CHAPTER 10

WORK ASSIGNMENTS AND INDUSTRIAL CHANGE

I. Job Security, Management Rights, and Arbitration

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Today we are addressing ourselves to the problems which economic change thrusts upon our society generally, and upon management, workers, and unions specifically. We are interested in examining how the authority and decision-making processes in the firm, typically identified with management, cope with change, and how the protective and representative processes identified with unions respond to and affect managerial initiative.

In particular, we are concerned with changes associated with technology, which have their impact on job privileges and job security. We could phrase our preoccupation in terms of the way in which the bargaining process affects management's right to initiate changes which disturb the existing system of job relationships and employee rights as they are variously conceived. I would prefer to shift the focus of our attention slightly but significantly, however, to avoid the question of "right," which has been examined frequently and exhaustively, and to center on the question of functional adaptations—the way in which institutions caught up in the relentless, inexorable, and inescapable processes of evolution, are driven to fight, flounder, and fish for ways of coping with changes which they cannot deny.

In this process "rights" have only a temporary, even if important, value. Too rigidly clung to, they deny the existence of the changes which invalidate them and impede the adaptations which are essential to ongoing activity. But denied altogether, their absence would leave the parties churning in an anarchic sea. At a minimum there are rights to expectations which cannot be

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disregarded without endangering the whole system of social relations within a shop or plant or office no less than in society at large. Thus, "rights" constitute a means for the orderly *transition* of social relationships in a world of change, if we are wise enough to use them in that fashion, or they can be less successfully employed to block changes in an effort to freeze social relationships in a pattern which is at least familiar. Without ignoring the function of rights in the process of change, I will urge our attention on the transitions and adaptations themselves.[1]

Planning for Change in the Firm

In the business world, which is also the worker's world, a decision is always made within a matrix of other decisions, partly determined by and partly determining them. This interrelatedness of decisions has been recognized in the corporate-planning process, which attempts to bring together into a comprehensive and meaningful mosaic all the separate decisions which must be made with respect to all the parts of the company's activities. The process of business planning, whether for the coming year or a longer time span, relates each part of the organization to the total operation. The amount of information which must be digested into such a plan is enormous.

This enormous number of decisions, estimates, and schedules which are the ingredients of the plan must be related to each other in what amounts to a detailed simulation of all activities of the firm having a bearing on its profit position. This is a rationalization of the planned performance of *each unit* in the light of the expected performance over the same period and on the same general assumptions of *every other unit* in the organization.

The Time Horizon

Business firms integrate their multiple activities through the medium of the budget, which allocates resources *where* they are most effective and *when* they are needed to make the plan come alive. It may be said without much exaggeration that a plan is simply a dream until it has been incorporated in the budget—until, that is, resources have been allotted to its accomplishment.

[1] Some of the material which follows has been drawn from a forthcoming book, *The Labor Sector*, to be published by McGraw-Hill; and an article, "What's Ahead for Labor?", *Atlantic Monthly*, July 1964.

But this type of planning requires a time horizon which extends into a virtually indefinite future. A business firm assembles and nurtures assets which grow over the years, and the uses of which vary from year to year, and decade to decade, in response to changing tastes, population shifts, market structures, production processes, and inventions. The use of virtually any company's assets is quite different now from what it was ten years ago and from what it will be ten years from now. A company may almost be viewed as a bundle of assets which are molded in one form today and which it is management's job to metamorphose into a continuingly different form as time goes by. If it fails in this task, the bundle of assets which it is managing loses its value.

To speak of a firm as having an almost *indefinite* horizon obscures management's task, however. To accomplish the continuing metamorphosis of assets, it must set dates on its plans. Just as we said that plans remain dreams unless they have resources allocated to their accomplishment in the budget, so we can say that plans remain dreams unless they have dates attached to their intended accomplishment.

If we pause to think what that means, we gain some appreciation of the size of management's job. Management cannot wait until the form in which its assets are now molded becomes obsolete; it would be too late then to transform them into something else, since they would already have lost their value. The transformation of assets from the production of good A to the production of good B, from the serving of one region to the serving of numerous regions, from one production process to a more highly automated one—all these and a variety of other related activities must take place in *advance* of the time when current assets have lost their value.

