

Collective Bargaining and the Theory of Conflict

La négociation collective et la théorie du conflit

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[See table of contents](#)

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Article abstract

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Jack Barbash

The purpose of this paper is to examine conflict in the bargaining context as it operates mainly in the United States, and then draw some broad inferences for the theory of conflict.

The nature of conflict in the industrial society is probably best understood in particular contexts. The aim here is to examine conflict in the bargaining context as it operates mainly in the United States, and then to draw some broad inferences for the theory of conflict.

Bargaining functions at four basic levels: (1) at the level of the agreement, which is likely to cover either a multiemployer, multiplant or single employer unit; (2) at the level of the shop floor, both formal and informal; (3) at the level of the final labor transaction between the individual employee and whoever monitors his work in management; and (4) in some senses bargaining also functions at the level of the economy.

Collective bargaining in the United States is a process in which unions, as designated representatives of employees in specified units, negotiate terms of employment with appropriate employers. The parties are also likely to engage in political activities to support their bargaining positions.

Unit describes the specific territory — occupation, craft, department, multiplant, multiemployer, etc. — to which an agreement applies. The terms of employment regulated by collective bargaining are, fundamentally: (1) the price of labor, e.g., wages, supplements and their methods of determination; (2) the utilization of labor, i.e., classification, tenure, effort and hours; (3) individual employee job rights, e.g., seniority, discharge for cause; (4) institutional rights of union and management in the relationship; and (5) enforcement and administration of the agreement. In the final analysis, the terms of collective bargaining boil down to price and power.

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Collective bargaining is coordinated with two complementary strategies. In internal bargaining the sides bargain out their eventual position *within* their respective organizations. In political bargaining the parties negotiate (in effect) with legislators and public administrators in pursuit of their divergent or, on occasion, joint interests. The emphasis here is on collective bargaining and internal bargaining.

The parties' demands on each other are made credible by sanctions which promise benefit, threaten loss, persuade by rational argument and direct action. The strike is the key union sanction. On occasion the strike is backed by consumer boycotts and direct action. Withholding the demand for employment and containing union power are the major employer sanctions.

Sanctions need not always disadvantage the other side. Standardization of labor costs, improvement of product market positions and common interest in shopfloor stability are, so to speak, "positive" sanctions by which unions will induce employers to agree.

The parties face each other at a negotiating table. Negotiation, normally face-to-face or through a mediator, allows each party to modify its initial positions as a result of the continuous exchange of information and feedback. Negotiation is part of bargaining, but not all bargaining involves negotiation. That is to say, the parties can communicate terms and sanctions without necessarily facing each other but without, of course, the opportunities for the instant feedback which face-to-face dealing makes possible.

The bargaining process is of such scale and complexity that both sides require organizations to render their representation effective. Organization, in turn, brings professionalization, hierarchy and, of course, internal division which requires *internal* bargaining to resolve.

In the enterprise management initiates and the union reacts. In collective bargaining, by contrast, the roles are reversed: the union initiates and management reacts. Hence, the dynamics of collective bargaining usually represents a sequence of union demands and management reactions.

The strike, or move to the point the threat of it, occupies the pivotal place in the bargaining paradigm. The labor transaction, like other transactions, requires withholding capabilities on the part of buyer and seller to make their bargaining demands credible. Absent a withholding capability institutionalized in the strike neither side can really *bargain* with the other. The employer will not ordinarily come voluntarily to a bargaining table which will result in the impairment of "management rights". Only a threat

of impending loss will bring him there. Analogously, the likely costs of striking to the employees and the union keep union demands within bounds.

Unions utilize three classes of sanctions for bargaining leverage: (1) withholding labor institutionalized in the strike, (2) withholding product/service demand institutionalized in the boycott, and (3) direct action against the physical instruments of production and/or the people who man them.

A "primary" strike in American usage withholds labor from an employer who is a direct party to the dispute. A secondary strike withholds labor from an employer who is not a direct party to the dispute but who, in varying degrees, is important to the employer directly involved in the dispute.

Unions at the shop floor initiate more limited withholding of labor: the wildcat, the slowdown, refusal to work overtime, mass resignations, etc. The wildcat is a cessation of work, not approved by the higher level union authority, and is commonly initiated by a smaller group within the bargaining unit. In the slowdown the workers stay on the job but work at a reduced pace. Wildcats and slowdowns are likely not to last as long as the conventional strike and are commonly called to protest specific actions by management, antagonistic work groups, or union leadership.

Management's bargaining strategy also includes internal bargaining prior to and concurrent with collective bargaining. Internal bargaining arises out of the complexity and scale of the management organization. Top management will shade the management interest somewhat differently from the industrial relations department or the foremen who have to live daily with the union. From another standpoint, finance, production and public relations are also likely to bring somewhat varying mixes of management preferences.

