

## CHAPTER 8

### NEW APPROACHES TO DISPUTE SETTLEMENT: THE FOOD AND COAL INDUSTRIES

#### I. THE JOINT LABOR MANAGEMENT COMMITTEE IN RETAIL FOOD—A PRELIMINARY REPORT

WAYNE L. HORVITZ\*

The Joint Labor Management Committee of the Retail Food Industry was born in the dying days of the first peacetime wage and price controls program in the history of the United States. Imposed with stunning suddenness by presidential order in the fall of 1971, the controls programs by the latter part of 1973 had stumbled through three reshufflings, or "phases," and it was clear that Phase IV was to be the last.

By that time, the food industry had been under mandatory wage and price controls for nearly two years. That experience taught the industry two indelible lessons: one, that it should do everything possible to avoid controls in the future; and two, that because of the public's supersensitivity and anger over escalating food prices, and the fact that this confrontation comes at the supermarket check-out counter, the retail food industry is a prime target for some form of controls in any future general or selective governmental incomes-policy program.

At the same time the food industry was discovering these truths, however, it was also becoming apparent to labor and management that the industry was in deep structural trouble from which it would not be easy to emerge. In this atmosphere it then became possible to move the industry, notwithstanding its reluctance to structure a voluntary experiment to improve collective bargaining in the retail segment of the industry. That experiment, the Joint Labor Management Committee of the Retail Food Industry, is now almost two years old. As its impartial

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\* Impartial Chairman, Joint Labor Management Committee of the Retail Food Industry, Washington, D.C.

chairman I would rate it a cautious success, one feature of which is that it survived.

As neutral chairman of the committee from its beginning, and as a part of the controls mechanism before that, I can say it has been a unique experience. I should like to describe for this group what the committee has been able to do and why, the reasons for its inability to accomplish some other things, and where it now seems to be going. At this point, it will be useful to take a closer look at the industry we are talking about.

The retail food industry is, if not the largest, one of the largest in the nation's economy. In 1974, sales in all retail food stores, excluding specialty stores, were some \$131 billion, an increase of nearly \$18 billion from the previous year. Retail food-store sales amount to about 10 percent of the nation's Gross National Product. More than a fifth (22.3 percent) of the consumer dollar is spent in food stores, making this the largest single item in the household budget.<sup>1</sup>

We tend to think of the retail food industry as the supermarket, and this is largely the case. The total number of stores in the industry is just under 200,000. Supermarkets, defined in the industry as those stores with sales of more than \$1 million per year, numbered 31,430 in 1974. While this is a small percentage of the total (15.9 percent), supermarkets in 1974 accounted for almost \$94 billion, or about three-quarters (71.8 percent), of total food-store sales. Chain-store supermarkets (a chain is defined as having 11 or more stores) numbered almost 20,000, or about 10 percent of the total, but accounted for nearly \$59 billion or 45 percent of food-store sales.<sup>2</sup>

It is a highly competitive industry. Huge and costly battles for the customers' patronage have been fought by some of the largest chains by the shaving of a cent or two off some items; the loser has paid in hundreds of millions of dollars in lost sales. Profit margins, as reported in a recent *Business Week* article, average less than 1 percent of sales per store.<sup>3</sup>

The new supermarket, now the center feature of most shopping centers, covers, on the average, 30,000 square feet of space and stocks between 7,000 and 10,000 separate food and nonfood items.<sup>4</sup>

<sup>1</sup> *Progressive Grocer: 42nd Annual Report on Grocery Industry*, April 1975.

<sup>2</sup> *Id.*

<sup>3</sup> *Business Week*, March 22, 1976, p. 52B.

<sup>4</sup> National Association of Food Chains.

The total number of employees in the industry is just under 1.8 million.<sup>5</sup> While less than half the industry is unionized, nearly all of the major chain grocers are. The majority of the organized workers are represented by three unions: The Retail Clerks International Association represents 450,000 employees in the retail food industry, or about 65 percent of its 700,000 membership.<sup>6</sup> The Amalgamated Meat Cutters and Butcher Workmen counts about 190,000, or 35 percent of its total membership of some 550,000.<sup>7</sup> In some chains, the Meat Cutters have "wall-to-wall" contracts, meaning the union represents clerks as well; the Retail Clerks also have some similar contracts—including the meat department.

The International Brotherhood of Teamsters has organized the retail warehouses and loading docks of the industry, and, of course, grocery-store trucks are driven mostly by Teamster members; about 10 percent of the IBT's 2.2 million members is counted in the retail food industry.

It is a highly fragmented industry in terms of collective bargaining. This year alone there are 1,377 contracts expiring, covering about 642,000 employees.<sup>8</sup> Because of this fragmentation, the potential for leapfrogging and whipsawing is always present, and both occur frequently.

This is no auto industry or steel industry, where a United Auto Workers union or a United Steelworkers union sits down with one or more of the major producers and sets the basic pattern for the industry in a single collective bargaining agreement that will run for an extended period of time. In the retail food industry, scarcely a week goes by that a pattern-setting or pattern-destroying agreement is not negotiated somewhere. In addition, the industry is susceptible to outside influences. For example, the Teamster national master-freight agreement will have an important impact on bargaining in the retail food industry for the balance of this year and probably well into 1977.