In effect, what happens is that management freezes—that is, invests—funds in certain forms for specific purposes. These frozen funds are becoming liquid all the time, as inventories are liquidated, as credit is repaid, as depreciation reserves accumulate, as earnings are retained. And management must make decisions *all the time* as to whether the assets which have become liquid again shall be frozen into the same forms again or into new forms. Sometimes the decision is relatively routine. If the inven-

tories of fast-moving products become depleted, it takes no soul-searching to decide whether to replenish them. But at other times the problem is more difficult. As an old piece of machinery has put in its time and has to be relegated to a standby role or scrapped, should the company buy another like it? Rival machinery producers or the company's own engineers may have other ideas as to how the job of the old machine can be done better. What form shall the replacement take?

Complicate the problem further. Should the machine even be replaced? Perhaps technological change has so outdated the whole production process of which it is a part that it is preferable to scrap not just that piece of equipment but the whole process, substituting a more efficient one. To carry that off effectively may suggest that it would be wiser to build a whole new plant. But if the company is to build a new plant, it does not have to place it in the same location; it might be more efficient to move it closer to a shifting source of materials or a shifting outlet for sales.

But the alternatives do not end there. If a firm is going to invest in a new plant and a new process, perhaps it should use these for a new product. How much longer will the present product, in question, remain profitable before being outmoded by something else? Perhaps the company had better consider substituting or adding a new product to its line.

We could multiply the questions which management must answer as it determines over and over again the form in which assets becoming liquid—through the sale of goods and the return of once-invested capital, through loans, through new equity issues —shall be frozen. The answers to these questions relate to different points in the firm's future. The decision to invest in rebuilding inventories is one that affects operations in the next few weeks; equipment replacement may be a matter of months; process substitution may take a year or two; new product development at least as long or longer; the location of a new plant takes a time horizon of at least five years; and all these things are going on at the same time. These decisions relating to projected actions at various points in a firm's time stream must all find room in the company's short-run and long-run plans and must be incorporated into its budget—given concreteness by having resources allocated to their phased accomplishment.

A company's plans and budgets thus relate to its immediate present, when it is concerned with whether it is making a profit on its current operations and to its long-range future, when it is concerned whether activities are underway which will eventuate in future operations maintaining the profitability of the firm. With plans and budgets made, it must then maintain a close scrutiny of how those plans are faring, and whether there are departures from the budget. If the sales which it had expected this month have not materialized, why not? Their failure to do so may lessen the inflow of funds which had been counted on for use in some other corporate activity, located somewhere ahead in its time stream. They may also suggest that certain products in the company's line are losing favor with the public, similarly jeopardizing its continuity as planned. If costs are higher than expected, this requires explanation. Unless purely a temporary phenomenon, it may carry a threat to the firm's competitive efficiency and profitability. What progress is being made in the planned extension of the company's marketing organization to the Southwest or to the Far East? Is it on schedule? Has the redesign of a particular product proceeded as planned for its introduction next year? Is R & D making satisfactory headway on Product X which is intended to replace Product Y two years from now? Has a site been purchased for the new plant which is to be started in three years in Colorado?

Any departure from these plans has its effect on expenditures or receipts, and hence involves a departure from the budget as well. Management must be alert to any such departures—"variances" as they are usually called.

The company analyzes variances from the budget plan in order to take corrective action as needed. In some instances the deviation from plan can be righted by further application of effort or by removing some impediment to efficiency. In other instances the variance is more intractable, and special action is called for. The plan itself must be changed.

How does all this relate to labor? Very importantly. More and more the pace of *change* has quickened in the business world—change in product lines, markets, production processes, financing, and organization. These must be planned for as best a firm can,

but plans are inescapably imperfect. Departures from plans and variances from budgets are to be expected. When they occur, they require prompt attention and action—either to deal with unexpected adversity or to capitalize on unanticipated advantage. Both planned changes and corrective actions may be with respect to the short run or the long run, but in either case what is needed is prompt adaptation to changed circumstances in order to preserve, and, if possible, enhance the value of the bundle of assets which the company is managing.

