CHAPTER 8

CONSENSUS IN LABOR RELATIONS

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The fundamental thesis of these remarks is that we shall not grapple successfully with the industrial problems of the next generation, of even the next decade, unless we succeed in thrusting greater responsibility upon, and eliciting greater joint response from, those who are closest to the problems, who know them best, and whose co-operation in their solution is indispensable—the parties themselves.

There are three subsidiary propositions: (1) The industrial problems of the generation will surpass in number and complexity anything with which experience has made us familiar; (2) Labor and management, both singly and together, with and without the co-operation of third parties, have been more successful in devising mechanisms for the solution of industrial problems than is generally recognized; (3) The role of legislation in the solution of industrial problems, for the next decade at least, should be largely confined to creating the kind of environment which will induce, even compel, management and labor jointly to study emerging industrial problems, to search for, and to fashion solutions which, while mutually satisfactory, will also be accepted as constructive and fair by the community at large.

The challenge and complexity of contemporary industrial problems is a matter of common experience. The future, of course, is uncertain. Yet forces now at work, some clearly recognized, some perceived only in broad outline, are creating problems new both in scope and form. This generation is no stranger to technological change. But today innovation has acquired both a new name and a new dimension. We recognize that it is changing

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the composition of the work force, that it is eroding the organizational base of unions in manufacturing, mining, and some forms of transport, that it is obliterating the demarcations between occupational groups, and that it may be distorting intraplant and interindustry wage structures. It is redistributing power centers among labor organizations. It is inducing shifts in the location of plants and eliminating whole categories of jobs. It appears to be destroying job opportunities faster than it creates them.

These developments are causing and will continue to cause tensions in labor-management relations—work-load and work-rules disputes, jurisdictional conflicts, demands for a shorter working day, for larger supplemental unemployment benefits, for the right to follow the job, to have moving expenses paid and other problems which we do not now foresee. They are also creating serious problems within the social structure. These latter are beyond the scope of my remarks, but mention of one of them may help to illustrate the reach and complexity of the problems.

For more than a decade we have been experiencing what Professor Clarence D. Long of Johns Hopkins University has called a creeping prosperity—unemployment: from 3.85 per cent of the labor force during the prosperity period of 1947-48; to 4¼ per cent during the thirty prosperity months from January 1955 through July 1957; to 5⅓ per cent during 1959-60.[1] During these same years the period of unemployment has lengthened and its relative burden has increased for Negroes, for blue collar and manual workers and for individuals having little education. For example, in 1959, the unemployment rate of non-white males was 2.36 times that of white males. Laborers, with a median education of 8.5 years, had in March, 1959, an unemployment rate of 11.4 per cent; at the other extreme, professional workers with a median education of 16.4 years of schooling, had unemployment of 1.5 per cent. There is some reason for believing that unemployment among the least skilled and least educated may be underestimated, and that many of them after successive periods of unemployment drop out of the labor force well before normal retirement age.

[1] For the data in this paragraph I have drawn on Professor Long's "A Theory of Creeping Unemployment and Labor Force Replacement," delivered before the Catholic Economic Association, December 27, 1960.

This phenomenon of creeping prosperity-unemployment has occurred at a time when there have been relatively few young recruits to the labor force. In the next decade children born during the population boom of the war and early postwar years will be entering the labor force in greater numbers. Rising employment standards, thus made possible, may exclude a greater proportion of the relatively uneducated and unskilled from regular active employment. Thus, if we choose employment to illustrate the complexity of one of our problems, it seems clear that associated industrial-relations problems will become acute, and that related social problems will become more perplexing and more serious. We know that we will be confronted with an immense task of training, both in industry and outside of it, both of the young and of the mature, but part of our problem is inadequate knowledge of the kinds of training needed and of the ability of those who most need it to recognize the need and to profit from it.

Turning to problems of another kind, we recognize that the culmination of what Professor Boulding has called the Organizational Revolution, with the vast aggregations of power which that revolution has produced, has brought its train of problems and will bring more. It seems clear that the American people want to preserve free collective bargaining. It is equally clear that they are unprepared to tolerate the consequences which breakdowns of bargaining on its present scale may produce. Whether or not the steel strike created a genuine national emergency may be debated. Less debatable is the public's unwillingness to permit its repetition. One of the most insistent demands of the immediate future is to find some mechanism, or combination of mechanisms, to which we can resort in such crises without destroying the values of free collective bargaining.