Important to an understanding of how the Joint Labor Management Committee came about is the fact that for 14 months of the controls period these controls were administered by a tripartite wage-and-salary committee of five labor, five management,

<sup>5</sup> *Id.*, quoting BLS data on grocery, meat, and vegetable store employees.

<sup>6</sup> Retail Clerks International Association research department.

<sup>7</sup> Amalgamated Meat Cutters and Butcher Workmen research department.

<sup>8</sup> Federal Mediation and Conciliation Service.

and five public members. I was first a public member and vice chairman of this committee and later its chairman.

All of the members of the tripartite committee were reluctant participants in the controls program. But this exercise was an essential ingredient to the development of the Joint Labor Management Committee. For one thing, it brought together two and sometimes three days a week representatives of the three major unions in the industry—the Teamsters, the Meat Cutters, and the Retail Clerks—and their industry counterparts from the major retail chains. This association, though forced, was unprecedented. Some of these people had experienced little direct contact before, let alone sat with each other in a group where they had to have exchanges, reach agreements where possible, and set policy.

As many of you know, in joint operations of this sort there are times when the rate of unproductive and nonspecific exchange rises geometrically. But during these times, things often happen on an interpersonal level that do not happen in more structured situations and are impossible of precise measurement as to effect.

Over the 14-month period of the tripartite committee's administration of wage controls, the industry participants began to recognize that whenever controls ended and both sides were completely on their own, a large number of accumulated collective bargaining problems would have to be faced. Recognition of that sobering fact was the foundation on which this voluntary experiment was constructed.

There is no question that the fear of a new controls program, if nothing was done by the industry to meet the very obvious problems in front of it, nudged the parties into acceptance of the experiment. In addition, John Dunlop, Director of the Cost of Living Council, in his usual persuasive way was pressing industries still under controls to find ways to make agreements on the wage, price, and supply side in exchange for an early release from controls.

With all that, however, it is my opinion, as a close-at-hand observer and participant, that the formal and informal dialogue, the "unproductive and nonspecific exchanges" that took place in and around the weekly meetings, was the most important factor in making the joint committee possible. More than anything else, these exchanges nurtured an awareness on the part of the participants that the industry's collective bargaining problems might require some new approaches, some new mechanisms, and some

new relationships, or free collective bargaining in the industry would not survive another government intervention. What had also become apparent to the group involved, as the structure of the voluntary experiment became clearer, was that such a committee, if made up of people who had been sharing the controls experience, was in fact possible and could produce results because they had been doing it.

A necessary next step took place when a group of industry principals—labor and management officials—met with Dunlop and W. J. Usery, then Director of the Federal Mediation and Conciliation Service and Assistant to the President, to discuss the possibility of creating a forum for a continuing dialogue and relationship outside the normal collective bargaining process.

I would be remiss if I did not mention the contribution of Robert O. Aders, then chairman of the board of the Kroger Co. and now Under Secretary of Labor. It was he who first publicly suggested the formation of such a group, and he made a continuing contribution to its beginnings and its continuation.

This, too, had its curious aspect. Most of those invited to that meeting had never met their counterparts across the table. Somewhat surprisingly, the first discussion was productive—so much so that a group of “deputies” were appointed and commissioned to see if they could agree on a structure and possible agenda for a joint committee.

That exercise took three months of weekly meetings. The exchanges were frank, sometimes bluntly so. But an agenda was arrived at; it was approved by the broader group of principals, and with appointment of the first members of the working group (what we came to call the steering committee) by the principals in mid-April of 1974, the Joint Labor Management Committee “went public.”<sup>9</sup>

Certain portions of the original agenda reveal the major concerns of the two sides:

“The Committee is to serve as a forum for initiating and maintaining wage and benefit data collection programs and for the exchange of information to strengthen the ability of the industry to reach constructive decisions in collective bargaining. Labor, management, public and government representatives recognize that the information presently available on collective bargaining settlements, wage

<sup>9</sup> One aspect of these discussions was particularly interesting. We asked the parties to prepare a list of grievances. Each of the unions prepared its own, and the lists turned out to be virtually identical.

rates and wage patterns, fringe benefits, noneconomic contract clauses and bargaining timetables are not always so accurate, available or useful to all parties as it should be."

It became frustratingly apparent during the life of the wage-and-salary committee that there was an urgent need for more reliable economic information, and a data-collection survey of the industry by the Cost of Living Council had already begun when controls ended.

The agenda also made it clear what the committee *was not* going to be:

"If the Committee is to make a constructive contribution to the industry, it will have to be sensitive to interference with normal collective bargaining and respect the autonomy of the individual organizations. The Committee cannot and should not be a mandatory industry settlement organization.

"However, with reliable data that is kept current, and utilizing its role in encouraging open communication and exchange of information on a national basis, the Committee may be able to assist the industry in key contract discussions that might otherwise lead to major confrontations. Such procedures as encouraging early discussion of difficult problems, supplying information for such discussions, and bringing to bear national experience on local problems should be part of this function."

The agenda also proposed that "the Committee shall be a national forum for *discussions of longer-range industry problems that often surface in local negotiations and which may benefit from national attention to secure mutually beneficial results*" (emphasis added). Included in these longer range problems are such areas of mutual concern as the relationship between top management and the international unions—the need for a better understanding of the scope and limits of authority and responsibility on both sides; international and local unions' relations with the rank and file; lines of management and union authority at the bargaining table; technological change; government regulation; management and union work practices; fragmented bargaining; contract administration; and the examination of new types of dispute-settlement mechanisms. It should be noted that this is touchy territory for exploration even in the most mature and sophisticated of labor-management relationships.