This importance of adaptability and flexibility is greater today than it was 25 or 50 years ago. For a company to remain profitable and viable, it must be constantly prepared to meet and deal with change. And this is increasingly incompatible with the emphasis on maintaining work practices, customs, and traditions which are the values which workers typically seek to preserve. They seek to preserve them in part because they feel at ease with the familiar—it is a way of life, and in part because the familiar seems to promise security. As long as they can continue with a job they have mastered, performing a function which is integral to a process, protected by seniority, they have greater assurance of the weekly paycheck which is needed to balance the household's budget. And if there is also a two- or three-year contract spelling out rights, an arbitration procedure promising their enforcement, and an industrial "common law" taking note of customs and precedents, so much the better.

But this stress on stability and security by workers and the unions as their agents has two weaknesses. First, it is incompatible with the company's need for prompt adaptation to change, and thus may jeopardize the profitability and even survival of the company on which the employees are counting for job security. And second, it is in part illusory. It may be powerful enough to retain customary jobs and practices in the present, but it is not powerful enough to retain them in the future, for there is nothing to prevent a company from closing down a whole plant or process or suspending production of a product, as it shifts into new products, new markets, new processes in its continuing preoccupation with metamorphosizing assets, transforming their shape, function, and location with the passage of time.

There is here, then, a growing incompatibility between the familiar *contractual* approach to collective bargaining, which seeks stability and security for workers, and the developing corporate planning and budgeting processes, which emphasize fluidity and flexibility in business operations. A contract which attempts to *fix* practices and procedures is basically at odds with a budget-plan which is designed to initiate changes and to alert management to the need for prompt adjustment in the face of departures from plan. The familiar collective bargaining process, inherited from the journeyman tailors, carpenters, and printers of 150 years ago, is less suited to the needs of modern economic activity. It is geared to a different kind of economic society than that which we have been developing in recent years. Its objectives remain but means of achieving them have become antiquated.

Workers are not in a position to participate in the corporate-planning program itself, and their primary offset to this disadvantage is to make sure that the corporate planners pay attention to their interests. They accomplish this through the collective bargaining process, and *in this respect* collective bargaining does not interfere with corporate planning but becomes one of the elements with which the plan has to deal. But there is another respect in which collective bargaining may be said to be inconsistent with corporate planning. It attempts to *fix* the interests of the workers whom it represents over some extended period of time, making difficult *both* flexibility in planning *and* the longer-run protection of the interests of its members, since those interests are themselves tied up with the survival-ability of the firm. The collective bargaining process as now practiced is not as flexible as effective business planning requires. It is no accident that in recent years management's major complaint against the union has been with respect to "work rules," while the workers' major protest has been in the area of job insecurity. The objectives of each party collide with a process important to the other—flexibility confronting contract-bargaining, and job security clashing with continuous planning.

New Methods of Collective Bargaining

If traditional collective bargaining methods are inadequate in the modern economy, this only underscores the necessity of our discovering new procedures for accommodating change without

exacting too high a price from those on whom the burden of change primarily falls. There is a need for new devices which satisfy both business requirements and the legitimate demands of workers, the households whom they represent, and the unions which represent them.

The principal specifications for such new procedures are apparent. If management wants flexibility in adapting to changes in plans and variances in budgets, it must give the union a chance to be heard on all the decisions affecting the interests of workers *on a continuing basis.* If management wishes to avoid the rigidities of "past practices" and custom, it has to accept a bargaining process which is as continuous as its own planning process. At the same time the union must recognize that a right of initiative must lie with management, or else the whole purpose of flexible planning is lost. If continuous bargaining means that management is prevented from acting until agreement has been reached with the union, then it stands in the way of that *prompt* adaptation to changed circumstances which is the objective of continuous planning.

