

Collective Bargaining and Management Rights Négociation collective et droits de gérance*

Roger Chartier

Volume 15, numéro 3, juillet 1960

URI : <https://id.erudit.org/iderudit/1021978ar>

DOI : <https://doi.org/10.7202/1021978ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer cet article

Chartier, R. (1960). Collective Bargaining and Management Rights. *Relations industrielles / Industrial Relations*, 15(3), 298–324.
<https://doi.org/10.7202/1021978ar>

Résumé de l'article

Dans le contexte de droits de gérance qui se relie de moins en moins directement au droit de propriété, dans la perspective de définitions nombreuses et souvent divergentes de l'efficacité, devant les incertitudes et les inexactitudes évidentes de la « science » dans l'industrie, et compte tenu du caractère politique de la plupart des décisions d'ordre économique et technique, quel est le recours de la direction et du syndicat, pour ne parler que de ces deux groupes? La négociation, le marchandage, le jeu de puissance, le compromis à durée temporaire.

Le processus de la négociation collective est essentiellement participation partielle du syndicat à la gestion de l'entreprise. Comme il n'existe pas de limites de principe au champ de la négociation collective, il est normal que le dialogue entre les parties s'engage en matières techniques ou financières aussi bien qu'il se poursuit depuis plusieurs années en matières sociales et économiques.

L'attitude traditionnelle de la direction d'invoquer ses droits de premier occupant, de s'attribuer et de se garder tous les droits que ne réussit pas à lui arracher le syndicat, est fort généralisée. Et pourtant, elle fera place, au cours des prochaines années, à une attitude nouvelle, plus réaliste, plus positive et moins inquiète, fondée sur la notion élargie de rôle fiduciaire, de chambre de compensation au service de tous les intéressés dans l'entreprise.

Le syndicat, co-législateur avec la direction à l'étape des négociations directes (et c'est au nom même de l'efficacité qu'il invitera la direction à négocier sur un nombre toujours plus grand de questions), perfectionnera son rôle de gardien, pour ses membres, des clauses de la convention, laissant à la direction l'initiative de décisions contre lesquelles il pourra s'inscrire en faux, le cas échéant.

Ainsi la direction des entreprises, équilibrée de préférences et d'aspirations nombreuses et fréquemment opposées, lieu de rencontre de tous ces accords à agencer, continuera d'être toujours plus efficace, mais dans un sens beaucoup plus large et plus fructueux, dans le respect des droits de chacun des membres de l'entreprise et dans la recherche du point d'équilibre qui, satisfaisant partiellement et provisoirement tous les intéressés, permettra à l'entreprise de fonctionner et de rendre son service.

Ce bon fonctionnement de l'entreprise, c'est justement la pierre de touche de la véritable efficacité.

* Le texte complet de cette étude est publié en français dans l'ouvrage *Changements technologiques et droits de Gérance*, Presses universitaires Laval, Québec, 1960.

Collective Bargaining and Management Rights

Roger Chartier

In the last analysis, the firmest and deepest foundation of management rights is the need for an efficient coordination of multifarious activities and often divergent interests, with an aim to achieving the basic purpose of the business concern. Efficiency, however, is essentially a value whose definitions are all the more numerous and varied as science, in its present applications to industry, cannot lay claim to absolute certainty and accuracy. And even if it could, this would not alter in any way the political nature of decision-making. Such considerations lead to a re-examination of the notions of collective bargaining and joint management, as well as they induce new thinking on the specific function of management, which reaches beyond decision-making into the realm of coordination of means, activities, interests, and bargains.

In this essay, the following *plan* will be followed. At the outset, it will be briefly demonstrated that the *ultimate* foundation of managerial prerogatives is not property as such, but the essential need for a harmonious interweaving of various activities and divergent interests and preferences in light of the objectives of the firm. In other words, the exercise of authority in the business concern is strictly conditioned and legitimated by the necessity of functional efficiency, without which no organization can survive and prosper.

Efficiency, however, is a *value*; as such, it is an object for almost as many value judgments as there are judges! According to the character and interests of the persons or groups involved, « efficiency » will be defined in a score of fashions, all subjective, all far from neutral.

CHARTIER, ROGER, M.Soc.Sc., professor of industrial Sociology and Personnel Administration in the Industrial Relations Department, Faculty of Social Sciences, Laval University, Quebec City; graduate studies for the Ph.D. degree in Sociology at the University of Chicago.

That is especially true in view of the fact that science, despite worthy, much-needed and partly fruitful efforts in industry — in economic and technical matters, for instance —, has not succeeded in reducing, let alone eliminating, uncertainty and inaccuracy to the extent that all concerned be intellectually compelled to yield without reservation to its conclusions.

Let us suppose for a moment, now, that Economics or Engineering could actually bring about a genuine consensus among the parties in given sectors of industry. Such an achievement might reduce the field of indetermination and litigation in which the parties are operating, but it would not in any way alter the *political* character of the decisions to be arrived at in, say, economic and technical matters.

The assertions above constitute a strong inducement to re-examine some general characteristics of collective bargaining and management rights, and to re-appraise management and union attitudes in that respect.

That will finally lead us to take a closer look at the concept of management and to find a tighter definition for its *specific* function, which is bargain-coordinating rather than decision-making.

The Concept of Authority

A few introductory notes may be in order to stress the close affinity between two concepts, namely, those of management rights and of authority. The latter is essentially the right to command and to be obeyed, the power to efficiently orient many individual activities toward a common end. What is, therefore, the proper basis of that authority?

As far as business management is concerned, authority is not founded, primarily and *in the last analysis*, on property rights *per se*. Such a statement is all the more valid in the case of the large corporation — our main concern in this essay —, in which property is both so diluted and so morseled that it looks cut off and separated from the daily exercise of authority.

The possession of capital goods does give power over things; however, it does not imply, *ipso facto*, the moral obligation for the various persons involved in production to blindly and silently obey any and all orders. Property, as such, grants its withholders no right what-

soever to make decisions in behalf of the workers, to place a dead weight on their lives, and to prescribe for them compulsory elements of behaviour. The power over men can never be founded upon the property of things.

