.

In my presentation, I shall discuss very briefly some of the developments in the farm economy which have relationship to migratory workers: the farm labor market and how it functions; the characteristics and employment patterns of migratory workers; trends and outlook for migratory farm labor; and some of the implications in terms of economic solutions to problems of migratory farm labor.

The Farm Economy

The recent growth in productivity in agriculture is the major factor that has affected labor requirements, employment relationships and the utilization of migrant farm workers in recent years. Real product per man-hour in agriculture rose more than 75 per cent from 1950 to 1960, averaging an increase of about 6 per cent per year—more than twice the annual increase in nonagricultural industries.[1]

From the standpoint of hand labor, the introduction and rapid spread in use of such new equipment as cotton-harvesting machines, potato combines, snap-bean harvesters, pickup balers, field forage harvesters and vegetable combines, have had a significant impact. The use of more productive crop varieties, fertilizers, sprays and weed controlling chemicals have literally revolutionized production methods. Gains in productivity of agriculture in the last 10 years have almost equalled progress in the previous 30 years.[2]

Since farm output has risen at a slower rate than labor productivity, total labor requirements in agriculture have trended downward. Technological displacement, chronically low incomes on a significant proportion of less productive farms and the high natural rate of increase of the rural population have tended to aggravate the labor-surplus situation in agriculture.

The increase in mechanization and scientific farming has also been associated with consolidation of farms into larger units to utilize expensive

[1] *Output per Manhour in the Private Economy, 1959,* Bureau of Labor Statistics, June, 1960.

[2] *Changes in Farm Production and Efficiency,* Agricultural Research Service, July, 1960; and *Farm Cost Situation,* Agricultural Research Service, November, 1960.

production capital more effectively. Between 1950 and 1959, farms of 1,000 acres and more in size increased 12 per cent. On the other end of the scale, farms in the 10 to 90 acre category declined 42 per cent. (This shift is only partially due to the change of definition of farms in the latest census of agriculture.)

The shift toward large, mechanized farm operations has had the effect of forcing tenants and sharecroppers, as well as small independent farmers, out of production. Tenants of all types accounted for 26.8 per cent of the 5.4 million farms in 1950, but were only 20.5 per cent of the 3.7 million farms in 1959. Growing capital requirements have severely limited the opportunities for tenants to become farm owners.

While favorable economic conditions in the nonfarm sector of the economy throughout most of the past decade have made it possible for displaced small farmers and tenants to move into nonagricultural industries, many have been forced to remain in agriculture as hired farm workers. This is especially true of those with limited education and members of minority groups. Many of these people have been a source of replenishment for the migrant streams of farm workers who strive to maintain steady employment by taking advantage of alternations of seasons in several agricultural areas.

Our concern, however, is with the changes in agriculture that have occurred in those enterprises that provide jobs for hired workers, including migrants. The recent census of agriculture show that more than half of all farms employ no hired workers. In 1954, only 5 per cent of all farms spent as much as $2,000 in wages. These farms, however, accounted for 70 per cent of the total farm wage bill for that year. Preliminary indications are that this situation will show little change in 1959. Migrant farm workers are usually found on those farms where there is a wide seasonal swing in hand-labor requirements which cannot be met from local sources. Vegetable, fruit, and sugar-beet enterprises and those cotton farms that are unmechanized or have not mechanized completely, have the greatest fluctuation in seasonal-labor demand. The 1954 census of agriculture reported average annual wage bills of $4,842 for farms primarily engaged in production of vegetables and $3,157 for fruit and nut farms. This compares with average farm-wage expenditures of $666 for all commercial farms.

Farm-Labor Market

The structure of the farm-labor market differs from that found for other industries in many important respects. To begin with, most labor on farms is supplied by farm operators themselves and by unpaid members of their families. During the month of highest agricultural employment in 1960, only 2.4 million of the 6.9 million persons employed on farms were wage and salary workers.

Hired farm workers generally do not have the stable attachment to the work force characteristic in other industries. Only some 700,000 farm workers are employed on any one farm for as long as 150 days in the year while nearly 3 million are employed only seasonally.[3] The sharpness of seasonal variations in the level of employment is illustrated by the fact that seasonal hired farm employment varied from a low point of about 310,000 in March to a peak of over 1.3 million in September in the major agricultural areas reporting to the

[3] *The Hired Farm Working Force of 1959*, Economic Research Service, U. S. Department of Agriculture, Agriculture Information Bulletin No. 238, April, 1961.

Bureau of Employment Security in 1960.[4]

The high degree of seasonality means that the work force must virtually be reconstituted anew each year from persons who left the labor force, entered nonfarm work, or were unemployed after the last period of labor need was completed. Obviously, this has important consequences with respect to the type of workers who seek farm jobs, employer-employee relationships, and other aspects of the labor market.

A substantial proportion are women and youth who come into the labor market only for seasonal jobs. As many as 1.4 million of the 3.6 million persons who did some farm wage work in 1959 engaged in such work for less than 25 days. For those who had longer term employment only 40 per cent relied on farm wage jobs as their major employment during the year.

Because of the short-term nature of most hired farm employment, employer-employee relationships are more casual than in most nonagricultural industries. The traditional picture of the year-round hand who is virtually a member of the employer's family has increasingly given way to a casual, impersonal relationship. Well-defined job tenure and seniority rights, taken for granted in nonfarm industries, are a rarity in agriculture. Instead, many seasonal workers are employed on a day-to-day basis, often by different employers on different days. Many farm activities are paid on a piece-rate basis under which the employer finds little necessity for careful selection of employees, training, supervision, or other management practices. In some areas, labor contractors, food processing companies or employer associations recruit, supervise and pay the labor used on individual farms, further reducing direct contact between the farmer and his hired hands. On the other hand, employment of migratory labor usually entails responsibility for providing housing and advancing transportation costs for employees.[5]

Special labor-market institutions have developed to meet the distinctive needs of agricultural workers and employers. The individual crew leader and labor contractor fulfill some of the functions of foreman and paymaster. The day haul brings together workers and employers in cases where employment relationships have been narrowed to day-to-day hiring. The provision of foreign workers through special government programs and special international arrangements exerts a labor market influence rare in other sectors of the economy.

Unionization, common in many nonagricultural industries, has, until recently, been almost nonexistent in agriculture. The casual nature of employment relationships, seasonality of operations, migrant status of many workers, the ethnic and racial heterogeneity of the labor supply and the absence of legal protection of the right to organize and to bargain collectively have combined to discourage the unionization of farm labor in the past. There are developments, however, which indicate that this situation may be changing.

It is obvious that the need to recreate the seasonal work force anew each year, heavy reliance on casual workers only marginally attached to the labor force, the lack of well-structured relationships between employers

[4] *Farm Labor Market Developments,* Bureau of Employment Security, January, 1961.

[5] For a discussion of employment relationships in the farm labor market in the Pacific region, see Lloyd H. Fisher, *The Harvest Labor Market in California,* Harvard University Press, Cambridge, Mass., 1953; and Varden Fuller, "Farm Labor: Supply, Policies, and Practices," 82 *Monthly Labor Review* 518, May, 1959.

and employees and the use of migrant labor make for relatively disorganized and inefficient use of manpower resources. Unemployment and underemployment are relatively high even during the active agricultural seasons.

There are, of course, some integrative forces which tend to bring order to the labor-market situation. Crew leaders introduce an element of stability in employer-employee relationships by developing job opportunities for their crew members and by serving as intermediaries in making and meeting work commitments. Although the role played by crew leaders is probably indispensable at the present time, it must be noted that some crew leaders have been known to impose unfair charges on their workers and to engage in other unscrupulous practices.[6]

For some crops and areas, second-stage handlers of farm products, such as packers or food-processing companies, have played an integrative role by recruiting seasonal workers, providing them with transportation and housing and scheduling them among individual farms which have entered into contractual marketing relationships with them. Often this results in more continuous employment for the farm workers than would have been the case if recruitment had been conducted by individual farmers.

Many farmers have formed associations to increase the efficiency of recruiting, transporting and housing workers and to provide more continuous employment over a longer period. Formation of associations has been given impetus by programs to utilize foreign workers in labor-shortage areas. The growing importance of centralized employment in the farm-labor market has significant implications in terms of stabilization of employment relationships and the relative bargaining strength of workers.

Most important as an integrative force in the farm-labor market is the federal-state system of public employment offices. Because of its nationwide coverage, its close contact with farmers and workers through local offices and its nonfee-service orientation, the public employment offices have an important role in the employment process. With the growing complexity of the farm-labor market and difficulties of obtaining workers for seasonal work, it is necessary to organize local-labor resources, to make interarea, interstate and even international arrangements to provide the appropriate number of workers in the right places at the right time. The employment service has been strengthened in this role by its authority to grant or deny the use of foreign labor in meeting labor shortages and by a continuous improvement of its fund of labor-market information.

For migratory workers, the federal-state employment-service system has established the annual worker plan under which workers are scheduled to a series of jobs in a manner which maximizes their continuity of employment while assuring growers of a reliable labor supply. Referral of migrants is conducted under detailed regulations designed to assure the availability of decent housing and the offer of terms and conditions of employment not less than those prevailing in the area.[7]

Migratory Farm Workers [8]

Workers are in the migratory stream mainly because of lack of better employment opportunities. Many are displaced farmers, tenants and share-

[6] *Survey of Farm Labor Crew Leader Practices,* Bureau of Employment Security, May, 1960.

[7] *The Annual Worker Plan in 1959,* Bureau of Employment Security, April, 1960.

[8] *The Farm Labor Fact Book,* U. S. Department of Labor, 1959.

croppers seeking to extend periods of seasonal employment in their home areas by supplemental work in other areas with complementary seasonal-labor requirements. Others migrate for higher earnings than those found in the low-wage, surplus-labor areas in which they live.

The approximately 500,000 migrants enumerated by the Bureau of the Census in 1959 constituted about one-seventh of the total number of hired farm workers that year.[9] They include persons of all ethnic groups, but a high proportion are Negroes and persons of Mexican origin. Nearly half of them were young persons, between the ages of 14 and 24, and about three-fourths are male.

The size of the migratory stream varies with general economic conditions, and the composition is subject to a large turnover. On the east coast, marginal farms are the principal source for the migratory group. New entrants to the streams which travel out of Texas and California are mainly recent immigrants from Mexico. A special study shows that the bulk of workers who leave the migratory stream take jobs as nonfarm laborers or machine operators; very few enter skilled, sales or service occupations.[10] For these people the migratory stream serves as a vehicle for adjustment from rural to urban life and for upward mobility. It brings them to work locations near centers of industrial employment where they can better their economic and social position. The study shows, however, that 30 per cent of the farm workers who migrated in 1957 had been engaged in farm-wage work for at least 10 years. For these people, handicapped by lack of skills and other barriers to nonfarm employment, there is no escape from the unfavorable wages and working conditions of migratory farm work.

The movement of workers from state to state may, in some instances, involve thousands of miles of travel. These workers tend to follow well-defined paths which have been developed over a period of years. The largest of these migrations is the midcontinent stream. Most of the south central states feed this stream but by far the largest number originate in Texas. Nearly 60,000 workers, primarily of Mexican descent, participated in the out-of-state migration from Texas in 1960. The most important part of this stream is the group which travels to the Great Lakes states to harvest canning crops and sugar beets. Another branch travels to the sugar-beet and vegetable areas in the Mountain states. A third group moves through the southwest to the Pacific coast harvesting cotton, fruit and vegetables. Several minor movements originate in Texas, such as the workers who harvest winter vegetables in Florida. A significant proportion of the Texas interstate workers return to complete the season harvesting Texas cotton.

Another major pattern of migration is the East coast movement, which involves 30,000 to 40,000 workers annually. The bulk of these workers come from Florida, but some originate in other South Atlantic states. When the winter harvest of beans, tomatoes, other winter vegetables, and citrus fruits in Florida is completed, they travel to North Carolina, Virginia, Maryland and Delaware to harvest

[9] Source cited at footnote 3. The survey estimate of migratory farm workers, including some foreign workers, was 477,000. Allowing for underenumeration, the domestic migratory work force was estimated at about 550,000 in 1959.

[10] James D. Cowhig and Sheridan T. Maitland, *An Analysis of the Experienced Hired Farm Working Force, 1948-1957,* Agricultural Marketing Service, Agricultural Information Bulletin No. 225.

vegetables. Many move on to the Middle Atlantic states and the Great Lakes for fruit and vegetable harvests.

Along the West coast, there is a substantial interchange of workers among California, Oregon and Washington.

Aside from these three basic migratory patterns, there are many minor routes, forming a veritable network over the country.

Earnings of migratory workers vary greatly from crop to crop and area to area. In the southern parts of the country wage rates of 50 cents an hour or below are not uncommon. In areas farther to the north migrants may earn 75 cents to $1.00 while on the West coast and Northwest, piecerate yields above $1.00 an hour are common. In 1959, migratory workers throughout the United States averaged $6.00 per day while engaged in farm work, according to the USDA. This compares with average daily earnings of over $17 for production workers in manufacturing, $14 in retail trade and $8 in laundries. Nonmigratory farm workers averaged $5.95 at farm jobs in 1959. Significantly, daily earnings of migratory farm workers have been declining while farm wage rates generally have risen. Earlier studies show average daily earnings of $6.90 in 1952, $6.40 in 1954, $8.05 in 1956, and $6.45 in 1957. This may reflect declining wages in the cotton harvest and an increasing mechanization of some of the better paying seasonal-crop activities.

A combination of low wage rates and intermittent employment results in low annual earnings. In 1959, migratory workers, excluding very casual workers, averaged only $710 from 119 days of farm work. Some were able to obtain nonfarm jobs during off seasons so that average earnings from all sources were reported to be $911.

Unemployment rates for migratory workers are extremely high. In 1959, 41 per cent of those who worked 25 days or more experienced some unemployment, compared with 16 per cent for the entire labor force. The average duration of unemployment among migrants who reported unemployment was 20 weeks.

Although migrant-worker families generally have more than one wage earner, families headed by migrants usually have cash incomes which are far below the income of the average American family. A special study of migratory farm workers in the midcontinent streams showed that the median household income was $2,256 in 1956 compared with $4,783 for all American households in that year. The average migrant household consisted of 6.5 persons of whom 3 were workers.[11] In the East-coast stream, where family size and workers per family is much smaller, annual earnings tend to be much lower.

Employment conditions for migrants are unfavorable not only with respect to wage rates but with respect to other working conditions as well. The housing provided for migrants is often structurally deficient and lacks adequate cooking and sanitary facilities. Owing to the uncertainties of weather and market conditions, the job tenure of migrant workers is insecure. Frequently they find themselves stranded without funds far from home but unable to qualify for public assistance because of residence requirements. The farm work assigned to child workers sometimes taxes their physical capacity and may interfere with their school attendance. During investigations conducted by the Labor

[11] William H. Metzler and Fredric O. Sargent, *Migratory Farm Workers in the Midcontinent Streams*, Agricultural Research Service, in cooperation with the Texas Agricultural Experiment Station. Production Research Report No. 41, December, 1960.

Department in fiscal 1960 about 1,600 migrant children under 16 were found to be illegally employed during school hours.[12] Over two-thirds of them were in grades below normal for their ages. When the children do not obtain adequate schooling, there is little chance that they will be able to qualify for nonfarm jobs or rise above the economic station of their parents.

The bargaining position of migrants is affected by the availability of foreign workers who are brought in under contract to work on American farms. In 1960, 335,000 were admitted, including 316,000 from the Republic of Mexico, 10,000 from the British West Indies, 8,000 from Canada and nearly 1,000 from Japan.[13] The availability of these workers for filling labor shortages prevents the upward pressure on farm wage rates which normal supply-demand relationships would generate in the absence of this additional labor supply.

Outlook for Migrants

The future of migratory labor must be considered from the standpoint of demand, which is related to production practices, supply in terms of forces generating migrancy and the organization of the farm-labor market itself.

The demand for food is expected to advance in the 1960's to meet the needs of an expanding population, particularly in rapid-growth regions in the West. However, the technological revolution in agriculture will more than offset increased production so that requirements for farm labor are expected to continue to decline. Overall a drop in farm employment in the magnitude of 20 per cent over the decade seems possible.

While the decline in farm employment during the last decade has been mainly in the family sector of the work force, during the next 10 years a significant drop in need for hired farm workers is expected. The spread of mechanical harvesting methods in cotton harvest, which employs the bulk of the seasonal farm workers, has been phenomenal. In the season just ending, more than one-half of the U. S. cotton crop was picked or stripped by machine compared with only about 5 per cent in 1950. About 90,000 U.S. migratory farm workers and 150,000 Mexican nationals were used in the cotton harvest in 1960. Further extension of mechanization can decrease needs very sharply. In the Lower Rio Grande Valley of Texas, for example, wage rates for cotton picking rose from $2.05 per hundredweight in 1958 to $2.50 in 1960. At this rate, the break-even point was reached at which growers have an incentive to mechanize. Sixty per cent of the crop was gathered by machine in 1960 compared with 30 per cent in 1959 and employment of hand pickers dropped by more than 40,000. Declines may occur elsewhere as machines adapted to varying soil and crop conditions are improved.

Similar developments expected to significantly reduce farm-labor requirements are the snap-bean harvester and potato and vegetable combines. A few years ago as many as 150,000 seasonal workers, mainly migrants, were employed in snap-bean harvesting at season's peak. By last year the number had dropped to 100,000 and further declines are likely to occur. Experimental models of tomato-harvesting machines are now in use. Growers are awaiting the development of tomato strains adopted to machine picking. Plans for machines to harvest raisin and wine grapes are also on the drawing boards. These are crops

[12] *48th Annual Report of the U. S. Department of Labor*, 1960.

[13] *Annual Report on Employment of Foreign Workers*, Bureau of Employment Security, February, 1961.

that employ hundreds of thousands of seasonal farm workers.

The harvesting of soft, perishable fruits and berries does not lend itself as readily to machine methods. Hand labor is preferred for selective picking for fresh-market use, but the demand for fruit for processing is gaining rapidly. Processed fruit is being harvested to a limited extent by tree shakers and other devices.

The long-range outlook is for a smaller and more highly skilled hired farm working force, but a core of migratory workers will still be needed for many activities for years to come.

Mechanization of farm operations, while reducing demand, has an effect on the supply of labor as well. Patterns of migration are likely to be upset, work seasons shortened, earnings lowered, unemployment aggravated, as scientific techniques spread unevenly. Migratory workers, finding irregular seasonal farm employment even less dependable as a source of livelihood, may seek jobs that offer greater security.