Finally:

"Overriding all of the above, and implicit in the fundamental work of the Committee, would be to use the Committee as an ongoing

forum to broaden the base of communication between labor and management at all levels and on all subjects of mutual concern to labor and management. Therefore, in setting priorities, the agenda must reflect the role that individual members play outside of the Committee and the concerns of those who do not participate in its regular meetings—the local and regional representatives on both sides.”

In other words, the committee was meant to represent the interests of the total industry.

The agenda no doubt was presumptuous, considering the dynamics of the industry and the backgrounds and personalities of the 20 or more members of the original steering committee. The present formal structure looks like this:

1. The top officials of the three major unions—Frank Fitzsimmons of the Teamsters, Patrick Gorman of the Amalgamated Meat Cutters, and James Housewright of the Retail Clerks International—serve on an executive committee along with 11 representatives of the major food chains, all but one of whom are chief executive officers of their respective companies. The JLM committee receives financial support from all the parties that are individually represented on the committee, and additionally from the two major trade associations, the National Association of Food Chains and the Super Market Institute. Some company representatives serve in two capacities—as a representative of a company and in addition, in a larger sense, as a representative of one of the trade associations.

The role of the executive committee has not been well defined to date, and the members do not meet as frequently as both they and I would like. But the very existence of this group is fundamental to the effectiveness and to the survival of the committee. Top officials on both sides must continuously put their stamp of approval (or disapproval) on the work of their subordinates, and periodically they must meet with the chairman and with each other.

2. The day-to-day work is in the hands of the steering committee. This group now numbers 26, including the chairman. Management is represented by the chief industrial relations officers of 12 firms, and each of the unions has a minimum of three representatives who are top international officers and/or district directors. In the case of the Teamsters, there are representatives from each of the four conferences in addition to representatives from the international.

In this industry it is a massive problem to cover the country. An analysis of the collective bargaining structure, however, reveals that we cover all the organized segments, and through one or more of our members we are represented in every substantial negotiation in almost every market area of the United States.

The steering committee has been meeting monthly for at least a day and a half for the better part of two years. In addition, we have created a number of subcommittees to deal with special problems on assignment and to recommend action to the full steering committee.

Since the inception of the Joint Labor Management Committee, our basic agenda has not been broadened, although the emphasis shifts from time to time; in some respects the agenda has been narrowed. From the beginning, the committee has operated by consensus; no votes are taken. The forces that created the need for such an experiment, the personalities and experience of the participants, and the structure itself limit the committee. All impact on the members' ability to grapple with sensitive issues and/or to reach a consensus on any issue. In addition, the dialogue takes place in an unstructured atmosphere where commitments are not necessarily required and decisions do not have to be made on the spot.

It must be recognized that the committee and its chairman have no direct power. That kind of atmosphere is foreign to the members of the committee, who are always impatient to "deal" and move on to the next problem. It often creates a frustrating feeling that nothing is happening.

Because the JLM committee provides, in my opinion, a unique role for a neutral chairman, I would like at this point to examine it a little more closely. How did the parties and the chairman perceive that role?

It was clear from the outset that without a third party serving as chairman, there would be no committee. It was not necessary to define the role with precision. All that was needed was an underlying consensus that the parties needed help. Although both sides recognized the need for an impartial chairman, each side's perceptions of his role, if any, were different.

In the beginning the management members perceived the chairman as a rescuer, not just an organizer to keep the parties together and talking. Somehow they hoped, even believed, that the person who was chairman would change the picture because



they had agreed to the establishment of a joint committee and the appointment of a chairman. The unions, originally less enthusiastic about the project in many respects, were fearful that the chairman, and particularly the individual agreed upon to occupy the chair, would attempt to continue to play the role of chairman of a controls board. But neither party wished to give the chairman any power. They created a czar without clout. In fact, in the planning process, there was no consideration given at any time to clothing the chairman with specific powers other than the power to call and preside over meetings.

The question of whether the chairman would serve on a full-time basis was interesting. I don't believe that most practitioners who serve in a variety of third-party capacities conceive of these assignments as full-time occupations except perhaps for short periods of time. John Dunlop, with his capacity for three-tier evenings, early breakfasts, and late-night study, thought that the assignment might require a commitment for two or three days a week in the early stages. The parties, interestingly enough, assumed that a full-time chairman and a small staff went with the territory. They were not interested in anything less, for it was generally believed that the process would never get off the ground any other way.

Quite apart from personal preferences, I agreed with the parties. I thought then and I think now that a committee of this kind in an industry this complex requires full-time attention for an indefinite period. That conclusion has proven to be correct to date.

Steering a path between the divergent expectations of the parties and the limits of power was and is difficult. It has been hard to move the parties to a position where they do not look to the chairman to perform those miracles they have not given him the power to attempt; to move the parties to recognize that they—the committee members—and not the chairman are the only source of power; to channel the dialogue constructively rather than to umpire adversary exchanges. The early atmosphere that I have described was not conducive to accomplishing these things quickly, and the frustration of the participants with the instrument they had created was often vented on something called the committee and someone called the chairman.