What, then, is to be the deepest and firmest foundation of authority and its exercise in the organization? It is the need for *coordinating* multifarious activities, antagonistic interests and divergent means in order to attain *one* common, ultimate objective which is the guiding light of the organization. As *each* productive agent accomplishes his work according to *his* aptitudes, aspirations and preferences, the coordinating action of the chief — whether an individual or group, and whether directly or through delegation — becomes an absolute necessity.

Coordination will be oriented toward the end of the firm. That end, which is not perceived with the same degree of sharpness by all participants — though it gives meaning to their vocational or financial activities —, may be defined as the profitable production or supplying of goods or services which be useful to society as a whole, so that each and every participant get a fair share of the results of the joint endeavour.

Briefly, therefore, it can be rightly stated that the exercise of authority in the firm is conditioned by the strict requirements of functional *efficiency*. For *all* participants to have a « fair share » and to maintain their interest and active participation in the business, it is an absolute « must » that the latter stand at a high level of useful production and succeed in ever improving its organization and processes. We have here the very definition of efficiency, without which no firm can maintain its competitive position, let alone improve it and prosper.

What, then, is efficiency? Is it an entity or a criterion both objective and neutral, which is readily observable by all and universally definable in the same fashion?

Efficiency Is A Value

Such is certainly not the case. Efficiency is essentially a value¹;

(1) KOIVISTO, W. A. « Value, Theory, and Fact in Industrial Sociology », *The American Journal of Sociology*, Vol. LVIII, No. 6, May 1953, pp. 564-572, *passim*.

it is the object of value judgments, just as well as industrial « peace », « cooperation », and « harmony ». On such notions, the parties involved have their own preconceived ideas. And those ideas are themselves part of the reality which they help bring about, while they tell us much about the social context of their protagonists².

In Physics, for instance, efficiency is defined as « the ratio of useful output to input »; now, only through a value judgment may the « useful » be defined. It is not impossible, therefore, to have as many definitions of what is useful as there are individuals or groups involved in a given situation.

Industrial Engineering, in turn, might define efficiency as « the ratio of actual performance to a "standard" performance » methodically observed or determined. The workers, for their part, will be prone to define efficiency as the ratio of human energy spent to the gains — economic or other — which consequently accrue to them. We could thus go on and on, according to whoever defines « efficiency ».

As applied to industry, the notion of efficiency has more often than not been implicitly defined according to management's views and in managerial terms. Those workers will be called efficient who « cooperate » closely with management without questioning managerial objectives and methods and without unduly stressing divergences of interests which are bound to oppose the parties involved and would normally lead to different value judgments.

When Elton Mayo, commenting on the French sociologists LePlay and Durkheim, remarked that « collaboration in an industrial society cannot be left to chance — neither in a political nor in an industrial unit can neglect lead to anything but disruption and catastrophe »³, he was more or less consciously endorsing management's definition of efficiency and of a « fair day's work ». It is worth noting in passing that up to this time — and with just a few exceptions —, the social sciences have been subservient to a management-defined concept of efficiency, striving as they were to eliminate the obstacles to a collaboration equally defined by management, while doing their best to help

(2) WIRTH, LOUIS. Preface to Karl Mannheim's *Ideology and Utopia*. New York: Hartcourt, Brace and Company, 1949, *passim*.

(3) MAYO, ELTON. *The Social Problems of An Industrial Civilization*. Boston: Harvard University Press, 1945, p. 9. See also Chapter VI.

canalize and manipulate the personnel's skills, physical strength, and need for work.

Now, it does not befit the social sciences to be taken in tow by any ideology whatsoever, to bow down to any subjective and self-seeking definition. On the very contrary, their rationale is to seek and to put forward various alternatives to given institutions, structures and modes of interrelations between men and between groups. It would be too easy and too petty a role for the social sciences to just make present social structures and institutions more « efficient ».

In Frank Knight's words,

It is impossible to form any concept of « social efficiency » in the absence of some general measure of value. Even in physics and engineering, « efficiency » is strictly a value category; there is no such thing as mechanical efficiency.⁴

What he means, doubtless, is that mechanical or technical efficiency, however rationally established and demonstrated, must always come to terms with a vast world of « irrational » elements, such as tradition, shop customs, past practices, employment and wage insecurity, fear of a fast work tempo not adequately compensated, and so on.

Professor Knight also implied — and this is the second point worth emphasizing — that the « science » which serves as a basis for Scientific Management is not blessed with the absolute certitude and exactitude which would automatically bring about the somewhat awed consensus of all concerned, thus eliminating the need for discussions and negotiations on an ever growing number of matters. Industrial Engineering, as a science, can only formulate hypotheses, propose alternatives, and produce approximations which are hoped to be ever more accurate.

The Uncertainties of Science

Before giving examples of the imperfections of Scientific Management as evidenced in three specific techniques, and in order to show that other sciences which are more solidly established, like Economics, are not themselves free from practical limitations, let us examine the problem of wage determination in industry, and particularly in the

(4) KNIGHT, FRANK. *The Ethics of Competition*. New York: Harper & Brothers, 1935, p. 42.

individual firm. For that purpose, Labor Economics provides (often conflicting) data and suggests bases for comparisons. But according to which principle will one basis be preferred to another? What criteria shall be used? On what grounds can one determine scientifically — that is, with certainty — the optimum rate of the workers' economic demands, as well as the fair (?) level of wages, salaries, and profits? Against what standard is it possible to gauge the « excesses » of union wage claims? What weight should be given to such factors as: the financial situation in the firm, the industry or the country; wage differentials between various firms in the same community or region, or else in different ones; differentials between industries; and so on? And finally, what importance should be attributed to indices like the Consumer Price Index and the Productivity Index? It is impossible to answer those questions, and dozens of others, with scientific accuracy.

One encounters the same difficulties in the application of various Industrial Engineering techniques, such as Time and Motion Study, Job Evaluation and Merit Rating.

