

CHAPTER VIII

TRENDS LIKELY TO AFFECT
LABOR ARBITRATION *

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When invited to participate in this program, I readily accepted, because I esteemed it a compliment to be invited again to address the National Academy of Arbitrators. I have never been a professional labor arbitrator; nor have I ever done much private labor arbitration. I still occasionally have an *ad hoc* arbitration case, but my regular job as a university professor prevents my taking many arbitration cases. I also acknowledge there has not been any overwhelming demand for my services. But I was a charter member of the National Academy and was honored to deliver the dinner address at your first annual meeting.¹ I have since attended every annual meeting that I possibly could. I have not contributed much to the Academy, but have enjoyed the friendship of many of you. With the lapse of the years these friendships have ever become more precious to me.

As my last lecture at Cornell was to be on January 21st, it seemed possible to come to this meeting. So I at once accepted Art Ross' invitation to speak to you on this occasion. But I got cold feet, when Art asked me to talk on the current economic situation. I know that I am not a prophet or a son of a prophet, and frankly I do not know what are the overall prospects of business. Asked to suggest another subject, I suggested

* Address given at the Seventh Annual Meeting of the National Academy of Arbitrators (Washington, D. C., January 22, 1954).

¹ See Chapter I of this volume.

the title which appears on the program. I had not thought through what I might say. But I hoped that something might occur to me, in the interim, which might be of interest to you, but I have had no bright ideas and, certainly no words of wisdom.

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Following consideration of the business prospects for 1954, a subject on which we have so many infallible experts—I must next address myself to the \$64 question directly concerned with my announced subject—Trends Likely to Affect Arbitration. How will arbitration be affected by continued business recession, a deep depression, or the much to be hoped for progress to new peaks in national production and per capita income? On this subject there are no profound pearls of wisdom from anyone, and, certainly, I cannot utter them. All that I shall attempt is to categorically set forth some not so profound beliefs of my own.

Whatever effects changes in business conditions may have upon labor arbitration, it seems to me will result from the effects the changed business conditions will have upon labor-management relations. Here, what has happened in the past is of some significance, but our experience with recessions and depressions since we have had strong unions and extensive collective bargaining is but limited.

When recessions occur, with extensive unemployment, unions are likely to lose members and suffer reductions in their income. Corporations have lessened sales, and profit margins are likely to fall. In such a situation, competition is likely to become more keen and increased efforts will be made to reduce costs. Although wage rates are not likely to fall immediately and, for a time, may continue to increase, hours will tend downward and overtime will largely disappear, with resulting lessened take home pay. Managements will resist more strongly union demands for wage increases, further fringe benefits, and other cost-producing labor gains. The workers certainly, will not be happy with reduced incomes, but the knowledge of increasing unemployment will make unions more cautious in their demands. Grievances

seem to me likely to increase and to be more sharply contested.

Recession may produce some increase in labor arbitration cases, but the costs of arbitration will act as a deterrent, especially to small local unions hard pressed for funds, with a falling off in union dues. On balance, I would expect some increase in labor arbitration, with a continuing, but not too serious business decline—more work for the arbitrators, but some need for reducing charges or more trouble in collecting bills in *ad hoc* cases. But, as I see it such a development is likely to have its most pronounced effects in the political field. We are living at a time when unions, like farmers and businessmen, turn to government for help when economic fates are unkind. Even a moderate, but continuing recession is likely to overturn a government in power, but less likely to result in much increased labor strife, despite increasing tensions.

On the effects of a really serious depression, we can look for probabilities only to what happened in the nineteen thirties and earlier. Until the great depression of the thirties, depressions have always resulted in seriously weakening the unions—although some unions have survived every depression we have ever had. The unions experienced a further decline in the early years of the great depression—a trend which developed in the prosperous twenties—the only long period in which American unions have not gained in a period of prosperity. But it was when the great depression was at its worst that the turning point occurred. Beginning in 1933 and developing at a quickened pace in the second half of the thirties, the unions made phenomenal gains. Management generally ascribes this development to governmental favoritism, but the deep dissatisfaction of the workers and the aggressiveness of union leadership were probably more important factors in the progress of unionism and the widespread acceptance of collective bargaining.