The rise in postwar unemployment creates some concern as to whether or not nonagricultural employment can continue to provide jobs for new entrants and also accommodate a substantial rural-urban labor shift. Displaced farmers, sharecroppers and unemployed farm workers, with low skill levels and inadequate education may have more difficulty competing in the nonagricultural labor markets of the future. Unfortunately rural educational levels, particularly those of migrants, lag behind accepted standards. With prospects for high rural births and declining employment opportunities, the ingredients are present for serious economic hardship for migratory farm workers in years to come.

Great interest has been aroused in recent years in the problems of migratory workers from a humanitarian standpoint. The President's Committee on Migratory Labor, since its inception in 1954, has done much to stir the public conscience. Committees have been established in some 30 states to prod legislatures to adopt housing and transportation codes and provide for child care and education. Private organizations and church groups have led the campaign for reform. Important as the humanitarian and welfare aspects of the problem are, however, a fundamental solution must be sought in the employment and labor-market area.

The impetus for stabilizing employment conditions for migratory farm labor, under normal conditions in a competitive labor market, should come from the agricultural industry itself. With increasing concentration on large business-like farms and centralized hiring through associations and processing firms, conditions are present for a more modern approach to employment relationships, taking into account the workers' needs for security, living wages and decent employment conditions. It is unrealistic for farm employers, particularly in the West and Southwest, to assume that the government will continue to intervene in the farm-labor market to assure a supply of foreign labor.

The concentration of employment in agriculture also produces conditions favoring labor organization. The economic effects of the AFL-CIO organizing drive in California during the past year have been considerable although the number of actual labor disputes was relatively small. Farm wage rates in California advanced 4 per cent between 1959 and 1960 compared with only 2.5 per cent for the country as a whole.

In the final analysis, the best hope for an economic solution to the problems of rural poverty and the de-

pressed condition of farm labor is the maintenance of a vital, vigorous, growing economy, with capacity to absorb technological displaced workers in productive employment. The role of government, through appropriate legislation, in dealing with the social and economic problems of migratory workers will be discussed by Senator Harrison Williams in the paper which follows. **[The End]**

Proposed Legislation for Migratory Workers

By HARRISON A. WILLIAMS, JR.

Mr. Williams is United States Senator from the state of New Jersey.

THANK YOU for the invitation to join you as a working member at the spring meeting of the Industrial Relations Research Association. I am grateful and impressed that you have devoted not only a portion of the afternoon session but the entire session to the discussion of the problems of the migratory worker and his family. It is a credit to the initiative and progressive spirit of your organization and indicative of the growing concern in this area of the last few years, or more recently of the last few months.

We naturally expect church groups, private welfare groups and other interested groups to devote much attention to the problems of the migratory farm worker and his family. Traditionally, these problems have been one of their major concerns. Their work has borne and is continuing to bear much fruit.

But when the migratory farm worker becomes the subject of consideration in the formal meeting of your association, not only is a new group promoting the cause of the migratory worker—more importantly, the worker himself is achieving status as a recognized member of the labor force of this country. Those who are familiar with your organization and its professional publications will become aware of the problems of the migratory farm worker in this new context.

During the last year, our nation has become increasingly aware of and concerned about the problems of the migratory farm worker and his family. Seldom does a week pass when their problems do not receive attention at the national level. All of these signs are encouraging. Those here today know, of course, that this is only a beginning.

Both party platforms of the last conventions pledged action on the problems of the migratory worker. I consider myself, for one, directly charged with a heavy responsibility.

The mandate of the new administration in Washington—the Democratic platform of 1960—expressly makes this call for action:

"We shall seek to bring the two million men, women, and children who work for wages on the farms of

the United States under the protection of existing labor and social legislation; and to assure migrant labor, perhaps the most underprivileged of all, of a comprehensive program to bring them not only decent wages but also an adequate standard of health, housing, social security protection, education and welfare services."

To complete the record on party position, particularly since it shows bipartisan demand for action in this area, I quote also from the Republican platform of 1960:

"We pledge, therefore, action on these constructive lines: Improvement of job opportunities and working conditions of migratory farm workers."

The pledges have been made; the time for legislative decision has now come. To meet this challenge, I introduced in the Senate an 11-point legislative program. Companion bills have been introduced in the House of Representatives. This program has evolved from more than 20 months of work and study by the Subcommittee on Migratory Labor, including public hearings and field trips in eight of the states which use large numbers of migratory farmworkers each year: California, Florida, Michigan, Minnesota, New Jersey, New York, Pennsylvania and Wisconsin.

The specific subject matter in the 11 bills are: agricultural minimum wage, agricultural child labor, education of migrant children, education of migrant adults, registration of agricultural labor contractors, housing assistance for farmers and for farm workers, agricultural labor relations, stabilization of the farm working force, improved health services for migrant families, improved welfare services for migrant children and establishment of a National Citizens' Council on Migratory Labor.

During hearings on April 12 on the child labor, citizens' council and crew leader bills, Secretary of Labor Arthur J. Goldberg gave an eloquent and thoughtful appraisal of these bills as a representative of the new administration. As one whose department will be charged with the administration of much of what is proposed, he took a forthright position. His enthusiastic support would seem to make positive legislative action imminent. He said:

"They [the migratory workers] are in a very real sense the forgotten people among us; they are at the bottom of the economic ladder.

"I am firmly of the view that the time for study has now passed and that the need for effective action is imperative . . . that the nature of the problem is such that meaningful progress toward its solution will come only in the exercise of leadership by the Federal Government and through the enactment of long overdue legislation by the Congress."

The first day of hearings closed with the appearance of Senator Hubert Humphrey, the Senate majority whip. It is certainly a good omen for our bills to have the generous and enthusiastic endorsement of one so high in the councils of the Senate leadership.

On the second day of hearings, April 13, Secretary of Health, Education and Welfare Abraham Ribicoff stated while testifying on the health and the education bills:

"The problems of migrant agricultural workers are clearly beyond the capacity of local educational and health agencies to solve by themselves. . . . We are firmly convinced that federal assistance and encouragement for such efforts are required if most of these citizens are ever to achieve a bare minimum of education."

Less than two weeks after these highly successful hearings, the subcommittee met in executive session and favorably reported the six bills to the full Committee on Labor and Public Welfare. What are the principal provisions of these first six bills?

Child Labor

Under the present federal law, agricultural child labor is prohibited during school hours, but outside school hours agricultural child labor is not prohibited. The necessity for protection outside school hours is evident when one considers the fact that in 1959, only the extractive and construction industries exceeded agriculture in rate of deaths resulting from accidents. Increasing mechanization continues to aggravate this hazardous situation.

Our bill prohibits agricultural child labor below the age of 15. Hazardous employment determined to be such by the Department of Labor would not be permitted below the age of 18. The present 16-year-old minimum with respect to agricultural employment during school hours would continue to apply.

Crew Leader Registration

Our chief objective in the crew leader registration bill is to weed out those dishonest labor contractors who make work arrangements and then fail to fulfill their contracts.

This bill requires persons engaged in activities as agricultural labor contractors (the middlemen in making work arrangements between worker and grower) to register with the Secretary of Labor. Upon registration and submission of certain prescribed information, such persons would be issued certification of registration which they must keep and exhibit to persons with whom they deal in their activities as agricultural labor contractors. A certificate of registration could be revoked or suspended by the Secretary of Labor after notice, hearing and findings of practices prohibited in the bill. Such practices, among other things, include (a) giving false or misleading information to workers concerning terms, conditions, or existence of farm work; (b) failure to perform agreements with farmers or workers; and (c) engaging in illegal activities on or near premises used to house migratory farm workers.

National Citizens' Council

The National Citizens' Council bill calls for an independent, representative citizens group to advise the President and the Congress with respect to the operation of federal laws, regulations and policies relating to all aspects of migratory agricultural labor. It would consider means for improved coordination of federal, state, county and local policies.

Membership would include representatives of farmers, migratory workers, private groups involved in migratory health, education and welfare work and state officials familiar with migratory worker problems. Public attention now given the problems of the migratory worker is the result of the efforts of people who have worked directly with and for the migrants. To apply the knowledge and experience of such people is the hope of this bill; this is a proper and necessary national function.

Education for Children of Migratory Workers

Two education bills were under consideration during the last Congress and they were favorably reported by the Education Subcommittee on June 24, 1960. The same provisions are in the two bills presented this year, S. 1124 and S. 1125.

The three principal provisions of S. 1124 are: federal financial assistance each year for five years to relieve local educational agencies of part of the cost of educating the children of migratory parents, annual grants for five years for operating costs of conducting summer schools and planning grants each year for five years to encourage interstate cooperation.

Local school districts face serious financial and physical plant problems because of the seasonal influx of migrant children and the special services required by this group. These children are no different from others, but a child who leaves and enters school several times a year in various areas cannot be expected to keep pace with those who are able to remain the full year.

Adult Education Program

The adult education bill would provide annual grants totaling $250,000 each year for five years to help defray the operating costs of education programs for adult migratory farm workers. Such programs would offer adult migratory farm workers fundamental, practical education in such areas as illiteracy education, remedial elementary and secondary education, child care, personal hygiene, sanitation, homemaking skills, nutrition and job improvement activities. These grants would be made available to state and local educational agencies or institutions of higher education and would be allotted on the basis of states' relative population of migratory agricultural employees. William L. Batt, Jr., Secretary of Labor and Industry of the State of Pennsylvania and recently named administrator of the federal depressed areas program—and, I might say, one of the most dedicated and knowledgeable in his concern for the improvement of the lot of the migrant—described the problem and indicated the purpose of this bill when he told the Subcommittee on Education:

"Farmers repeatedly say to us, 'I've built them new housing, put in toilet facilities, showers, cooking facilities, nice bedding, plenty of garbage cans—and then what? The occupants mark up the walls, kick holes in the screens, stop up the toilets, pull the knobs off the showers and stoves, tear up the blankets, and ignore the garbage cans.'

"Too many of these things have happened on too many farms and one must be extremely sympathetic to the farmer who provides good facilities only to have them damaged. . . . [T]he problem is a lack of education and knowledge of modern living."

Health Grants for Migratory Worker Families

To relieve the many serious health problems facing migratory workers and their families and, as a consequence, the local areas in which they reside, this bill authorizes $3 million annually in federal grants to states and local communities to help stimulate and support health programs for our migratory farm worker families.

These plans are practical; their consequences would benefit the migrant, his employer and the community to which the migrant goes in search of employment. If money spent in emergencies were directed to prevention, the cost might well be less for us all and the benefits greater in the long run.

These bills are moving smoothly along the legislative path now, but they comprise only part of our legislative program. The remainder of the program consists of five bills dealing with child day care facilities, housing, agricultural minimum wage, agricultural labor relations, and stabilization of the farm working force.

Day Care Facilities

The day care facilities bill would assist states in establishing and operating day care facilities for migratory children. The migrant parent often must cart the little ones to the field during the working day or leave them untended at the camp. Only 24 state-licensed day care centers now exist. Almost half of these are in New York State and the capacity of all 24 is about 1,000. It is interesting to note that there probably are between 350,000 and 500,000 migrant children under 18.

Housing

Agricultural income is low. Agriculture has risks no other industry has. At certain times, the grower has a large labor force. At other times, 5 or 10 per cent of the peak season labor force is sufficient. Housing, whether used for one month, six months or a year, is costly. The grower seldom is able to finance housing in the commercial market, while the increasing activity of counties and states in enforcing housing codes squeeze him more each year. To encourage the development of adequate housing and to help the farmer finance necessary housing, our bill provides commercial loan guarantees and direct low-interest loans. It also provides aids to the worker seeking to own his own home. What we have seen in Florida, California and elsewhere indicates such a plan is advisable and feasible.

Minimum Wage

Presently the wages of migratory agricultural workers are less than $1,000 a year and only about 120 days of employment are possible. The minimum wage bill would bring a minimum wage to agriculture where none exists now. It would extend coverage of the Fair Labor Standards Act to include agricultural employees. The minimum would be $.75 the first year; $.85 the second; $1 the third and the industrial minimum the fourth. The coverage test is set at 560 man-days during any one of the four preceding quarters. Overtime is not involved in this legislation.

The effect of the 560 man-day test would be to apply minimum wage requirements to farm enterprises using approximately seven or eight full-time employees during a calendar quarter. It is estimated that the test would apply to about 50,000 farms, thus providing coverage for approximately 1 million farm employees.

If a minimum wage in industry is justified on the grounds of social welfare and conditions of work as not being in keeping with the general standards acceptable in this country, then this same reasoning would apply to the farm workers. I realize we are faced with an income problem in American agriculture. However, sections of the country pay rates in excess of the recommended minimum at the present time. If they are able to meet minimums, why cannot others?

National Labor Relations Coverage

The purpose of this bill is to apply the collective bargaining rights to agriculture. To achieve this purpose the bill amends the National Labor Relations Act by removing the exemption for agricultural employees and by including agriculture in the special provisions in section 8(f) covering construction employees. This would allow agreement without (a) prior establishment of union majority status, but the majority principle of the Act would be preserved by allowing unions showing sufficient interest to petition for election, (b) requiring union membership on the seventh day of employment, (c) giving the union first option on new employment opportunities and referrals, and (d) specifying certain

objective criteria for referral of employees for employment.

No element of the migratory worker problem is so complex as is this. You will hear more about these problems, I trust, before the afternoon is over. Consider this question: Isn't the farmworker entitled to the same provisions and coverage as other groups enjoy under the National Labor Relations Act? If not the same coverage, should not some similar legislation be developed? Remember at present there is an exemption. Should the exemption continue?

I do not deny that agriculture has a problem not common to most other industries. The harvest will not wait. What do you do when faced with a strike situation? Are there comparable situations in other industries which might help in the development of satisfactory solutions? It is to be noted that the best bargaining power, and maybe the only bargaining power, the farmworker has is that which can be exercised when he is most needed. All of us in this country who have grown up with union management collective bargaining are sensitive to its great importance. It helps to create industrial peace, and it can do the same for agriculture.

Domestic Worker Stabilization

This bill is designed to stabilize and insure an adequate, well-trained domestic farm labor force through (1) improved programs of recruitment, transportation and distribution of domestic agricultural workers; and (2) assurances and guarantees respecting the rights and obligations of agricultural employers and employees using the recruitment program. Participation in the recruitment program would be strictly voluntary. During participation both employer and employee would continue to have free choice as to whether to enter into work agreements with each other.

As Professor Varden Fuller made so clear at the National Conference to Stabilize Migrant Labor, the major goal of any national policy aimed at stabilizing migrant labor should be: "The establishment and maintenance of an employment environment that offers positive inducements to a resident core labor force that will have attachment to and identification with seasonal agriculture, and that will constitute an employment category in which workers will have a reasonably good chance of making a living."

Is it possible that eventually with increased mechanization the agricultural labor force might come from the seasonal employees of some other industry within a given state if such a situation as Professor Fuller advocates were to become a reality?

As A. H. Raskin so well pointed out in his lengthy series on the problems of chronic unemployment which appeared in the New York Times in early April:

"Many experts believe these machines will eventually end the exploitation of the country's most depressed labor group, the half-million migrant farm workers, whose annual earnings average less than $1,000 and who live in squalor reminiscent of *Tobacco Road.*

"The question is what will become of these workers when the machines 'emancipate' them from their bondage to the crops that pay them so poorly. Uneducated and unused to city life, how will they find jobs in industries that have long waiting lists of experienced workers they are unable to employ?"

Experience convinces me that much can be done through the development of programs leading to fuller utilization of underemployed rural Americans and to meeting existing labor

requirements, which would go a long way toward solving such a problem.

Conclusion

Consideration is being given to problems of unemployment compensation, workmen's compensation, and residence requirements in social legislation.

No matter how many laws we propose in Congress, we can hope for little accomplishment unless we have help from you and people like you throughout the country. You are bringing the migratory worker into a new context; you are considering him as a member of the entire labor force entitled to the same rights and privileges generally accorded that group. I urge you to keep the migrant in that context. Consider especially the last three pieces of legislation I have presented: minimum wage, National Labor Relations Act coverage and domestic farm worker stabilization.

The migrant is a citizen and should be entitled to all benefits accorded that group in American society; he is a member of the labor force and entitled to consideration as such; his work is essential to the agricultural economy and should be treated as such; his work makes it necessary for him to travel often and far.

It should disturb us when we constantly seek to increase the benefits to groups already covered and yet at the same time do not make serious attempts to include the forgotten men, those at the bottom of the economic ladder.

A problem such as this cannot be blamed on any one segment of our population. Many positive steps can be taken through which progress can be made. Much of the legislation would accelerate already existing programs or supplement private and state activity of the same nature.

At a time when so many Americans believe that all Americans are living in an affluent society, it is refreshing and significant that many individuals and organizations are taking time and trouble to do something about a minority which, although it is comparatively small in a nation of 180 million persons, is, nevertheless, of significance beyond its members. If we believe in economic and social justice, then we must believe in economic and social justice for *all* Americans.

[The End]

Problems of Union Organization for Migratory Workers

By FRANZ DANIEL

The author is Assistant Director of Organization of the AFL-CIO.

THE PROBLEM of organizing working people into unions consists of an educational procedure which convinces those people that they will economically benefit by organization. This procedure is complicated, easily disrupted, influenced by objective economic and social factors, subject to personality impact and conditioned by the local, state and national political climate.

There have been a few periods in our national development when many influences and conditions combined in

such a fashion as to cause union organization in a massive, sweeping manner—and during such periods the step-by-step educational procedure was telescoped and the steps are hard to discern. But such periods are rare—and we definitely are not in such a period at this time. For the purposes of this discussion let us analyze the process of union organization as it applies to the migrant farm worker. Let's start with the raw material—the worker himself.

The Migrant Worker

This morning, long before daybreak, the skid row section of Stockton, California, has been swarming with men and women looking for work. Some 3,000 or more of them. And of this number only the slightest fraction are there because they want to be there—conscious beings following a trade; knowing their skill and seeking a chance to use that skill. Of this mass of milling, seeking people another small fraction are derelicts. Even though it is now two hours before the liquor stores open at 6 a. m.—wine bottles are beginning to circulate among this group. Should some stay sober enough to get on a truck or bus the odds are that a bootlegger will also be on the bus and the unfortunate individual or individuals will become more incapable. This is the type the growers and grower spokesmen insist on describing as characteristic of all migrant labor. The vast majority of these men and women listening to the loud speakers blasting out job requests are sober, anxious, eager and capable individuals. They are unhappy. They are resentful. They lack confidence in themselves and in each other. They are afraid. They are poor, and there is nothing redeeming about poverty when it means dirt, vermin, hunger and pain. This is the raw material with which our organizers start their work.

