CONSTRUCTIVE COLLECTIVE BARGAINING

Robert B. McKersie

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Robert B. McKersie
Professor of Industrial Relations
Sloan School of Management
Massachusetts Institute of Technology

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INTRODUCTION

The organizers of this conference have shown considerable wisdom in the framing of the major theme: the creation of wealth through good industrial relations. Certainly, everyone can subscribe to the idea of "making the economic pie bigger." However, how to divide up the pie is not as easily answered. I would submit that collective bargaining represents a superior method. It has shown that it can allocate shares without undermining the central mission of any economic/political/social system, namely, to provide jobs, to raise incomes, and to provide important social services.

Moreover, and related to the theme of this conference, collective bargaining is more than a distributive process; it can also be a process for adding value, for problem solving, and integrating the interests of all stakeholders.

I am sure that I cannot persuade you merely by assertion. I am sure that many of you are asking yourselves several question. First, what is constructive collective bargaining? Is it not an oxymoron? Do I really have to get involved with collective bargaining for the large unskilled and semi-skilled segments of my workforce? Wouldn't I be better off to work hard to avoid unions by instituting the latest human resource
management ideas? Hasn't this approach been quite successful in the U.S.--witness the steady decline in union density in the U.S.?

I have several responses to this point of view. First, as was the case for most large companies in the U.S. during the upsurge in unionization in manufacturing (when the unions had many of the characteristics of a mass movement) you may not have any choice.

The most obvious answer is that it is better not to be in a reactive mode but to be proactive and to get out in front of developments. It is often said that "management gets the kind of industrial relations that it deserves." Companies that drag their feet with respect to recognizing unions and establishing working relations may gain a temporary reprieve but ultimately they find themselves "playing catch-up" and having to fashion labor-management relations under the pressure of a crisis.

If management attempts to introduce positive personnel policies just to avoid unionization of its workforce, it will find that such an approach will only have negative repercussions over the long run. The adoption of a strong anti-union strategy creates considerable tension within the operations--with the only benefit going to competitors who have already recognized the union and moved toward stabilization of their work environments.
By taking the initiative, you can avoid being driven into a traditional system of industrial relations and collective bargaining. What do I mean by a traditional system.

In our analysis of the changes taking place in industrial relations in the United States, we characterize the traditional system as adversarial in nature with heavy reliance upon a very detailed contract that specified a highly defined work system, usually with many classifications and work rules.

Today the choice is not between such a traditional industrial relations system and a non-union system that seeks to avoid unions with comprehensive personnel policies, but there is another alternative, and this is what I mean by constructive labor/management relations, or the new industrial relations. Basically, it seeks to integrate the latest ideas in human resource management with the reality of collective bargaining. We are beginning to see enough examples in the U.S. in such industries as automobiles, steel, rubber, and communications to conclude that a new system is being created and diffused throughout the U.S. economy. Some of the best examples take place within Japanese transplants where the "humanware"¹ that has been perfected by Japanese companies, combined with Japanese management skills and U.S. workers, produces a very effective organization for all of the stakeholders.

¹. Cite to Shimada & MacDuffie.
Increasingly, in the U.S. the function of collective bargaining is the creation of value by enabling the parties to the employment relationship to engage in joint activities that bring about better results for all concerned. Here I am referring to such basic functions as achieving a safe and healthy work environment, delivering training to a workforce that needs constant upgrading in the face of advanced technology, and designing new work structures that encourage all employees to participate and to commit themselves to high performance. There is substantial evidence that the presence of unions in a workplace can raise productivity both as a result of the impact on management to manage better as well as the opportunity for the development of a high-quality, productive workforce.

Certainly, the parties in this country should be able to benefit from the experiences of other countries in the same way that the Japanese have benefited from many of the practices in the United States, and in turn, the U.S. has benefited from experiments in Scandinavia, Europe, and increasingly from the models in the United States presented by Japanese transplants. This type of transferrence of social technology can be accelerated and it should be possible for collective bargaining in South Africa to do some "leapfrogging" with respect to the best aspects of new industrial relations. To state the point more directly, it should not be necessary for all of the long stages of inception, trial-and-error, and codification of
collective bargaining that have characterized the United States and other industrialized economies to be re-travelled by the parties in South Africa.

THE CONTENT OF THE NEW INDUSTRIAL RELATIONS

The exciting part of being an observer of the developing collective bargaining scene in the U.S. is the rich array of innovations that has been emerging at all levels of the industrial relations system. As we do in our book, let me separate these into various levels.