The most difficult lesson for the chairman to learn was to accept the fact that indeed the role was powerless by design. The

challenge, therefore, was to work with the parties to establish a joint authority from a consensus on any issue. Given the structure which was and is probably the only acceptable one, creating consensus even on a minor issue becomes the first critical goal. This process takes an inordinate amount of time and requires full-time attention from someone.

The understandable suspicion and tentativeness that surrounded the initial commitment to embark on this tortuous road in April 1974 was immediately apparent when the parties committed themselves to only an eight-month "experiment," until December 31, 1974. The question of continuing beyond the end of 1974 was left for review 60 days prior to January 1975. The chairman was asked to serve for that period only.

Doubts and suspicions about the concept were plentiful. There was a fear among some of the unions, even with the friendly and reassuring faces of John Dunlop and Bill Usery before them during the planning process, that the purpose of the committee was to continue wage controls on a voluntary basis and to make them pay for it as well. This prospect seemed to some unions to be politically difficult at best and outlandishly foolish at worst. Management feared that the lack of trust that historically existed among the firms and between the firms and the unions would inhibit their ability to act. This is understandable; labor cost is a high proportion of total cost, so that a lower labor rate often gives a firm a competitive edge. Management also believed that the unions stood to gain most from participation in broad industry discussions.

This is curious. Management representatives often hold the view that open communication between the firms and the unions on an industry-wide basis benefits only the unions, that in some way the unions gain knowledge and/or insights that otherwise would not be available to them. This feeling still persists, to a degree, and it is a difficult barrier.

Unfortunately, the economic climate during the experimental period immediately following the cessation of controls overshadowed almost all other factors. Despite the expectation that Phase IV would be the last of the controls program, no one in the industry expected it to end as abruptly as it did on April 30, 1974. That surprise had an immediate and predictable effect on negotiations in the food industry, which for 22 months had been smarting under mandatory controls that decreed that any wage or

salary increase over 5.5 percent had to be approved by the government. Management was quickly frustrated by its inability to hold down the cost of settlements coming out of the controls chute. The unions resisted any "interference" with their two goals of catch-up and protection against future inflation.

These factors, however, obscured the fact that other things were happening to the parties. In a report to both committees at the end of the trial period, I stated: "If I were asked to sum up the collective experience of the JLM Committee to date in one sentence, I would be inclined to quote the famous Philosopher Pogo who said, 'We have met the enemy and they is us.' It was clear from the beginning that each organization and each individual joined the effort with different degrees of enthusiasm and with different expectations." There were:

. . . those who hoped the committee could be a vehicle for continuing a form of wage controls, for exercising leverage on local bargaining situations to keep wage settlements down.

. . . those who reluctantly accepted the concept of a committee with a combination of distaste and disdain because they viewed it as the price for decontrol, or for avoiding more stringent and perhaps permanent regulation in the future.

. . . those who felt the committee was the only game in town. There were some in this group who suited up for the game because they were afraid not to, some who felt they must pretend to be playing, and some who felt the game should be played even if the outcome was uncertain.

. . . those who saw the committee as a genuine opportunity to improve communication between labor and management at the national level and who hoped it would become a forum for responsible dialogue on the economics of the industry, the relationship of wages to inflation, and the criteria that might be used to measure responsible collective bargaining settlements. This group also believed the committee could develop new approaches to the problems of fragmented bargaining, whipsawing, me-tooism, etc., and use its influence and "power" to put these ideas into practice, and could develop approaches to other fragmented problems that infringe on collective bargaining, such as health and safety, equal employment opportunity, and the introduction of technological change.

It is not surprising that the pilot period was one of water testing by both sides. Reactions ran the gamut from mutual euphoria to severe disillusionment on a weekly basis.

But some substantive differences also emerged. The unions' resistance to interference in normal collective bargaining, except for off-the-record contacts and behind-the-scenes maneuvering, proved not to be a passing fancy. Except for one joint attempt by the committee openly to restructure a historically fragmented set of bargaining relationships in the Baltimore-Washington area, that attitude prevailed throughout this period. That effort did, in fact, result in bringing four locals, two Meat Cutters and two Clerks, under one contract expiration. The contracts, for a three-year period, conformed many of the contract clauses and eliminated differentials in health and welfare benefits. The unions, although they cooperated completely in putting together the Baltimore-Washington rationalization and approved the results, did not translate their feelings into a positive view of more direct public intervention in specific bargaining situations. They were, and still are, sensitive to the political dangers of disrupting local autonomy and constitutional procedures. Landrum-Griffin makes international union officials more and more cautious about using their direct power to resolve conflicting views in their own house. Some of the employers also viewed the results of this attempt at restructuring as too costly and feared that they were taking the first steps down the road to regional bargaining.

The testing period was particularly influenced by the nature of the roles that the participants play in their respective organizations and across the table from each other. The traditional adversary relationships were much in evidence; role reversal or modification was not an early agenda item.

But there were positive changes within the committee. The parties had no difficulty identifying many unresolved problems of the industry or recognizing where weaknesses existed in its collective bargaining structure. They had little difficulty in agreeing on the problems that the committee should address, and the committee as a whole began to realize that there was indeed a fat agenda of problems before the industry. The participants got to know each other and increasingly interacted privately and publicly in a more relaxed fashion. Committee members became aware of each other's strengths and weaknesses. The group surmounted the first wave of the hard facts of the economic life in late 1974, and each member recovered well from the stunning realization that the person across the table was not nearly as rational or irrational as he had thought when listening to him speak in the first few meetings.