They are unhappy because they are migrants—they have no base, no home, no roots. And even if they have a shack or trailer, or live in a pick-up truck, this is still a rootless, abnormal life. At one time in the experience of each one of these people there was a home. And if they dream, there is a home someplace in the future. But right now each one has the job of staying alive. And following the crops is a rough way of doing that.

Resentment against their way of existence is the most recognizable feature in their make-up. Some lost their farms, most of them lost a job in industry. They were low on seniority lists when cut-backs came. Automation may be a fancy, mysterious word to most of these people, but these are the ones who have felt the sting and have got the message of the meaning of that word. If they were union members, and many were, they are angry about their union experience. Unions are no good—otherwise why should I be here on the streets of Stockton at four this morning fighting for a chance to work for a lousy dollar an hour? They resent the condescension of the bureaucrats in the placement office; they resent the hostility of the community. Most of all they resent the dreary, shabby routine of hard, hot work, crowded and uncomfortable transportation facilities, cheap food, drab and cramped sleeping quarters, and the same shape-up the next morning.

Nothing in their lives tends to give them confidence. They fight each other for jobs. They are suspicious of each other. They fear, if they do not hate, the contractor who is screaming obscure offers for their services. The contractor shouts rates and conditions, how much he will pay for what kind of work; and what do these words mean in the experience of past dealings? They have been cheated so many times. And when cheated, there

was nothing to be done about it. It is this lack of confidence in themselves or in each other that is the organizers' first challenge. People without confidence cannot be organized. And the second challenge is the fact that these people are afraid.

They have a right to be afraid. They are denounced as riff-raff and bums by the growers. The growers and grower-controlled police shove them around without hindrance. They are not welcome in the prosperous business and residential sections of the city. They are confined to a ghetto of shabby eating joints, saloons, flop houses, missions, here and there a park with grass and dirty, littered streets. Police cars are everywhere, paddy wagons stationed every block or so and patrolmen with dogs making their rounds.

Public Law 78

The growers are anxious to put into effect the benefits they derive from their law, Public Law 78. They want to fill their fields and orchards with the docile, disciplined and uncomplaining creatures of Public Law 78, the Mexican nationals—the braceros. The presence of an abundant supply of domestic labor is an embarrassing inhibition to this desire. As a result the object is to reduce such a supply of domestic labor and this is done by police action in the valley cities, mass arrest on vagrancy charges, a quick trial by complacement magistraters and the automatic sentence of "get out of town." In the case of one California county this procedure is varied in just one particular—this county leases convicts for agricultural work and so a certain percentage of those picked up on vagrancy charges are given jail terms. A reservoir of labor supply has to be maintained. If this sort of action is not sufficient to scare the domestic workers away from the community, then the grower puts into effect a second phase of the over-all plan. Domestic workers are hired and then are put to work in the worst fields where production is difficult and earnings are necessarily low. They soon quit.

The largest cherry grower in the Stockton area has for years had the practice of starting his picking season by hiring domestic workers. His trees are abnormally tall and high ladder work makes earnings very low. The workers would become discouraged and would walk off the job. The grower would then demand and obtain braceros. To discourage the supply of domestic labor; to condition that supply to be unreliable; to make conditions unattractive—this has been the pattern of grower policy since Public Law 78 has been in existence. The relentless operation of this policy over many years has created a condition of timidity, fear and resentment in the consciousness of the average migrant farm worker.

There are other factors as well that influence and condition his personality and character that the union organizer has to understand. There are racial prejudices and feelings that have their roots in our national cultural development. There are ethnic divisions that often take emotional directions. The language barrier is compounded by the existence of many tongues and dialects. And finally there is the problem the organizer has to solve of how to obtain the attention of this restless, fearful, complex individual long enough to even begin the educational process which is union organizing. Like the "Ancient Mariner" the organizer has to attract and hold the attention of him who has something else on his mind—and something else which he must be doing.

The Bright Side

This description of the raw material with which the union organizer begins his work is perhaps oversimplified in several aspects, and it certainly is geographically limited. It is based on personal observation during the past two years in the San Joaquin and Central Valley of California. Conditions undoubtedly differ in other areas of migrant labor usage. Certainly conditions are different in those states which have educational and welfare programs in effective practice. And even in this area of personal knowledge there are some relieving items. Some of the workers are not afraid and do have self-confidence. Some of them look back on their union experience in industry as a good experience and are willing and able to use their union knowledge and training as local officers and shop stewards in this new venture of union organizing. And all of the growers are not damned denizens of outer darkness; and here and there are city and county officials, including some sheriffs and cops, who are not without some compassion and regard for human rights.

And certainly there is a body of citizens in all of these communities who are concerned about the situation and who sincerely desire to see conditions bettered and the ugly aspects removed. Their sincerity goes so far as to be willing to give union organization an opportunity to prove its contention that it can remedy this grievous shape of things as they are. It is the organizer's job to discover these exceptions in each of the mentioned categories, to rally them and to make use of them in reaching out to attract, to educate and to organize.

Organization Techniques

Demonstration of results is a necessary step in union organization and the organizer will move in this direction. In industry the problem is simple: compare the wage levels, the fringe benefits, the job protection safeguards in organized industry as compared to the unorganized portion. This is impossible in the agricultural area. No basis for comparison exists. So the organizer is forced to demonstrate results on the job itself. The first avenue of attack is the administration of the laws, rules, regulations and policies of the complex of national and state agencies concerned with the welfare, the employment, the job placement and the economic protection of migrant farm labor. The laws creating these agencies have their origin in the concern of our democratic form of government over the plight of citizens engaged in farm work. Based upon this democratic concern, the laws attempt establishment of base pay rates in certain crops upon the "prevailing rate of pay" in the area.

Over the years the records show that there had been no real determination of what was the prevailing rate of pay. In response to organized farm worker demands and pressure last summer, actual scientific determinations were reached and as a result piece work rates were substantially increased in several crops. As a direct result more domestic workers were available, less braceros were used and more workers joined the union.

Growers, devoted to the tactic of discouraging domestic workers, take every advantage of slack administration of the regulations. Their trucks will not be at the designated corner or location at the time they had agreed to pick up their domestic labor supply; they will reassign the workers from a good, lush field where a decent wage could be earned, to a weedy, dirty field where the return is poor; they will call off work after an hour or possibly two hours of harvesting; they will delay the furnishing of

knives or other equipment—all technical violations of the spirit, if not the letter, of the regulations and policy of the agency involved. But unless a voice of protest and demand is raised the agency will not be aware of the violation. And the discouraged, intimidated, beaten individual worker will not raise such a voice.

The union organizer supplies this voice—not his voice representing himself, but his voice representing the wronged workers. He is demanding that the spirit and the letter of the law be enforced. If his facts are right, and in the obtaining of facts he is careful, he obtains redress and better conditions. He is often able to remove braceros from a field and replace them with domestic workers—and, despite the rigid grower policy of no dealing with the union, he is sometimes able to negotiate an increased rate. This is the kind of demonstration of results that builds the union. This exercises fear, this builds confidence, this satisfies the pragmatic goal of union organization —more money in the pocket. The organized migrant workers in central California are doing these things.

The whole point of organizing workers into unions is to establish economic security by increasing the amount of money the worker gets for his labor. This is the crux of the whole matter; this is where we separate the men from the boys, the realists from the romanticists. It certainly isn't fashionable, and probably not politic, to talk about the class struggle in relationship with union organizing these days. It's been over 55 years since Big Bill Haywood opened a Chicago meeting by banging a piece of lumber on a table and stating the classic formulation of a widely held tenet of labor philosophy: "The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things of life. Between these two classes a struggle must go on. . . ."

The labor movement has come a long way since 1905. The labor movement today shares the assumption that it is an accepted, respectable and respected element in our social and political system. Upon reflection we realize that this assumption is a very recent development, an assumption of very tender years. It could not have been made in the first decade of this century with the Rocky Mountain rebellion exploding bombs and spilling blood. Nor in the second decade with the IWW thrusts at the mining, timber, textile and agricultural industries. Nor in the third decade that marked the crushing of the labor movement and the triumph of the open shop "American plan." All of us recall the turbulent and violent thirties with the textile revolt in the South, the steel, rubber and automobile campaigns. The fact is that for less than 15 years has the permanence of the labor movement been accepted by society.

Grower Resistance

For any understanding of the present problem of organizing migrant farm labor it is necessary to accept the fact, and to understand the implications of that fact, that the dominant, controlling farm and grower groups in this country do not recognize the labor movement as a valid social institution with a right to exist, with obligations to perform, with objectives of individual and collective improvement. These farm and grower groups have accepted Bill Haywood's dictum "between these classes a struggle must go on." Listen to the words of the Western Growers Association—words issued in January 1961: "proponents of panty-waist public rela-

tions, people with revolving cheeks, and sensitive souls who shrink from using heat to cure the union blight should file quietly from the hall at this point. Low purposes spawn at low levels and cannot be met successfully with an invitation to tea in the upper parlor."

Union Progress

For the past two years the AFL-CIO has conducted a pilot organizing campaign in the Central Valley area of California. During these two years over 20,000 months' dues have been paid by migrant farm workers to the Agricultural Workers Organizing Committee—the AFL-CIO chartered organization set up to organize in this area. In order to accomplish this much a vast amount of money and even more energy has been expended. From a dollar and cent business point of view the experiment has been a failure. But from that point of view there never would have been a successful organizing campaign. On the credit side there are concrete results: a staff of competent, dedicated men and women has been recruited directly from the fields; stewards—spokesmen—over 150 now, have been trained and have become experienced; national and state administrators have responded to the factual presentation of grievances and wrong doing; and wages have been raised. During 1960 the AWOC operated in 17 California counties and concerned itself with some 15 crops. Wage increases in excess of $11 million was a direct result of this operation. Concurrent with the wage increases were the following: less number of braceros used; more domestic workers employed; more efficient harvest methods practiced with less crop loss than has ever been before. These actual accomplishments add up to the kind of demonstration of results that is necessary in effective union organization.

In the boundaries and according to the rules of class struggle operation as laid down by the grower groups this record of accomplishment has not been achieved easily. The union has had to fight each inch of the way. The union held to the belief that this condition of human anguish and degradation could be helped by the process of democratic collective bargaining. The growers said that there would be no recognition of any collective body, no bargaining, not even any talk. So the issue was joined.

The union does not want to strike. A strike in a cherry or a peach orchard is not like a strike in a steel mill. Whatever the outcome of a steel mill strike, victory or defeat, the mill and the machinery and the jobs are still there. This isn't true in a peach orchard. The peaches drop off and the jobs are gone. The men and women, the peach pickers, need and want those jobs. All they want is to talk to the orchard owner—to bargain with him about the value of their labor. They asked for $1.25 an hour. The grower said no—no bargaining, no talk. He said he would recruit other labor. He said he would use local clerks, housewives, dentists, anyone he could get or his association would send him. He sent agents out to recruit and to organize strike breakers. And so the issue was joined.

The men and women who work in the apricot, pear, peach, celery, prune, tomato, walnut, grape and olive harvests said, "We need and deserve at least $1.25 an hour. Lets talk about it." The growers in these crops said, "No, no talk." And so the issue was joined.

As an afterthought, the growers said that they wouldn't consider a $1.25 an hour because it would raise food prices and the consuming American public would rebel. Do they think we like the smell of peonage in

our salad bowls? Or the taste of misery and shame in our fruit cups?

Power Conflict

When such issues are joined power comes into play. On the one hand there is labor withheld and pickets placed at ranch gates. On the other there are the grower associations and combinations. There are the reservoirs of strike breakers; there are the "blue card" Mexicans in this country by permission of the Immigration Service and subject to abnormal pressures inasmuch as their businessmen and/or grower sponsors can withdraw their sponsorship and thus return them to Mexico; and until recently there were the braceros who have been used in recent years to break and destroy any and every sporadic attempt on the part of domestic workers to better their conditions. And there are the courts. Injunctions are automatic and severe. Arrests are numerous, bail bonds set at oppressive heights and shotgun carrying to bring about practical efficiency in supplying labor when and where it is needed and, at the same time, giving protection to labor when and where it has been placed on jobs.

It is possible to grant the high motivations of these laws and agencies, and at the same time call attention to an inevitable fact of democratic development, the administration, the interpretation, the enforcement of social and economic legislation responds to organized pressure. In the development of the agencies having to do with farm labor there has been only one effective voice—that of the organized farmers and growers. It is proof of the validity of democracy and a tribute to the honesty and dedication of the public servants attached to these agencies that the administration has been largely marked by fairness and impartiality. There have been surprisingly few cases of actual corruption. But the fact remains that organized growers have succeeded in using the laws and the agencies for their convenience and for their increased efficiency.

The organizer sees in the existence of these agencies an opportunity to demonstrate concrete results. For example, existing regulations call for the deputies in such swarms as to recall historical references to sun-obscuring locusts.

To these fundamental problems of union organization of migrant farm labor, there must be added a myriad of smaller but bothersome problems. How does the union movement go about creating the kind of organizational structure that will give permanence and stability to a membership moving about over an area of thousands of square miles? A bookkeeping system that will keep membership records, dues payments, benefit claims, social security information—the essential data of an efficient modern union—up to date and in available form has not yet been invented. In order to get the full benefit from union organization the membership must participate in political action. This alone represents a problem of tremendous proportions. An educational program designed to increase skills and abilities is absolutely essential in view of the rapid mechanization and automation of agricultural production. These are but a few of the problems presented by the complex, difficult, but essential job of organizing migrant farm workers.

Conclusion

In facing the task of organizing the migrant farm workers the labor movement must first take stock of itself. Does it want to do this job? The labor movement, like all other human institutions, is prone to the

disease of growing old. From time to time one hears the creaking joints of our labor movement. And creaking joints are symptomatic of a congealing brain and a hardening heart. There is a specific for this disease. It lies in doing once again what we did in our youth. The imagination we once had, the willingness to experiment, the ability to break with the tyranny of sterile tradition—these are ours if we will but make the effort to re-establish them.

In the old days when the weak needed succor, union men poured out their resources and their money. To solve the problem of organizing migrant labor this is needed now. Money, equipment, manpower—these will be needed in stupendous quantities. And more important than material things is the need of spirit. A union can't be bought into being. It has to be built. It is built with the raw material available. It is built with knowledge and understanding of the objective conditions involved. It is built in spite of adversity, of storm. Storms will come, violent ones, and the union is sometimes twisted and torn. It can be rebuilt. And in the rebuilding it becomes stronger. Unions have never been built under ground rules or conditions of its own choosing. The job consists of building in spite of conditions and opposition. The problems of organizing farm workers are formidable. They can be solved. And in the attempt to solve these problems the American labor movement has an opportunity to renew its youth and to reassert its claim to the idealism of man's duty to his brother and to society. **[The End]**

The Work Rules and Work Practices Problem

By WILLIAM GOMBERG

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PICK UP a newspaper and if it carries news of a dramatic strike these days, the odds are that the issue of work rules is dominating the bargaining climate between the parties.

The question of work rules must plague any dynamic society. Technological stagnation would put an end to the work rules problem or perhaps better yet, the problem would never arise. Innovation subverts the stability of the management-labor relationship. Carefully worked out job descriptions and established property rights in jobs disappear overnight and are replaced by new job descriptions requiring a reworking of new relationships in the presence of contenders who are refugees from the old technological climate. No sooner are the new sets of rules developed than a restless management again subverts the new relationship with new innovations and new fights replace old ones. The radical unionist fights conservatively to hold on to his old jobs while the conservative manager never stays in one place long enough to let the dust settle.

Neil Chamberlain put it very succinctly: "The manager is committed to change. The worker is committed to preservation of the status quo. The result is the work rules issue." Charles Zimmerman, Vice President of the ILGWU expressed the paradox of his own frustration by labeling his colleagues conservative radicals. Chamberlain goes on to add: "From the management point of view, resistance to change is bad when practiced by workers in the industrial sphere, but good when practiced by management in the social sphere. From the union position, innovation and change are bad when practiced by management in the industrial sphere, but beneficial when sponsored by unions in the social sphere." [1]

Work rules present themselves in two categories: Category one is conflicts over jurisdiction, including subcontracting; category two is conflicts over alleged featherbedding, including workload controversies.

It is our intention in this paper to examine the following questions:

(1) What is the basic philosophical interpretation of the management-labor relationship by both labor and management that leads to conflicts over this area?

(2) How has the behavior of the parties developed in a number of recent disputes in which these work rules issues were at stake?

(3) What procedural changes are likely to develop a more viable and rational result than those that are now used by the parties?

The basic conflict between labor and management in the work rules area can best be understood if it is viewed as a conflict over property rights.

Property Rights Conflict [2]

In a sense, the labor movement embodies the development of a new set of property rights generated within the womb of an older set of property concepts. The older set must either repress the developing concepts or adapt to them by a process of accommodation. Collective bargaining is essentially an experimental procedure to reconcile these conflicting property concepts in an evolving social system.

The interpretation of this conflict as a clash of different property rights permits a rational view of the problems of work rules and alleged featherbedding.

An understanding of the problems presented by work rules is best understood by a re-examination of the basic philosophy behind the collective bargaining process.

Practically all discussions of work-rule problems have proceeded upon a set of implicit assumptions. Management has implied that it is entitled to a volume of work that calls for the full exertion of the worker just short of his physiological and psychological limits. The trade unions have never openly rebelled against this concept. They have, therefore, adapted their arguments to this assumption and usually couched discussions about rules in terms of health and safety. In the back of the mind of the trade unionist is an emerging property right which he is attempting to assert.

The rituals of our society are not yet ready to accommodate this new concept and so he conservatively attempts to secure his objective through indirection by complying with the conventional rituals.

[1] Chamberlain, Neil, "Work Rules," *Proceedings,* Labor Relations Council Conference, Wharton School, University of Pennsylvania, November, 1960, p. 14.

[2] Gomberg, William, "Featherbedding: An Assertion of Property Rights," *The Annals,* American Academy of Political and Social Science, Philadelphia, January, 1961, p. 119.

Many of the work rules define an emerging property right of the worker in his job. For example, a jurisdictional claim of a yard worker that he and he alone can handle a train in the yard and the corresponding claim of a road worker that he and he alone can handle a train on the road stem from a property right of each craft in the particular job area. The equivalent of the workers' property deed is the collective agreement.

