CHAPTER VII

ARBITRATION OF JURISDICTIONAL DISPUTES

The AFL-CIO No-Raiding Agreement

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We propose this afternoon to have each of us give you some background information about our respective assignments.

The AFL-CIO no-raiding agreement was developed in 1953 by the AFL-CIO Unity Committee as a necessary first condition to the achievement of unity. A six-man sub-committee consisting of Messrs. Meany and Reuther, Schnitzler and Carey, and Woll and McDonald made a careful study of all N.L.R.B. cases in the two years 1951 and 1952 in which an AFL or CIO union sought to replace the existing AFL or CIO union then in collective bargaining representation with the employer. There were 266,000 employees involved in such cases, The raiding union was successful in becoming the certified representative of 62,000 employees (about 17%), but 35,000 of these employees were lost by CIO and 27,000 by AFL, reflecting a net gain or change of only 8,000 employees or approximately 2%.

The conclusions of the subcommittee were:

> The results of the study made by the subcommittee, as well as the experience and knowledge of the members of the full Committee, compel the conclusion that raids between AFL and CIO unions are destructive of the best interests of the unions immediately involved and also of the entire trade union movement. In addition to the antagonisms between unions created by such raids, the welfare of the workers and the public is damaged. The overwhelming majority of such attempted raids fail, creating unrest, dissatisfaction and disunity among the

> workers involved. Even in the small proportion of cases where such attempts are successful they involve a drain of time and money far disproportionate to the number of employees involved. They create industrial strain and conflict and they do nothing to add to the strength and capabilities of the trade union movement as a whole.
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> There are still millions of working men and women who do not have the benefit of organization or collective bargaining. The members of all unions affiliated with both federations would be benefited if the energies devoted to raiding were devoted to the organization of those yet unorganized.
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> For these reasons the representatives of the American Federation of Labor and the Congress of Industrial Organizations who constitute the Unity Committee have agreed that the elimination of raiding between unions affiliated with the American Federation of Labor and the Congress of Industrial Organizations would contribute to the strength of the unions affiliated with both federations, would materially benefit the entire nation by eliminating a source of industrial unrest and conflict and would remove a serious barrier to ultimate organic unity between the two federations.

There followed on December 16, 1953, the basic no-raiding agreement executed by the top officials of the two federations, in accordance with the unanimous recommendations of the full joint Unity Committee. On June 9, 1954, a memorandum of understanding was signed by Messrs. Meany and Reuther to which were attached the names of the individual unions affiliated with each of the federations which had delivered instruments of adherence and ratification. These included 29 CIO and 65 AFL unions. Since then additional unions have formally become adherents, 10 of these are affiliated with AFL and one with CIO.

This no-raiding agreement is not an instrument for the assignment of jurisdiction based on industries or on the nature of the work covered. It is thus basically different from the building trades arrangement under which John Dunlop functions. The only test set up in the AFL-CIO agreement is whether there is an established bargaining relationship with the other federation or any signatory

union affiliated with the other federation. "Established bargaining relationship" is defined as a "situation in which a union or a local . . ., either (a) has been recognized by the employer . . . as the collective bargaining representative for the employees involved for a period of one year or more, or (b) is certified by the National Labor Relations Board or other Federal or State agency having jurisdiction as the collective bargaining representative for the employees."

No functional basis exists for determining which union should have jurisdiction. The undertaking is solely to protect the *status quo,* to assure the signatory unions that their jurisdiction, whatever it may be predicated on, will be protected, and that this will be respected by all the parties to the agreement.

This is understandable when we view it merely as the first tangible step toward the unification of the major segments of the labor movement, an objective sought ever since 1937 when the split occurred, by all manner of people, including the President of the United States. It is difficult to evaluate this no-raiding agreement except as such a step. Has it been successful?

In the sense that the officers of the two federations have established diplomatic relations by this device with each other, and have had to meet together repeatedly to work on common problems, and have found a fairly broad area of compatability, it has been a success. I may say, in fact, that, measured in these terms, the success has been surprising and most gratifying. Well over 30 disputes have arisen. These have first been put through the screening process provided in the agreement, a sort of grievance procedure in which there is an ascending order of importance in the officials who try to compose the differences, culminating in the Secretary-Treasurers of the two federations. Only after all these have failed, does a case go to the impartial umpire. Only two cases have had to be decided since June 9, 1954, and only one is now awaiting hearing.

