THE ARBITRATION OF CIO ORGANIZATIONAL DISPUTES

NATHAN P. FEINSINGER
Professor of Law, University of Wisconsin

The CIO Agreement Governing Organizational Disputes was adopted by resolution of the Executive Board on October 31, 1951. It was subsequently signed by the national officers of the CIO and by thirty-five of its thirty-seven affiliated international unions [1] as a contract between the national CIO and those signatory unions, as well as a contract between each signatory union and all the others. The agreement was made effective upon signing and is to "continue in effect as a contractual obligation of each of the parties . . . unless terminated by the Executive Board of the CIO".[2]

The source of authority for the resolution, as stated in the preamble to the Agreement, is a provision in the CIO Constitution calling upon the Executive Board to make recommendations as to the appropriate means of settling disputes arising between affiliates which cannot be settled by mutual agreement. The Agreement was drafted by General Counsel Arthur Goldberg and strongly endorsed by the late President Philip Murray and by his successor, Walter Reuther.

The Purpose

An inter-union agreement might conceivably have any or all of three objectives, namely: (1) to enforce jurisdictional lines established by charter or by custom in the assignment of work; (2) to prevent "raiding" in the sense of one union seeking to replace another which has been recognized by the employer or certified by the NLRB or other governmental agency as the collective bargaining

[1] The two non-signatories are the Lithographers and the Brewery Workers.
[2] Paragraph 5.

agent in a particular bargaining unit; (3) to prevent or settle disputes as to which of two or more unions is the appropriate union to conduct an organizing campaign, where none of the competing unions is presently recognized or certified.

Although the CIO Agreement refers to "jurisdiction" in several places,[3] it is clear that its purpose is not simply or solely to enforce charter or customary jurisdiction. The Agreement is designed for the other two purposes mentioned. In the case of "raiding", charter or customary jurisdiction is irrelevant; the recognized or certified union is entitled to protection by reason of that fact alone. In the case of competitive organizational drives, charter or customary jurisdiction is merely one of several criteria specified for the guidance of the Arbitrator.

Rules Governing the Settlement of Organizational Disputes

The resolution of the CIO Executive Board adopts certain rules which it recommends to the affiliates, and urges each affiliate "to enter into an agreement with all other CIO affiliates and with the CIO itself, which agreement when made shall constitute a binding contractual and moral obligation on the part of the signatories thereto to adhere to its terms and scrupulously to abide thereby."

The rules may be summarized as follows:

1. No raiding rule

Each signatory agrees that it will not attempt to organize employees in a unit where another signatory has been recognized by the employer or certified by the NLRB[4] as the collective bargaining representative. This rule adopts the so-called "no raiding" principle. The rule is stated as an absolute, that is, while the dispute involving a claim of violation of the principle may be processed under the

[3] The preamble refers to organizational problems arising from "the closely related jurisdictions of many CIO unions." Also to the evils of "a raid or invasion" of the established jurisdiction of one CIO affiliate by another. Rule 2 calls upon the signatories to "respect the jurisdiction of the particular CIO affiliate which is the appropriate union to conduct [an] organizing campaign."

[4] Note the apparent exclusion of certification by state agencies.

Agreement, the jurisdiction of the Arbitrator is "limited to the enforcement of this paragraph." This seems to mean that once the violation is found, the Arbitrator has no discretion as to the remedy. He still has a function to perform, however, which includes at least passing on disputed issues of fact.

No case has as yet reached the Arbitrator under this rule. One case was closed at a preliminary step, however, when it was shown that a signatory union held a collective bargaining agreement at the plant involved.

2. Rule as to competitive organizational campaigns

Each signatory agrees that it will "respect the jurisdiction of the . . . appropriate union to conduct such organizational campaigns." A dispute as to which is the "appropriate union" is to be processed as indicated below.

3. Rule as to decent behavior in organizational campaigns

Each signatory agrees that its agents or representatives "will not issue derogatory statements or publications concerning any other party hereto during the course of an organizing campaign."

4. Procedure for settlement of organizational disputes

Step 1. Representatives of the signatory unions designated in advance are to attempt a direct settlement.

Step 2. At the request of any party, or on his own motion, the national CIO Director of Organization may convene a meeting between designated national officers or representatives of the competing unions, and of any other signatory deemed by him to have an interest in the dispute, in an attempt at settlement.

Step 3. Any interested union or the Director may submit the dispute to the CIO Organizational Disputes Arbitrator.

Step 4. The Arbitrator is to notify all signatory unions of the dispute and any interested signatory may intervene in the arbitration proceedings. The Arbitrator is to establish rules of procedure.[5]

[5] Thus far, the Arbitrator has promulgated only one rule, requiring the submission of written statements before or at the arbitration hearing.

5. Criteria for guidance of the Arbitrator

In deciding what is the "appropriate union" to conduct an organizing campaign, the ultimate criterion is "what will best serve the interests of the employees involved and will preserve the good name and orderly functioning of the CIO".[6]

Supplementing the main criteria, the Agreement provides that the Arbitrator:

> "shall give due consideration to all of the relevant facts and circumstances including the following factors where he deems them relevant:
> (1) The charter or customary jurisdiction of each of the unions involved.
> (2) The extent to which each of the unions involved have organized—
> (a) the industry,
> (b) the area,
> (c) the particular plant involved.
> (3) The ability of each of the unions to provide service to the employees involved.