The interpretation of labor's rising assertion of its property right is best understood against the background of the development of the property concept within the western philosophical and legal traditions.

The concept of a worker's property right in his job originated as an intellectual formulation in the work of John R. Commons. It received its classic expression from his student, Selig R. Perlman. He wrote, "The safest way to assure group control over opportunity . . . was for the union . . . to become the virtual owner and administrator of the jobs." [3]

John R. Commons places working rules at the very basis of our economic theory. Commons used the concept of a working rule in a much broader sense than we use it in the field of industrial relations today. He formulated it as a guiding concept in explaining the behavior of all economic institutions including the corporation itself. He describes the working rule in the following language: [4]

"It tells what the individual must or must not do (compulsion or duty), what they may do without interference from other individuals (permission or liberty), what they can do with the aid of collective power (capacity or right) and what they cannot expect the collective power to do in their behalf . . . Working rules have had a profound effect upon the concept of private property, changing that concept from a principle of exclusive holding of physical objects for the owner's private use into principle of control of limited resources needed by others for their use and therefore into a concept of intangible and incorporeal property arising solely out of rules of law controlling transactions."

It was by linking the economists' basic concept of the commodity to the courts' fundamental treatment of what Commons called a transaction that he developed his fundamental theory of institutional economics and discarded the classical model.

Commons traces the evolution of a man's calling or job as a property right in the decisions of the courts. He quotes the Supreme Court minority in the slaughterhouse cases in 1872 to the effect that a man's calling, his labor, his occupation, is property. He traces the minority doctrine to a majority doctrine in the Minnesota rate case in which the majority held that not merely physical things are property but the expected earning power of those things also is property. In a sense, then, can we not conclude that the deprivation of a worker of his job is the equivalent of the abolition of a property right for which he is entitled to compensation on the basis of capitalizing the earning powers of which he is thereby deprived?

It would be silly and pointless to deny that work in many cases could be performed more cheaply if these property rights and the penalties for their violation did not exist. In a democracy, however, other values than those of productivity receive equivalent attention from the community.

[3] Perlman, Selig R., *A Theory of Labor Movement,* Augustus Kelley, New York, 1959, p. 199. See also Leon Green, "Fansteel Strike," 90 *The New Republic* 199, May 24, 1937.

[4] Commons, John R., *Legal Foundations of Capitalism,* University of Wisconsin Press, Madison, 1957.

Eminent Domain Concept

Let us consider some examples from the more classic forms of property, property in things and land. Many public automobile roads and expressways wind a serpentine path between two points. The road is much longer than it would have been had a surveyor and engineer been permitted to lay out the most effective path that would afford the traveler the shortest distance at the minimum consumption of gasoline. Society has invented the concept of eminent domain. Its purpose is to prevent the holder of private property from imposing too absolute a restraint on public purpose and public efficiency. However, the exercise of this right of eminent domain is reserved to the government and its specified agents. Even so, the government can only take over after due process and fair compensation.

Analogies, of course, can be overdrawn, and it is not our purpose to attempt to prove a point in collective bargaining by dwelling upon the evolution of the property law. However, it is offered as an illustration. The deep feeling of private property holders about their land finds its sanction in a complex jurisprudence that goes back to John Locke and Blackstone. The same deep feeling of workers about the property rights in their jobs received its first quasi-legal sanction in 1926 with the passage of the Railway Labor Act. We do not question the rationality of the feeling of the private property holder. It is part of our system of conditioned reflex. We are confused by the apparently irrational behavior of workers who will not sacrifice their property rights in the name of productivity. Are the differences in our reactions a matter of tradition?

Work rules are insistently treated as a separate question in collective bargaining, but are they, in fact, unrelated to the other issues of bargaining? The history of negotiations is an extremely complex story of the comparative weighting of different objectives. How many demands for additional increases in wages were sacrificed in exchange for a work rule? Any program to undertake the revision of work rules must always keep these considerations in the background.

Excellent examples of what we are talking about are provided by the recent conflicts over contracting out between the crafts and industrial unions. The maritime industry, the railroad industry and the steel industry provide more classic kinds of examples.

The problems of contracting out are a set of problems over work rules that involve three parties. Two of them are unions in conflict over whose job properties are the victims of trespass. The third is the employer whose interest consists in following the most economic procedure irrespective of whose job rights are the victims of trespass. Employers have signed contracts in many cases with industrial unions. The maintenance crew of the plant is included in the contract. Along comes another enterprise and offers to subcontract the maintenance of the plant and equipment, making use of its specialized employees, most of whom are members of craft unions. The state is then set for a three-way "Donnybrook." Donald Crawford documents the complete confusion that governs arbitration awards in this area. It is a relatively new development and arbitrators are asked to interpret agreements, governing this procedure, which did not anticipate this development.[5]

[5] Crawford, Donald A., "Contracting Out Industrial Relations and Prospects," *Proceedings,* Labor Relations Council Conference, Wharton School, University of Pennsylvania, November, 1960, Vol. I.

The confusion sets the stage for a jurisdictional row between the industrial unions and the craft unions that threatens to cause a new split in the federation; add to this the fact that the National Labor Relations Board has just ruled that a decision by the corporation to contract out its maintenance is a nonbargainable issue and the issue is further aggravated. The United Steel Workers were supported by a dissenting member of the board who claimed that the board decision contradicted the Supreme Court's decision in *Telegraphers v. Chicago and North Western Railway,* cited below.[6] Although the federation has set up an arbitration mechanism to resolve disputes of this nature, both sides increasingly ignore decisions not to their respective tastes.

Matters have reached such an open break that Al Hayes, President of the International Association of Machinists, an industrial union originally identified with the old AFL, appeared before a Congressional hearing on April 19, 1961, to oppose the common situs picketing bill, sponsored by the building trades unions on the grounds that the building trade unions were seeking the privilege of not only picketing nonunion subcontractors on the jobs but subcontractors who employed nonbuilding trades unionists.[7]

It is quite clear that the solution to these property conflicts between unions will be a decision imposed by the National Labor Relations Board if the parties show themselves incapable of resolving their household disputes. The NLRB is under mandate from the Supreme Court to handle these issues where they remain unresolved.

A pioneer attempt to develop a rational solution to the work rules controversy developed between the Pacific Maritime Association and the International Longshoreman's Union headed by Paul St. Sure and Harry Bridges respectively. Between the period of 1934 to 1948, constant warfare between the association and the union led to the imposition of many restrictive working rules on the West coast waterfront until mounting costs threatened the future of the San Francisco port.[8] Some of the restrictive rules that were imposed upon the industry during this period were the double-handling rule, the load-limit rule and the fixed-gang-size rule. The double-handling rule provided that a teamster can only load a truck from the skin of the dock. This meant that after a palette would be unloaded from the ship, each item would then be unloaded from the palette onto the pier floor. The teamster would then load the individual items onto his truck. The load-limit rule imposed upon management for any palette was 2100 pounds despite that fact that modern equipment could handle much larger loads quite safely. Safety, of course, was the reason given for the rule. The fixed-gang-size rule had developed into the four on, four off rule. A gang of eight men were assigned to a hold. Four would work alternate hours spelled by the other four during the former's rest hour. Thus each group of four would work a half day during an elapsed full day.

After 1948, the union became acutely aware that the San Francisco port was losing much of its maritime business to rival forms of transportation.

Then came the Korean War and, in 1957, a 180-degree change in the union's strategic stance.

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[6] *Daily Labor Report,* No. 60, 1961, p. a-1.
[7] *Daily Labor Report,* No. 75, 1961, p. e-1.
[8] Kossoris, Max, "Working Rules in West Coast Longshoring," 84 *Monthly Labor Review* 1, January, 1961.

Close attention to shipping led the defense arm of the federal[9] government to conclude that the bottleneck in making more effective use of available shipping was the turn-around time required to load and unload the ship. The Maritime Administration and the Department of Commerce requested the National Research Council of the National Academy of Sciences to set up a special group to study the problem. A maritime research advisory committee was created to look into a proposed program aimed at revolutionizing shipping design. Still underway, this program is leading to ships designed to operate with a much lower seagoing complement than presently required for a full crew and a much smaller longshoring gang to load and unload. In the meantime, private research has led to newly designed ships that have revolutionized conventional practices for manning both the seagoing complement and the longshoring gang.

Completely new methods of handling cargo through "containerization," "unitization" and "fishy-backing" materially decrease the demand for longshoremen. With the conventional break-bulk cargo methods, large gangs of longshoremen were required to load and unload the sling loads. With the new methods, only two men may be required where 16 were once used.

Containerization and unitization are techniques for prepackaging cargo at the factory, loading it once on a truck, then unloading the container from the truck by placing two lines on either end and swinging it into the hold of the ship. The use of this method eliminates all of the tedious loading and unloading that is characteristic of break-bulk methods. Fishy-backing treats the truck trailer as the container. The trailer itself is driven onto the ship, virtually eliminating altogether the need for longshoremen.

As though all of this were not enough, the National Research Council set up a separate Maritime Cargo Transportation Conference to streamline the conventional methods of break-bulk cargo handling. After looking for a research site where they would receive the most hospitable treatment from both unions and management, the group chose the San Francisco waterfront. Although the usual types of friction developed over details, all involved now agree that the two years of investigation were fruitful.

Pacific Coast ship lines like Matson and Grace have maintained their own research departments that have been using the newest research techniques to revolutionize methods of handling shipping. Under the new agreement, all of these methods may now be used without restrictions.

In anticipation of the Bridges-St. Sure agreement, the Bridges union had negotiated a preliminary one with the employers' group in July, 1959, under which the employers declared themselves ready to set up a $1.5 million fund to be used as recompense to workers for all of the labor-saving devices that had been introduced up to that time. In the preliminary document, no basis was provided for the distribution of the money; both the union and management looked upon the fund as a token payment by employers in recognition of the union's equity in a solution to the problem of technological displacement. Such a solution was advanced in the second, detailed agreement.

This provided payment by employers of a sum of $5 million annually for five years (the original $1.5 million is to be added to the total) into a fund to protect workers against displace-

[9] Gomberg, William, "The Job As Property," 191 *The Nation* 410, November 26, 1960.

ment. Specifically, the money supplemented wage payments for work opportunities lost by increased mechanization for all presently registered longshoremen and clerks, minus the normal attrition; in other words, it financed what amounts to a guaranteed annual wage-payment plan for the remaining labor force. In addition, the fund is used to provide for the retirement of longshoremen at an age earlier than that provided in the Social Security Act. After 25 years of service, reached at any age up to 62, a longshoreman can retire voluntarily and receive $200 per month until his Social Security payments begin, at which time an adjustment is made. On the other hand, workers who reach age 62 with 22 years of service must retire with payment of $320 per month until Social Security payments begin (at age 65), when an adjustment is made.

In return, the employers have bought back practically all of the work rules tending to retard the introduction of labor-saving devices. What is most interesting in the agreement is a sentence referring to any anticipated stoppage over possible safety violations: "The union pledges in good faith that health and safety will not be used as a gimmick." Lacking other protection in their contracts, labor unions have been habitually using the alleged imperilment to health and safety as their main argument against the introduction of labor-saving devices.

The significance of this agreement is the rational way it treats the problem of worker displacement by the frank recognition of the worker's property right in his job.

The International Longshoremen's and Warehousemen's Unions have extended the property right of the worker in his job. Their whole approach is one of capitalizing the worth of the job in exchange for the worker's title to it. It is an answer to the question: How do you "phase out" those members of the work force whose jobs have become obsolete? It is an extension of Professor Commons' and Perlman's theory of jobs as property rights to a new area of collective bargaining. And it is a tribute to the paradox of America's cultural pluralism that an avowed Marxist should be pioneering the property concept for workers in America's pragmatic experimental society, and thereby earning encomiums on the editorial pages of papers like the *San Francisco Chronicle*. We are presented with the paradox of Harry Bridges cooperating to streamline free enterprise while conservative bodies like the International Typographical Union are still struggling with a membership that refuses to surrender rights to "bogus," the make-work practice of reproducing for the scrap box already set-up advertising.

An unforeseen circumstance at the time of the negotiations interfered with the program. A property right conflict between the teamsters and the longshoremen over whose work rules the longshoremen had a right to sell resulted in a strike of the teamsters that tied up the port. The Pacific Maritime Association has filed charges in the federal courts asking for damages from the Teamsters Union for triple the sum of monies being paid into the longshoremen's mechanization fund.[10]

By way of contrast, the conflict in the railroad industry between union and employer is following the conventional rituals of health and safety on one side and righteous indignation on the other.

Recently the Chicago and Northwestern Railway attempted to rationalize some of its operations by eliminating stations along its right of

[10] *Wall Street Journal*, March 22, 1961.

way. Quite obviously along with the elimination of the station went the job of the telegrapher located at the station. The parties could come to no agreement and finally the railroad in an attempt to free itself declared that the elimination of these jobs was a nonbargainable issue. The Order of Railway Telegraphers took the railroad to court where the decisions of the lower courts were finally appealed to the Supreme Court. The Court finally ruled in 1960 that the railroad management was obligated by the Railway Labor Act to bargain over this issue. In other words the continuance or discontinuance of a job is now defined as a bargainable issue thus underlining the workers' property right in his job. It should be said in justice to President Heineman of the railroad that he has indicated that he was willing to bargain over the issue but the "unreasonable demands" of the union forced him into the stratagem of the court procedure. Quite obviously it has had an effect contrary to what he had hoped; the unions will be encouraged by this decision to press their case even more energetically.

In 1960 the negotiations between the railroads and the unions threatened to break down over the issue of "obsolete work rules."

It had become quite clear that the issues raised in the work rules dispute were of such a nature that they did not lend themselves readily to the crisis type of bargaining in which a rate of wages is finally worked out before a strike deadline. Attempts to come to grips with the work rules problem in railroads, ever since the Lane Commission [11] set down the fundamental conditions governing the relationships between labor and management during World War I, have been tried a number of times. Labor agreements negotiated since that time have built upon the Lane basis within the provisions of the Railway Labor Act. Work rules were reviewed by Otto Beyer in 1936.[12] Joseph Eastman, Director of the Office of Defense Transportation during World War II, attempted to get an agreement between the railroads on one hand and the conductors and trainmen on the other to eliminate allegedly unnecessary trainmen but nothing came of the effort.[13] Emergency Board 109 recommended the setting up of a special commission outside of the Railway Labor Act procedure in which both sides would be represented in an effort to modernize the railroad work rules and wage structure. This recommendation of the board was ignored by the parties. A similar recommendation was made by the writer in his own report for the Ernest Williams Department of Commerce Study of Transportation in 1960.

Former Secretary of Labor James Mitchell wrestled with this problem in an effort to avoid a strike on the railroads in 1960. In a speech at Cornell University, he made reference to the quasi-property right of railroad workers in work rules. Finally, he persuaded both sides to consent to the organization of a Presidential commission made up of five public members, five representatives of the railroad management and five representatives of the railroad labor organization to review this entire matter. Initially,

[11] Gomberg, William, "Some Observations on the Problems of the Relationship between Union and Management in the Transportation Industries," U. S. Department of Commerce. A supporting document for the Ernest Williams report.

[12] Federal Coordinator of Transportation, Section of Labor Relations, "A Survey of the Rules Governing Wage Payments in Railroad Train and Engine Service," Vol. I, Wash., D. C., 1936.

[13] Slichter, Healy and Livernash, *The Impact of Collective Bargaining on Management*, Brookings Institute, Washington, D. C., 1960, p. 325.

Mr. Mitchell served as chairman of the board. He subsequently resigned and President Kennedy appointed retired Judge Simon Rifkind as his successor. Informal reports would indicate that both sides are pursuing the classic ritualistic pattern of presentation. The railroad management in its initial presentation by its attorney, Mr. Neitzert, made the point that outmoded work rules are costing the railroads $600,000,000 a year. He attributes the burden of these rules to five sources: (1) collective bargaining; (2) arbitration awards; (3) actions by the director general of the railroads during World War I; (4) interpretations by boards of adjustment; (5) practice. He asks specifically for the following rules changes:

(1) Allow management to determine when firemen should be used on diesel locomotives in freight and yard service.

(2) Revise the dual basis of pay for engine and train crews to reflect higher train speeds by allowing longer runs for a day's pay.

(3) End the union supported work rules which limit the number of miles covered each month for an individual employee in order to increase an individual's earning opportunities.

(4) Wipe out arbitrary lines now drawn between the work performed by over the road crew and yard crew members required on trains.

(5) End rules requiring standby crews when self-propelled equipment is used in track maintenance, repair or inspection.[14]

Replying for the railroad unions, Attorney Harold C. Heiss asked for the modernization of the pay structure on the railroads on the grounds that railroad working conditions were laid down in an industrial climate far inferior to the atmosphere that now prevails: Specifically he asked for the following:

(1) Shorter workday and workweek; (2) Allowances for away from home terminal expense; (3) Overtime payments eliminating the present basis under which some employees only get overtime after twelve hours; (4) Termination of the seven-day week and replacement of the six and seven-day week in yard service with a seven-hour day, five-day week with maintenance of take home pay; (5) Premium pay for night work plus paid holidays and overtime for holiday work.

Heiss then went on to ask the commission to deny the work rules changes requested by the carriers. He specifically defended the usefulness of the fireman on diesels, remarking that all that had changed was the type of duties performed by the second man in the locomotive. He was still necessary for safe operation.[15] He also requested a program to stabilize employment on the country's railroads, pointing to the huge displacement that had taken place during the last few years.

It is too early yet to be able to judge in what direction the commission will move to resolve this dispute. What is noteworthy is that both parties seem to be using the commission as a long-time emergency board under the Railway Labor Act.

A development has emerged in the wake of the steel strike of 1959 that is implicit recognition of the fact that classic crisis collective bargaining is breaking down under the impact of more complex issues than crisis collective bargaining is equipped to handle. This is the setting up of a long range committee on collective bargaining made up of public neutrals by the Kaiser Steel Corporation and the United Steelworkers.

[14] *Daily Labor Report*, No. 24, 1961, p. 4.

[15] *Daily Labor Report*, No. 26, 1961, pp. A5-6.

The steel strike of 1959 started as a normal breakdown over basic wages.[16] Some days after the strike was in progress, management suggested that it would be ready to consider some adjustments in wages if the union would virtually surrender its rights to participate in a revision of the work rules. This was the famous demand for the revision of paragraph 2B of the collective agreement. What had been a half-hearted, desultory strike on the part of the workers at once became a militant, determined contest. At stake was not the preservation of old work rules keyed to an alleged archaic technology, but the workers' rights to "due process" in any revision of their rules. Featherbedding had never been an aggravated problem in the steel mills. However, the impatience of engineers with "due process" snatched defeat out of the jaws of victory for the companies.