Considering the traditional feuding propensities of many of the signatories and the energy and zest with which they have been in the

habit of going after one another in recent years, this record, I think, is remarkable. To accept suddenly a new form of restraint foreign to their customary thinking and planning is not easy.

It is not that some unions have not been chafing at the bit, so to speak, but the calming influence of Messrs. Schnitzler and Carey, actively aided and abetted by Messrs. Reuther and Meany, has been unusually effective. These officials realize that the success of unification hinges largely on the effectiveness of the no-raiding agreement, as the best available means of reassuring unions of the integrity of their present positions and of demonstrating that it is possible and beneficial for them to live and let live. These officials have also gone to great lengths to conform to the spirit and the broad purpose of the no-raiding agreement, and their support of the umpire leaves nothing to be desired.

Problems? Of course there are problems. When one or both contesting unions resist all efforts to work out a dispute within the family and go before the umpire, they pull out all the stops. Thus far, these cases have involved attempts to recapture locals or to accept into membership employees who have plainly indicated a desire to leave the rival, and there is a sense of righteousness in such situations. The attitude essentially is, just let us take over this group and from now on we will observe the letter and spirit of our promise.

In each case which has come to a head, the so-called raiding union has pointed to some other instance in which it refrained from interfering with its rival, as proof of its good intentions. The difficulty in some situations is that at the very time while such protestations are being made, the two unions in their publications or releases continue to attack and berate one another. I believe, however, that these are transitional problems, and that before long the momentum and force of raiding campaigns which have been carried on for some time will die down.

In any event, the two federations do not appear to be unhappy or disappointed. On February 8 and 9 there will be important meetings of the joint Unity Committee in Florida, and it would not be

at all surprising to see further substantial progress toward the ultimate goal.

It has been suggested that the no-raiding agreement has some undesirable implications. One is that it deprives workers of the full freedom of choice in the selection of their bargaining representative. The second is that it serves to entrench and strengthen the position of the leadership by eliminating the competitive element.

The latter point must be considered in light of the general purpose of the agreement. It is simply a step in the direction of uniting the labor movement. As such, it is far too soon to say what the final effects will be on the sense of responsibility of the leadership of the constituent unions.

After all, there is a strong degree of autonomy now enjoyed by the individual unions, and under the existing scheme we have seen a number of cases in which the leadership has had little or no concern over the possibility of being unseated by virtue of a transfer of the membership to some other union. The building of a greater degree of control by the membership involves a better understanding and utilization of the rights inherent in a democratic form of operation, and it may well be that on completion of the unity program the enlarged federation will be better able either to discipline offending affiliates or at least to influence and assist the membership in asserting its rights.

The other criticism overlooks several facts. Employees will always retain their privilege of seeking *disaffiliation.* Although 105 unions are now parties to the no-raiding agreement, there are major unions with very broad coverage which are not parties. There are also various unions independent of the AFL and CIO which function actively in the labor market.

Moreover, a certain amount of restraint on the right to move with absolute freedom out of unions or into other unions has long been recognized by our regulatory bodies, under the law, and certainly by custom. Union-shop agreements and maintenance-of-membership agreements are illustrations of situations in which employees are not

free to leave their union as the mood changes, at least not for the term of the contract. The no-raiding agreement also has a termination date, Decemebr 31, 1955, and if its restrictions are found undesirable there is nothing to prevent a signatory union from electing not to continue under the agreement; after all, there are now numerous AFL and CIO unions which are not adherents of the agreement.

In the *Industrial and Labor Relations Review* of October, 1954, Joseph Krislov discussed the results of a study of raiding in the period 1940 through 1952. He reported some 1650 raids. 780 were AFL v. CIO or vice versa. But, 134 of these involved the Steelworkers, Teamsters, or Carpenters, none of which is now a party to the no-raiding agreement. Moreover, included in the 1650 raids were 545 by or against national independent unions, 73 involving independent local unions, and 55 involving so-called left-wing unions not now affiliated. Thus, a total of 807 raids out of 1650 would still be possible, despite the no-raiding agreement.

It would seem, therefore, that there is a considerable area for movement still available to employees who may find themselves dissatisfied with the representation they are getting. There is, more important, the promise of more effective and responsive representation if energy need not be consumed in these inter-union struggles. Finally, there is the hope that upon the achievement of unity a greater degree of direction and discipline may be exerted by the enlarged labor organization toward the improvement of the responsibility of the leadership and for the activation of the democratic rights of the membership within the constituent unions.

These background matters must be understood, it seems to me, to appreciate the nature of the arbitration process as it applies to the no-raiding agreement.