It was commonplace, a few years ago, to say that the country could not live through another depression like that of the nineteen thirties. Everyone expects that it would sweep out of office any government in power at the time and quite likely bury the party in power so deep that it will have difficulty

recovering. A great depression is, of course, what our enemies, the Communists, have been counting upon to destroy us. For years they have been predicting a collapse of our economy through another great depression. I think, the American way of life would survive even such a calamity, but with nearly all Americans I hope it will not, again, have to go through such a fiery cauldron. What would happen to arbitration in such a situation, is certainly of very secondary importance. If the American way of life survived, arbitration in some form would also survive, because the settlement of unsolved disputes over the meaning and application of provisions in labor-management agreements has become a part of the American way of life. And it is my belief that in such an emergency, we will surely get increased governmental control of labor relations; if private industry endures, some form of compulsory arbitration.

But consideration of what will happen to labor arbitration should a deep depression develop is going pretty far afield. We are not in a deep depression—the Communists to the contrary. And it is unthinkable that we will get into a deep depression without our National Administration using the entire arsenal of measures developed in previous Administrations and some additional measures to prevent a depression. Moreover, business conditions do not alone affect the trend of developments in labor relations. While important, many other factors also exert their influence. Among them unity or dis-unity in labor ranks, the developing law, governmental policies and actions in labor relations matters, patterns of labor and management thinking, the general climate of public opinion, and still others. So we need, realistically to appraise the entire labor relations situation and not merely speculate about the possible effects of recession or depression on labor arbitration. That is even more difficult than business forecasting, as more variables have to be taken into account. Model building, mathematics, and even statistics cannot be of much help and preciseness in the interpretation of trends is unwarranted. But there may be some value in calling attention to some elements in the present situation which may affect the future of labor arbitration.

A central question concerns: Will we have more or less labor-management strife? Two months ago, I heard one of the best informed observers of the labor scene, whom I shall not name, make the prediction that we are in for bitter strikes, knock-down and drag-out fights between unions and employers in many areas, old time strike-breaking, and much violence. This observer referred particularly to the New York waterfront, but also to the prospects of a major railroad strike, the aggressiveness of the teamsters, the plight of the Coal Miners, the emergence of the issue of guaranteed annual wages, the persistence of demands for wage increases and higher fringe benefits, and the feeling in management ranks that now is the time to fight it out. I thought this was an unduly pessimistic view although probably correct for some areas and segments of American industry.

What has happened since then has given me increased confidence in my appraisal of the situation, although I recognize the much greater authority and superior opportunities for observation of others, and must always utter the caution, "I am not a prophet or the son of a prophet." So far there has not been a great increase in strikes. On the railroads, the carriers and the Trainmen and the Firemen have arrived at new agreements through collective bargaining, without a strike or government intervention—something almost unprecedented for many years. The negotiations between the non-operating railroad unions and the carriers have not come to such a happy ending, but have now reached the emergency board stage, in the long process of kicking around controversies on the railroads until everybody is tired of them, which has generally resulted in a long delayed settlement, avoiding an interruption of operations. On the New York waterfront, the unexpected has been happening: John L. Lewis' coming to the support of the old union, an untimely N.L.R.B. election which, although intended to clarify the situation has added to the confusion, the N.L.R.B.'s holding up certification, repeated threats of strikes, and some limited, but so far, no port-wide strikes, and as seems to me, much less violence than expected—all happenings

making the headlines, but, I cannot believe, symptomatic of the situation in American industry generally. There are some criminals in the labor movement and also in the ranks of management, but the New York Port situation has aspects of a war on crime more than those of a normal labor dispute.

The year 1953 had somewhat fewer strikes and far less days lost than did 1952. The pronouncement that this resulted from the coming in of a new Administration and a "hands-off" policy by Government seems to me to have little basis beyond "politics as usual." The great reduction in time lost because of strikes was attributable almost entirely to the Steel Strike of 1952. To place responsibility for that strike entirely upon mistaken governmental policies of the Truman Administration is not only highly partisan, but, in the long run may not even be good politics. We had smaller strike losses than in 1952, because but few of the major labor-management contracts expired in 1953. But the steel contract does expire in 1954 and may lead to a strike, in which, if prolonged, the Government can scarcely sit idly by, any more than it has adopted an attitude of indifference in the New York waterfront difficulties. Political claims for credit for the strike record of 1953 may, conceivably, backfire in 1954.