The Kaiser management finally broke ranks and signed with the union. Part of the agreement called for the creation of a long-range committee to assure equitable sharing of economic progress. The committee was made up of Professor John Dunlop of Harvard University; David L. Cole, the country's leading private mediator and arbitrator; Dr. George W. Taylor, chairman of Eisenhower's fact-finding board, on behalf of the public; and three representatives each of the company and the union.

The very creation of the committee was a precedent-shattering action. Hitherto, the principals in collective bargaining, particularly in steel, had treated their negotiations as a private matter between the parties. Official mediation services were ignored and if any representative on behalf of the public attempted to intervene before the crisis stage—or even during it—he was treated with resentment. The principals were convinced that they could do everything themselves. To be sure, the not infrequent use of impartial umpires to resolve disputes that arose under existing agreements represented a departure from this tradition. However, the formulation of new agreements was forbidden territory from which the umpires were very specifically excluded. It is in this context that the Kaiser-Steelworkers arrangement constitutes a significant experiment in the evolution of collective bargaining. The public is invited to participate in the collective bargaining process from scratch in an effort to aid the principals to arrive at equitable agreements that will do justice to them and simultaneously protect the public interest.

After a number of meetings, the committee recommended a supplement to the agreement between the Steelworkers and Kaiser that included the following significant statement:

"That the services of this committee be utilized on a continuous basis in promoting harmonious relations between the parties of interest. It hopes to achieve this objective by settling problems as they arise and thus avoid the accumulation of complex issues that must then be settled under the pressure of contract termination pressure deadlines. These problems definitely exclude routine grievances that continue to be settled under the normal provisions of the contract. They include the kind of problem that cannot be foreseen at the time of the signing of the contract and is therefore not covered by existing agreements.

"The bargaining over new contracts is still left to the union and the management. However, no later than thirty

[16] Gomberg, William, "Public's Role in Labor Disputes," 192 *The Nation* 165, Feb. 25, 1961.

days prior to the expiration of the old agreement, the full committee shall meet to review the status of negotiations. It may then take any or all of the following steps:

"(1) Determine to take no action; (2) Attend the bargaining session as observers; (3) Engage in mediation efforts including private meetings with each of the parties; (4) Issue a private report to the parties, summarizing positions and making recommendations; (5) Issue a public report."

At no point in the process is legal compulsion invoked, thus overcoming the objection that "outsiders" are attempting to impose a decision. The "outsiders" become "insiders" by adoption.

Conclusion

The Pacific Coast longshoremen and the employers were able to reach an agreement without third-party intervention. The setting up of the railroad commission represents an effort to make a new use of neutrals in collective bargaining. It is quite clear from the opening statements that the principals are taking the classic position of adversaries. The recommendations which they will make are not compulsory. Suppose, despite their best efforts at achieving a consensus, despite heroic efforts to mediate the demands of the parties, they are unable to gain an agreement—what then? The strike is still open but largely as a ceremonial weapon rather than an operational tool. Certainly the railroad unions learned this lesson during the general strike of the locomotive engineers during the Truman administration. Is compulsory arbitration the answer? The stock answers are readily available with all of the examples of why, where and how it has not worked in the past. Suppose, however, we set up a tribunal on the basis of a fundamental acknowledgment of the worker's property right in his job; that it is not for the tribunal to decide whether or not the job exists, but whether or not the job deserves to be continued and, if it deserves not to be continued, what is the surrender of the property right in the job worth? In other words, assign to the tribunal the equivalent of the power of eminent domain for the job area. Defining the procedure and frame of reference for a compulsory arbitration tribunal of this nature may lead to a more real acceptance of its authority rather than a wide open tribunal that creates its own frame of reference and its own sense of equity to suit itself.

The cost of obsolete workers should be viewed as a charge on industry just as rational as the cost of obsolete machinery. There is no reason why an enterprise should expect to create a depreciation reserve or an obsolescence reserve for hardware, but be free of any similar obligation for human ware. At the present time, the costs of worker obsolescence are undertaken by the community by the socialization of the charge through unemployment insurance and community relief when the unemployment insurance period has expired.

Unemployment insurance has been supplemented of late through supplemental insurance benefits negotiated through collective bargaining.

It is a truism that the more we keep our economic decisions decentralized and out of the state sphere, the more we will break up unhealthy combinations of power concentration with their ultimate political consequences. The movements for severance pay are an attempt to move in the direction of localized reserves for human obsolescence. New experimentation with collective bargaining devices at the local level can lead to a rational procedure which will capitalize the earning power of a worker who is deprived of his job property.

Payments can be related to criteria such as worker age, prospective transferability of the worker to other occupations and earning opportunities. In a sense, it becomes the obligation of the private enterprise manager to treat labor as a capital charge rather than a variable charge on the enterprise. Top management personnel is treated this way now; it is merely a matter of extending this attitude towards labor obligations down the plant hierarchy on the assumption that a worker develops an equity in his job in a property sense. To be sure this does not exclude the state from many functions that can only be socialized, like minimum standards of unemployment insurance and social security. However, an acceptance by management of the job property principle would lead to diversity of handling the problem at the local level that can be treated by decentralized decision making. This would be in accord with our unique cultural pluralism, characteristic of the western world.

It has become clear that collective bargaining is rapidly approaching an impasse. If it is to survive, experiments with new institutions become necessary. In a sense, this echoes a development that took place when collective bargaining agreements began to break down administratively over the process of grievance-solving. The clothing workers' unions then pioneered the concept of a permanent umpire, with a thorough knowledge of the industry, who could propose equitable solutions. The previously employed system of *ad hoc* arbitration of grievances had become increasingly unsatisfactory. Arbitrators, ignorant of all the intricacies of union-management relationships in the complex industry, often rendered decisions that were judicially equitable, but operationally impossible. The *ad hoc* arbitrator had to become a professional member of the family—albeit one with a professional obligation to the public.

Today, increasing dissatisfaction with *ad hoc* governmental intervention at the climax of negotiations for new contracts has led to a similar expirment, again making use of "members of the family" with a professional obligation to protect the public interest. But this time the experiment is applied not merely to the settlement of grievances, but to the actual formulation of contracts.

The development recalls a device pioneered by the late Justice Louis Brandeis of the U. S. Supreme Court, when as a private lawyer, he drew up the "protocols of peace" that ended the New York cloakmakers' strike of 1910. The protocols, a highly idealistic document, carried no expiration date, but provided for a supreme conciliation and arbitration board of distinguished citizens who were to confine their attention to new fundamental conflicts that might arise between the parties. In a sense, it provided for a permanent industrial government by private citizens. In 1924, the protocols were dismissed by Louis Levine, historian of the ILGWU, as a visionary document that served as a bridge to the more orthodox kind of trade agreement. But in retrospect, it becomes clear that the protocols were in advance of their time. They may very well have been the harbinger of the next development in collective bargaining beyond the collective agreement. **[The End]**

The Use of Tripartite Bodies to Supplement Collective Bargaining

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IN MANY AREAS of national life the complacent optimism so well expressed by the catch-phrase "the soaring sixties" has already yielded to a sober if not somber mood that justifies substitution of the term "the difficult decade." If this change of outlook leads to hard thinking and responsible action in the common interest and not to passive despair, it will serve a useful purpose. The difficulties are real and they are formidable. They embrace many aspects of public affairs, foreign and domestic. Among them is the formerly prosaic field of industrial relations.

In the last two years, a growing concern has become evident regarding the operation of collective bargaining in the United States.[1] Public expressions of disquiet and even dissatisfaction have been voiced by some distinguished neutral experts from a quarter quite separate from the anguished cries of discontented parties to the bargaining process. The criticisms have taken two distinct forms, sometimes conjoined.

First, it is said that negotiations have failed to produce genuine accommodation of the parties' conflicting interests, leading instead to perpetuation of the *status quo* and on occasion to hard strikes. To some observers, furthermore, these strikes have imposed unreasonable losses upon third parties. On this line of argument, the major difficulty is the predominance of conflict over co-operation, which finds expression in rigid positions, strike-prone relationships and agreements that are not fully responsive to either the long-run mutual interests of the parties or those of the public.

Of growing importance in this area is the problem of adjustment to change —change imposed by increasing competition and by the heightened pace of technological developments, a pace that is certain to speed up under the joint impetus of cost pressures and acceleration of the rate of discovery. Change is now dictating a variety of adjustments in bargained rules governing the work place: seniority units, promotional sequences, job and rate structures and incentive systems. Even more, it is producing major displacement and unemployment at the plant level, posing in acute form the whole

[1] Consider for examples, Sumner H. Slichter, "New Goals for the Unions," *Atlantic Monthly,* December, 1958; James P. Mitchell, Bureau of National Affairs, *What's New in Collective Bargaining Negotiations and Contracts,* April 15, 1960; Seminar on Collective Bargaining at the Center for the Study of Democratic Institutions, July, 1960; remarks of Secretary Arthur J. Goldberg on the need for an official Council of Labor-Management Advisers, Bureau of National Affairs, *Daily Labor Report,* August 17, 1960, Sec. E; The National Council of the Churches of Christ in the U. S. A., "In Search of Maturity in Industrial Relations: Some Long-Range Ethical Implications of the 1959-1960 Dispute in the Steel Industry," mimeographed, November 26, 1960; and George W. Taylor; "Collective Bargaining: New Approaches to the Problems of Achieving Agreement," Bureau of National Affairs, *Daily Labor Report,* March 30, 1961, Sec. A.

question of shock absorbers to make change more compatible with the interests of workers as workers. In today's industrial environment, change must be planned ahead. Accordingly, collective bargaining must bear a much heavier load than formerly. To many students it continues to hold much promise as a problem-solving device, but for this promise to become reality the bargainers will need new ideas and methods, and in some cases access to outside help.

Second, the belief is spreading that the bargaining system is producing many economically unsound settlements that are now a real threat to the stability of the country in the difficult sixties.[2] On this view, the problem is not the rise in the general level of wage rates and supplements alone, but includes the effects of certain work rules upon unit labor costs in some industries. Even more, wage pressure has the dual effect of encouraging employers not to reduce prices when savings from increased productivity would justify cuts and of enticing them to raise prices even when demand and cost considerations do not support it. In consequence, the economy suffers a double liability: inflation and unemployment together. There follow the real dangers that our export prices will become noncompetitive, that outflow of capital and loss of domestic jobs will increase and that our foreign balance will worsen. If so, we will be seriously crippled in the use of measures to increase effective demand, both to increase employment and production and to accelerate growth of productivity and output.

Obviously, the two lines of questioning share in common a real and growing concern about the performance of bargaining institutions, posed with full awareness of the major benefits the system undoubtedly confers. Furthermore, this concern has been seriously formulated and is honestly held. It is not to be written off either as partisan bias or carping complaint by outsiders.

To be candid, I think there is considerable support for both types of criticism, although my purpose here is not to examine their underlying merits. I have referred to them only to provide a context for the proposal to make greater use of tripartite bodies in collective bargaining, for this proposal is being put forward not as an academic exercise but to solve certain problems. For those who still believe that the present system is working well and stands in need of no aid of any kind, of course the whole discussion will be irrelevant, if not an insidious attempt to subvert the natural order. For those who think the situation requires improvement, it will do no harm to take a serious look at the trilateral approach.

Tripartite Bodies

To clear the decks first, the kind of trilateralism contemplated in the topic assigned to me is a device to supplement, not to supplant, collective bargaining. Like grievance arbitration, it is an extension of the bargaining relationship, expected by its proponents to produce results superior at times to those attainable by straight bargaining methods, yet not in con-

[2] The official task force headed by Professor Paul A. Samuelson devoted much of its attention to the problem of price stability and the role of wages therein. In opening the first session of the President's Advisory Committee on Labor-Management Policy, President Kennedy told the committee that its purpose "is to give direction to the general movements of wages and prices so that the general welfare of this country can be served," noting that wage-price relations affect our competitive position abroad and that problems of structural unemployment were now "a matter of utmost concern."

flict with the spirit or the substance of the bargaining relationship.

The tripartite device now most commonly proposed is the study committees, with or without mediatory functions. However, the private board for contract arbitration would also qualify. Although it may come about from a mild kind of official intervention, as with the railroads currently, the study committee does not imply government regulation or coercion. Indeed, it may derive from the voluntary initiative of the parties themselves, as at Kaiser Steel or Armour Packing. Either way, however, the device rests upon mutual consent, and is not externally imposed. As such, it is about the most modest alteration conceivable for the present bilateral bargaining system, limited solely to the voluntary introduction of neutrals at some stage in the bargaining process. Accordingly, we can rule out of the discussion entirely the kind of trilateralism followed during wartime control of wages and disputes, or occasional proposals for compulsory arbitration of disputes in key industries during peacetime.

Still another form of noncoercive trilateralism appears in the new President's Advisory Committee on Labor-Management Policy, a tripartite official body to discuss wage-price relations and related matters. The guiding conception here is that high-level talks about these problems may create a climate for collective bargaining that will produce detailed results at the sectional level more in accord with the administration's conception of the common interest.

Obviously, we have initiated an experiment in nonregulatory trilateralism on two levels: the national and the local. Both represent extensions of similar principles employed in grievance and in contract arbitration, while all such ventures seek to strengthen the bargaining system, so that it will yield more satisfactory composite results—better accommodation between the parties and greater attention to serious national problems. No one should discount the sincerity of the approach or the gravity of the difficulties.

Let me now distinguish the tripartite study committee from the tripartite arbitration board. As currently put forward, the proposal for study committees contemplates an ex ante mechanism for eliding or resolving difficult issues before they become joined in an intractable strike. This is not strictly true, for the Kaiser Committee emerged after a strike, while by contrast the Railroad Commission came into being to head one off. But in both cases in giving their consent the parties were looking to the future. Their purpose was to examine certain hard questions away from the bargaining table and with the aid of distinguished outsiders, in hopes that solutions could be found that would eventuate in more successful negotiations the next time around. The essence of this approach is prenegotiation bargaining aided by neutrals. In turn, the neutrals' role is a double one: to contribute to the study of difficult technical issues and to mediate their solution.

By contrast, the voluntary tripartite arbitration board, for contract or grievance issues, is an ex post device for disposing of questions already joined. In contract issues, the parties commit their destinies to a third party because they cannot get agreement and wish either to avoid or to end a strike. Since the issues must be submitted, the neutrals can do little to shape them, while their authority to explore alternatives is likely to be circumscribed. Although they can play a mediatory role, neutrals in these situations will be working with an inherently less flexible instrument

than the study committee. Moreover, contract arbitration is less likely to shape constructively the future course of negotiations and of the parties' permanent relationship, unless the board is fortunate enough to have a fairly sweeping grant of power for disposing of sticky issues, lucky enough to have a membership with astute insight and, above all, a high sense of responsibility in the use of power.

Voluntary tripartite grievance arbitration inherently has less importance for the present context, notwithstanding its enormous contribution to effective contract administration. Save for occasional situations of surprise, the issues are necessarily confined by the limits of contract, limited even further if the submission agreement is shrewdly drafted. As an ex post device for resolving a narrowly posed class of issues, grievance arbitration is already so well established that no more need be said here beyond the observation that it is not intended either to cope with difficult bargaining situations or to influence the economic effects of negotiated agreements.

Let me return now to the study committee. The case for this proposal boils down to this: that time, expertise and detailed examination are all required to deal with problems of unusual difficulty and that negotiations and the quality of settlements will both be helped greatly if such issues can be explored well ahead of time, away from the bargaining table. Among the problems would be revision of incentive systems and obsolete or inefficient work rules, planning adjustment to technological change, reduction of a high grievance rate and increasing the efficiency of high-cost plants or firms—to name a few. On a broader plane, the committee could well investigate quietly the causes of unusual negotiatory difficulties, perhaps by that very act fostering greater attention to common interests and better appreciation of the special problems of each side. Further, the environment provided by such committees is likely to compel more attention to concrete problems and to facts, to some extent freeing the parties from the distractions of immediate bipartite conflict.

Committee Formation

How is the assignment of the committee to be framed? In principle, it must be undertaken by the parties themselves, for, at the outset at least, they alone know what their difficulties apparently are, granting that these may change as study and discussion get below the surface. More than this, since the committee is created by mutual consent, it is the creature of the parties. They alone can set its purpose.

Here the choice lies between a specific list of questions and issues, prepared in a fashion similar to a submission agreement; and a broader and more flexible assignment. For example, in the railroad case, the commission's task derived from disputed demands taken out of the last negotiations. At Armour, the parties asked their committee to explore and develop solutions to a variety of problems all connected with automation. Proceeding even further along this latter line, the parties at Kaiser Steel requested their Long-Range Committee to look into such diverse and wide open questions as the impacts of technological change, the grievance procedure, employee communications, incentive methods, strike prevention and even a plan for distributing the fruits of economic progress.[3]

[3] George W. Taylor, Source cited at footnote 1.

Clearly, it lies with the parties to determine the scope of their committee. The effectiveness of the venture will be increased if the guiding questions are posed concretely but not narrowly and if the body is accorded latitude in proceeding with its inquiry. Beyond this, there is real advantage in asking the committee to make recommendations, so that its efforts will yield practical results. At the same time, if the recommendations are nonbinding, it will be easier to get agreement to create the committee and still easier to explore issues fully and freely.

As to the composition of the body, it could be bipartite, tripartite, or even all public. Indirectly, the question posed here actually is whether neutrals have a significant net contribution to make to such ventures.

Steel Industry Experience

The advantages of introducing "outsiders who become insiders by adoption," to use George Taylor's expression, are not at all self-evident. To illustrate, bipartite committees have been used in the basic steel industry with remarkable success for many years, in development and application of the joint industry-wide job-evaluation plan. The necessary technical support was provided by staff experts on each side, while the controlling procedure emerged from negotiations. Once "the book" was in being, joint local committees worked up the plant wage structures, subject to joint control at higher levels.[4] To the public, the steel industry seems perpetually engaged in almost total conflict. Yet here is an outstanding instance of effective cooperation, by which the wage structure of the entire industry was recast. Unfortunately, it is still too little appreciated.

Above all, the project was successful because the parties recognized clearly from the outset that the occupational rate structure was badly in need of systematic revision, that their common interests demanded that they do something about it. Thus they had a specific problem from which to start, and were in a mood to cooperate. As a point of departure, they had at hand some pioneering work done by management at U. S. Steel. Aided by staff research, they were able to hammer out an operating plan through straight bargaining. In executing it, both sides were willing to provide the large measure of needed cooperation, with adequate time to do the job properly.