First, at the operating level, more and more plants are fashioning via collective bargaining high commitment systems that have in common the use of teams, pay systems that reward knowledge, deemphasis of status differences, elimination of levels of management, and the payment of rewards based on performance and improvement of operations.

While these systems only cover a fraction of unionized plants in the U.S. today, they are showing very positive results, and the challenge facing the parties is more generally to find ways to convert traditional work systems at the plant level to these new high commitment systems that produce better outcomes for all concerned.

2. Cite to K, K, McK.
Moving to the policy level and the main terrain for collective bargaining as it fashions new solutions and new approaches, the list of distinguishing features is impressive. It includes employment security coupled with programs to enhance career progression via training, gainsharing, consultation of users and union representatives with respect to new technology, programs to cushion the impact of dislocation, not to mention the traditional joint subjects such as apprenticeship and health and safety.

When we turn our attention to the strategic level of the enterprise, access by union officials and their designees to important business decisions has been growing steadily. We find more and more worker-type directors, and a variety of arrangements that include unions in deliberations before final decisions are made about plant location, outsourcing, and new products.

A key finding of our research is that there must be reinforcing developments at all levels that serve to institutionalize these innovations. For example, if employment security is going to mean something, then it is necessary for the union to have some type of input into decisions such as outsourcing that directly affect the ability of employment security to be realized. Similarly, if the union is going to be a party to some employee involvement process at the shop floor level, such a development then needs to be coordinated
with strategic decisions that emphasize the importance of the union as an institution, especially with respect to representation rights at new facilities.

The new industrial relations embraces various forms of participation for various subjects. Many subjects are dealt with on a joint basis, whereas for other subjects the union's role is one of input or awareness, with management having the initiative and final say. When there is an understanding of the respective roles of the different stakeholders, and where there is an ability to talk about the decision-making process itself as a subject for discussion, then these complexities can be dealt with intelligently.

PROCEDURAL ISSUES

The first step is the designation of worker representatives. Many public policy questions are involved: multiple unionism versus exclusive bargaining agent status; as well as procedures for determining worker wishes with respect to representation; not to mention many other legal and practical questions relating to the recognition of trade unions. Let me give you my perspective. I believe that the employment relationship is better served when it is possible for unions once recognized to serve as the exclusive agent for the relevant unit and for the union to perform a strong representation function.
STRUCTURE OF COLLECTIVE BARGAINING

We have found it helpful to think about tiers. At the top, the peak bodies, there is the need for agreement on guidelines, that relate to wage increases to production and cost of living changes. Given the buildup of expectations in this country, indeed insistence on a living wage, forums and principles need to be in place on an economy-wide basis so that the real work of collective bargaining can take place at lower levels.

Certainly the distance between current wage levels and desired wage levels must be traversed on a planned basis. If unionized sectors move too far ahead of relevant labor markets, then there will be increasing pressure for employers to remain non-union or to search for escapes under collective bargaining. Research suggests that it is possible to allow unionized wages to move 15-20% above what might be the hiring rate for the labor market, and to have this difference be offset by the positive contribution of unions and collective bargaining. But when the differential becomes larger (as it has in many industries in the U.S.), a number of counterproductive sequences are set in motion, not the least of which is a decline in the number of unionized jobs.

From the viewpoint of social policy, another reason that the rates of increase have to meet the test of guidelines is that it would be intolerable for bargaining power to be the
only determinant. Such a mechanism would lead to islands of well-paid workers in a sea of otherwise relatively lower-paid comrades. Of course, this is where national economic policy joins the subject with its emphasis on growth and the creation of good jobs so that the strongly unionized sectors can be thought of as boats that move upward on a rising tide.

No doubt this line of reasoning will be seen by many as typical capitalist thinking that seeks to hold down the wages of the disadvantaged. To demonstrate that such a wage policy is not singling out wage earners requires standards that achieve overall equality of sacrifice. Compensation for management cannot move ahead more rapidly than other occupational groups.

I serve as a union-designated director on the Board of a large trucking company. One of the most challenging aspects of my role is in this area of insuring equality of sacrifice. We have a group of workers who have taken substantial cuts in compensation and I am constantly reminding the board that managerial compensation has to be framed with some sense of equality of sacrifice.

When we move below the national tier, there are many options, for example, industry-level councils versus company and plant-level negotiations. I recognize the need for agreements in some industries to be fashioned at industry
level, but the increasing trend within most countries is for collective bargaining to occur at company and plant levels where the realities and varieties of marketplace pressures are present and where collective bargaining must confront these realities in as creative a fashion as possible.