Experiments attempting to meet these requirements have already been undertaken in some few companies and industries. The steel industry's efforts have come into greatest prominence in recent years, having spawned two programs—The Kaiser Long-Range Plan for the Equitable Sharing of the Fruits of Economic Progress, and the Human Relations Committee jointly sponsored by eleven other companies. The latter meets throughout the year to discuss whatever problems are viewed as of major importance, in an atmosphere of informality which one perceptive observer, A. H. Raskin, has described as "at the opposite pole from the charadelike rigidities usual in bargaining." [2]

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[2] A. H. Raskin, "Nonstop Talks Instead of Nonstop Strikes," *New York Times Magazine,* July 7, 1963, p. 12. Raskin writes:

"The ground rules permit every member to set forth his ideas without committing the rest of his group—or even himself—to be bound by them. All are free to change their minds a dozen times. This makes for an openness of discussion that is impossible when each side is ready to pounce on any incautious word by the other and try to twist it into a tactical advantage.

"The result has been that union and industry chiefs have exchanged opinions almost as unreservedly as they would in their own councils. Individual committeemen have sounded off without even consulting the other members of their own team. Not infrequently a unionist supports a position advanced by someone on the industry side or vice versa. Often, too, a member will do an effective job of puncturing an argument he himself has presented a few minutes before."

The steel industry's Human Relations Committee is a "family affair." No outsiders are involved in its deliberations. The Kaiser Corporation approach differs in making use of what has become known as "informed neutrals"—individuals selected by the parties jointly to assist them in solving the problems they confront.

These two approaches to modifying traditional collective bargaining procedures—the "continuous committee" and the use of informed neutrals—are obviously both moving in the direction of replacing the old emphasis on fixed practice and contractual guarantees with something new. That something new is a willingness on the part of both union and management to reexamine (rather than seek to fix) how worker interests can best be accommodated within the framework of flexible business planning designed to meet more rapid economic change. It is quite possible that any of the specific experiments now being undertaken may collapse or prove ineffective. And major problem areas still remain to be resolved, such as how to accommodate the strike, without which union bargaining power is relatively ineffective, within the framework of continuous consultation, and whether the new procedures require more time or more personnel than a small business can afford. But despite any possible setbacks or unresolved problems, one may reasonably predict that the future of worker-union-management relations lies in the general direction indicated.

From Work Rules to Career Planning

There is always some tendency to believe that events of the moment constitute the wave of the future, and one may succumb to that error in concluding that workers will be increasingly concerned with job and income security in the face of rapid economic change. But I am sure we would all agree that regardless of its impact on bargaining *procedures,* job security will remain an important enough issue to require new *substantive* approaches.

In the past workers have sought protection from economic changes threatening their skills and jobs in "work rules" which their unions sought to enforce against the employer—rules requiring so many workers or certain types of workers for given functions, rules limiting the number of apprentices, rules requiring that jobs be performed in certain ways or using certain tools or materials, or general rules that "past practice" should be continued

except in circumstances where there have been "major" changes in the nature of the job.

These attempts to hold back the tides of technological change may be at least partially successful in certain sectors, such as building construction, though even there they have begun to give way. In large industrial and commercial establishments or in hospital and governmental service, they have ceased to be very effective. Perhaps the imminent collapse of certain work rules in that citadel of conservatism, the railroad industry, is a harbinger of other areas where inflexible restrictions will give way--and with them whatever sense of security they may have afforded workers, however false that sense of security may have been.

What then will take their place? It is unreasonable to expect that workers and their households will willingly be subjected to a continuing uncertainty of employment and income, living in fear that technological advances will shoot their jobs out from under them. One answer lies in more conscious efforts at career planning by the individual, his union, and his employer, preferably in conjunction with educational institutions and employment services as well. There is no need to dwell here on the ways in which basic education, skill training, retraining, and continuing education can all be improved to assist individuals in carving out more meaningful lifetime careers. Education for lifetime careers constitutes one of the most fundamental, most exacting, and most challenging of all our "new frontiers." We need only couple efforts along these lines with the continuous problem-solving bargaining approach which we have just been considering to realize that unions and managements can assist greatly in implementing a worker's vague and perhaps unstructured desire to fit himself for a continuing meaningful role in industry. Building on his past training, he *ought* to be able to look to the future not with fear or foreboding but with confidence that through his union, through his employer, through the community's educational provisions, and through his own efforts he has every reason to expect a brighter rather than a dimmer future.