Advisedly I say "conceivably," because I do not look for a revival in this year of the widespread labor-management warfare of the late thirties or that which followed World War II. The Steel Contract expires in 1954, but the Automobile Contracts run until 1955. Labor leaders will be well advised not to go into strikes, if they can possibly avoid them; and this, as I see it, also applies to management. Because the Republicans have taken over the National Government and there is, undoubtedly more of a disposition in Washington, to avoid irritating what might be called "the business point of view," does not mean that management has all its own way. I think it is significant that wage rates continued to increase materially and probably faster than per capita production, during the recently fairly long periods of almost stable costs of living, from 1947 to 1950, and since late 1951. In these periods, also,

have come labor's greatest gains in fringe benefits. Management is more united than is labor, but in a time when profit margins are likely to decline, can industry maintain a joint front when only one competitor is attacked and on an issue in which some managements have nothing directly at stake? (Recall what happened in the Steel Strike of 1949, when the industry could not maintain a joint front against union demands for non-contributory pensions because some companies already had non-contributory pensions.) Taking on one competitor at a time seems the most likely tactic of unions under present conditions, and it remains to be seen how effectively industry can meet such tactics, while continuing to proclaim its opposition to industry-wide bargaining.

This leads me to the "new" issue of guaranteed wages or employment. Being people who have had long familiarity with labor-management developments, you, of course, know that this union demand is not as new as represented. The Steel Workers, the Automobile Workers, the Packing House Workers solemnly declared this to be their major demand on several previous occasions in the last ten years and have always dropped it when given something else reasonably acceptable. It is my belief that the unions are much more in earnest this time than ever before. Guaranteed work or earnings have a strong appeal to workers when lay-offs are in the air and the fact that executives, and many supervisory and other key employees, and most of the clerical employees have something akin to job security, makes the proposal the more attractive to production workers. But I doubt whether the Steel Workers will take a strike this year to win annual or other earnings or employment guarantees. The Automobile Workers are much more likely, as I see it, to really go through with their demands for work guarantees, but their contracts do not expire until 1955; and a great deal of water will flow over the dam in the interim and the total climate in which negotiations may then be carried on may be quite different from that of the present. It is even conceivable, although I see but little evidence to that effect, that many managements may more seriously consider how they

can provide security of employment for production workers comparable to that now enjoyed by supervisory and other key employees.

In the first flush victory in the elections of 1952, many management people may well have expected the new Administration to take their side in disputes they might have with unions and to help them naturally. This has not happened to any great extent. A political party once it becomes responsible for the running of the Government, inevitably, is faced with considerable differences of opinion among its supporters. Our political parties are loose organizations, without any program agreed upon by all its supporters and even do not have a definite dues-paying membership, such as have European parties. Divisions in their ranks come into the open when a party ceases to be the opposition. Very close divisions in the popular votes in elections and in the membership of Congress compel a greater degree of unity than will be displayed by a party coming into power with overwhelming majorities. In that respect, the Republicans were, perhaps, lucky in winning only narrow margins in both Houses of Congress. But even so, differences within the Republican Party are coming into the open and the Democratic Party appears to be somewhat less divided—as always occurs after a change in the party control of Government. But, certainly, the present political situation cannot be very encouraging to managements who may be harboring thoughts of all-out war on unions. Amendments to the Taft-Hartley Act somewhat along the lines of the recommendations of the President are still a possibility, but, I suspect have less than an even chance of enactment and very certainly will not be pleasing to either side, or fundamentally alter the existing situation. Management may well conclude that with a majority of the members of the N.L.R.B. now industry approved, the *status quo*, as far as legislation goes, is quite acceptable, for the moment. And managements harboring thoughts of all-out fights with unions scarcely can still believe that the Administration will give them all-out support in an election year.

Organized labor, too, can be expected to avoid show-downs as much as possible. It is debatable whether the long, world wide trend toward conservatism, which has been evident in this country since 1938, has been reversed by this time. More certainly, organized labor still is not in much favor with public opinion, particularly when workers go on strike. I feel that organized labor has made progress in getting its views before the public, although it still is far behind management in this respect. Quite likely the number of dyed-in-the-wool unionists is increasing with the lapse of the years, even among the wives of the union members. But the production workers in industry are considerably less than half of our population and the percentage is decreasing. Less than half of all production workers are union members and most union members, and particularly their wives, no less than the union leaders dread strikes. American public opinion is most fearful of strikes, despite everything we have said about the right to strike being a necessary and useful part of collective bargaining. While the public is less worried about strikes today than on many previous occasions, it is probable that scarcely anything could harm organized labor more than a prolonged major strike producing something like a national emergency. And the unions are likely to be hurt with public opinion and with its own members by exposés of racketeering and graft which seem to be in the making.