(a) TIME AND MOTION STUDY

With regard to Time and Motion Study, Frederick W. Taylor, the father of Scientific Management, did not suffer from an inferiority complex! For him,

Time and motion study is the accurate scientific method by which the great mass of laws governing the best and easiest and most productive movements of men are investigated. They substitute exact knowledge for prejudiced opinion and force in determining all the conditions of work and pay.⁵

Paraphrasing Talyor, Professor Hoxie added:

The results of time study are, therefore, not a legitimate subject of bargaining since they partake of the nature of objective scientific fact in the determination of which the prejudices and opinions of men have had no part.⁵

Taylor went even so far as using the following comparison: « As reasonably might we insist on bargaining about the time and place of the rising and setting of the sun! »⁵

Hoxie's own position was far more reserved, as can be seen in the following statement:

(5) In HOXIE, ROBERT F. *Scientific Management and Labor*. New York: D. Appleton & Company, 1915, pp. 40-41.

Far from being the invariable and purely objective matters that they are pictured, the methods and results of time study and task setting are, in practice, the special sport of individual judgment and opinion, subject to all the possibilities of diversity, inaccuracy and injustice that arise from human ignorance and prejudice.

In making this statement, it is not intended to condemn time study and task setting, as such, or to deny that under certain special conditions..., results approaching scientific accuracy are possible by these methods. Neither is it to be inferred that time study does not hold out the possibility of improvement over the current methods of task setting, nor that in some scientific management shops the methods used are not fair and the results attained are not beneficial to the workers. The statement merely characterizes the situation as it has been found actually to exist.⁵

Hoxie's careful pronouncement, written forty-five years ago, could probably be repeated today with equal pertinence, since most of the problems raised by Time and Motion Study still remain unsolved, thus inviting the experts to much work, patience and humility. William Gomberg, in his truly remarkable book on the subject,⁶ forcefully poses many relevant and fundamental questions about a technique which still tolerates conflicting ways of observing work and of collecting, analyzing and interpreting data.

Is not psychology hostile to the motion analyst's fundamental hypothesis, namely, that the one best way for a given operator to work is never to modify the cycle of his operations? Is it truly advisable to break into minute parts an operation which anyhow will never be accomplished in exactly the same fashion by two operators? Is not the parceling out of an operation into micro-motions a dangerous abstraction? For in actual fact motions are successively interdependent, that is, the speed, rhythm and form of each motion is influenced by preceding and following motions.

Furthermore, the individual at work is not a robot linked by push-button to the analyst. The stop-watch operations and results are directly influenced by hard-to-measure, but supremely important factors whose character is either *mechanical* (quality of tools, consistency of raw materials, etc.), *physiological* (food, sleep, muscular development, etc.), *psychological* (aptitudes and attitudes, speed of

(5) *Ibid.*

(6) GOMBERG, WILLIAM. *A Trade Union Analysis of Time Study*. New York: Prentice-Hall, 2nd ed., 1955.

reflexes, etc.), and *sociological* (relationships between workers, between workers and supervisors, between groups of workers, etc.). All those variables, which have hardly been sketched, further complicate the analysis in that they are closely interdependent.

On the other hand, the stop-watch customarily used in Time Study does not yield results whose accuracy could really justify the setting of wage rates which, of necessity, *are* precise.

There still remains the problem of scientifically defining and evaluating the « fatigue » factor, a major stumbling-block for both physiologists and industrial engineers. Fatigue may show up at different times on different workers. It may be outwardly suppressed, at least temporarily, by an increase of effort which may prove harmful in the long run. And then, the elimination of so-called « parasitic » motions — which are often wrongly considered useless — may bring about added fatigue, with both psychological and physiological overtones. With all that in mind, how can the analyst rely solely on a measure of individual output to allocate a definite percentage to the fatigue factor?

Lastly, is there any such thing as a « standard » productive pace on the basis of which a given worker's output may be rightly judged? It seems that psychological and physiological knowledge is at present too imperfect to allow such an evaluation on solid enough ground.

(b) JOB EVALUATION

Now, what about Job Evaluation? Here is a systematic method of appraising the relative value of a job with reference to other jobs; this technique is not truly scientific, inasmuch as its results are only approximations. The *point method* of Job Evaluation is the most popular in North America; it is also the most complex, alongside factor comparison, and unlike non-quantitative methods such as ranking and classification. At various steps, the point method calls for decisions which are subjective and arbitrary.

First, there is arbitrariness in the choice of *factors*; then, once a set of factors has been selected, it is assumed, possibly wrongly, that all the jobs to be evaluated are made up of those factors only. Second, the number, description and weighting of *degrees* of factors are objects

of discretionary determinations. Third, the number of points assigned to factors is highly arbitrary. How, then, is it possible to know whether the yardstick is correct and valid?

The main problem is that between certain jobs, there exist differences not only of degree, but kind. It is incorrect, therefore, to assume that just *any* yardstick will serve the purpose of Job Evaluation provided it be applied in the same way to all jobs equally.

There is some arbitrariness also in the determination of minimum and maximum point limits for the various factors. Why attribute more points to the highest degree of skill than to the highest degree of physical effort? Is an arbitrary allocation of points really better than an equal and identical point distribution for all degrees and factors?

It is further assumed in Job Evaluation that a point is a stable unit, that one point granted for a given factor is equal to another point allocated for another factor. Now, it is impossible to demonstrate that one point attributed to a given degree of education, for instance, is worth exactly as much as one point accorded to a certain degree of, say, job conditions.

Do most point systems in Job Evaluation do full justice to manual workers by properly weighting job conditions and physical effort in relation to skill and responsibility factors? There is doubtless room here for heated discussions!

(c) MERIT RATING

Merit Rating is a technique of Industrial Engineering which is somewhat akin to Job Evaluation: some Merit Rating schemes of a quantitative nature are as complicated as the point system of Job Evaluation, and they are equally subjective. Here, jobs are not pitted against one another, but *men* are compared to one another according to given qualities demonstrated in the accomplishment of their respective jobs.

The presence of several evaluators helps reduce the importance of inherent limitations of Merit Rating, such as: individual prejudices of all sorts; a propensity for judging all qualities of an employee in the light of a dominant one; the temptation of allocating an average weight

to all those who are evaluated; an unavowed ignorance by the raters of some of the ratees; an inclination to always under - or over - estimate subordinates; the mixture of « actual » and « potential » value to the firm; and so on. Factors and points intervene to further complicate the process. Such a technique is probably worth more for a sound appraisal of employee performance than those subjective judgments made without expressed and uniform criteria by the raters of yore. It is not genuinely scientific, however, and therefore does not impose consensus to the extent that bargaining be eliminated.