These are problems of which we are aware. They will probably be surpassed in complexity by those which we cannot as yet foresee. We are living in a world in which two nations, the United States and the Soviet Union, are the recognized leaders of groups of nations who are in open conflict. This struggle will continue to have its impact upon our economy and, as a result, upon our labor relations. But the power of these leaders is being rapidly diffused. The leadership of Russia is being challenged by the emergence of China. The rapid development of the European

nations and Japan is offering its challenge to the leadership of the United States. The present status of our balance of payments is illustrative of the change which is occurring. What impact this particular problem alone will have on industrial relations is as yet uncertain, but it could be extensive and disturbing.

The diffusion of power among nations which we now are witnessing is perhaps only beginning. Modern communication has made all peoples of the world neighbors and has made each aware of how its neighbor lives. The aspirations of the less-industrialized peoples can no longer be denied even if there were, and there is not, any inclination on our part to deny them. As these nations industrialize, economic as well as military power will tend to diffuse further, and we may shortly discover that this country stands economically as one among equal competitors. Effects of this diffusion upon wage structures and employment are already apparent in industries requiring little capital investment. We may soon see old mercantilistic arguments given a new look, and find that we have a choice of encouraging foreign investment at the expense of domestic growth or of gearing our wage policies in some industries to those of foreign competitors. What this could mean in terms of industrial relations problems needs no elaboration.

In a Hillman Lecture at the University of Wisconsin about two years ago, the present Secretary of Labor was a confessedly reluctant witness about his own disappointment—after World War II he had looked for gradual, but continued, improvement of labor relations. Instead he saw with the passage of time a progressive hardening of attitudes on both sides of the bargaining table. There is no lack of qualified spokesmen who share this view, or of evidence to support it.

But the picture is not one of unrelieved darkness. Part of what seems to be a hardening of attitudes is only the reflection of a changed economic environment. The bargaining is tougher in some relationships because the issues are more difficult. At the operational level, where union and management meet in the day-to-day administration of agreements, relations have perhaps never been better. Grievances are treated as important matters, are handled promptly, are settled quickly by agreement where agree-

ment is possible, and, where not, are submitted routinely to arbitration. And even though bargaining has become more difficult, there have been relatively few strikes, and during strikes violence is rarer than at any time in our history.

Moreover, there has been in the past two decades a significant, but gradual and undramatic, and for these reasons, perhaps, an almost unnoticed growth of devices by which management and labor have been solving their problems. Arbitration is the example which comes most readily to mind at a meeting such as this. Arbitration, of course, is neither an American invention nor a recent innovation in labor disputes. The first reported instance of a labor arbitration occurred in 1865, as Professor Witte told us a few years ago. In the next half century, however, labor arbitrations averaged fewer than one per year. Following World War I, there was some increase in arbitration, but even after allowance is made for differences in the extent of unionization, its use, by contemporary standards, was rare. Today arbitration is an accepted institution; ninety-five per cent of all labor agreements provide for it. In the twenty years following 1936 the Railroad Adjustment Board disposed of about 39,000 cases, some 15,000 with the aid of referees.[2] The members of this Academy in any year will decide surely not less than 15,000 cases and twice that many issues. How many issues go to arbitrators yearly is unknown but probably exceeds 25,000.

Arbitration, however, is only one example of labor-management accommodation in matters affecting industrial relations. Mediation, with federal and state, and even jointly-selected conciliators, is another. Perhaps less well known, but important, are state advisory councils on unemployment compensation, some of which are bipartite, others tripartite, the National Joint Board for Settlement of Jurisdictional Disputes, and the Atomic Energy Labor-Management Relations Panel. There are countless impartial or third-party trustees for welfare and pension plans. Universities and boards of education have their impartial commissions for administering grievance procedures. The Los Angeles Board of Education, for example, has such a commission, and provides for

[2] For a study of arbitration by the Railroad Adjustment Board, see Carroll R. Daugherty, "Arbitration by the National Railroad Adjustment Board," *Arbitration Today* (Washington: BNA Incorporated, 1955), pp. 93-120.

appointment of hearing officers. Recently we have seen in the steel industry the creation of committees to study the effects of technological change and to make recommendations about distribution of its benefits. In meat packing we now have a tripartite committee for studying problems related to technological change, and within recent weeks we have seen the appointment of a presidential board to study and make recommendations about the myriad problems relating to work-rules. To deal with internal problems, two unions recently imitated the Norman kings and set up their consciences or chancellors. The Upholsterers and the United Automobile Workers now have public review boards clothed with authority to reverse the unions in matters affecting the rights of members and of subordinate bodies.