This approach to the relationship of the worker to his company and career has remarkable parallels to the planning and budgeting procedures which management has adopted for its own purposes, but unfortunately the unions have been too busy trying to hold

the line to perceive them. Just as management is viewed as managing a bundle of assets, so too may the worker be viewed as managing a bundle of assets—not just figuratively but literally, assets which have a financial value to them. The worker's assets are his abilities and skills. Like the company's assets, these too deteriorate and become obsolete. Like the company's assets, they must be metamorphosized into a new bundle of assets if their value is to be preserved and enhanced. This transformation and upgrading of the worker's assets must too take place continuingly and before the value of current assets has been lost so that they provide no basis on which future values can be rested.

As with corporate planning and budgeting, this requires programs which are specific as to the needed investment and the time when it should be made. Unless we become serious about assisting the worker, like the manager, in managing his assets, by providing for periodic reexamination of his career objectives and potentials, their financing, and their timing, the assets of more and more of our labor force will be washed away through neglect. Here is an unparalleled opportunity for labor unions to prove themselves capable of new and imaginative responses to the worker's ancient problem of security. I strongly suspect that unions, capable of meeting such a challenge by devising meaningful programs and enlisting the interest of their members in them, will find some—perhaps many—managements not only willing but eager to discuss them.

The Position of the Arbitrator

Where does the arbitrator fit into this brave new industrial world? Let us consider that question briefly from two perspectives —the perspective of the new, more flexible bargaining system which is developing, and the perspective of the present period when the old system is still the prevalent form.

The new developing relationships emphasize ready adaptation to a changed economic environment and preservation of the worker's welfare by planning for his future rather than attempting to hold fast to the past. Without indenturing him, they are more concerned with his long-run than his immediate position, which is accepted as temporary. In this setting employee rights relate

more to his position in a time stream stretching into the future than one stretching into the past. And I suggest that from such a perspective precedents lose some of their force.

To be sure, we cannot do without precedents. We have to work with a set of relationships based on appropriate expectations of what people will do in given circumstances. And these can be reduced to rules or agreements which are applied to each new case in the light of their application to prior cases. But the precedent needs to be applied judiciously rather than judicially, and where the economic setting of the claimed right has changed markedly I am not sure that the precedents or even the rule should continue to govern. I do not have time to expand this point with examples, but let me simply point to the place of seniority in promotions as a clearcut case. We all recognize that many jobs require higher grades of skill and formal training than formerly may have been needed, but management efforts to upgrade the quality of corporate performance sometimes run head-on into precedents for giving promotions to the oldest-service employee as long as he can "do the job," however that may be interpreted by an appeal to the very kind of performance which management is seeking to change. As long as arbitrators continue to turn to precedents which were developed under quite different circumstances as though these had the same relevance, they will be parties to perpetuating the old system of rigid rights in the face of its growing inadequacy.

Nor am I convinced by the argument that the arbitrator can only do what the agreement calls for. His function is interpretation, and the question is his to answer whether the interpretation appropriate to the case he *now* wrestles with must be the same as the one appropriate to a case he or someone else wrestled with ten years or even two years ago. I suggest that the agreement *incorporates* the surrounding relevant circumstances at the time it was negotiated, and that when such relevant circumstances have changed, the clause—even though it remains in the agreement—necessarily takes on a different meaning, which the arbitrator can interpret when he is asked to do so. And the injunction found in many agreements that the arbitrator may not add to or change the content of the agreement should not—I am tempted to say *cannot*—rob him of that authority of fresh interpretation.

I recognize the arbitrator's dilemma, however. Accommodation or adaptation to change tends to recognize management's interests more than the worker. Change tends to invalidate expectations which workers have built into their jobs. For the arbitrator to give greater recognition to change and less to precedent means to diminish workers' rights. Can the arbitrator afford to be partial?