There we have three techniques — Time and Motion Study, Job Evaluation, and Merit Rating — which are well known to industrial engineers and which cannot lay claim to scientific certainty and accuracy. The engineer, like the economist, aims as best he can at that exactitude of criteria and calculations which, gradually and laboriously, will tend to a truly scientific certitude. Such an endeavour, however, has not yet reached its term, nor has it definitively found its object. And no one is now in a position to predict when — and even if — the experts will reach the frontiers of authentic science.

Is it really necessary to add that this is not an essay in debunking, and that it was never the writer's purpose, in the preceding pages, to demonstrate at all costs and by all sorts of easy arguments the congenital limitations of science in industry and the ineptness of the industrial technical intelligentsia!

As regards science itself with its variegated techniques, it does play a foremost part in industrial development, and has done so for scores of years. The advances of technology — and more recently those of Economics, Sociology, Psychology and other behavioral sciences — portend an extremely promising future for scientific applications to the industrial world. Science, however, is still in its infancy, so that its contribution to industry through more certain and more accurate knowledge lies ahead rather than in the past. To acknowledge this, to point out the various limitations and weaknesses of present industrial techniques is to prepare for to-morrow industrial techniques of a truly scientific character. The present resources of science in industry, while not to be disdained, are means toward an efficiency constantly to be re-discovered and re-defined in terms which are not primarily scientific.

As to scientific people in the industrial field, the best among them are perfectly aware of the challenge represented by the various sciences and techniques which are at work with their limited means and their patterns of chiaroscuro. They have bravely taken up the challenge, applying their skills with both humility and patience. There are too few of them, unfortunately. But time will come when more and more of them, possessed of a thorough scientific background, will succeed in reducing in size, if not in completely eliminating, the numerous zones of scientific indetermination which obscure the relationships between industrial groups.

Meanwhile, and doubtless for a long time to come, the *non-scientific character of the techniques* involved constitutes a first and fundamental reason for rejecting at the outset any form of arbitrariness in such matters, whether indulged in by an arbitrator, a board of arbitration, management or the union.

* * *

What If It Were Science?

There is, however, a second reason of a theoretical nature — a reason as basic as the first one — which compels the parties to bargain and to arrive at multilateral decisions on economic and technical questions which, as we have seen, are open to litigation. And that reason lies in the fact that *decisions in such matters are of a political nature*, « political » here meaning « prudential » and qualifying acts or things which are not necessarily related to party, government, and so on.

In other words, even if industrial techniques were thoroughly scientific — that is, accurate and certain — the question of their negotiability would not automatically be solved.

(a) At the *economic* level, as has been clearly demonstrated by Nell-Breuning⁷, important decisions in industrial relations have strong political undertones. For instance, the determination of an « economical-fair » level of wages is not primarily a matter for a cold and unerring arithmetic; it is, first and foremost, an element and a sector of the general

(7) NELL-BREUNING, OSWALD VON, s.j. « Implications politiques de la grève », *Revue de l'Action populaire*, avril 1956, pp. 394-407, *passim*.

economic policy to which it is related and by which it is circumscribed and influenced.

Now, in a free economy — and if we except sectors covered by decrees or minimum wage ordinances —, decision-making on wage levels is left in the hands of the parties themselves (management and labor, unionized or not), while government controls the other aspects of economic life (taxation, trade, customs duties, and so on). It follows that management and union people establish their respective wage policy, not knowing for sure whether it fits in the overall economic policy. Pressure is then exerted on government officials with a view to gaining the insertion, in the general scheme, of such private wage policies.

What, then, is the function of Economics in such matters? According to Nell-Breuning, the role of Economics consists in defining causes and in indicating and evaluating the consequences of a given economic decision which is strongly political in character. For an employer, the decision may bear on whether or not to expand; for a union, the dilemma may be expressed in terms of whether the level of living should be raised by direct consumption or by the workers' participation in capital formation.

Economic science, therefore, formulates hypotheses and accurately describes conjunctures. A given contingency must lead to a given set of hypotheses and to a choice between various alternatives; for hypothesis A, a given set of likely consequences will be described and weighted; and so on for hypotheses B, C, D. . .

Now, the *selection* of probable hypotheses to be used as a basis for economic calculations is indeed a political act; for here the margin of indetermination is so wide that there can strictly be no question of scientific accuracy and certainty. And one premise tinged with political elements will suffice to render the conclusion equally political, however rigorously scientific may be the logic which links them. It follows that the parties, and the parties alone, *as bargainers*, are entitled to turn hypotheses into reality. If, for instance, union and management choose mostly the *same* hypothesis-conjuncture, they will at times agree quickly on a given level of remuneration. If on the contrary, as is more often the case, they fail to agree on the definition of the economic contingency, economic science, though narrowing the field of potential divergences

between them, will not succeed in reconciling their different points of view by authoritarian pronouncements.

(b) At the *technical* level, now, the preceding considerations are equally valid. For the technical is closely related to the social, the economic, and the political. It is the industrial engineer's challenge to work at the very junction of efficiency as defined by management and of the assent to be obtained from the personnel. He must always keep in mind that the changes he introduces in processes and instruments of production have a direct bearing, and often a very important one indeed on the workers' problems, behavior, and perspectives.

Technological change, in fact, is not necessarily another word for progress. It cannot be judged and evaluated absolutely, as in a vacuum, but only in light of its human and social implications and in relation to the structures which are modified by it, to the gains and losses made by various individuals and social groups in the short and the long run.

The engineer, the technician may succeed in acquiring, often in spite of his temperament and training, an acute consciousness of the economic and social consequences of some of his decisions and inventions. However, it will not be his role, *as a technician*, to solve the problems of union-management relations in instances of technological change. As we have seen, decision-making at that level is essentially political and institutional, which does not mean that it is necessarily rational in the engineer's book.

Thus, the non-scientific character of the techniques involved and the political nature of decision-making in matters of economics and technology both prescribe a rejection of unilateral determinations in industrial relations. But there is a third consideration — a practical one this time — which leads to the very same conclusion.