I am not suggesting that the full implications of such boards have been appreciated even by the unions which created them; I am merely recording what I consider an important development. Similarly, industrial relations departments in many companies, with varying degrees of authority and success, act as the corporation's conscience in matters affecting employees. These examples suggest, but do not begin to exhaust, the private institutions which have come into existence in response to the increased complexity of our labor problems.

We now have a wide range of private institutions dealing with some phase of labor and management organizations and relations. These could profitably be subjected to searching analysis. I venture to suggest that we are on the threshold of a greater growth of such institutions and we need to know what conditions make for their success or failure.

Such a study was recently made of the advisory councils in unemployment compensation by Father Joseph M. Becker, S.J., in his book, *Shared Government in Employment Security*. He tried to learn why some councils achieved marked success while others failed. His criterion of success was simple: the ability of a council to agree upon a bill for recommendation to a state legislature. The experience of these councils may be transferable to other fields. He found that the factors making for success were both external and internal. I am paraphrasing his thought in saying that the external factors boil down to an environmental situation

which gives labor-management representatives a compelling incentive for seeking and reaching agreement. If the representatives on either side are persuaded that the economic or political situation so overwhelmingly favors them that they control the situation, there is little likelihood that they will labor to achieve consensus.

The internal factors making for success are threefold. (1) Council members must be capable, that is, they must have the authority to make decisions and the technical competence to deal with the problems considered. People who do not understand a problem have little to contribute to its solution. People who are insecure lack the independence needed for successful negotiation. (2) The council members must be reasonable. They must be willing to see the problem in all its ramifications and to seek solutions which will preserve as far as possible all conflicting interests. (3) The council members, or at least some of them, must have the skills of a political lobbyist. Mr. Charles P. Taft, speaking to this group two years ago, made much of what he called the art of higgling. Negotiation is an art the fundamentals of which have not been mastered by all its practitioners. I suggest that this study, despite its limited scope, offers valuable suggestions for problems with which we may shortly be dealing.

III

In recent months we have heard repeated suggestions for creating labor-management committees to study existing and emerging industrial problems. If such committees are created, how can we be certain that we have also established the internal and external conditions which will make for their successful operation?

The personnel of such committees will come from top labor and top management. The labor representatives, most of whom have dealt with problems both of individual workmen and of industries, may be assumed to be skilled in the art of accommodation. In their case a more important consideration will be sufficient freedom from political pressures to act independently. This consideration is also important for management representatives but, in their case, perhaps more important will be adequate knowledge of the problems considered. In contradistinction to the

obvious competence in industrial relations of management representatives closest to the level of operations, Professor Slichter's remark about top executives is still true: "By and large, the top executives of American enterprises have rather limited familiarity with the problems of industrial relations. . . . Progress is being made. . . . Nevertheless this interest is far less than it should be in view of the enormous possibilities of saving capital expenditures simply by improving employee-management relations." This observation is even more true when we leave the individual enterprise and consider the top staff of the management confederations—the National Association of Manufacturers and the Chamber of Commerce.

While choice of the right personnel for a labor-management conference offers its difficulties, they are relatively minor. The cardinal problem is that of motivating the committees. How can we be assured that the environment in which the committee will operate affords the needed incentive, determination, even compulsion, to strive for and to find a genuine consensus?