Management's first reaction to a union is to avoid it if it can. Failing this it tries to trim the union's effect on management costs and power.

If bargaining comes the sanctions available to management are based on its ability to withhold demand for union labor. In the event of a strike, management may choose to "take a long strike" to wear the union down. In the process it may try to cut *its* losses by prestrike stockpiling, farming out of struck work and strike insurance. Commonly, management intends reconciliation with the union after a strike.

There has been something of a recent tendency in several industries, strike or no strike, for management to go nonunion; that is, to sever the

union relationship altogether. Management may go nonunion at the same location or relocate to a more congenial region.

Management may pursue a “union substitution” policy which has it doing for the employees many of the same things which a union does but short of an active union presence. In this tactic management in effect “buys out” the employees’ union impulse.

If management comes to terms with the union, it may thereafter seek to cut the losses of its earlier concessions. It may utilize labor more economically, or exclude certain terms of employment from bargaining — this was the objective of Scientific Management.

Managements may elect to cut losses in a more positive way by “problem solving”, sometimes also called cooperative, collaborative or integrative bargaining. The assumption is that there are labor problems which can be resolved with advantage, or the lowest disadvantage, to *both* sides through rational examination rather than by each side disadvantaging the other. This is problem solving because the primary objective is not to enhance or diminish the position of one side against the other but to deal with a difficult situation. The grievance procedure is probably the most prominent example of problem solving in collective bargaining. But acceptance of the grievance procedure framework does not preclude the parties from using it to enhance their relative advantage.

Like unions, managements utilize public policy bargaining to reenforce *their* price and power objectives in bargaining by opposing or supporting legislation. Electoral support, lobbying and political contributions are the means. Historically, business resorted to the courts to avoid collective bargaining. After the Wagner Act, employers’ main public policy objective was to seek redress of the balance of power in *their* favor through statutory change and the appointment of sympathetic regulators. There are also “problem solving” analogs in political bargaining.

The “building block” of the work society is the primary work group. The work groups in the work society “consciously or unconsciously ... build up a self-defence organization to resist the changes that management is imposing” (Whyte, 218) or “to prevent the individual from appropriating more than his rightful share of work”. (Perlman, 242)

The work groups which comprise the work society may be conceptualized as informal bargainers with specific objectives and with sanctions at their disposal to pursue and enforce their objectives. The work group as a bargainer antedates the union but coexists with the union. Where the work group coexists with a union, “at worst /it/ play/s/ an autonomous role,

showing slight respect for the union or its policies". At best it meets "needs that the union disdains to consider, needs too petty and troublesome to be dealt with as union matters". (Kuhn, 131-32) The bargaining relationship is with the employer and inside the work society between work groups.

The core interest of the work group is the continuous bargaining of effort value — the relationship between effort and wages — to utilize Baldamus' formulation: "Wages are costs to the firm, and the deprivations inherent in effort mean 'costs' to the employee ... A relative lowering of effort value is an advantage to management and a disadvantage to the workers, for it implies, by definition, that effort intensity per unit of wages is increased". (Baldamus, 105)

Bargaining of effort value is necessarily continuous. Since "the formal wage contract is never precise in stipulating how much effort is expected for a given wage (and vice versa), /the/ details of the arrangement are left to be worked out through the direct interaction between the partners of the contract". (Baldamus, 35) In this respect supervision is management's shop-level bargaining. "If a worker slackens his effort at one moment, the foreman's job is to remind him, as it were, that he departs from his obligations, and, in certain circumstances, it is quite possible that there may be some haggling between the two as to what is a 'fair' degree of effort in relation to the wages paid". (Baldamus, 36)

The effort bargain can be perceived as a function of the condition of the external labor and product market.

If ... the local supply of labor for a particular job (or industry) becomes scarce, the workers' expectation of tolerable effort will move towards looser rates ... If, on the other hand, the supply of labor is abundant, expectations will gradually be adjusted in the opposite direction toward tighter rates. Similar effects may come from the product market. When the market expands and the firm's demand for labor expands, management may be compelled to attract labor by what amounts to relatively loose rates. And increasing competition in the product market means that existing effort values have to be tightened up. (Baldamus, 104)

The work society seeks to preserve a maximum degree of predictability, stability and surveillance of the conditions of employment. More specifically, the work society "set \bar{s} / and maintain \bar{s} / a level of output or earnings which corresponds to the value the members place upon their efforts within existing conditions of work and pay". (Kuhn, 132) The work society has "remarkably precise and rational conceptions in respect of effort values". (Baldamus, 94)

A second work society objective is to conserve the supply of work and employment. The worker "knows the conditions of the markets in which he sells and delivers his labor, and his policies are dictated by the practical necessity of avoiding overproduction". (Leiserson, 165) The worker's outlook is on the pessimistic side and he is likely to err on the side of work scarcity.