In commenting on this and other problems as we started our first full year of operation in January 1974, I told the committee:

“We need more risk taking, particularly in the discussion of sensitive issues so that individuals on both sides dare to say things that may provoke people inside and outside of the group. The Committee cannot succeed if after eight months, its members hesitate to speak their minds for fear the reprisal lurks under or on top of the next bargaining table. If the labor and management representatives hold their serious discussions in separate formal or informal caucuses, the work of the committee suffers. Strong and important feelings about vital issues are submerged in a report, a proposal, or a resolution in carefully couched language, reminiscent of formal negotiations. This approach creates responses that are inhibited and rigid. I have from time to time facetiously suggested that if I wanted one power in the new year, it would be the power to decide who goes to dinner together the night before our monthly meetings.

“There is really only one way this will change, and that will be by your decision to drop the bargaining, drop the posing, drop the traditional role playing, take some risks and go to work. The results of this change will be dramatic. We will move the Committee to a new level, increasing its ability to deal with the problems that have already been identified, and will surface problems not yet on the table because the parties have either feared to put them there or been unwilling to face them there.

“In a new kind of atmosphere, the Committee’s activities will inevitably increase and its base will broaden. Without these changes, the subject matter will not expand and the discussion will congeal because of repetition. There will be little or no progress. With these changes, even unrealized and unthinkable expectations can be channeled where they belong—on the parties. The enemy is indeed us.”

In the early months of 1975 there was a marked and positive change in direction. The executive committee had extended the committee’s life for one year. What was implicit in this action and highly important was that the industry principals expressed their faith in a process that was still unproven and controversial.

The first meetings of 1975 produced some special kinds of changes. There was a good deal more candor in discussion, but unfortunately not much more trust. Exchanges were considerably more open; there were fewer long periods of silence when one knew that individuals were seething underneath. By this time, most of the initial round of post-controls bargaining was over. While each side viewed the results differently, there was more concentration on the future than recriminations about the past.

As a result, the committee was able to focus on a number of important issues that had been on the agenda from the beginning, and members in the meetings began to expand their views about subjects that might be raised for joint exploration. However, the intense dialogue that had taken place over the months on various matters was locked securely in the hearts and minds of the participants and in the purposely sparse minutes of the meeting. The fact was that the same discussion topics appeared again and again on the agenda without resolution or action. There just was not much meat for publicity releases or a Sunday *New York Times Magazine* article. Indeed, any move to publicize broadly the work of the committee would probably have brought about its destruction. The profile had to be kept low.

There was one major constraint on the development of public statements that was probably not anticipated: Such statements would be joint statements arrived at after joint deliberation, not after deadline bargaining. Such decisions are quite different from the decisions reached through the bargaining process and can be dangerous for the parties.

The first public statement issued by the committee established a health and safety committee in October 1974. At the same time, intense discussions were taking place in the committee on the fundamental issue of formal intervention by representatives of the committee in the collective bargaining process. No public utterance was made to reflect this, except by implication in a much-debated and weak statement the same month, which said: "It is the policy of the JLM Committee, in its contribution to the fight against inflation, to encourage fair and equitable settlements. . . . To facilitate achievement of this policy the Committee will assist in key collective bargaining situations."

Some months later, an equally hotly debated document, entitled "Procedures for Collective Bargaining," was released. It set forth 10 simple principles to be followed by the parties in the conduct of negotiations in order to avoid unnecessary strikes and/or stoppages and to improve the bargaining process.

On reading, these 10 principles seem to do no more than approve the flag, mother, and apple pie. They are, in fact, just those sensible guidelines followed in every mature collective bargaining relationship. But the important thing to know is that the parties thrashed these out on their own, even though they seemed to be reinventing the wheel; they were not imposed from the outside.

The principles represent what the parties thought ought to be observed by negotiators in the retail food industry. It was a thoroughly positive act by the committee.

Since that time the committee has held numerous discussions on a variety of topics and has developed positions, taken action, or had under review such topics as the introduction of the Universal Product Code and the automated checkstand, a revolutionary innovation in retail markets with significant work-force implications; a national contract data-collection system; a proposed health research program on environmental conditions affecting employees in the meat departments of retail markets; and equal employment opportunity laws.

Recommendations for consideration and/or action are carefully worded to take into account the fact that the committee's basic mandate is to deal with collective bargaining and reflect the fact that the committee has no power to impose "solutions." And there is a strong sensitivity on the part of members to the potential reaction of those in the management and union ranks who are not sitting in the meetings with them.

By the fall of last year, 16 months after the start of this effort, the committee had moved to the point where individual members did not fear to put tough and sensitive issues on the table or to assign such issues to subcommittees for consideration and/or recommendations for action.

In what has been an important step by the committee with respect to the collective bargaining role, earlier this year we "targeted" more than two dozen contract expirations where it was considered possible for us to make a contribution toward a settlement. This represents a substantial change in the committee's earlier tentative approaches to intervention. The practical effect is this: By joint agreement, the committee has publicly announced its concern about those negotiations. The purpose of this is to let the local parties know that, for one reason or another, both sides represented on the JLM committee believe that the results of those particular negotiations will have a pronounced impact on 1976 bargaining and/or they are likely to be trouble spots as the year advances. In each instance I have appointed representatives of both sides—some who are directly involved, others who are not—to track these negotiations with the parties and with my office to see at what point, if any, the services of our committee in some form could be productive.