Here, again, I suggest that we are not entirely devoid of experience. The National Joint Board of Settlement of Jurisdictional Disputes established by the construction industry in 1948 has had a record of achievement which is outstanding when measured by the accomplishments of its predecessors. The weaknesses of those predecessors were two-fold: (1) Unions alone are wholly unable to make a successful attack upon jurisdictional problems. Contractors make the work assignments, and when they do not agree about the appropriate limits of their activities, work assignments will inevitably conflict with the accepted jurisdictions of the craft unions. (2) The construction unions differ considerably in relative bargaining strength. The problem always was how to induce an autonomous national union, confident of its power, or a practically autonomous subsidiary in a large metropolitan area, to accept an unfavorable decision of some joint board. The framers of the Taft-Hartley Act helped to supply the answer. They made work-stoppages associated with jurisdictional disputes unfair labor practices; but they went further. In Section 10 (k) of the Act, Congress said in effect that the industry would settle jurisdictional problems or the NLRB would settle them.

This provision, I think, was unique in labor legislation. Here Congress did not attempt to settle ever-changing industrial problems by a rigid legal formula. Rather, it left the parties free to find their own method of settlement, but supplied an adequate incentive to get them about it. In an address before this group Professor Dunlop, who has contributed more to the Board's success than any other individual, said:

> The interests of different groups of contractors are highly conflicting, and certain unions have relations with certain contractors which are opposed to other unions and their contractors, and this is a vital part of the whole jurisdictional disputes problem in this industry, perhaps most fundamental of all.
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> The most fundamental thing that the Board has done has been to serve as a forum in which representatives of the industry spend time and are compelled to understand and study their problems.

The concluding words of the last sentence bear repetition, "representatives . . . are compelled to understand and study their problems."

Congress in recent legislation has shown little disposition to follow the course it took in Section 10 (k) of the Taft-Hartley Act. Had that course been followed, for example, in Title I of the Reporting and Disclosure Act of 1959, we probably would have seen the establishment of a variety of private appeals boards, similar to those of the Upholsterers and the United Auto Workers. This variety could have had two beneficial results: the devices adopted for achieving the purposes of the Act would have been adapted to the peculiar requirement of individual unions and they would have taken cognizance of the union official's need for sufficient authority to carry out his responsibilities as a bargaining representative; and they would have afforded the Congress a variety of experience for its guidance, should it feel compelled in the future to legislate in this area.

Instead we see union officials refusing to make decisions adverse to the interests of actual or potential political rivals (or even merely overly aggressive members) even where the facts seem to require it. They fear a charge of unfair representation—a fear which in the light of the recent Hein-Werner decision [3] may not be entirely groundless—and they fear that fighting the matter out in

[3] *Clark* v. *Hein-Werner*, 8 Wis. 2d 268, 45 LRRM 2137; rehearing denied, 100 NW 2d 317; cert. denied.

union meetings may lead to a Title-1 suit. These fears may be baseless, but they are real. The prospect of litigation, even in which one hopes for vindication, can be a powerful deterrent. Why run the risk? It is simpler to send the case to arbitration.

I am not suggesting that the double-barrelled approach of Section 10 (k) is the only, or even the best, method of creating an environment which encourages consensus. The situation itself may produce it. Arbitration, for example, is accepted because the costs of alternatives are much greater, and prohibitive when the alternative is a strike. The Railway Labor Act was largely the product of a consensus between railroad organizations and railroad managements because disagreement offered too much risk. Possibly in the years ahead a clearer recognition by government of the need for solving industrial relations problems by consensus and for a vigorous leadership from the highest levels of government in promoting it, may establish the conditions which make consensus possible. When we come to recognize that consensus is not the automatic result of bringing labor and management together in conference, but that it needs adequate motivation, we will have taken an important step toward achieving it.

Legislation should provide long run solutions to problems. Since 1932 our labor legislation typically has been the product of short run crises. As Professor Dunlop has pointed out, the depression produced the Wagner Act; the postwar strikes gave us Taft-Hartley; the McClellan investigations were responsible for Landrum-Griffin. For a time it appeared that the steel strike would father a National Emergencies Act. Crisis legislation too often deals only with surface phenomena, while basic problems remain unsolved.

The increasingly complex problems of the years immediately ahead may produce their crops of crises. It is important that they do not also produce a crop of crisis legislation. The best way to prevent it, I suggest, is to thrust responsibility for achieving consensus on the parties closest to the industrial relations problems. How to create the conditions which promote such consensus offers its challenge. But if those most familiar with such problems, the representatives of the parties, government officials, students of industrial relations, and legislators emphasize the importance of consensus as the way to reach solutions, the challenge will be met.

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