The evolution of our industrial civilization toward ever more democratic forms, the slow creation of a new type of man richly endowed with more and more knowledge, general education, autonomy and consciousness, the new power of unions which is felt by both the employer and the lawmaker, and other developments of the same magnitude allow us to state that if industrial management, rejecting the need for consent, strongly insisted on preserving its « right » to

unilateral decision-making, arbitrary decisions thus arrived at would be made partly or totally impractical by a systematic blocking at all levels of execution. What then would happen to that efficiency, even management-defined, which is so rightly and so eagerly sought after?

Scientific data, however genuine, cannot bring about, *per se*, the consent of all productive agents at all levels of the business concern. Now, having in sight the highest regard for man-worker's dignity and liberty, how can one imagine an efficient production without some form of common decision, by *all* concerned, to work on certain terms determined in advance? The very notion of efficiency, in a work community, implies the sincere adhesion of free agents, the common acceptance of a job to be done in a given way by each member: and such an assent is not necessarily and primarily based on economic and technical data.

It is obvious, then, in the present industrial context, that the glorified haggling which is collective bargaining cannot be ignored and cast aside; short-lived compromises have to be sought on the basis of the relative strength of the parties involved. This is a proper introduction for a broader discussion of some general aspects of collective bargaining and for a tighter definition of management and union attitudes toward it.

* * *

Collective Bargaining

At the National Labor-Management Conference held in November 1945 on President Truman's instigation, the failure of joint Committee No. 2 on Management Rights to reach any kind of agreement brought into sharp focus the differences in outlook of management and union representatives with regard to the nature and function of collective bargaining. Such divergences, which may be said to date as far back as the master-servant or employer-employee relationships, are particularly marked in North America since World War II and the advent of a strong trade-union movement whose challenge to managerial prerogatives has been and still is powerful indeed.

The representatives of management, anxious to stabilize once and for all the busy frontiers of collective bargaining and to put an end to union « encroachments » on « their » domain, submitted for approval to the union leaders two lists of sectors for decision-making in industry.

The first list, made up of some twenty elements dealing mostly with technological and financial aspects, enumerated non-negotiable subjects, that is, matters to be deemed outside the scope of the unions' interests and therefore the exclusive province of management. The second list contained points on which management maintained decision-making initiative, but which could be considered as being within the scope of the unions' interests. The union, if dissatisfied with management's decision, could always question it by resorting to the grievance procedure. Needless to say, this latter list was made up of those sectors only in which trade unionism had succeeded in obtaining bargaining rights.

The union members on the Committee, while acknowledging the need for a vigilant safeguarding of management functions and responsibilities, flatly refused to bind themselves to such an exclusive and static enumeration, pointing out that the experience acquired during many years seemed to indicate that, as mutual understanding increases between the parties, what is today the responsibility of management may well become to-morrow a joint responsibility of management and union.⁸

Faced with this dynamic and wide-open approach to collective bargaining, the management representatives raised the bugaboo of joint management.⁹

* * *

Joint Management

There is no doubt that collective bargaining is for the union a very real form of participation in management, without ideological catch phrases but with genuine efficiency.

- (8) The U.S. Bureau of Labor Standards. *The President's National Labor-Managements technologiques et droits de Gérance*, Presses universitaires Laval, intendent of Documents, Bulletin No. 77, 1946, p. 61: « It would be extremely unwise to build a fence around the rights and responsibilities of management on the one hand and the unions on the other. The experience of many years shows that with the growth of mutual understanding the responsibilities of one of the parties today may well become the joint responsibilities of both parties tomorrow. We cannot have one sharply delimited area designated as management prerogatives and another equally sharply defined area of union prerogatives without either side constantly attempting to invade the forbidden territory, thus creating much unnecessary strife ».
- (9) *Ibid.*, p. 56: « The labor members are convinced that the field of collective bargaining will, in all probability, continue to expand into the field of management. The only possible end of such a philosophy would be joint management of enterprise ».

At the level of *facts*, union participation in management may take numerous, well-graded forms. At first, it may be *passive*, or consultative: this is the phase of suggestion boxes, meetings, discussions and joint committees of all kinds (industrial cooperation, production, safety, training, etc.).

Then participation in management, now *active*, will bear on various issues both social and mixed — half-social and half-economic, that is — such as wages, hours, and other working conditions. Union inroads in technical matters (equipment, layout, processes and methods), however, have been much less spectacular, in the face of a very reluctant management. The same is true as regards economic and financial issues (purchasing, sales, prices, capital formation and reward, ploughing back, depreciation, assets and liabilities, inventories, and so on).

This, very briefly, takes care of the facts. What of the *principles* underlying joint management?

Pope Pius XI has made his position very clear in the following statement:

In the present state of human society, We deem it advisable that the wage contract should, when possible, be modified somewhat by a contract of partnership, as is already being tried in various ways to the no small gain both of the wage-earners and of the employers. In this way wage-earners are made sharers in some sort in the ownership, or the management, or the profits.¹⁰

Thus it seems legitimate to aim at joint management as an ideal corresponding to the requirements of a given type of civilization, public interest, and the work-community character of the enterprise. In so doing, the workers and their union will invoke, not natural law, but what Cologne's Cardinal Frings called « a high natural suitability against which no principle stands in the present state of evolution ». Cardinal Frings then refined his statement as follows:

When one speaks of the right of participation in decision-making on social and economic issues and in personnel matters, this does not mean that such a right should cover the same ground in those three fields, nor *a fortiori* that it should be unlimited in each of those fields. Management must be allowed to freely attend to current business

(10) *Quadragesimo Anno*, on Reconstructing the Social Order. May 15, 1931, parag. 71.

decisions, in order that the enterprise may operate properly and productively for the employees also.¹¹

The Cardinal implicitly distinguishes two phases of the management-union relationship which are worth analyzing, always from the angle of efficiency: the *legislative* phase (which is that of direct negotiations and of the gradual extension of collective bargaining) and the *administrative* phase (which covers the application of the collective agreement, law of the parties).