The joint willingness of the committee members to undertake this broadened intervention stems from a successful intervention experience in southern California late last year, directly involving the retail food-industry employers association there and 54,000 employees in nine Retail Clerks locals.

The committee's assistance came at the invitation of both parties and provided the first thorough test of our intervention policy. Our role was given substantial credit for helping to avert an almost certain strike and brought praise from the parties involved and from the Federal Mediation and Conciliation Service.

The southern California experience provided working proof that the committee could play a constructive and positive role in collective bargaining situations. However, the cardinal rule is that it is not the intent or the desire of the committee to sit at the bargaining table; that role is left to the local parties. And any participation by the committee comes only on joint invitation of the local parties.

This is ticklish business. To date we have been accused of meddling in situations that were better left to the parties, I have been accused of holding secret meetings with one side while ignoring the other, and the committee has been invited into situations by one party and not the other, thereby incurring the wrath of the noninviting party.

Simultaneously, however, there have been a number of instances where the mechanism of communication that was established early by the implementation of this informal policy has been used effectively in concert with the FMCS to influence the bargaining at critical stages. Without the existence of this mechanism and the fact that it has been operating in advance of negotiations, this would not have happened.

Another feature of this approach, which has embarrassed various officials on both sides, has been what I call the spotlight effect. There is an inverse human ratio between those keenly aware of the problem and their willingness to admit it and accept assistance, no matter how carefully proffered. But the game won't wait. The risks of intervention are clear; the risks of surfacing publicly are clear; the risks of spotlighting are clear. But they are not nearly as great as the risks of doing nothing when agreement can be reached that a given situation requires at least attention, if not action.

The targeting of negotiations represents recognition by the



committee, albeit with different levels of enthusiasm, that we must move more aggressively to identify the problem areas. We will still constantly disagree among ourselves as to method, techniques, and approaches in each instance. But there is now a general recognition that the highest priority must be given to developing the role the committee must play in the collective bargaining process. Management believes it is the number-one priority. The unions are wary of that emphasis. Whether this difference is one of degree or of kind has not been settled at this stage of the committee's life.

In September 1975 the executive committee was asked to review again the steering committee's work and decide the question of the committee's future. It responded by extending the committee's life for three years, effective January 1976.

I think this decision caught the steering committee by surprise. The experimental nature of the committee's life up to that time had created a certain psychological set among participants and nonparticipants alike. For outsiders who looked upon the operation with suspicion, its temporary existence was comforting. For those who were out but wished to be in, it was good to know that the experiment would be short; that meant it would fail. In that event, of course, the outsider might let it get around that his absence had foreclosed any chance of the venture's succeeding.

The insiders with starkly negative views walked a tightrope between feigned participation and real inaction, comforted by the fact that if the experiment failed, they at least had given a full measure of public support. For those whose views and whose hopes were positive, the temporary nature of the committee's existence up to that time was logical in terms of the history of the relationships, the nature of the industry, and the ordinary problems that go with change. Therefore, the decision by the executive committee, to, in a sense, institutionalize the program, even if only for a few years, was more traumatic than I think any members of the committee or the chairman realized at the time.

One might argue that it was merely the time for this step to be taken and that the parties had had the time necessary to crystallize issues, to form priorities, and to adjudicate conflicting opinions among members of the same group. But in the six months since that decision was made, there has been a series of subtle changes in the committee's view of its own role.

The role of the chairman has grown with the parties, as has the chairman. To the extent that the parties have changed, he has changed, and to some extent his role has changed. The basic assignment remains the same, the basic structure is the same; but the atmosphere is quite different. The parties now expect and urge the chairman to increase the activity of the office, to be more publicly visible on issues even where there is not total agreement on procedure. They trust the chairman and his representatives to move often on motion, in specific collective bargaining situations, negotiations, or other matters. This is a limited but important step.

For example, the chairman has been serving for the last year as a member of the Public Policy Subcommittee of the Ad Hoc Industry Committee on the Universal Product Code. This was a recognition by the industry's management that it looked to the Joint Labor Management Committee as the body to consult on any matter affecting collective bargaining. As a result of that move, the committee has been able to broaden that relationship, and the Public Policy Subcommittee has agreed that all information on the development of UPC-related technology will be shared with the unions through the Joint Labor Management Committee. It is interesting, however, that the one attempt to establish a three-way dialogue with the consumer movement through the committee was strongly resisted by management.

It is not clear at this stage, however, whether the parties are interested in assuming greater power in the committee or giving greater power to the chairman. It is not at all clear that such a policy would be wise now or in the future. That question will become important only if the parties, by consensus, determine to assert themselves in a more organized fashion as a committee than they now do. Then and only then will they be able to define a changed role for the chairman. At present, we are far from that place.

As for the parties, the unions as a group have not changed as much as has management. Individual union representatives have gone through a variety of changes of view about the role of and the priorities for the committee, but these have largely been individual reassessments as circumstances and relationships change. Union attitudes and attitudes about positions continue to have a heavy political flavor, however. In some specific situations, for ex-

ample, where I have suggested restructuring bargaining to make it less fragmented, to eliminate whipsawing between unions or among companies and unions, most of the union members of the committee hesitate to step forward publicly unless they are sure of the firmness of the political ground. On the other hand, they are committed, through the basic agenda of this committee, to undertake to stabilize such situations, and they have worked hard, although quietly, behind the scenes. We have been able to change some situations. We have prevented some unnecessary strikes and helped settle some major confrontations. However, these efforts have been too slow and too carefully orchestrated to impress management.