The stabilization agreement in West Coast longshoring is another strong example of a successful bilateral attack upon a difficult problem.[5] There the parties negotiated a trade by which certain obsolete and costly work rules were relaxed in exchange for a fund to stabilize earnings and to accelerate retirements. Neutrals contributed only to the extent of undertaking certain productivity studies at an early stage. Success depended instead upon the willingness of the union to yield on work-inflating rules and upon the employers' willingness to commit a substantial part of the savings to finance adjustment of the work force to change.

Function of Neutrals

What, then, is the case for introducing neutrals? There is none when the right kind of circumstances prevail. However, if the problem is one

[4] Jack Stieber, *The Steel Industry Wage Structure: A Study of the Joint Union-Management Job Evaluatiton Program in the Basic Steel Industry* Cambridge, Mass., Harvard University Press, 1959.

[5] Max D. Kossoris, "Working Rules in West Coast Longshoring," 84 *Monthly Labor Review* 1, January, 1961.

in which interests are deeply conflicting at the outset, the level of accommodation will be too low to permit success of a bipartisan approach. Examples are the firemen on freight locomotives, provision of shock-absorbers against major labor displacement, or a relationship that is acutely strike-prone. Here it may require skillful official persuasion even to gain acceptance of a study committee, so that the questions can be opened up at all. At this point, the proposed introduction of outside experts has symbolic value, for it can reassure each side that it will get a fair hearing.

Beyond this honorific function, neutrals can serve as catalysts, by undertaking continuous mediation in the broadest sense — directing the parties' attention to problems, to the facts developed by investigation and to the need for viable solutions—with tactful occasional reminders that the public also has an interest. By injecting new ideas at strategic points, the outsiders can increase the possibility of constructive discussion. Where necessary, they can formulate and guide technical studies, where relevant drawing upon their own specialties and experience. In the end, of course, solutions still must be negotiated, as they should be in a voluntary system. However, neutrals can contribute something new and on occasion perhaps decisive at the prenegotiation stage, in addition to making that stage possible in hard situations.

For prenegotiation procedure—and this is the real place of the study committee—the tripartite panel seems to me so obviously preferable to an all-public board as to require little extended comment. After all, the intent of the whole idea is to improve the prospects for accommodation in an inherently difficult setting. The outsiders thus need the parties' representatives to gain the necessary evidence and insights, while the latter must be on hand if the leavening effects of the process are to work. By contrast, in contract arbitration—an ex post procedure—the case against the all-public board is by no means so clear cut. To explore it would take us too far afield. I will say only that the work of the all-public arbitration commission at Pittsburgh Plate Glass last year will repay study as an impressive example of how neutrals can make a major contribution to better collective bargaining, while laboring in about the thorniest briar patch of problems one could ever encounter.[6]

We have had too little experience with the voluntary trilateralism exhibited by the study committee to know whether it will work in a broad way or, even it if does, whether it will be widely adopted. So far, the published evidence suggests a measure of success at Kaiser and at Armour under rather divergent circumstances. Probably the acid test is now under way in the railroad industry, where the problems are formidable. So far, these proceedings reveal the usual formalism and acute polarity of positions traditionally characteristic of the industry, although it is still too early to pass final judgment.

Problems for Study Committees

In principle, the study committee device suffers from a curious paradox: that it has its greatest utility in cases of extremely low accommodation, yet depends heavily and directly upon the level of accommodation if it

[6] See George H. Hildebrand, "The Use of Informed Neutrals in Difficult Bargaining Situations," a paper delivered at the 1961 meetings of the National Academy of Arbitrators; to appear in the annual volume published for the Academy by the Bureau of National Affairs.

is to yield tangible results. The way of escape from this impasse lies in the mediatory skills of the neutrals, for careful study and patient discussion can produce a more constructive outlook. After all, the purpose is not to gain public admissions of error or changes of face, but to effect quietly a change of attitude and of conduct.

Another obstacle is deeply rooted in the institutions of a voluntary private exchange economy—the tradition held strongly by both managements and unions that bargaining is a method by which each side freely pursues its interests to the limit, constrained only by law. On this view, contracting is a private preserve into which outsiders should not intrude. It was one thing to compromise this principle by introducing grievance arbitration, where neutrals can be confined usually to narrow bounds. It is quite another to extend it to the much more vital area of contract making. For this very reason, contract arbitration has never taken hold. The stakes are less for the tripartite study committee, but the tradition of privacy still rules. Traditions do change, but only when they no longer work and new patterns of conduct become imperative. Bargaining today must take place in a far more difficult environment than in the roomy forties and fifties. If the study committee proves effective, it will spread, for among all alternatives it is the one most compatible with the voluntary system.

Let me refer now briefly to the Kaiser committee. One of its novel features is that it was formally established for the life of the agreement and shows some promise of becoming a permanent contractual institution. Another is that the committee now proposes that, if necessary, it may review negotiations, with the public members participating in what might be called "built-in mediation and fact finding with recommendations." Beyond this, the proposal would even allow the public members to report publicly on the status of negotiations[7] Finally, the committee was formally asked to develop a plan for division of the proceeds of the business, as among stockholders, employees and consumers.

Here we have a notable departure from tradition that in good British style seeks by modification to preserve the core of the tradition itself. In the negotiatory field, the committee's proposal actually aims at increasing the prospects for private settlement by conceding the introduction of adopted outsiders to forestall their imposition through official intervention—an extension of collective bargaining to prevent its replacement. One doubts that labor and management generally will receive this notion with unrestrained applause. Yet it is the beginning of a new idea. For industries vulnerable to Taft-Hartley procedures, it may ultimately prove attractive.

The introduction of neutrals to help plan the distribution of gross earnings also invites speculation, although so far no plan has been made public. The principle is not altogether new, but its practical implications deserve examination. Our official policy of bilateral monopoly in labor markets makes wages and profits often indeterminate. Within limits, they are fixed by a power struggle. By comparison, the older competitive principle that the only sound wage is that unique one which clears the market, while more honored in the breach than in the observance, at least provided a functional standard for wages. In theory, it supplied commutative but not necessarily distributive justice

[7] George W. Taylor, Source cited at footnote 1.

—the employer pays and the worker gets what the free market judges to be the latter's productive worth, not what he "needs." Inherent imperfections in the labor market, supplemented by collective bargaining, have made this principle obsolete in most situations, requiring in its place either a power struggle or an acceptable criterion of "fairness" to guide the distribution of the proceeds of the firm. The Kaiser committee now has the unenviable task of formulating just such a criterion.

If this doctrine spreads, it could go two ways. It might lead to greater attention to the consumer in collective bargaining, by passing back more of the savings from technological progress as lower prices and less as increased profits and money wages. Contemporary wage-fixing discourages price cutting, also fostering capital substitution and unemployment. Because prices can never fall, the economy has a built-in inflationary bias. Unemployment can then only be cured by increasing total demand, by methods that necessarily promote inflation.[8] If widely adopted, one outcome of the Kaiser principle might be a more flexible and less inflationary system of wages and prices, permitting fuller employment, a more stable price level and a moderate rise of the money and real wage levels.

Alternatively, joint pressure could well develop in favor of greater plowback of savings, "to develop the business and enlarge its wage-paying capacity." On the surface, this looks good, for it would increase the productivity offset to higher money wages. There are just two difficulties. First, if the approach were widely followed in rapidly progressing firms that also happen to be strategically situated, it would strengthen the role of such firms as the bellweather for wage patterns that in turn would then spread to the more slowly advancing or even stagnating and declining parts of the economy. The upward pressure on wage costs and prices would increase, making the desired union between full employment and stable prices even more difficult to achieve. Further, by freeing the firm even more from competitive dependence upon the external capital market, greater reinvestment rather than distribution of earnings would foster increased monopoly power. This situation is already painfully evident in several situations. Do we want it to spread further?

Beyond this, the proposed distributive plan undoubtedly contains the germs of industrial syndicalism—cooperation within competing producer groups to exploit the rest of the economy. Given a single-product, market-wide union, employers in the field are already driven to joint action in the labor market. Suppose, now, they formalize this with an association, superimposing a study committee to work out an industry-wide distribution plan. Can anyone doubt that the parties' joint private interest in monopoly would triumph over any verbal deference to consumers? Of course this prospect is fanciful today, but "big trees from little acorns grow."

Conclusion

I began by pointing to two sources of responsible concern about traditional collective bargaining: negotiating difficulties and inflationary settlements. What promise does extended tripartitism hold for dealing with those problems?

Both in the study committee and contract arbitration forms, tripartite

[8] For a careful examination of the problem, see Fritz Machlup, "Another view of cost-push and demand-pull inflation," 42 *Review of Economics and Statistics* 125, May, 1960.

approaches have a contribution to make to improved bargaining. The study committee is a way to achieve what George Taylor calls more factual bargaining. Besides, it offers a method for reorienting the parties' conception of their problems and of their relationships, hence a chance to raise the level of accommodation. If attempted in some of today's difficult contexts, it may well reduce proneness to strike, also developing equitable solutions to problems of change. There is more likely to be greater resort to study committees than to contract arbitration, because they provide a somewhat easier fit with our bargaining system. However, contract arbitration has a place in resolving situations that have reached an impasse. Improved prenegotiation procedures offer no guarantee against an impasse, while contract arbitration supplies a way out that is still compatible with the voluntary system. This system is neither perfect nor is it sacrosanct. Over its lengthy history it has shown remarkable capacity for adaptive change. There is no reason to expect that the process has now reached its terminus.

Nonetheless, there is reason to doubt that any form of trilateralism—the study committee, contract arbitration or the high-level national conference—will improve the overall economic quality of settlements, granting that relief may be had in cases of severe distress. Wage settlements are still made in the United States in a highly decentralized way. With relatively full employment and renewed expansion, these settlements give rise to a wage-push, as they have been doing for nearly twenty years.

The tradition is now established that wages should rise considerably faster than the rate of increase even in gross labor productivity. On the one side, the corporate income tax reduces employers' resistance to inflationary settlements, while public opinion still looks one-sidedly at the intended benefits of wage gains, to the neglect of their effects upon costs and prices. On the other, union leaders still must serve their constituents and cannot get far with pleas for private restraint for the public benefit, even if this were their dominant outlook. Such pleas would fail to carry conviction if put forward in the setting of an undeniably prosperous and growing firm, while they would yield quickly to the equity claims implied by "coercive comparisons" if advanced in less favorable contexts.

However, the situation is not hopeless by any means, even if it is unlikely to improve by introduction of supplementary tripartite devices. Measures to increase total demand will yield economies of higher productivity through larger volume. If federal tax policy could be revised to increase the inducement to invest, faster replacement of obsolete plant and more innovation would follow, further raising the labor-productivity offset. If, too, public opinion could become more aware of the cost-price problem, this might well temper inflationary behavior in wage making and price setting. There is enormous need in this country today for frank discussion of wage and price problems, among the public and at the levels where the critical decisions are taken. Finally, we ought to recall Sumner Slichter's plea for new goals in collective bargaining: namely, the development by management of union and employee incentives to promote cost-savings, by sharing such savings more fully.

The voluntary system of bargaining now confronts a difficult national environment. We ought not to shrink from frank and critical discussion of its weaknesses, nor from open-minded

experimentation with measures compatible to its strengthening. The common interest of us all will be served with nothing less. **[The End]**

The ILWU-PMA Mechanization and Modernization Agreement

By LINCOLN FAIRLEY

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ON OCTOBER 18, 1960, the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association signed a mechanization and modernization agreement running to July 1, 1966. The agreement was the culmination, reached after five months of intensive negotiations, of discussions and planning by the parties which had begun three years earlier in 1957. Union members gain a unique degree of protection against layoff and declining earnings, insofar as these threats are the result of rising productivity, while the employers gain substantially greater freedom to mechanize and modernize. Negotiations were amicable, with no strike threat, and were conducted without benefit of any third party.

The union involved, the ILWU, represents, with minor exceptions, all the longshoremen, shipsclerks and related categories on the Pacific Coast of the United States, the West coast of Canada and Alaska and Hawaii. It also represents warehousemen in these areas and a wide variety of miscellaneous workers. In Hawaii, it represents also the vast majority of workers in the sugar and pineapple industries, all the way from field laborers through those engaged in processing. It is the longshoremen and shipsclerks on the Pacific Coast who are involved in the mechanization and modernization agreement under discussion. Somewhat similar agreements now apply in British Columbia and Hawaii, but these are separate contracts.

Among the Pacific Coast longshoremen and clerks it is necessary to distinguish three categories, differentiated principally by the extent of their attachment to the industry. Ever since the award of the National Longshoremen's Board in 1934, the regular longshoremen have been in the lingo of the industry, "registered" men. To become registered a man must be approved both by the employers' association and by the union. The number to be registered in a particular port is likewise jointly determined. Disputes over registration may be taken to arbitration.

At the present time there are two categories of registered longshoremen, those "fully registered" or "A" men, and those "partially registered," known as "B" men, or "pool men." The fully registered men have first preference for dispatch. They constitute the union's membership, though registration is in no way contingent upon union membership.

The partially registered men are entitled to any work not claimed by

the "A" men and, except for benefits under the mechanization agreement, are entitled to all contract benefits, including welfare and vacations. Their time as "B" men counts toward their qualifying years of service for pensions. The "B" men constitute an entrance classification: they are men who have decided to be longshoremen and who in the course of time anticipate becoming fully registered men and union members. They are for the most part younger men, starting before age 40, and willing to put up with an annual income of $5,000 or so in order to become "A" men who, if they make themselves regularly available, earn about $7,500 a year.

The third category of men consists of "casuals," who have no recognized attachment to the industry and who work only on peak days when the "A" and "B" lists have been exhausted. The need for an auxiliary force of "B" men and casuals arises out of the violent day-to-day fluctuations in the demand for men. The regular work force of "A" men could not handle the work without causing serious gang shortages on busy days, with resultant ship delays.

On the other side of the bargaining table is the Pacific Maritime Association, made up of several different groups of employers with somewhat diverse interests. There are, first, the West coast steamship operators, including Matson Navigation Company which shuttles between the coast and Hawaii; Alaska Steamship Company, which runs to Alaska from Seattle; American President Lines, which runs to the Orient and around the world; Pacific Far East Line and States Steamship Company, which run to the Orient. These represent the main strength of the association and are the principal policy makers.

The second group includes East coast operators whose ships touch at West coast ports, such as Grace Line, American Mail Line and Weyerhauser Steamship Company.

There are, thirdly, a large number of foreign lines—Japanese, British, German, Scandinavian and many others—some of which are members of the association and others of which participate only through their West coast agents who are members.

Finally, there are the stevedore contractors who are, for the most part, the direct employers of longshoremen and who work on a contract basis for the steamship operators. They load and discharge the ships. Only two of the steamship companies do their own stevedoring and hence employ longshoremen directly. There are also terminal operators who, like the stevedore contractors, do work on behalf of the steamship companies, but who are reimbursed on the basis of a tariff, not a contract. They do such dock work as loading and unloading rail cars and palletizing or depalletizing cargo, work which is often done by the steamship companies themselves.

Character and Extent of Mechanization

The longshore industry is technologically among the most backward. An industrial engineer from any one of the mass production industries would be horrified to find sacks of coffee on the San Francisco docks being handled just as they have been handled since sailing ship days. No one of the many separate corporate links in the transportation chain has sufficient interest in greater efficiency to force the changes in coffee handling methods, for example, which, to be effective, must start in Brazil and be carried right through to Hills Brothers or Folgers in San Francisco.

At the other extreme is Matson's container ship which can be loaded

and discharged in a single shift of eight hours using a single longshore gang in place of eight or nine gangs for five or six shifts just for loading. The specially designed ship carries nothing but large containers the size of truck trailers, hoisted in and out by a specially designed shore-based crane. On this operation, productivity of the longshore labor has been increased 40 to 50 times. If the whole operation from shipper to consignee is considered, the gain is very much greater.

The fact, of course, is that the longshore industry combines a vast number of operations which have nothing in common but the movement of cargo to or from a ship. Ships and piers differ markedly in design, the conditions of trade routes differ and cargoes range from bulk wheat, sugar or wine to "plunder," which consists of miscellaneous break-bulk items. There is little which is comparable between pouring bulk sugar into the hold of a specially prepared ship and stowing lumber piece by piece. It is not surprising that technological advance proceeds by fits and starts, now here, now there.

The first big change, accelerated by wartime demands for greater efficiency, was the use of lift trucks on the docks. This radically changed dock operations and forced the Union to give up the "long gang" including a dock complement attached to the ship's gang. "Short gangs," or ship gangs, have prevailed since the war.

Since then the important developments have been, first a shift to bulk handling, a radical improvement in bulk handling methods, for such cargoes as grain, ore, sugar and scrap metal; and, second, the increasing use of unit loads to replace the old break-bulk handling. Instead of sacks or boxes or sticks of lumber being handled piece by piece, they are now increasingly being handled in units weighing a ton or more. The items may be glued together as in the case of cartons of pineapple or beer; they may be strapped as in the case of lumber; or they may be put into vans or containers. The containers may carry anything from household goods of an Army officer going to Guam to bulk rice from Sacramento.

Recent studies, particularly those by the Maritime Cargo Transportation Conference, a quasi-governmental unit of the National Academy of Science, suggest that for the ship operation alone, savings from handling simple palletized loads may equal savings from the more elaborate container systems. However, considering the entire transportation chain from shipper to consignee, where several modes of transportation are involved, it seems that containerization will become increasingly important.

It is changes of these types, certain to be multiplied in the future, which have begun to reduce the demand for longshoremen and which have stirred the industry into adopting the program under consideration. How rapidly the changes will occur and how great will be the reduction in work opportunity cannot be foreseen with any great accuracy. Our own conclusion is that there are enough difficulties in the way of progress so that attrition, as aided by the program of early retirement incorporated in the mechanization agreement will continue to exceed the drop in work opportunity.

Background

This agreement did not spring full-blown from the brow of Zeus, or from the brain of Bridges. Its genesis goes back a number of years, but more specifically to 1957. In April, 1957, the problem of loss of work opportunity due to mechanization was

discussed at a longshore caucus and the officers of the Longshore Division of the union were instructed to make a report to the following caucus on just what was happening. The caucus in our union is a delegated convention representing all the longshore locals which meets at least once and frequently twice a year to formulate policy for the division, including particularly bargaining demands. The officers, assisted by the research department, made a careful survey of the extent of mechanization, made rough estimates of probable effects on work opportunity and came up with recommendations on how to proceed.