(a) THE LEGISLATIVE PHASE

Some students of the industrial relations process have seen in the direct negotiations which precede the signing of the collective agreement a union encroachment of a rather negative and external nature. Thus, management would be left less issues on which to make unilateral decisions; however, the very nature of the freedom of decision-making for management would not be altered, even though its objects may have been reduced in number and size.

(1) *Management's Position*

The traditional position of management, at this stage, may be associated with the theory of *residual rights*. In the past, and prior to the advent of the union, management possessed all rights, and disposed of all discretion within the limits of common law and the master-servant relationship.

Then came the union, collective bargaining, and the collective agreement. Once this is signed, management keeps for itself all its traditional rights, save of course those whose exclusive exercise has been bargained away. The union has only those rights which have been

(11) Cardinal Frings, Archbishop of Cologne. Text written in May 1949 and quoted by Father Gérard Dion in « La doctrine sociale de l'Eglise et la gestion économique des entreprises », *Relations industrielles*, vol. 6, no 4, septembre 1951, p. 101: « Quand [on] appelle la co-gestion un « droit naturel conforme à l'ordre voulu de Dieu », [on] entend par là une haute convenance naturelle à laquelle aucun principe ne permet plus de s'opposer dans l'état actuel de l'évolution. Quand on parle de droit de participation aux décisions en matière sociale et économique et dans les questions de personnel, cela ne veut pas dire que ce droit doit obtenir une ampleur égale dans ces trois domaines, ni à plus forte raison qu'il doit être illimité dans chacun de ces trois domaines. Il faut que la direction de l'entreprise puisse régler en toute liberté les affaires courantes, si l'on veut que l'entreprise soit à même de fonctionner et qu'ainsi elle soit productive pour les employés également ».

written in the agreement; those rights fatally trespass on managerial prerogatives. Management protects its occupancy: it was there first. According to management's view, collective bargaining is a vast enterprise in resistance, a constant fight against encroachments and for survival. And in that fight, management thinks less and less in terms of private property and more and more in terms of its own status, of its own need for efficient power.

There is, however, another managerial theory which is gaining in popularity; this new approach rests on the concept of *trusteeship*, of administrative control in behalf of others, of clearing-house for all concerned. Management, here, would act as a trustee to the personnel at all levels, to the shareholders and other suppliers of capital, to the suppliers and purchasers of products, to the State and to society. There is no further talk about abandoning rights which should have been untransferable and unassignable. The new point of view is indeed more positive: it sets its sights on the multiple responsibilities of management and on the need for a rational allocation of functions rather than on the maintenance of absolute and inalienable rights which would mean stagnation for the collective bargaining process.

(2) *The Union's Position*

At this stage of direct negotiations, the union's attitude is well known. It is the union's purpose to protect, first by its legislative action, the interests of its membership; those interests go beyond wages, hours, and other conditions of work. According to the union, the scope of collective bargaining is not limited by any barrier, in principle, and there is no justification for the building of a barrier at one point rather than at another. On the contrary, it is the pressure of union demands which injects efficiency into management in a goodly number of sectors.

As the union grows in power and maturity, it will have its practical say on more and more issues, with a concomitant increase of its span of control. It would be unrealistic to think in terms of restriction to the bargaining process, according to union leaders; for the purpose of collective bargaining is not to narrow the field of decision-making for any one party, but to enlarge it so that both parties can jointly legislate.

If, therefore, the democratic process in industry does introduce, at first and in some cases, minor delays in production, this is a relatively small price to pay in order to protect men's freedom against any form

of arbitrariness. As Sumner H. Slichter puts it: ¹²

Collective bargaining is a method of... making the price of labor..., of introducing civil rights into industry, that is, of requiring that management be conducted by rule rather than by arbitrary decision... (p. 1)

The most frequent complaint of employers concerning union shop rules and policies is that they limit the efficiency of labor and reduce the output of industry. Some sacrifice of production is undoubtedly desirable in order that men may have protection from arbitrary management. The security that can be obtained only in that way is undoubtedly worth a great deal. Furthermore, ...industry produces men as well as goods...; the kind of men which a democratic community needs may not be produced in shops which are small oriental despotisms. (pp. 4-5)

The very fact that the workers have had an opportunity to participate in determining their working conditions is in itself favorable to efficiency. As Mr. Justice Brandeis ¹³ long ago pointed out, efficiency depends upon consent. Even though the specific rules and policies adopted in particular instances may not be ideal, the process of joint determination of working conditions as least offers the possibility of achieving greater efficiency than could be obtained under rules and conditions dictated by one side. (p. 575)

Collective bargaining, always according to the union, is a new mode of joint government of the enterprise which expresses the temporary agreement of the parties. Management rights are those which are defined in the collective agreement, and their binding power stems from no other source. The collective agreement, as a system, is of relatively recent origin: it covers the present as well as it opens vistas on the future. It is unthinkable, therefore, as the union sees it, that management should bring into the collective debate a whole background of so-called «inalienable» rights and prerogatives born of a long tradition of unilateral decisions.

This ends our interpretation of the parties' respective positions with regard to the legislative phase of their relationship. How, then, do they define the nature of their relations once the agreement has been entered into?

(12) SLICHTER, SUMNER H. *Union Policies and Industrial Management*. Washington, D.C.: The Brookings Institution, 1941, pages as indicated.

(13) BRANDEIS, L.D. «Efficiency by Consent», *Industrial Management*, February 1918, Vol. LV, pp. 108-109.

(b) THE ADMINISTRATIVE PHASE

In the legislative phase, some observers could in a way imagine the union as some sort of external agent, making its weight felt somewhat from the outside; in the administrative phase, however, the union may be said to share, according to various modes, a continuous and positive responsibility with management for the elaboration and execution of the firm's policies. The union has come of age: it exercises its « civil rights ».

(1) *Management's Position*

At this stage, management's attitude may be interpreted as follows: while the agreement is in force, management must have elbow-room and a free hand, in order to be « efficient » and to administer the business « in the best interest of all concerned ». It will strive to avoid, in direct negotiations, the erosion of its right to initiate decisions and action at the administrative stage. The day-to-day conduct of the firm is management's attribute. Should the union be unhappy with some of management's decisions, redress may be sought in the grievance procedure; the union, however, should relate its complaint to a definite clause of the agreement. Management is aware of the fact that it can initiate decisions at no great risk other than some delay, since the union is usually bound not to strike over grievances during the life of the agreement; the union, on the other hand, finds some compensation and guarantee in the application of the retroactivity principle; it may also clog the grievance procedure with scores of complaints in order to gain tactical advantage over management.