It is management's conviction that union leaders lack only the will to rearrange any local condition that needs changing. Unwillingness on the part of labor to agree to intervene publicly in difficult situations, without careful assessment of the likely outcome, has cast doubt in the minds of management on the sincerity of labor's commitment to the committee. They see this as a kind of agenda cop-out. Nonetheless it has forced management to look inward. Put another way, if the committee cannot do it, the chairman cannot do it, and the unions cannot do it, who can do it?

Let me illustrate this change in the following way. The significance of the illustration goes beyond the specifics. It describes the history and the development of the dynamics and challenges of this committee.

At least two major policy controversies surfaced early, as I have said, that even today have not been totally resolved: the extent to which the committee should intervene in specific collective bargaining negotiations and the role the committee would or could play in those situations. The latter problem took on very subtle shadings. Since the unions feared that they were agreeing to controls on a voluntary basis, they suspected that the influence of the committee, the activities of the committee, and the whole thrust of the committee's work would limit the size of settlements. From the political point of view, this was untenable. They smarted from the record of controls as they perceived that record, and they were and are concerned about the extent to which they can, in fact, control local or regional negotiations even if they wished.

The companies, on the other hand, viewed the question of intervention in specific negotiations on economic issues as fundamental to their objectives. One of their principal hopes, often

unexpressed, was that the committee would make a major contribution to their number-one priority—the need to control rapidly rising labor costs in an industry where the labor content of every cost dollar is around 60 percent. Under heavy pressure from consumers and government with respect to prices, pressed by narrow margins, and worried about the capital required for the development of needed technology, management has pressed impatiently for labor's cooperation in those areas that are clearly the most sensitive and politically dangerous for the other side.

It was not surprising, therefore, that early attempts to get full agreement on the intervention role of the committee were largely unsuccessful. An early suggestion by management that the union withhold strike sanction in situations where the committee believed a threatened strike was unnecessary or the demands of one side or the other were inflationary or outrageous was not well received by the unions. Quite apart from their political concerns with respect to local autonomy, the unions believed then, and to a large extent believe now, that the great danger of telegraphing intervention is that one side or the other will freeze on its most extreme bargaining position. In addition, none of the members of the committee views the major role of the committee or the chairman as that of a supermediator. A national representative of the Federal Mediation and Conciliation Service sits as a regular member of the committee and works closely with both the committee and the chairman on all disputes or threatened disputes in the industry. It has always been the consensus of the group that the pure mediation role is well assigned to that agency and to others; that the committee, through its members, should be of assistance as mediators in special situations; but that the committee should devote its time and resources to solving more fundamental questions.

In the area of specific negotiations, the question that management has been struggling with is this: The mediator's role is to bring the parties to a peaceful agreed-upon settlement. The committee's role must go beyond this, if, in fact, the agenda commits the parties to restructure fragmented bargaining, eliminate whipsaws, and promote noninflationary settlements. These are three assignments no practical mediator would ever wish for, be asked to perform, or accept. Yet they are deep commitments expressed in the Joint Labor Management Committee agenda.

And at the same time, some management spokesmen pressed

hard for opening a dialogue on the question of what criteria could be agreed upon to determine whether a particular settlement was, in fact, inflationary. The union members of the committee must be commended, for in the privacy of our monthly meetings, which are hardly shining examples of bastions against security leaks, the parties did indeed decide to appoint a subcommittee to discuss these sensitive economic questions under the general title, "The Criteria for Collective Bargaining."

No one knew at the time where these discussions would lead. Somewhere in the background lurked the management view that a process of education and fact-finding would sober the unions' economic views with respect to settlements (what they would do with this information was not clearly thought through or expressed). For the unions' part, I doubt that at that time they considered it likely that any meaningful results would come from these discussions or that any results could be quantified or agreed to. However, a general document was written setting forth agreed criteria. If one could quantify these criteria, then there would be a basis for dialogue on the meaning and/or application of the numbers. The question of what the committee might then do was not discussed.

Concurrently, the chairman's office had been compiling wage and benefit data from the collective bargaining contracts of committee representatives. We have now compiled enough information from those sources to make meaningful wage and benefit comparisons and plot trend lines. In the last two meetings, we have been able to put on the table for comment and criticism a quantitative analysis of selected 1976 negotiations.

Initially, the reaction of the parties to this process was routine. Each side viewed the material as statistically interesting but not profound. That reaction soon changed. Management now views this information as the springboard for serious discussion on where the committee should direct its intervention efforts and on what facts should be brought before the parties in negotiation. In management's view, this is an important foundation for forcing change in the traditional bargaining structures and in the traditional results. They view this development as critical to the bargaining in 1976 and hence critical to the future role and, in fact, the life of the committee.

The unions have not, in my judgment, fully assessed this development. They have never been dedicated to rigid tests of the committee's usefulness or interested in "go, no-go" tests to deter-

mine its future. They have been more patient and balanced than management about both its successes and its failures. This can be explained in part by the fact that union officials' lives are political and require more day-to-day flexibility and constant adjustment to the shifting winds of fortune in their own organizations than the more rigid, controllable internal structures of management.