A third objective is to maintain "the integrity and prestige" of the respective work groups compared to other groups. (Kuhn, 134) Each work group "may seek to enlarge the area of work in its own job classification, to raise its members' earnings or lessen its members' work effort, to restrict bumping in from other groups, and to gain any special privilege it can". (Kuhn, 134)

The sanctions which the work groups have at their disposal come from the withholding of effort which, in turn, derives from work group cohesiveness. The methods of withholding effort by work groups are of two types. In the first type the withholding rations effort and output — the classic term is "restriction of output" as in the setting of precise work quotas, bans on overtime or in "banking" previous quota surpluses.

The second type of withholding is not so much explicit rationing as it is a protest — i.e., the slowdown against too low wages or too high workloads. "Convinced that the piece rate is too low, the workers stand together to hold down production to hurt management and thus force an increase in the price". (Whyte, 26)

Withholding by restriction, whether as protest or rationing, "is a widespread institution, deeply entrenched in the working habits of American laboring people". (Leiserson, 146) "Restriction of output in some form exists in practically every plant, on all sorts of jobs, and under all kinds of payment systems. It is so common as to be taken for granted." (Gardner, 150)

The work group applies sanctions to secure compliance from its deviant members. Ostracism, oral disapproval and even physical force or the threat of it, may be resorted to. The work group relationship thus implies "control and conformity" for the members. (Tannenbaum, 61)

Individual workers may, apart from concerted action, practice their own withholding to express discontent. Tardiness, absenteeism, quits and acts of indiscipline on the job, like insubordination, pilferage and low work quality, are the channels through which this form of protest travels.

The agreement sets the broad rules for determining the price of labor and related conditions of sale. (Flanders, 1-26) Only in subsequent shop

transactions are the rules translated into specific prices for specific workers, where eventually the individual work bargains will be consummated. The grievance-arbitration system is the mechanism through which shop-floor disputes over individual or group prices are resolved. Or to put it another way, grievance-arbitration carries the pricemaking process one step beyond the broad framework established in the agreement.

But even so the grievance-arbitration system yields a result which falls materially short of completing the labor bargain for every employee; eventually this is completed only in the continuous bargaining relationship between the employee and his immediate superior.

The negotiation of the agreement, even with grievance-arbitration, does not work out to a *joint* decisionmaking process between equals in any operational sense; which, in any case, neither of the parties really wants. Management still "retains the right to act" on its own in the first instance. (Feller, 737) All the grievance procedure does is to make management authority "conditional" (Kuhn-2, 263) and then applicable only to a small minority of all disputes.

In general, the union rejects true *joint* decisionmaking, that is where the parties make decisions together as equals. Instead, the union prefers to leave the initiatives in the enterprise to management. In this way its role as counsel for the defense is not compromised in a grievance which might subsequently arise over an earlier joint decision. Exceptions are industries such as apparel in which the union is the dominant partner and individual managements are incapable of seeing through major industrywide initiatives on their own.

Conflict, latent or manifest, is the essence of industrial relations, but the object of industrial relations as technique is the *resolution* of the conflict. Conflict is the essence of industrial relations because industrialism necessarily generates stratifications which, in turn, necessarily generate tensions among those stratified.

Tensions are innate to the industrial order, regardless of whether it is a socialist or capitalist order. To put it summarily, tensions spring from technology, scale, organization, efficiency and uncertainty — the essential features of industrialism. These features necessarily generate tensions (again in shorthand terms) of command and subordination, competitiveness, exploitation, physical deprivation at work and economic insecurity. Industrial relations as technique consists largely of resolving tensions in the interest of preserving a going enterprise.

Tensions are latent conflict which become overt in diverse manifestations. The strike is only one manifestation, albeit the most costly.

The conflict “universe” consists of a variety of adversary interaction. The adversaries are, as we have seen, either unions vs. employers or employees vs. employees and management vs. management. More recently the state has become a *bargaining* adversary seeking to influence the outcome of the labor transaction between unions and employers.

The locus of conflict in which the adversaries operate is either the bargaining table for the negotiation of the agreement or the shop floor for the further negotiation or application of the agreement. The third locus of conflict is politics, where unions and employers pursue their adversary interests — and occasionally common interests — in the forum provided by the public policy debate.

Each locus of conflict has its characteristic instrumentality. Collective bargaining typically produces the strike. The grievance and wildcat strikes spring from the union-management relationship on the shop floor; and absenteeism, quits and indiscipline are manifestations of conflict in the informal work society. Political conflict generates election contests and legislative votes.

Conflict in industrial relations, or mostly the threat of it — far from being pathological or aberrant — is normal and even necessary. The principle is that the parties can be kept “honest” only by countervailing checks and balances. Conflict looking toward resolution is like a stabilizer or governor which signals the parties away from extreme positions by confronting them with the likely costs.

