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Symposium: Introduction

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INTRODUCTION

by

Charles O. Gregory*

In a symposium on Union Power and the Public Interest everybody assumes that labor unions have become too strong for the general good. But this conclusion may be too pessimistic. After all, the object of labor unions has always been to create and maintain the power to do what individuals could not do. The earliest restraints on union power came from the courts. At common law judges allowed workers to form unions and to call bargaining strikes. But they would not permit them by concerted action to force reluctant workers to join or to compel employers to become unionized. That was because they disapproved of monopoly over employment and feared the growth of union power. At the same time the Supreme Court read the Sherman Act to prevent unions from using economic pressure to increase their power.

Congress in the 1932 Norris-LaGuardia Act and in the 1935 Wagner Act virtually made union economic organizational pressures lawful. And in the second of these statutes employers were forbidden to resist unionization. Thus the prevailing national policy came to be in favor of strong unions, of economic coercion to promote their growth, and the use of the resulting power in collective bargaining. As a consequence unions became more numerous and grew big overnight — exactly what Congress wished at that time. Union activity after the war, however, suggested to Congress that it may have over-shot the mark. That was when the Taft-Hartley Act introduced restraints against particular uses of union power that had been allowed in the 1932 and 1935 statutes. Thus, it outlawed forcing workers to join unions, it undertook to prevent unions from compelling neutral employers to help them in organizational and bargaining fights, and in the Title II procedure it evolved a method of handling national emergency disputes.

It was nevertheless plain in 1947 that Congress still wanted strong unions free to bargain collectively — as long as they did not cause national emergencies in doing so. This fairly raises the question: Just what is a national emergency? Indeed, it also seems fair to wonder if we ever have had a really serious national emergency since 1947 as the result of a collective bargaining dispute, regardless of the reports of some of the special fact-finding boards. Reflection on what has happened since Congress took over the regulation of labor relations matters indicates that its mandate for strong unions has been faithfully observed. Certainly the results in collective bargaining achievements have been astonishingly successful, considering the short time that has elapsed since 1935. Of course, whether or not you think that all of this is desirable largely depends on where you sit and what you believe.

Whatever you think, one result of all this has been to institutionalize the employment relationship, so that collective administration of it seems necessary to displace the former method of individual bargaining. In a democratic

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industrial society this calls for labor unions of some kind, selected by the workers. The next consideration is: What powers shall these unions have and to what extent is it necessary for them to assume control over functions previously left to individual workers? Do we really want unions to be rendered powerless, or do we want them to retain power and then to control their use of it?

After the McClellan Committee's report, Congress seemed determined that unions should not be the masters of workers whom they represent and should not exploit them or the union's financial resources. But in one vital respect Congress fell short in this aim when it failed to require that unions should be open to everyone represented by them, with complete voting membership to all employees, regardless of their race, creed or national origin. The 1959 act does, however, tighten strictures against exerting organizational and bargaining pressures through neutral employers. It looks as if it has eliminated organizational pressures against reluctant workers and their employers. On the whole, however, collective bargaining techniques have otherwise remained unchanged.

Now, if collective bargaining was a national good in 1935, then it still is in 1960. What if large unions and huge employer associations stopped bargaining altogether and simply agreed to almost anything just because the cost could easily be passed on to the public in higher prices? A consistent policy of this kind would really be sinister and far more harmful to our economy than any strike we have ever had. Again, if we prohibit collective bargaining disputes, then we run the risk of losing free collective bargaining altogether. For we cannot have the bargaining process without conflict of some sort — without a certain amount of economic black eyes and bloody noses.

I have always thought that there are some areas where it would be proper to prohibit bargaining strikes. Surely we all agree that government employees cannot be allowed to strike. Congress recognizes this in the Taft-Hartley Act simply by flat prohibition and the punishment of individual strikers. But Congress surely ought to practice some of what it preaches and imposes on others, at least by substituting a procedure where organized government employees could present demands and have them arbitrated. Again, I have always wondered if Congress and the Supreme Court should have prevented the states from experimenting with compulsory arbitration of local public utility disputes, where the freely bargained terms of employment in other industries could be used to provide standards for the arbitrators. In the rest of industry, however, most of us feel that we must preserve free collective bargaining, with all that that means, if we can do so.

What do we need to do this and at the same time to prevent inconvenience and harm to the interests of the public, both as individual consumers of goods and services and as members of a government that has important general interests at stake throughout the world? Is there some procedural formula to channelize bargaining power in big strikes — a bagful of varied techniques simultaneously available to different branches of the government?

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1 On workers' rights generally see Note, Civil Liberties Within the Labor Movement, 34 Notre Dame Law. 384 (1959). (Ed.)
so that one or another recourse is held over the heads of the parties in order to keep them guessing and off balance? Certainly there are suggestions of this kind which we shall hear today. Possibly we should continue the same old methods, with one big difference. That would be to compel the parties to make public ahead of time all issues, demands, and answers, with facts and reasons, before any strike large enough to endanger the national public interest is allowed. All negotiations would be subject to public scrutiny and comment, with severe penalties on individuals from either side who were caught engaging in "off the record" deals. The parties would remain free to accept, reject or compromise. But, the price of this freedom to impose inconvenience and danger on the public would be to run the gauntlet of adverse public opinion.

Imagine a collective bargaining session between United States Steel and the United Steelworkers on a national television hookup, with private conferences between the parties effectively forbidden! This would be better than industry-wide bargaining. It would be nation-wide bargaining! Possibly this is as close to anything like antitrust or other control of union bargaining power as we should come. But my suggestion may seem so flighty as needlessly to cause alarm. We are here to discuss a very serious subject. Moreover, you did not come to hear my views on this matter. The members of this panel, all able and well-known scholars in the field, are prepared to raise fundamental issues concerning union power and to make proposals about what should be done concerning it.