The next caucus, held in Portland the following October, was called specifically to review the officers' report. The problem under discussion was formulated in this fashion: "Do we want to stick with our present policy of guerrilla resistance or do we want to adopt a more flexible policy in order to buy specific benefits in return?" It was agreed that by the term "mechanization," the union meant any change in method of work which was labor saving, whether any mechanical devices were involved or not. In the language of the industry:

"We all know what we are talking about when we say Mechanization but actually it is a whole series of things which are more accurately described as Changes in Methods of Operation. We include not only a mechanical device like an Aberdeen dolly or a sugar leg, but the use of unit loads whether or not in containers, an increase in the size of the load, any shift of work away from the waterfront, any infringement on the first place of rest, and any reduction in double handling."

The reasoning of the Longshore Division officers as presented to the caucus delegates was summarized in the report as follows:

"Such research and surveys as we have conducted indicate that so far only a relatively small portion of the over-all cargo movement operations are mechanized. However, the trend is definitely toward greater use of labor-saving devices and techniques.

"The present longshore contracts and working rules offer a high degree of protection against PMA's adopting new methods of cargo handling to the detriment of the workers in the industry. There is thus every likelihood that the union can resist and delay mechanization within certain limits. On the other hand, present contracts and working rules must be changed by negotiation or arbitration if the employers are to obtain the maximum benefits possible from mechanization. PMA desires to be allowed full utilization of labor-saving devices and manpower. They have indicated willingness to share the benefits to the shipping and stevedoring companies resulting from mechanization.

"We should decide how the union will meet the problem. On one hand we have the determination of the rank and file to secure their share of the increased productivity as the result of mechanization, by holding tight and keeping the maximum number of men on the job and, upon occasion, suggesting that more men are needed. This approach is fundamentally one of holding the *status quo* as long as possible.

"The other approach is one which would modify the present restrictions such as working rules, standard gangs, etc., which hamper the maximum output and development of mechanized techniques.

"Assuming for the time being that the union has sufficient strength and discipline and the employers (through

their organization, PMA) have no inclination to force a showdown when the contracts terminate next June, then as a result of our ability to hold the fort, or *status quo,* the best the union can hope to come out with is an ever-increasing mechanization with any disputes as to premium wage rates, number of men used per operation, etc., being resolved through the grievance machinery including arbitration.

"Realistically, the specific terms and language of the contract hold little promise of permitting the union to maintain *status quo* as an answer to the problem of mechanization. Locals try to avoid using the grievance machinery for fear that decisions will go against us. What takes place then is job action and the economic threat of tying up or delaying a ship in order to try to keep the usual number of men on the job or to force more men on the job along with the introduction of machinery. So far this has worked fairly well. As to how long it will continue to work in the future and what it may cost in the way of overall improvements in the wages, hours and working conditions to keep it working is a matter that warrants serious consideration by the caucus.

"On the other hand, the employers have indicated their willingness to sit down and come to grips across the negotiating table with the problems and the benefits of mechanization. Their attitude is not one of insisting that we do not participate whatsoever in the results of increased productivity and the savings in money and labor due to mechanization. But they have stated to us frankly that they hesitate to make the capital investment required unless some understandings are first reached with the union guaranteeing against organized harassment and work stoppages.

"This is another way of saying that they recognize notwithstanding the contract guarantees of freedom to introduce and use the maximum labor-saving devices, that the workers are not without ways and means of also profiting. There are exceptions, of course. Some companies have gone ahead and developed new methods and techniques. These moves have been met by the union's insistence on maintaining the usual number of men on the job.

"Presently it seems possible for the union to negotiate a contract embracing the full use of labor-saving machinery with maximum protection for the welfare of the workers. Such protection can generally be spelled out in the following terms.

"(1) Adequate guarantees against speedup of individual longshoremen. (2) Guarantees of safety. (3) Guarantees against layoffs of the basic work force; the basic work force here is defined as the presently registered longshoremen, clerks and walking bosses. (4) No reduction in take-home pay. (5) Shortening the work shift. (6) The possibility of guaranteed work opportunity to provide guaranteed weekly take-home pay. (7) Improvements in pension, welfare and vacation conditions.

"If the caucus and the membership decide that the best program is more or less the current approach, namely, to meet the mechanization on a given operation by resisting, or by keeping the maximum number of men on the job it's hardly necessary to try to develop any alternative program at the caucus. We can continue as we are until the contract ends, or attempt to negotiate or force by one means or another, an extension of the contract with whatever improvements can be obtained. Or, if we wish to sit down with the employers now,

some months prior to the contract termination date, and seek to negotiate contract rules and guarantees giving maximum protection to the union in the matter of mechanization, such a course is open to us.

"Recommendation: It is the recommendation of the International Officers and the Coast Committee that the caucus empower the International and the Coast Committee to continue their unofficial discussions in order to learn how far PMA will go in giving adequate guarantees for the workers in the industry."

Debate proceeded for three full days. Had a vote been taken the first day, the decision might easily have been to continue to use the union's muscle to preserve the *status quo.* "We've gotten along all right so far, so why not continue?" But as the discussion proceeded, the view gradually prevailed that the continuance of guerrilla resistance meant fighting a losing battle, a delaying or holding action at best. The pressure to increase productivity was growing and, in the future, might be expected to accelerate. The employers might decide to become tough and the general economic picture did not bode well for a prolonged strike on an issue on which it would be difficult to secure public support. Arbitrators are not disposed to protect the use of unnecessary men so that in the case of disputes arising under the grievance machinery the chances were that we would lose more cases than we won and even when winning we would only be hanging onto what we had, not gaining anything. Finally, it was recognized that a candid review of the past several years showed that despite the militant position of the membership, many operating changes had been made and we had nothing to show for them; no positive benefits or gains had accrued to the men from the changes already put into effect by management.

The decision was therefore made, by unanimous action of the delegates to accept the recommendation to explore further with the PMA the possibilities of some sort of *quid pro quo,* some specific benefits to the longshoremen, as our "share of the machine," in return for what the employers were seeking, namely, a chance to adopt new methods and relaxation of such working rules as required multiple handling, set a limit on the size of sling loads or called for unnecessarily large gangs.

If space permitted it could be demonstrated that each of these rules, when adopted, served an important function in protecting the men on the job from loss of work, from discrimination or from speed-up. In many instances, the original need for the rule has disappeared with the adoption of other contract provisions or with the growing use of new methods. Nevertheless, the rule is treasured by the men because many remember the conditions before the rule was adopted and the travail involved in winning it. Part of the educational job which had to be done at the caucus and which has had to be continued since was to convince the men that other forms of protection—such as are now embodied in the new agreement—could be exchanged for the old rules without any sacrifice of security.

It may be interjected at this point that working rules in the West coast longshore industry are agreements, negotiated and administered port by port, specifying for each operation how work shall be carried on and by how many men. With the possible exception of the railroad and printing industries, less is left to employer prerogative than in other industries. Nevertheless, these are joint rules, they are the result of collective bar-

gaining and they are beneficial to both parties by insuring equality of treatment among employers, and they have been in effect for many years. They were overhauled in 1948-1949, but have been largely unchanged since.

The important point here is that union insistence on the observance of the rules made it economically difficult for those employers who desired to do so to adopt new methods. A six-man gang in the hold is necessary when scrap metal is handled in the old-fashioned way, but becomes too large when the metal is picked up by a magnet.

Pursuant to the instructions of the caucus, the next step in the development of the agreement was a resumption of informal conversations with the PMA. These led, in November 1957, to adoption, still informally, of the following statement of objectives:

"OBJECTIVES"

"1. To extend and broaden the scope of cargo traffic moving through West Coast ports and to revitalize the lagging volume of existing types of cargoes by: (a) Encouraging employers to develop new methods of operation, (b) Accelerating existing processes of cargo handling, and (c) reducing cargo handling costs in water transportation, including faster ship turnaround.

"2. To preserve the present registered force of longshoremen as the basic work force in the industry, and to share with that force a portion of the net labor cost saving to be effected by introduction of mechanical innovations, removal of contractual restrictions, or any other means.

"3. To accomplish objectives 1 and 2 WITHOUT: (a) Individual speed-up, (b) Breaching legitimate safety rules and codes, (c) Indiscriminate layoffs, (d) Bankrupting operations which do not lend themselves to change, (e) Driving away any existing cargoes, and (f) Distorting hourly wage rates of longshoremen in comparison to rates paid workers of comparable skill in the longshore industry.

"4. An additional objective proposed by the union is to reduce the length of the present longshore work shifts."

These objectives are, basically, the objectives which are implemented by the current agreement negotiated in 1960. The union has explicitly reserved the right to raise the question of a further reduction of hours during the life of the agreement.

The above review of caucus action has sufficiently explained the union's objectives. It remains to comment on the employers' objectives, even though I am not in the best position to do so. As indicated at the outset, some members of PMA are steamship operators while others are stevedore contractors. The latter work on what is essentially a cost-plus basis and, in consequence, have little or no interest in any steps which will reduce the number of men they employ. In the past they have passed along their costs to the steamship operators who, in turn, have passed them along to the shippers and to the federal government through the subsidy program. The whole industry, in fact, has been essentially cost-plus in character. This accounts in part for its extraordinary backwardness technologically.

Recently, the steamship operators have been feeling significant pressures from their shipper clients and from the federal government to reduce their costs, particularly their cargo handling costs. To accomplish this they have been taking a whole series of measures to secure greater control over the cargo handling operation and to make it more efficient. They seized upon the union's demand

in 1959 for an eight-hour guarantee to obtain greater flexibility of operation than they had previously enjoyed. Through what is known in the industry as the "performance and conformance" program in 1960 they rooted out a lot of extra-contractual practices which, because of the laxity of the stevedore contractors, had been allowed to grow up, like early quits, late starts, four-on and four-off. The men had naturally taken advantage of the contractors' laxity, so that the ship operators' pressures had to be directed both at the men and the contractors. The elimination of these practices was reflected in higher productivity rates even before the new mechanization program became effective.

The mechanization agreement is the latest step in this process by which the operators are developing control over the flow of cargo and hence over the cost of its handling. The nature of the new technology, in particular the use of containers, not only facilitates, but requires, this sort of through control just as it is requiring the development of through bills of lading. The most successful users of containers are those companies which operate in more than one segment of the transportation chain.

It was not until the 1959 negotiations that any further action took place. Meanwhile, however, union and PMA technicians undertook to devise a method for measuring productivity change and the savings which would accrue to the employers from productivity gains, including those from reduced ship turnaround. The union had proposed this formula: That each employer contribute to a mechanization fund an amount equal to the straight-time wage rate for each man-hour which was saved in his operations as a result of improved productivity during an appropriate period, presumably a year. Since the straight-time rate is roughly one-half of total direct labor cost per hour, this formula would mean sharing gains on approximately a 50-50 basis.

On the basis of such a formula the progressive employers would contribute most while those preferring the *status quo* would contribute nothing. While the specific amount of contribution was never agreed to by the PMA, the principle of payment on the basis of measurement was generally accepted. A method of computation was worked out, with assistance from the Maritime Cargo Transportation Conference of the National Academy of Science, and the PMA instituted a system of reporting tons and man-hours, company by company, ship by ship and commodity by commodity, designed to provide the required information.

In 1959, while there was full agreement on the perspectives, the PMA indicated that it needed more time to develop the necessary factual basis before reaching a final agreement. The union, however, was unwilling to defer action for another year. Consequently, an interim agreement was worked out which accomplished the following:

(1) It restated the basic objectives of the parties including a specific guarantee against layoffs of the fully registered men.

(2) It established a mechanization fund to which the PMA agreed to contribute a down payment of $1½ million during the ensuing contract year, the money to be raised as the PMA saw fit. This amounted to about $100 per registered man, since there are roughly 15,000 registered longshoremen and clerks, and to about 1½ per cent of the annual payroll.

(3) It formalized a procedure for modifying gang sizes and other rules case by case where new labor saving devices were introduced, but froze working rules under all other conditions.

Shortly thereafter, the PMA borrowed Max Kossoris from the U. S. Bureau of Statistics to help them work out a more complete and more adequate system for reporting tons and man-hours as well as a formula for computing the necessary indices of productivity. The statistical problems involved are in many respects similar to those the Bureau encounters in computing the Consumer Price Index and Kossoris was eminently qualified for the job. Though he was employed by PMA he kept the union informed at all stages.[1]

The 1960 Agreement

The general nature of the agreement reached in October, 1960, should now be clear. The union won a substantial degree of security for its members; the employers won a substantial degree of freedom to push for productivity improvement. The agreement runs until July 1, 1966, and is not subject to review. The basic longshore and clerks' agreements were extended for the same period, but are open annually on all matters except mechanization and pensions, including reduction of hours.

The PMA agreed to contribute $5 million annually for 5½ years or about 4½ per cent of present payroll, beginning January 1, 1961, but reserved to themselves the right to determine how to raise the money. The money will go into a trust fund for the exclusive use of those men who had full registration at the time the agreement was signed. Three million dollars each year is considered to be, in our terminology, the men's "share of the machine" and it is understood that the union will seek in 1966 to continue this portion of the fund for the purposes for which it is intended, namely, the early retirement, cash vesting and death benefit features.

The remaining $2 million per year is what the men are to receive for selling a portion of their property rights in the working rules, to use Professor Gomberg's concept. These are rules which they have struggled to obtain and which they are loath to relinquish. It is understood that $10 million is the selling price ($2 million for five years) and that by 1966 the transaction will be completed. This portion of the fund is to be used for the wage guarantee. Men becoming registered from now on will not be entitled to any of this money because they will not have given up anything.

Maximum possible security for the present fully registered work force is provided as follows:

(1) There is a flat guarantee against layoffs. The parties prepared for this by freezing registration in 1958 and by making registration coastwide instead of port by port, so as to facilitate shifts from area to area.

(2) There are two cushions which will take up the shock as work opportunity declines due to rising productivity. Normal attrition is high because the average age is well over 45 years. Deaths and normal pensioning remove about 4 per cent a year. And, secondly, the parties have agreed to cooperate in reducing the percentage of work going to the "B" men and casuals. Together, these groups do about 12 per cent of the work. It is anticipated that this percentage can be reduced to 5. Thus a considerable decline in work opportunity can occur before the fully registered men are affected.

[1] Kossoris has described his work and written a valuable commentary on the new agreement in "Working Rules in West Coast Longshoring," *Monthly Labor Review*, January, 1961.

(3) The agreement provides for voluntary early retirement, at age 62, with a monthly benefit of $220, the sum of maximum Social Security and the regular longshore pension of $100. At age 65, when Social Security is payable, the industry pension will drop back to $100. This early retirement provision will tempt some men to withdraw from the labor force, leaving more work for the younger men. This is seniority in reverse.

If a man chooses not to retire early, but continues to work until normal retirement, he will receive a lump sum of $7,920, the equivalent of $220 per month for 36 weeks, from age 62 to age 65.

(4) If necessary to meet a sharp decline in work opportunity, the parties may invoke compulsory early retirement. In this event, the men will receive $320 a month, the extra $100 being intended to make retirement more palatable to the men.

(5) Finally, if, despite these steps, average weekly earnings fall below the equivalent of 35 straight-time hours per week (about $100), the weekly guarantee of this amount will become operative. Equivalent hours are now about 40. Important details of the guarantee remain to be worked out: How much pressure will be put upon a man to move from a port of low work opportunity to a port of higher work opportunity? Will the guarantee be payable in a port where the local union has persisted in maintaining a large secondary labor force of "B" men or casuals? Before the guarantee is payable, will the registered men be required to do the hard and disagreeable jobs, like handling bananas, which they now leave for the "B" men and casuals? Will the guarantee be payable on a quarterly or a yearly basis? We have tentatively ruled out shorter periods than a quarter because of the greater expense.

These questions are still to be answered, in part because neither party anticipates an early need for the guarantee and both parties sincerely hope it will never be necessary. The political problems of putting the guarantee into effect are tough from the union's point of view. In calculating the amount needed for the guarantee we assumed as an outside possibility a rise in productivity of 10 per cent a year; the actual improvement rate, we anticipate, will be considerably less. Assuming no change in tonnage handled, the guarantee would not become operative, under these assumptions, until late in the fourth year of the plan's operation. With an increase in tonnage, even a moderate one, the guarantee may not be necessary at all.

As indicated earlier, funds for the wage guarantee will no longer be accumulated after 1966. We anticipate that once existing restrictive rules have disappeared, the rate of productivity increase due to mechanization will certainly not be greater than the rate of attrition so that by controlling manpower intake we shall be able to prevent average work opportunity from dropping below a reasonable level.

The wage guarantee does not apply to a drop in work opportunity due to economic decline. This raises a nice technical question, of how to distinguish the causes for an observed decline and how to determine their relative magnitudes. The question can be answered by use of the detailed data on tons and man-hours which PMA is accumulating, but it may have to be answered nonstatistically, simply through the processes of bargaining.

What the employers gain is the opportunity to put in any new machine or method provided they can establish, through the grievance machinery, that the method is safe, that there is no speedup of the individual

and that the work is not onerous. These safeguards are written into the agreement. The concepts "speedup" and "onerous" are giving us some difficulty in definition, but interpretations are beginning to come out of the labor relations committees and arbitrators. Subject to these safeguards, any existing working rule which can be shown to prevent or to limit more efficient operation, must be changed.

Under the agreement, the employers will be under no obligation to perform work with unnecessary men, or "witnesses" as they are sometimes called. The men necessary to any longshore operation will be based upon a determination to be made in accordance with the agreement. In this respect the agreement takes into account contractual provisions for relief and the fact that during many operations all men will not be working at all times due to the cycle of the operation.

The old sling load limit (2,100 pounds) will continue to apply to all loads built by longshoremen where conditions, number of men on the dock, and in the ship, and the method of operation is the same as when the original sling load agreement was negotiated. This will be the standard by which the union can measure changes which do take place.

Sling load limits are lifted for changed operations or where new commodities or operations have developed. For these, loads will be as directed by the employer, within safe and practical limits and without speedup of the individual. An increase in the number of men manhandling cargo or use of machinery to move or stow cargo on docks or ships will be considered a changed operation permitting loads in excess of the standard previously agreed upon.

Past practices which resulted in over-standard loads being skimmed or cargo being removed from pallet boards and placed on the skin of the dock while in transit to or from the ship's hold are eliminated. This will end unnecessary handling of cargo to the benefit of the employers; it will eliminate these jobs from the industry.