Management is opposed to any formal and legal participation by the union at the level at which day-to-day decisions are initiated. It may, however, accept union consultation at that stage, provided it remains entirely free to disagree and to act. When joint consultation is achieved, the union becomes a useful communication medium between management and its personnel, a sort of unpaid technical adviser, a kind of benevolent partner who is informed of certain changes to come or whose advice is sought for solving given problems (absenteeism, turnover, discipline, waste, and what have you). And yet, management cannot help worry about the difficulty of clearly distinguishing between consultation (which is always capable of influencing managerial decision-making) and formal union participation in the management of the business.

(2) *The Union's Position*

As regards the application of the agreement, the union's attitude may be expressed as follows: if the union concedes to management the right of initiative in decision-making, it does so only on matters covered by the collective agreement.

As a general rule, the union leaders do not care much for a role of co-determination in the application and administration of the agreement. For them to make administrative decisions in the plant on an equal footing with management people may be dangerous, especially if the union members' position, as seen by them, seems to deteriorate following such joint decisions. On the other hand, it is never safe for union leaders of militant organizations to show too much management-mindedness, to know well and to adopt management's points of view.

The union is usually satisfied that the legislative framework within which management exercises its efficient authority be the object of a joint determination. In other words, once basic decisions have been made in common at the level of direct negotiations, management will have a free hand for its daily activities, within pre-set limits. If problems of interpretation arise, the union will resort to the judiciary phase inasmuch as grievances are not settled in direct discussions with management at various levels. The union wishes to be an active force, and not a dead weight, in the operation of the firm.

To conclude this part of the essay, it is obvious that union and management attitudes toward management rights and collective bargaining are well demarcated and rather divergent. They have, however, one point in common: they all have a stake in the *decision-making* process. Does this mean that the main role of industrial management is to make decisions?

* * *

The Specific Function of Management

Since unions are regularly accused of trespassing on the managerial function, it is important to ask ourselves what is the *specific* function of management in the business concern. Is it, or is it not decision-making? It would be both tempting and wrong to answer in the affirmative, that is, to closely identify the exclusive function of management

as the making of decisions, to equate managing and decision-making. It would be tempting because much of management's job is to make decisions at a crucial level. And then it would be wrong because management performs many other duties besides making decisions, and more so because many people outside the management group participate in the decision-making process. In other words, the *function* of management must be distinguished from the *people* of management, as far as decision-making is concerned.

For years and years, indeed, unions have shared with management in the decision-making process: both parties have bargained, and then agreed, on job contents and assignments, remuneration levels, technological processes, and so on.

The firm is the locus of many decisions regarding the nature, the number and variety, the price and the manufacturing processes of products; those decisions, however, are not the exclusive province of the people we call managers. For decision-making involves three distinct steps: first, the gathering of alternatives; second, the determination of the consequences of each alternative; and third, the final choice. The first two steps especially involve in decision-making a good number of persons who do not necessarily belong to management; and even the third step, as we have seen, is not only for management to take.

Who, for instance, decides on the speed of an assembly line? The engineer shares his responsibility for such a decision with the production manager who is on top of him, with the foreman who organizes the work at the shop level, and also with all his subordinates who, through the union, are in a position to block all the efforts and determinations of the experts and of management. To identify the management function with decision-making would mean that all the employees, at all levels of supervision or execution, are constantly encroaching on managerial rights; this would obviously lead to a blind alley.

No! Decisions are those determinations which finally get transformed into reality; in the firm, decision-making is of necessity a group process, indeed the process of individuals pertaining to several groups. People at various levels within the business concern have many aspirations which are somewhat limited by their income, and which will be partly translated into reality by the firm itself. Those persons often have marked preferences for company actions and decisions, in line

with their interests and aspirations. On the other hand, only a few of the individuals within an enterprise express preferences on *all* matters which are objects of decision-making — as for instance remuneration policies, manufacturing processes, vacation with pay, the promotion of a supervisor, the installation of a new plant in this or that community, the introduction of a new product or a new machine, and so on. But whatever the many preferences of scores of people, the fact remains that in each case *only one* final decision must be arrived at which will bind all concerned.

In this light, management discovers, not rivals and trespassers who attempt to « encroach » on its prerogatives and to reduce its efficiency, but associates in a common undertaking whose activities must be coordinated and whose interests must be balanced so as to achieve the end of the business. Such a coordination cannot be accomplished without reciprocal concessions, accommodations, and compromises which are the very prerequisites of true efficiency in the firm.

If, on the one side, the union seeks participation in decision-making by all those who are affected by management's actions and decisions, management, for its part, may very realistically and pragmatically seek, or at least tolerate, participation in the making of decisions by all those who are in a position to affect the outcome of such decisions.

Now, we have seen that the individuals and groups involved are numerous: management, supervision, rank-and-file, union, suppliers of materials and of capital, customers, government, and society.

Furthermore, the number of issues about which those individuals and groups have preferences is great indeed; and then, those preferences are often divergent. Despite all this, concrete decisions must constantly be made, one decision covering one issue and applying to all concerned. Finally, each decision must be consistent and compatible with dozens of others on similar or different issues: for instance, wage administration must have due regard for the organizational structure as much as it must be in line with price policies and with the level of dividends to be paid to shareholders in order to keep them contented.

For all those reasons, there must be somewhere in the firm a coordinator, a « trustee », a gatherer of clashing elements. And this function of equilibration of interests is the essential, exclusive, specific function of management.

As Professor Chamberlain so aptly demonstrates,¹⁴ the type of coordination which we should have in mind here is not primarily one which is associated with the division of labor and technical specialization. However important and necessary such a coordination may be, it is comparatively easy to effect. What is involved here is rather a *coordination of bargains*, to quote Dr. Chamberlain's phrase; management's most crucial problem is to put, and then to maintain in dynamic equilibrium the many forces which are at play; management's job is to skilfully determine the point at which — and the conditions under which — many persons and groups with divergent interests will consent to join or to remain in the enterprise, in whatever capacity this may be.