I have no confident answer to that question, but let me make a few general observations. If partiality is involved, it is a partiality dictated by the logic of circumstances, not by prejudice. And to the extent this lesser reliance on precedent, where precedent loses its logic, accelerates pressures for adopting new techniques for dealing with change, it encourages a development of surer ways of providing workers with security, by joint forward-planning for jobs and careers. The arbitrator cannot evade his personal responsibility in this matter by hiding behind the slogan that if the parties want to change the agreement they are free to do so. If he accepts the responsibility of *interpreting* the agreement, it is up to him to determine the force of precedent.

Secondly, I am not sure that management is always favored by an arbitral process that more explicitly incorporates the economic setting in the interpretation of the clause. A clause that management shall give displaced workers an opportunity to qualify on new assignments may, at the urging of an alert union, take on meaningful content as to what such an "opportunity" requires of management by way of training at the same time that it accords a more sympathetic consideration to management's plea for tighter tests of qualification.

But perhaps a more difficult problem is presented by the current managerial interest in negotiating more comprehensive managements' rights clauses in an express effort to limit the arbitration authority. This shortsighted attempt mistakes the right of initiative, which management must be accorded, for an *unencumbered* right, free of *any* necessity to consult worker representatives where workers are affected or to recognize that the economic changes which it claims the right to initiate may change too the nature of its responsibilities for the welfare of its workers. If the clauses of the agreement must be interpreted in the light of changed circumstances, this applies to obligations as well as privileges. While the arbitrator is not free to rewrite the agreement at will, he may

assert his own prerogative to read the underlying intent as *both* parties see it, in the light of the circumstances—however changed or unchanged—giving rise to the dispute.

There is a growing need for management and unions to develop new procedures for dealing with problems of job changes and employee rights. Perhaps what we are headed for, eventually if not now, is a more flexible agreement than the past quarter century has produced, some return to a shorter contract which enunciates a few basic essentials, in contrast to a code of laws which spells out all conceivable contingencies. The parties would thus be led to seek and effect understandings as situations develop, in the light of the basic intentions set forth in the contract. The manifold clauses of present legalistic documents would not give birth to their own problem children. In such a system the arbitrator would play a more creative role as unresolved disputes were referred to him for solution. While the touchstone of the parties' intentions would remain, this would be a more elusive guide providing greater scope for judgments—again I urge the distinction—more judicious than judicial. Unions, managements, and arbitrators alike would be forced to operate more responsibly within a more permissive framework.

Let me try to clarify the main thrust of my remarks by a brief summation:

1. Management plans, and in planning *creates* change in response to a changing environment. In the continuing modification and effectuation of its plans, it introduces further changes. This flexibility of operation is not just a nice thing to have; it is indispensable to profitability and survival, which in turn provide and secure the job opportunities for its workers.

2. The changes which management initiates, in the performance of its job, change the industrial context in which a collective agreement is set. If the industrial context constitutes part and parcel of the agreement, as I have argued, then work practices may have to change in order to carry out the reasonably inferred *intent* of the agreement, rather than its specific language.

This sounds as though management enjoys a unilateral right to alter the contents of a collective agreement simply by initiating

changes in corporate activity. Very baldly speaking, that is indeed the nub of my position if properly modified by noting, first, that the changes in contract application are incidental to its basic job of managing the assets entrusted to it, and, second, that the question of *how* the contract application should be altered is properly referable to agreed-upon statements of intent, subject to discussion and arbitration.

3. If arbitration is invoked, the arbitrator should be receptive to arguments and evidence that change has invalidated the force of precedents, but this does not oblige him to accept either party's interpretation of what new practice should be substituted. He is free to exercise his own discretion as long as it conforms to his explicit interpretation of the basic intent of the agreement. This is a more creative role than he has generally assumed or the parties have accorded him.