The men so employed in the past are assured that there will be other work for them. Men incapacitated by age or illness and therefore unable to handle ship work will be guaranteed priority on the dock work.

The hold gang for cargo which continues to be hand-handled will continue to be at least six men for discharge and eight for loading. The minimum basic cargo gang may be reduced to four men in the hold when the employers add mechanical equipment, or under other special circumstances detailed in the agreement.

The employer may bring machinery and machine drivers into the hold and swing out an equivalent number of hold men, but four basic hold men must be retained at all times where hold men are required.

When loads above contractual limits are moved manually, additional men or machines will be provided to guarantee against onerous individual work loads.

In one respect the agreement provides a direct benefit to both the men and the employers; it protects the industry's jurisdiction on the dock.

The agreement spells out longshore work between the first and last place of rest as follows: (a) High piling or breaking down high piles; (b) Sorting; (c) Movement of cargo on the dock or in a terminal or to another dock, terminal or warehouse; (d) The removing of cargo from longshore boards; (e) The building of all loads on the dock.

The employer is not required to perform all of the above work, but he may not use any but longshoremen if such work is done.

In some areas, part of this work has been done by lumpers, members of the Teamsters' union, employed by drayage companies on behalf of the shipper or consignee. The steamship companies desired to have all work on their docks done by their employees, or employees of terminal companies operating on their behalf. And the union was, of course, interested in nailing down its jurisdiction over this work.

In addition, the union is guaranteed that any new equipment used by PMA employers will be operated by ILWU members, trained if necessary by the employers. Some difficulties have been encountered on this score with the operating engineers, but the problems are being worked out.

Finally, continuing a process which has been going on for some years, modifications were made in the grievance machinery to insure more expeditious settlement on the spot and to provide, when necessary, quicker reference to the coastwide grievance machinery. Largely because of the many radical changes in operations resulting from the adoption of the eight-hour guarantee in 1959 and of this new mechanization agreement, both parties have moved in the direction of greater centralization in the handling of grievances. Coastwide rules are superseding many local rules. So far as the PMA is concerned, this is symptomatic of the drive, already discussed, to assume greater control by the steamship operators.

To provide a financial incentive for contract observance, the PMA insisted on an abatement provision. This reads as follows:

"In the event that the Union or any Local fails or refuses to follow a Coast Labor Relations Committee or Arbitrator's ruling interpreting or applying the provisions of this document, or in the event of a work stoppage in any port or ports in violation of the provisions of this document, payments into the Fund shall be abated during the period of such failure, refusal or stoppage in the manner and amount hereinafter provided, and the total Employer obligation shall be reduced by such amount.

"The method of determining the amount of abatement shall be as follows:

"The total Employer obligation on an annual basis is at the rate of $13,650 per day. This shall be the maximum amount of abatement per day. Within this limit, the parties shall agree as to the amount to be abated on a daily basis in each instance of failure, refusal or stoppage, whether on a Coastwide, Area, or Port basis, and failing such agreement, the Coast arbitrator shall make such determination."

Problems Arising in Negotiation or in Application

Brief mention may be made of several problems with which one or both parties has had to deal during negotiations, since the agreement became effective in January of this year or will have to face in the future.

(1) *Should contributions to the Fund be based on measured improvement in productivity or should they be a flat amount?* Some of the background on this issue is supplied above, and it is indicated that the PMA preferred the flat amount approach even though they have the statistical data for measurement, and even though the union had assumed that measurement had been agreed upon.

Why did the PMA decide on the flat amount approach even though it clearly puts the burden upon the employers? They are now responsible for getting an average of $5 million worth of improved productivity per year for the entire period of the con-

tract. No reasons were given in negotiation, so that what follows is largely by way of speculation.

One consideration appears to have been that the measurement method under consideration would have included among causes for increased productivity a variety of changes for which neither the union nor the men would be in any way responsible. Employers did not care to put money into a fund, for example, just because they built a new pier or a new ship which expedited the work, or if they streamlined supervision.

Possibly more important was the fact that if payments were to be proportional to increased productivity, the burden would be greatest upon those employers whose productivity gains depended in large measure upon capital investment. Matson, with millions of dollars invested in containers, container ships and cranes, would be paying at the same rate per man-hour saved as a stevedore contractor who gained productivity because of a reduced gang size without any capital expenditure. While the union had never insisted on a straight proportional relationship between productivity gains and contributions and had recognized the need to make some allowance for capital investment, actually none of the formulas which were informally discussed included such an adjustment.

A third factor may have been reluctance on the part of individual employers to reveal their productivity rates, not so much to the union as to other employers. A stevedore contractor, for example, might fear that the steamship operator for whom he is working would discover that another contractor had a better productivity record and could therefore do the work more cheaply.

(2) *How should the money be raised?* Once it had been agreed that the PMA would contribute a flat amount, then there arose this second question of how the money should be raised. Should individual employers be assessed on a man-hour or a tonnage basis? The choice appears to have been between these alternatives or some combination of the two.

The man-hour basis was used in order to raise the initial $1.5 million. The tonnage basis is being used now: 17½ cents-per-ton of ordinary cargo, 5½ cents-per-ton of bulk. Domestic operators are paying the assessment, and no doubt have amended their contracts with stevedores accordingly. In the case of foreign lines, the stevedore pays the assessment and collects from the steamship company.

During the period when the man-hour basis was being used, the stevedore contractors and the foreign lines, who as earlier indicated have little or no interest in increased productivity, complained bitterly that they were being compelled to subsidize the more enterprising and progressive companies which were pushing ahead on mechanization. The tonnage basis now in use appears more nearly equitable though, from the outside looking in, it would still appear that payment in proportion to man-hours saved, with an adjustment for capital cost, would be even more equitable.

(3) *Tax problems.* The parties have run into difficulties because the unique character of the agreement does not fit into existing categories of the Internal Revenue Code. The agreement provides that contributions to the fund shall be contingent upon the employers obtaining Internal Revenue Service approval for treating contributions as business expense. To secure approval it may become necessary to incorporate some portions of the program as amendments to the existing pension plan and possibly to make other minor modifications in the agree-

ment as originally written. Negotiations on this matter are currently under way.

(4) *Load size.* The agreement permits larger sling loads when the conditions which governed the setting of sling load limits no longer apply. The operating employers have in some instances interpreted this provision to permit enormously increased sling loads without any compensating use of equipment or without adding any men. The men have balked, protesting that they cannot "meet the hook" when the loads are so big, that they are being speeded up, and that the work is onerous. The original sling load limits were adopted primarily to protect the men in the hold. If now, without any change in equipment or manning scale, they have to stow two tons in the same time they formerly stowed one ton, they naturally object. The employers have been told that under these circumstances the hook will just have to hang while the men stow cargo at the former rate. The no speedup provision governs. Though the Maritime Cargo Transportation Conference studies show that considerable improvement in productivity is possible with larger hold gangs, no employers are so far experimenting with larger gangs.

(5) *Multiple handling.* It was anticipated during negotiations that the elimination of multiple handling on the dock, and the consequent limitation on Teamster jurisdiction, might cause complications with the Teamsters. When the agreement became effective, the Teamsters were told by our employers that they could no longer build their loads on the dock; they would have to build them on their trucks. The Teamsters' union objected and picketed the docks first in Los Angeles and then in San Francisco, despite attempts by ILWU and our employers to confine the problem to a single dock for test purposes. They argued that their agreements did not expire until July 1, 1961, and that until they could renegotiate their contracts they were not going to permit their members to lose jobs.

The matter was worked out after a few days through four-way negotiations involving PMA, ILWU, the Teamsters' union and drayage associations up and down the coast. Except for San Francisco, the agreement reached provides, on a coastwise basis, for a return to the *status quo* prior to the inauguration of our agreement and for its continuance until July 1. After that date the new methods will go into effect on the docks. The Teamsters' union is planning to renegotiate its contracts, possibly to include some provision similar to ours by which they obtain some benefits in return for loss of jobs. Meanwhile, multiple handling continues on some jobs and the PMA is considering whether to demand some compensating abatement of their contributions to the fund.

In San Francisco, where this settlement was turned down by the Teamsters, the PMA has sued the Teamsters for damages and has brought NLRB charges. These actions will be dropped if the local Teamsters agree, meanwhile, to go along with the agreement worked out for the rest of the coast.

It is important to point out that in this industry and in the present instance the basic jurisdictional struggle is not between the Teamsters and longshoremen but between the drayage companies and the dock operators. What is necessary, by way of immediate solution, is for shippers to give different orders to the drayage companies. The long run solution, which will prevail whatever the outcome of the present jurisdictional beef, is that technological advance will eliminate the work which is now at issue. Most loads will be handled as units,

with the result that neither Teamsters nor longshoremen will be building loads on the dock. That work will be done once and for all by employees of the shipper.

(6) *What will be the effect on future wage negotiations?* This is a nice question. Has the union, by getting a side deal on mechanization, deprived itself of an important argument for wage increases? A first answer may appear this June when wages are open for negotiation and, failing agreement, for settlement by arbitration. The union will certainly insist that the mechanization agreement is wholly apart from wages, that employers are recovering at least the equivalent of their annual $5 million contribution through mechanization and rules changes—and if they are not, that it is their own fault. The PMA may contend that the mechanization agreement costs something like 4½ per cent of payroll, that on top of that wages were increased eight cents last June, and that the union has always argued productivity gains in the past as one basis for wage increases.

Actually in the past, productivity as a wage argument has been accorded relatively little attention, particularly by arbitrators. The employers have on occasion argued that the men were not entitled to an increase because productivity in the industry was low and falling, while the union has argued, on the basis of national productivity gains, that unless productivity is taken into account living standards cannot be increased. Decisions, as in most industries, have been largely made on the basis of other factors.

To hazard a guess, I would say that if the wage issue is settled in negotiations the influence of the mechanization agreement will be governed largely by how smoothly the agreement is working. If a lot of difficulties are being experienced which the PMA can attribute to the union or to the men, the employers will not be disposed to grant a wage increase, or not as much as they otherwise might. If the matter goes to arbitration? Who can predict what an arbitrator will do?

Related Issues

(1) *Is mechanization a proper matter for collective bargaining?* Though many employers consider that mechanization is wholly an employer prerogative, the PMA never took this position. From the start, they recognized that the union had a legitimate interest and they were willing to concede that the men were entitled to a "share of the machine." It is true that their position may have been in part a recognition that without the cooperation of the union they could not hope to accomplish their objective of greater managerial freedom and elimination of restrictive practice, at least without a prolonged struggle. Nevertheless, their position represents a more farsighted attitude than prevails in many industries. From the standpoint of economics, mechanization and productivity are certainly proper subjects for bargaining. If wage bargaining is restricted to the amount of payment per hour, the question of how much work is done in an hour remains to be fought out on the job in those cases where the men are in a position to fight, or in the more usual case for the employer to determine. A complete bargain, of course, includes the *rate* of work as well as the compensation.

(2) *Is third party participation necessary or desirable in bargaining over such issues as mechanization?* Both the ILWU and the PMA feel strongly that on a complicated issue of this sort no outsider can be of any real assistance. If the parties cannot work out a satisfactory solution, a third party is even less likely to be able to do so. Even though at times during

the five months of negotiating this agreement one party or the other might in frustration have demanded that the matter be referred to the permanent coast arbitrator, neither party did so. A representative of the U. S. Maritime Administration attended the negotiations but did not participate in any fashion. No conciliators were called in.

The union, in fact (I cannot speak for PMA), deplores what appears to be a trend toward outside participation—we would say "interference" —in matters properly handled through collective bargaining. We are opposed, whether the third party be the government or, begging the pardon of those present, college professors. We think the Bi-State Waterfront Commission on the East coast was unnecessary and undesirable, despite some of the serious situations it was designed to correct and despite some of the good things which it has done. We have strenuously opposed proposals which have been made from time to time for the establishment in the maritime industry of government machinery similar to that in the railroad industry. We are skeptical of the tripartite bodies set up by last year's steel negotiations and in the packinghouse industry. As far as we can learn, they are accomplishing very little, at great expense to the parties.

So far as our present agreement goes, we agree with Donald Crawford when he told a conference at the Wharton School last December: "Maybe Bridges gave away the Union and maybe the Waterfront Employers Association sold out the stockholders. But of this I am sure: no matter how bad a deal it was, still the Association and the Union each made a better deal for itself than the central government would provide for them." [2] The essential point is equally valid if one thinks the deal is a good one.

(3) *Is an agreement such as this any contribution to the solution of the problem of unemployment?* The ILWU answer is, regretfully, "Only a very small one." We are protecting our own members to a very considerable extent against the threat of unemployment and loss of earnings but by so doing, are closing the door on younger workers who are seeking jobs in the industry. There is no difference in this respect between what we are doing and what happens in any industry as productivity rises without a corresponding increase in production. The difference lies in the fact that in this case the union is a party to closing the doors and this has exposed us to sharp criticism even from some in our own ranks.

The "B" men awaiting advancement to full registration have naturally objected that the agreement discriminates against them and their cause has been supported by outside observers. Yet these same observers would not think of criticizing the steel industry for not employing men whom they do not need. The point, apparently, is that the union should not be party to limiting the number of workers in an industry, even though the limitation is required in the interests of efficient operation. If the union insists on keeping unnecessary workers on the job, it is attacked for featherbedding; if it cooperates to improve efficiency and the security of the union members, it is being selfish and discriminatory. To those critics with full tenure who come from academic circles, I would put this question: "Do you think tenure should be extended to all teaching assistants?"

As I have indicated above, the union has reserved the right, at any open-

[2] "Industrial Relations in the 1960's—Problems and Prospects," University of Pennsylvania, Labor Relations Council of the Wharton School of Finance and Commerce, February 15, 1961, Volume I, p. 28.

ing during the life of the agreement, to seek a reduction in the work shift. We expect to move in this direction when and if the situation is propitious. This, so far as we know, is the only way that a union, through collective bargaining, can help to meet the problem of the displacement of men by new machines and new methods.

We are convinced that national legislation and national planning will be required to cope with the chronic unemployment crisis which confronts the country.

(4) *Can the agreement be applied in other industries?* This question cannot be answered satisfactorily within the limits of this paper; it would require at least as much space as I have already consumed and, besides, it would require another author, one far more familiar than I with conditions prevailing in other industries. What I propose to do is simply to list the factors which, in my judgment, have contributed toward making the plan workable in the West coast longshore industry:

(a) Productivity must advance at a pace no faster than the work force is reduced by attrition. Within our own jurisdiction, the work force in the Hawaii sugar industry has been more than cut in half—with the same output—in less than two decades. It would have been impossible to negotiate a similar agreement under these circumstances. There we have experimented with some interesting variations on severance pay, but we have had to accept substantial layoffs.

(b) The union must have something to sell in the way of work rules or work practices which the industry considers worth buying. Many, if not most, unions have never achieved such a position. They do not have manning scales, or agreed-on work loads, or any say as to the conditions which shall prevail when new equipment is introduced. In such cases the union can seek severance pay, or retraining allowances, or transfer to new locations, but it cannot bargain away valuable rules because it does not own any.

(c) The union must have the discipline to deliver what it agrees to give up. The process in our union of convincing the membership that it was desirable at this time to move in this direction began as early as 1957 and is still going on. Besides several caucuses, the matter has been discussed at many union meetings, has been presented in printed form and was voted upon in a coastwide referendum last winter. Without such an educational process, the men would never have been willing to change working conditions which they had fought for originally and had enjoyed for years.

Without pretending to any careful analysis of conditions prevailing in these industries, it seems to us that the ILWU-PMA approach might be applicable, with appropriate variations to meet different situations, to the railroad industry, to the printing trades and to some sections of the trucking industry. We have had inquiries from the union side from local officials in each of these industries but do not have information as to whether the plan is seriously under consideration. In the mass production industries we doubt that the unions are in a position to embrace such a program even if they desired to do so. **[The End]**

Program

Thursday, May 4

SESSION I—GOVERNMENT REGULATION OF INTERNAL UNION AFFAIRS

Chairman: Joel Seidman, Professor of Social Science, Graduate School of Business, University of Chicago.

Papers: John L. Holcombe, Commissioner, Bureau of Labor-Management Reports, *Union Democracy and the Labor-Management Reporting and Disclosure Act;* Sam Romer, Labor Staff Writer, Minneapolis, Minnesota, Tribune, *The Teamster Monitors and the Administration of the International Union.* **Discussants:** Lester Asher, Asher, Gubbins & Segall; I. M. Lieberman, Employee Relations Director, The Toni Company.

LUNCHEON

Toastmaster: Frank McCallister, Director, Labor Education Division, Roosevelt University and President, Chicago Chapter, IRRA. **Introduction of Speaker:** Philip Taft, President, IRRA.

Speaker: The Honorable Jerry R. Holleman, Assistant Secretary of Labor.

SESSION II—THE MIGRATORY WORKER

Chairman: John W. McConnell, Dean, New York State School of Industrial and Labor Relations, Cornell University.

Papers: Louis Levine, Deputy Director, Bureau of Employment Security, U. S. Department of Labor, *The Migratory Worker in the Farm Economy;* The Honorable Harrison Williams, Jr., United States Senator, New Jersey, *Proposed Legislation for Migratory Workers;* Franz Daniel, Assistant Director of Organization, AFL-CIO, *Problems of Union Organization of Migratory Workers.*

SESSION III—THE USES OF LABOR TRADITION

Chairman: George Shultz, Professor of Industrial Relations, the Graduate School of Business, University of Chicago.

Speaker: Archie Green, Librarian, Institute of Labor and Industrial Relations, University of Illinois.

SMOKER—9 p.m.

Friday, May 5

SESSION IV—THE IMPACT OF CHANGING TECHNOLOGY ON COLLECTIVE BARGAINING

Chairman: Charles Killingsworth, University Professor, Labor and Industrial Relations Center, Michigan State University.

Papers: William Gomberg, Professor of Industry, Wharton School of Finance and Commerce, University of Pennsylvania, *The Work Rules and Work Practices Problem;* George H. Hildebrand, Professor of Economics, Cornell University, *The Use of Tripartite Bodies to Supplement Collective Bargaining;* Lincoln Fairley, Research Director, International Longshoremen's Union, *The ILWU-PMA Mechanization and Modernization Agreement.*

Meeting Officials

Program Chairman: Martin Wagner, Director, ILIR, University of Illinois.

Local Arrangements Co-Chairmen: Frank McCallister, George Shultz.