A major weakness of focusing primarily on industry-level bargaining is that at this level it is difficult to couple pay and productivity quid pro quos. Since productivity ultimately hinges upon work organization and motivation—in effect, the details of the particular employment relationship—if the benefits of collective bargaining are granted at the industry level, then productivity bargaining is much more difficult to execute.

This does not say that the influence of settlements elsewhere via the mechanism of pattern bargaining can be ignored. But collective bargaining must do more than just emulate developments elsewhere. It should serve the function of tailoring an agreement to local realities and in the process add value to the enterprise and serve the interests of the key stakeholders.

**DISPUTE RESOLUTION**

Clearly, collective bargaining plays a key role in confronting difficult differences and dealing with protracted
disputes. It is not just a process for increasing the pie via problem solving, but it is also a process for resolving conflict.

It is important for the parties to settle disputes quickly and fairly because there is no aspect of industrial relations that mobilizes government to move in and to constrain the freedom of labor and management to make their own decisions (which is so essential to preserve) than the onset of a major dispute and the escalation of conflict between labor and management.

I would like to consider these first at the level of individual claims and then collective disputes.

**Individual Disputes.** I have read a number of case studies from this country that detail a sequence of events that starts from something quite limited and specific like a worker being discharged for gross misconduct, then followed by a "stay-away" of large portions of the workforce, in turn triggering the mass dismissal of those engaged in an illegal strike, leading to a further escalation of the confrontation. Based on several decades of thinking about this important nexus for balancing due process and operating effectiveness, let me offer a series of caveats.
First, a grievance system ending in independent and binding arbitration should be in place. Such a system needs to review grievances, especially those involving discipline, quickly and objectively. In the case of the U.S. longshoring industries, arbitrators are on call 24 hours a day to hear disputes and render summary judgments in order to keep the docks functioning on schedule. In South Africa the rostering by IMSSA of professional arbitrators is to be applauded, for it puts in place machinery that the parties, on a voluntary basis, can build into their collective bargaining agreements.

Assuming that an aggrieved worker can have his complaint considered quickly and fairly, then the need for pressure tactics should diminish substantially.

Collective Disputes, Matters of Interest. I have a strong preference for allowing the parties to engage in protracted impasses, including strikes and lockouts, as long as the spillover consequences for the economy are not devastating. Case after case can be cited of where the premature intervention of the government in my country has only frustrated the formulation of efficient solutions.

But the reality is that any government will be under substantial pressure to intervene in major disputes and consequently it is desirable for labor and management to agree on guidelines for resolving disputes as quickly and as
effectively as possible in order for them, in the longer run, to preserve the autonomy that is necessary to make a collective bargaining system viable. Let me touch on several ideas.

First, from the vantage of fairness and also to keep disputes from escalating unnecessarily, I believe employers should avoid hiring permanent replacements when workers are on strike in pursuit of legitimate collective bargaining objectives. I base this premise on recent experiences in the United States where employers have gone to the bargaining table demanding concessions that they felt were absolutely imperative to achieve, reached impasse, and then hired permanent replacements. The long-run consequences for morale, relations with the community, and indeed the moral integrity of the enterprise are called into question by such "hard ball" strategies.

A second guideline would require the use of mediation and here is where the role of IMMSA has been indispensable. We know enough about personality conflicts, the injection of outside agendas, and the problem of saving face, to recognize that trusted third parties can perform very useful roles to get discussions back on track and to help the protagonists find constructive solutions to the unresolved issues that have led to strike action.
BEST PRACTICE REGARDING THE SHAPE OF THE AGREEMENT

An important distinguishing feature of the new industrial relations is that unlike the detailed labor agreements of several decades ago, many of the best relationships in the United States have very short agreements that emphasize principles and concepts rather than elaborate language to cover every contingency. In effect, lawyers have been sent out of the room and the parties have fashioned agreements that capture the basic principles of the new relationships.

The deciding factor, of course, is the degree of trust between the parties and the degree of maturity of the relationship.

THE NEED FOR A LIVING AGREEMENT

We also need to be mindful of some tendencies of collective bargaining for preserving the status quo and making it difficult to respond to new challenges once the initial contract has been negotiated. We see this today in the U.S. with a very slow, agonizing transition of industrial relations from a very traditional system to what is required by the new economic realities.