Seen in this new light, the decision-making process is one of multi-lateral bargaining. Such bargaining is not management *per se*. What is management's clearly isolable domain and function, however, is the harmonization, the accommodation, the imbrication of all those bargains. That is the province of management, and of management alone.

When one thinks of the entrepreneur, and by association of management, one has in mind innovation, a taste and a flair for risk-taking, leadership, and aggressiveness. Now, is not this prime function of coordination which we assign to management too passive, too neutral in view of our own concept of management? With the role of equilibrating agent and of manipulator of bargains previously attributed to management, are we not setting the latter as a passive object for all pressures to be exerted on?

Far from it! Those many bargains, those divergent consents have to be negotiated and arrived at one by one after a great expense of craftiness and effort on the part of management; and then, they have to be followed closely till they are renewed and reformulated. This means much activity and great demands in time, energy, imagination and originality; management is forever in motion in and around numerous bargains which have to be geared to an ever-changing and multiform contingency. And far beyond individual bargains with various interest groups, management must keep in sight the whole organization and its common good.

(14) CHAMBERLAIN, NEIL W. *Labor*. New York: McGraw-Hill Book Company, 1958. Chapter 12, « Union Impact on the Management Function », pp. 217-236, has inspired much of our thinking in the final part of this essay.

It shall be management's true greatness to show enough creative-ness and organizational skill to go beyond the most optimistic objectives of the various groups involved by broadening, by purifying, in short, by coordinating them. As Chamberlain puts it,

The real fun in managing a business, it would seem, must lie in projecting one's own creative imagination into realms which none of the participating parties dream of. The real managerial satisfaction must come in conjuring up ways in which this organization... can now be used by you to accomplish objectives beyond the imagination and even beyond the interest of those who form its several parts.¹⁵

* * *

CONCLUSION

In the context of management rights which are linked less and less closely to property rights, in the perspective of numerous definitions, often divergent, of efficiency, in the face of the many uncertainties and inaccuracies of science in industry, and in view of the political nature of most decisions in economic and technical matters, what is there left for management and union, among other groups? There remain negotiations, haggling, bargaining, power plays and short-lived compromises and accommodation.

Collective bargaining essentially involves partial participation by the union in the management of the business concern. As there exist no limits of principle to the field of collective bargaining, it is understandable that discussions between the parties, which have been pursued for years in social and economic matters, finally and gradually cover the fields of technology and finance.

Management's traditional attitude, which consists in invoking its right of first occupant and in claiming for itself all those rights which the union does not succeed in wresting from it, is still prevalent. And yet, it will some day be replaced by a more realistic and more positive attitude, based on the broadened concept of trusteeship, of clearing-house in the service of all groups and individuals interested in the business.

The union, acting as co-legislator with management in direct negotiations, invites management in the name of efficiency to bargain on

(15) CHAMBERLAIN, NEIL W. *Op. cit.*, pp. 232-233.

more and more issues; it intends to perfect its role of watch-dog, for its membership, of the terms of the agreement, leaving in the hands of management the initiative of making day-to-day decisions which it may question through the grievance procedure.

Thus it is that management, equilibrator of variegated and often antagonistic aspirations and preferences, locus of all those bargains which have to be fitted together, will increase its efficiency, taken in a much broader sense, with due regard for the rights of each and every member of the enterprise, and in search of the point of balance which, partially satisfying for some time all interested individuals and groups, will permit the business concern to operate and to render its service to society.

This smooth and proper functioning of the enterprise is the touchstone and the criterion of genuine efficiency.

Négociation collective et droits de gérance*

Dans le contexte de droits de gérance qui se relie de moins en moins directement au droit de propriété, dans la perspective de définitions nombreuses et souvent divergentes de l'efficacité, devant les incertitudes et les inexactitudes évidentes de la « science » dans l'industrie, et compte tenu du caractère politique de la plupart des décisions d'ordre économique et technique, quel est le recours de la direction et du syndicat, pour ne parler que de ces deux groupes? La négociation, le marchandage, le jeu de puissance, le compromis à durée temporaire.

Le processus de la négociation collective est essentiellement participation partielle du syndicat à la gestion de l'entreprise. Comme il n'existe pas de limites de principe au champ de la négociation collective, il est normal que le dialogue entre les parties s'engage en matières techniques ou financières aussi bien qu'il se poursuit depuis plusieurs années en matières sociales et économiques.

L'attitude traditionnelle de la direction d'invoquer ses droits de premier occupant, de s'attribuer et de se garder tous les droits que ne réussit pas à lui arracher le syndicat, est fort généralisée. Et pourtant, elle fera place, au cours des prochaines années, à une attitude nouvelle, plus réaliste, plus positive et moins inquiète, fondée sur la notion élargie de rôle fiduciaire, de chambre de compensation au service de tous les intéressés dans l'entreprise.

* Le texte complet de cette étude est publié en français dans l'ouvrage *Changements technologiques et droits de Gérance*, Presses universitaires Laval, Québec, 1960.

Le syndicat, co-législateur avec la direction à l'étape des négociations directes (et c'est au nom même de l'efficacité qu'il invitera la direction à négocier sur un nombre toujours plus grand de questions), perfectionnera son rôle de gardien, pour ses membres, des clauses de la convention, laissant à la direction l'initiative de décisions contre lesquelles il pourra s'inscrire en faux, le cas échéant.

Ainsi la direction des entreprises, équilibrée de préférences et d'aspirations nombreuses et fréquemment opposées, lieu de rencontre de tous ces accords à agencer, continuera d'être toujours plus efficace, mais dans un sens beaucoup plus large et plus fructueux, dans le respect des droits de chacun des membres de l'entreprise et dans la recherche du point d'équilibre qui, satisfaisant partiellement et provisoirement tous les intéressés, permettra à l'entreprise de fonctionner et de rendre son service.

Ce bon fonctionnement de l'entreprise, c'est justement la pierre de touche de la véritable efficacité.

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