In this situation, the leaders of organized labor seem to me to be pursuing an intelligent policy. The efforts toward unity may not result in either organic unity or the ending of all union raiding and jurisdictional disputes. To date most AFL unions have not ratified the national no-raiding agreement. But quite a few no-raiding agreements have been entered into by international unions and some long-standing jurisdictional disputes have been settled. Efforts along this line seem to me likely to favorably impress public opinion and to some extent employer opposition. And labor is also sound in continuing its somewhat feeble efforts in the political field. It is very clear that the labor leaders do not have the labor vote in their vest pockets; also that it is difficult to arouse the rank and file politically except

when the pocketbooks of the workers are hit by widespread unemployment and reductions in earnings which really hurt. But Members of Congress, in a high percentage of all the approximately one-third of all Congressional Districts which are reasonably close and in industrial areas, as well as Members in other districts which have a sizable industrial population and who fear opposition in the primaries, know that it will not do them any good to be branded as hostile to labor. Defeats in strikes would intensify labor's political efforts, but no union leader can be so blind as to feel sure that many or large strikes at this time would surely help labor's cause. Labor will not take everything lying down, but in most cases, will avoid strikes if it can do so.

Because I do not see that either labor or management have much, if anything, to gain from strikes at this time, I do not look for much, if any, worsening of the situation in this respect, in 1954. Should we get a Steel Strike—and I think there is enough statesmanship on both sides to be able to work out a compromise—strike figures in 1954 will resemble those of 1952. But very real progress has been made with genuine collective bargaining in the relatively short period in which we have had collective bargaining. I believe that progress will continue, because it has, on the whole, worked well for industry, labor, and the entire public.

How labor arbitration will fare if this hope—and it is no more than that—proves justified seems fairly clear. Labor arbitration is an established part of the process of collective bargaining in the adjustment of disputes which arise during the life of the contract and concern its meaning and application. The ideal situation as regards such disputes is their settlement without arbitration provided that they really are settled in a manner acceptable to both sides and which leaves no rankling soreness. But some unresolved disputes are almost inevitable and the costs of arbitration are small compared with those of unsettled grievances.

So I anticipate at least a continuance of the present extent of grievance arbitration. I cannot conceive major corporations

which now have contractual provisions for the arbitration of unsettled disputes over the meaning and application of contracts dropping them, because there is some business recession or because the National Administration now in office suits them better than the preceding Administration. In states, like Wisconsin, where a government agency performs the services of voluntary *ad hoc* arbitration without charge to the parties, that type of arbitration may, more and more, become their function—at least, until their arbitrators render widely advertised decisions strongly disliked by one party or the other. But in toto, *ad hoc* arbitration, I think, will also tend to increase, despite its many limitations. And I expect the consultive services of labor arbitrators to be sought increasingly by industry and in the domain of intra-union rivalries and conflicts, also by unions, with the end in view of avoiding difficulties before they arise or come to a head.

It is further my view that arbitration will gradually come to play a larger role in the domain of the determination of contract conditions. Like just about everybody else, I hold the view that far better than arbitration or government decision is the determination of the conditions of employment by free collective bargaining. But some disputes over contract terms just do not get settled in collective bargaining. In many situations and industries, the public is becoming increasingly intolerant of strikes. I am strongly opposed to prohibiting strikes by law and see little, if any value, in governmentally conducted strike votes. But it is but realistic to recognize that the right to strike often cannot be used without arousing such strong public emotions as to make resort to strikes extremely dangerous. But even greater is the evil of leaving basic issues unresolved. In such situations the real alternatives are a governmental decision deciding the disputes or voluntary arbitration of the unresolved issues. Settlement of contract terms by arbitration is inferior to settlement by agreement of the parties, but it is my belief that it is preferable to a strike in many situations and will be preferred by the parties to leaving the decision up to government.

Concluding, I see ahead continued growth of labor arbitration, established on a voluntary basis by agreement of the parties. That this is the prospect is in large measure, due to the satisfactory way in which you, and particularly the professionals among you, have done your work. As a group you have the confidence of both labor and management, to a degree unmatched by any other group. Your good repute has grown with the years, as doubtless has your competence. I think the future of voluntary labor arbitration is bright in the United States and is largely in your hands. If you and your organization, of which I am also proud to be a member, the National Academy of Arbitrators, continues to function as you have been functioning and as I confidently expect you will—I have no fears for the future, in this respect. Although I am not a professional or near professional arbitrator, I am happy over my association with you and appreciate this opportunity to again exchange ideas.