To be more specific, unionized plants in the United States are often characterized by rigid work rules, wage rates that
may be out of line with competition, and a perpetuation of cleavages (sometimes racial) that are in place because of the divisions within the larger society and which unionization has, in some instances, made more intractable. Some of the latter occurred in craft unions in the U.S. for a number of decades before the U.S. government moved in with a mandate to achieve equal employment opportunity.

The fact that collective bargaining often does not have the capacity for self-correcting adjustments means that the parties must keep the relationship open to the realities of the marketplace, both on the product and labor sides of the enterprise. It also means that leadership of the highest order is required: leadership that constantly engages all of the stakeholders in understanding a changed environment that requires new solutions. More and more this requires line management to take the lead in dealings with trade unions with human resource and industrial relations professionals providing support but not direction.

If the basic tenet of collective bargaining, namely, to involve all stakeholders in a process of rational discourse is observed, then the self-perpetuating tendencies can be confronted and collective bargaining can produce agreements that represent "living documents."
THE ESSENCE OF COLLECTIVE BARGAINING

Collective bargaining is like the proverbial bumble bee: it is amazing that it works, that it stays airborne given all the forces dragging it down. Not only do we have those within management who are opposed or skeptical for all the well-known reasons, but there are many voices within the union movement that do not favor free collective bargaining but prefer governmental action to achieve their objectives.

Many voices can be heard that are urging the union movement in this country and in other countries to use the "movement" to realize improved education, better housing, a redistribution of income, and other important social and political objectives. Certainly, business and union leaders should participate in the solutions to these macro problems, but if collective bargaining has to "carry the freight" for such a wide-ranging political agenda, it will be diverted from performing its unique function of creating and distributing wealth within the enterprises of the economy.

THE ROLE OF GOVERNMENT

I hold fairly specific views about the appropriate role of government.
(1) The more that collective bargaining can operate free of government regulations and intervention the better.

(2) Collective bargaining free of regulation will solve problems better and contribute to the interests of management and labor.

(3) There tends to be a vicious spiral where some governmental intervention requires more intervention.

(4) Government is needed but only to get the players in the ball park, not to umpire every play.

Certainly the lesson I draw from the fascinating developments in Eastern Europe is that competitiveness of enterprises is not realized when government exerts a heavy hand.

Today, collective bargaining is being challenged to deliver better outcomes than some of the alternative arrangements that are advocated for dealing with the creation and distribution of wealth.

By contrast to planning and command systems for realizing the national aspirations of industrialized economies, collective bargaining tends to be very pragmatic and immediate in its focus. Rather than waiting for "big picture" subjects to be resolved, it grapples with the immediate: a grievance of
an individual worker or a claim by a group of workers for better working conditions within the employment relationship.

In a very basic way, collective bargaining represents an evolutionary approach to change. It does not bring about radical change and for the most part, it works within the existing system. To the extent that people feel uneasy about the capitalist system, there will be an undercurrent of skepticism about collective bargaining. But over time collective bargaining has shown its effectiveness in delivering results. The history of industrial relations in the U.S. is replete with examples of where trade union ideology has given way to the practical realities of dealing with management and striving for the best conditions possible for the members, even though this process was taking place within a capitalist system that some union leaders would just as soon have altered.

THE JOURNEY AHEAD

If one were drawing the type of diagram that planners use, we could label the current state of industrial relations as S-1, and the desired system, with a key role for collective bargaining, as S-2. The question, then, is how to travel the roadway from S-1 to S-2.

Many of the comments made in this presentation imply that the transition needs to be gradual, planned, and one that keeps
a process of discourse as a centerpiece of the journey, for indeed, this is at the heart of collective bargaining: "getting together" to work things out.

The Industrial Relations Section of MIT is ready to play an appropriate role in the transferrence of social technology. There may also be a role for the U.S. Industrial Relations Research Association, of which I am currently president. The IRRA, with its 10,000 members, represents a unique organization that brings together academics and practitioners of many persuasions in a way that underscores the unique and pluralistic nature of collective bargaining.

My colleague, Tom Kochan, is president-elect of the organization that Roger Blanpain has recently headed, the International Industrial Relations Association, and he joins me in expressing a willingness to help with the creation within South Africa of a professional community from labor, management, government, and academia to engage in a thoughtful examination of the key issues of our field.

Ultimately, collective bargaining will only be able to play its constructive role when key leaders from management and labor join together in regular forums for discussion and eventual agreement in principle regarding the many issues and questions that this conference has focused so effectively.