However, the unions are not insensitive to what management is saying. Whether they publicly can say so or not, they are well aware of the problem of inflation and the fact that their future is inextricably tied to the success of the organized segment of this industry. They are acutely aware of the unorganized. They do not support fragmented bargaining, whipsawing, or leapfrogging in principle. They know that some area rates are higher than they should be (and others may be lower) and that this leads to more patterned leapfrogging.

They are at this stage, I believe, somewhat puzzled by the singular importance that management attaches to the criteria and to public intervention in combination as a test of the committee's utility, almost but not quite to the exclusion of other committee activities.

The unions are disquieted by these developments. They are not eager to accept the public-intervention role. It would require them to press on unstable memberships and ambitious and independent subordinates (they blame the changing nature of the work-force age and minorities and the Landrum-Griffin Act for much of this sorrow) facts, figures, and pressures that would create internal political problems at best and outright rebellion at worst. They point out that overt attempts to influence local bargainers directly with economic and statistical arguments will be met with resistance and that the resistance will be directed at them and at a meddling committee. The unions will then have to make a choice. They may have to come down in favor of abandoning a joint committee that forces them to support interference with local autonomy and distasteful solutions to problems. If one wishes to preserve the constructive side of this committee, the unions argue, management would be well advised to heed their advice: Avoid public interference and open confrontation with local or regional leaders; try to use the good offices of the committee and its members in a more careful, quiet, and flexible fashion in such situations; and continue to work publicly and aggressively on broader problems that the local folks can't solve,

*e.g.*, technological change, pension reform, the cost of health care, and equal employment opportunity—problems that clearly require a national dialogue to provide rational frameworks for local bargaining.

In the meantime, the committee can continue to work quietly to change outmoded structures, to avoid strikes, and to influence settlements, but with a careful and low-key approach—as, in the unions' opinion, it has been doing. Some situations can be changed now, but others cannot, the unions believe. Management insistence on rigid applications of economic formula will backfire, and union officials who believe in the committee and its potential will be forever suspect.

Finally, there is the unions' suspicion that management wants to do the job that management historically has been unable to do for itself and that it doesn't want the government to do: organize its own forces to present unified industry policies.

Management is concerned about the future. A rising-cost picture, whatever its cause, will most likely be followed by rising prices. Rising food prices infuriate consumers, alert government enforcement agencies, and drive out marginal operators. The unions have additional fears. They fear that the employers will conclude that controls are better than the market system as it is presently structured. One major union is not opposed to that idea: Frank Fitzsimmons of the Teamsters has said on more than one occasion that mandatory controls, if equally imposed on all segments of the economy, may well be the only solution to our present-day domestic economic problems. They are caught between the Scylla of their internal union structures and the Charybdis of wage controls in their future. While the talking is going on, negotiators are establishing important patterns everywhere. The facts of life run ahead of rational discourse.

Discussions in the next few months will be crucial. The collective bargaining calendar is unfolding fast. The introduction of a revolutionary technological advance is upon the industry—the development of the Universal Product Code that makes it possible to computerize numerous store operations, eliminate price marking of individual items, and utilize automatic checkstands. The new Pension Reform Act and other legislation, EEOC, and OSHA pose huge problems for the industry. All impinge on the collective bargaining process. None of these problems will be satisfactorily solved at single contract negotiations in one area of this country, nor will they be satisfactorily solved by legislators,

the courts, or government agencies. Where will it get done? Management has pinpointed its major concerns. They feel that the inflationary impact of major settlements on the industry is the number-one priority and that the committee has failed in its responsibility to bring that priority jointly to the tables around the country and to find a structure for impacting those negotiations. They accept case-by-case analysis, but argue for agreement on "first" principles. They challenge the unions to join in this analytical process and ask that after that process is completed the unions work with them in the marketplace.

The unions suspect that management consciously or unconsciously wants them to join a voluntary controls program. They don't believe that either party can make it stick, and they fear that managements will always foul their own nests when under pressure in key areas of the country. They question whether managements can produce an organized stand in support of their own concepts that will withstand the pressure of strike deadlines.

Although there has been some evidence of more management will in this respect, the unions are right to view this as risky business. Both sides are correct. The history of fragmentation is a joint history. Today the chains are still ambivalent about cooperation. Whether they are ready to take labor cost out of the competitive equation is still an open question in most areas of the country. Their desire to present a united front is too often tempered with a desire to maintain whatever historic edge they have enjoyed over their competitors. And they also have a deep underlying concern that is usually unexpressed: The more the *employers* organize in a given city, state, or region, the more they may be exposed to the ultimate challenge of broader bargaining units. As the bargaining area gets wider, the risk of losing historic differentials vis-à-vis their competition in both organized and unorganized segments of the industry becomes greater. The unions argue that unless management is prepared to discuss the prospects for coordinated bargaining, a broader application of agreements in some form, and national clauses to cover issues such as technological change and equal employment opportunity, there is little hope of relieving the pressures of fragmented bargaining.

It is the need for this dialogue that is the crisis that confronts the committee at this stage. It will probably take place. Yet without the underpinning of almost two years of monthly JLM committee meetings, I am not sure that such a dialogue could ever take place in this industry.