6. Summary proceedings

Steps 1 and 2 in the settlement procedure may be dispensed with and the dispute referred immediately to the Arbitrator for decision, where time does not permit the usual course "because of pending NLRB representation proceedings or other valid reasons." In such case the Arbitrator may, in his discretion, issue a final award or he may issue an interim award that the National CIO rather than one of the disputing CIO affiliates go on the NLRB ballot, pending final award as to the appropriate affiliate. He may, in his discretion, "make such other interim award as he deems appropriate." If the National CIO is placed on the ballot and wins the election, the Arbitrator is then to make a final award as to the appropriate affiliate, after which the National CIO "shall transfer jurisdiction to this affiliate."

[6] The logic of this criterion relates back to the preamble, which condemns raiding and competitive organizational drives as "injurious to the workers' interest and to the good name of the CIO."

7. Finality and enforceability of Arbitrator's decision

In all cases properly before him, "the decision and award of the Arbitrator shall be final and binding," and "shall constitute a legally enforceable obligation of each of the parties" to the Agreement.

8. Selection of the Arbitrator

The Executive Officers of the National CIO select the Arbitrator, subject to the approval of the Executive Board, upon terms agreed to by the Arbitrator and the National CIO.

9. Procedure before the Arbitrator

Hearings have been held in Washington or in a city convenient for the parties. Excepting perhaps formally promulgated rules,[7] the Arbitrator is free to determine the procedure in the particular case before him. The parties determine their own representatives to present the case, although the desirability of a local representative, among others, to be present at all hearings, has been pointed out. The IUE has usually had its case presented by its International President or Secretary or both. Other unions have also used high officials or, as in the case of the UAW, a particular representative designated to present all such cases. Attorneys have appeared in a few cases.

The National CIO office is usually represented by the Assistant Director of Organization as an observer. A member of the secretarial staff is designated to assist the Arbitrator by arranging the hearing and taking stenographic notes for use by the Arbitrator. The question of a formal transcript for use by the parties has been raised in one case, but not decided. The decision would probably be adverse.

10. Relations with the NLRB

The NLRB, recognizing the desirable objectives of the Agreement, has by administrative action agreed to notify the National CIO and the Arbitrator of all representation petitions involving two or more CIO affiliates seeking a place on the ballot. It has also agreed to postpone hearings on such petitions for a period of two weeks, to

[7] See note 5.

permit the machinery of the Agreement to operate. This delay is often too brief, but an extension may presumably be had for good cause.

Appraisal

The stated purpose of the Agreement is to protect the workers' interest and preserve the good name of the CIO against the consequences of raids on established bargaining agents and competitive organizational campaigns. The accomplishment of that purpose obviously benefits the employer and the general public as well, by preventing or minimizing the industrial unrest accompanying a raid on an established bargaining agent or a competitive organizational drive. Another and more obvious benefit is the saving of union funds ordinarily expended in inter-union rivalry in the organizational field, with one or more unions sure to lose.

The exact extent of these benefits can only be estimated. The NLRB annual reports show a decline in the number of elections with two or more CIO unions on the same ballot, from 18 in 1950 (the year before the agreement took effect) to 11 in 1952, and 6 in 1953.[8] The total number of NLRB notices of petition with two or more CIO unions seeking a place on the Ballot has not been tallied, but it is considerably more than the foregoing figures. Unquestionably, a look at the "rules" of the Agreement has often persuaded one or more CIO signatories to withdraw before the Agreement machinery was invoked.

As of December 1954, seventy-four disputes had been brought to the attention of the CIO Executive Vice President. Of these, thirty-seven had been settled (more than two-thirds at the First Step). Fifteen had been decided by arbitration. Thirteen were still pending at the first or second step. The remaining cases, with two exceptions, were closed for various reasons (one signatory withdrew from the representation proceedings, etc.). In only one case did two CIO unions remain on the ballot. Both unions lost!

[8] Special circumstances explain the number remaining. For example, in one case, the lithographers (non-signatories) were involved.

The first Arbitrator was Dr. George W. Taylor of the University of Pennsylvania, who handled this ground-breaking assignment with his usual skill and success. He issued ten decisions in 1952 and three in 1953. I succeeded him in April, 1953 and issued two decisions in 1953 and seven in 1954. I resigned at the end of 1954. My successor has not yet been appointed.* All of Dr. Taylor's decisions and mine were accepted as final and binding.

THE ARBITRATION OF JURISDICTIONAL DISPUTES IN THE BUILDING INDUSTRY

JOHN T. DUNLOP
Harvard University

In order to understand the jurisdictional arrangements in the building and construction industry, it would ideally be essential to paint in detail the background of that industry, the peculiar features of its technology and labor relations, and the history which created work assignment disputes as they have existed for many years.[1] But there is only time here to focus our attention very sharply on the immediate assigment of the operation of the jurisdictional disputes machinery.

The National Joint Board was created by agreement, effective May 1, 1948, and on March 31, 1955, we will have completed our seventh year. The Board is comprised of four regular representatives on the contractors' side, two from general contractors associations and two from national specialty contractors associations; on the union side

* ED. NOTE: The CIO subsequently announced the appointment of David H. Stowe of Washington, D. C., to succeed Dr. Feinsinger.

[1] See, for instance John T. Dunlop and Arthur D. Hill, *The Wage Adjustment Board*, Cambridge, Harvard University Press, 1950, pp., 1-15 and "Jurisdictional Disputes," *Proceedings of New York University Second Annual Conference on Labor,* 1949, pp. 477-504.