4. How the courts would interpret this approach, if challenged by a party which claims injury from its application, I do not know. The logic of the arbitrator's opinion would be crucially important in establishing his authority. But I do not consider the question of the courts' attitude really determinative of the responsibility which an arbitrator elects to assume. At most, his decision can be overturned. Far more important in establishing his authority is the responsiveness of the parties to the relationship which he urges on them. If there is any value to the approach of more flexible contract interpretation, it must be validated by the parties themselves. But the arbitrator can be an effective influence on them to modify traditional modes of bargaining to accommodate more realistically and more hopefully the long-run interests of managements and workers both.

Basically, what I am suggesting is that perhaps it is time to reconsider the nature of the collective agreement. We have come to regard it, in law and in practice, as a contract. This conception of it at one time represented a considerable victory for the collective bargaining process. The Industrial Commission of 1898 was daring in elevating it to such a status and likening it to a commercial contract, entitled to the same respect. It was not until the early Thirties that courts quite generally treated it as a binding commitment, on the strength of which the parties to it could sue

and be sued. The Taft-Hartley Act's Section 301 delivered the accolade by specific legislative provision for such suits.

It seems ironic that the unions' long struggle to win legal institutionalization of the bargaining process should have eventuated in this kind of rigidification of the bargaining relationship, treating the agreement as a static legal prescription for what increasingly must be a dynamic adaptive relationship if it is to survive. I suspect that our construction of the agreement as the equivalent of a commercial contract grows out of the history of union-management conflict, in which the pact represented the terms on which an adversary relation could be resolved. If the pact could not be enforced, then obviously the state of hostilities could not be ended. It is evident that the Industrial Commission looked on a union-management bargain as the effort to resolve *a* dispute over terms, and the agreement was *a* statement of the terms of the bargain. ". . . the labor contract is precisely similar in nature to the process of bargaining between two parties regarding any other contract." On this construction, the grievance procedure is simply a means of determining what the terms are, what performance is called for. It lends itself to judicial construction, either through arbitration or court proceedings.

We all know that this is a false view of the agreement once we move away from the notion of union and management as adversaries only, or as seller and buyer. The collective agreement then is not the same thing as the contract for the purchase of an automobile or the sale of real estate or the construction of a military plane. It is a statement of certain conditions governing a continuing relationship, but how governing is a question which is not easy to answer and which warrants reexamination, not necessarily by legal reference to words which must be strictly interpreted or to precedents which bind the parties. At least not that if we wish to see the bargaining relationship develop into an instrument for meeting problems not just once every three years but as they arise, and not just as a means of awarding short-run rights growing out of the past but as a means of creating long-run values stretching into the future.

The emphasis on an agreement as a contract, binding on the parties and enforceable at arbitration or law, stands in the way of such a maturing of the bargaining relationship. At the same time

I recognize the difficulties of substituting a new interpretation. The agreement must mean *something,* and something which carries clear implications and consequences to the parties. What I am approaching is an agreement which specifies fairly broad intentions, subject to an application in particular situations but not so specific as to past situations that it cannot be modified as need dictates, and modified in the interests not just of one but of both parties, and relying on an arbitrator to assist in the determination of how that broad intent can best be carried out, whether according to previous practice or fresh experiment.

In any event, I feel reasonably sure that the legalistic view of the collective agreement is now a social liability, and the more willing we are to adapt bargaining instruments to the dynamics of our industrial and economic system, the more effective will it become, and I might add, the more interesting to everyone.

II. Reexamining Traditional Concepts

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Listening to a paper like Neil Chamberlain's is a refreshing experience for those of us who work in the corners and interstices of the collective bargaining and arbitration process. It is like turning from the view of the weather we get from our windows to the weather announcer on television, with his large map showing the "highs," the "lows," the major fronts, etc. Such a map gives one the broad horizon one cannot see from the window, and the ability to look towards the future that comes from such a broad horizon.

To most of us, I am afraid, the weather map of collective bargaining is all too familiar: two large areas of high pressure, separated by an area of dense fog in which arbitration takes place. Fog is the inevitable result of mixing hot air and cold reality. It is good to come out of the fog every once in a while for a different and larger perspective; to see the possibilities that the future may hold for collective bargaining, for arbitration, and for the professional lives and preoccupations of all of us.

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