Latent and manifest conflicts contain within them — to put it into the dialectical style — the seeds of their own resolution. Indeed, industrial conflict cannot be understood at all without a frame of reference that also included conflict *resolution*. This is because in the bargaining context conflict is not an end itself but a means to an end; specifically, a means to induce agreement.

Bargaining is, as has been said by many, a *cooperative* form of conflict in which the parties — or for that matter the social *partners* (as they are called in Western Europe) — seek to exchange what they want from each other. Unlike *competitors* who seek to oust one another, bargainers seek a mutually agreeable exchange. Unions and managements *compete* only for the intangible value of employee loyalty. In fact, the parties to the labor transaction are tied to each other more than nonlabor buyers and sellers because alternate sources of labor supply and demand are much more difficult to come by.

In the perceptions of the parties collective bargaining is mostly an adversary game constrained at the margin only by the common interest in the size of the fund available for distribution to wages and profits. Yet the fundamental commonality which underlies the collective bargaining relationship is underscored by the preoccupation of the parties with the avoidance and rationalization of overt conflict.

Rationalization of conflict means that the parties have substituted procedural and substantive rules for trial-by-ordeal and confrontation. The strike has gradually been divested of its confrontational aspect and, for many purposes, has been reduced to a sequence of symbolic gestures. Nonetheless, confrontation is never far from the surface. Rationalization does not imply that the differences which divide the parties are any less but that the differences are no longer asserted through physical encounters.

The concept of a generalized, overriding class struggle culminating in the triumph of the working class cannot find support in the evidence of collective bargaining. The first problem with the concept has to do with the fragmentation of diverse adversarial relationships which are as likely to encompass employees vs. employees or the states vs. unions and employers, as they are the classic unions vs. employers. Operationally there is no overriding class struggle.

The second problem has to do with the pressures on unions and employers to conciliate their conflicts, making it difficult to sustain a posture of permanent warfare. The final problem is that both unions and employers have been able to advance their respective interests under the regime of bargaining, thereby avoiding the catastrophes of immiseration and diminishing profits which Marx had designed to bring about capitalism's downfall. Indeed, a sort of neo-Marxism has emerged in the current period which denigrates the revolutionary potential of advanced capitalism's working class precisely because bargaining has *not* led to revolution.

The intellectual problem is how to deal with conflict as an analytical category. Essentially the problem comes to this: how can "normal" conflict be distinguished from "pathological" conflict. Normal conflict is the conflict essential to the maintenance of the system and without which the system is largely incapable of functioning. Pathological (or dysfunctional) conflict is not only not essential to the maintenance of the system, it may even be destructive of it.

Although conflict is an element in the maintenance of equilibrium in the industrial relations system, there is a point beyond which conflict

becomes “aberrant”, “abnormal”, “dysfunctional”, or “pathological”, or whatever the right word is. It is not yet possible to determine analytically the nature of the boundary, the point at which conflict is normal or abnormal at an abstract level of theory.

But a rudimentary beginning may be made in the direction of a general theory by examining particular cases. My method here has been to make a quick mental inventory of what have been, by common consent, some of the industrial “horrible examples” of conflict in recent times and to work up stepwise to a more general formulation of aberrant conflict. Since this is very much a trial exercise, I see no point in identifying the specific situations by name. If I am right, informed observers will be able to fill in their own particulars without difficulty.

I offer the following as examples of “deviant” conflict behavior:

1. Conflict accompanied by pervasive violence.
2. Conflict which results in wholesale disorganization of a community or society.
3. Conflict which is associated with extinction of unions or managements as institutions.
4. The persistence of unhealthy and unsafe work environments.
5. The persistence of a large hard-core of absenteeism, tardiness, indiscipline through periods of economic expansion and contraction.
6. Long-term declining productivity not caused by corresponding improvement in work quality.
7. The inability of workers to maintain internal unity because of fragmentation, as indicated by persistent wildcat strikes and acute internal rivalries.
8. The permanent cooptation or manipulation of one side by the other.
9. The exclusion of important segments of the work force from representation and participation in the union or the work society.
10. The blocking of access to fair and efficient representation by bureaucracy including excessive professionalism.
11. Persistent civil disobedience in an essentially democratic political system.

In more general terms, conflict pathology is conflict in contexts of violence, class warfare, social disorganization, alienating and life-threatening work environments, low productivity, cooptation, manipula-

tion and fragmentation, and gross inequalities in income and power, all of which have to be present in some egregious way to qualify as pathology.

The essential common ground occupied by all of these manifestations of conflict pathology are: (1) the substantial impairment of the parties' representational capabilities, (2) major impairment of the public interest in the process of asserting sectional claims, and (3) infringement of basic human rights to be free from violence to the person and life-threatening stress at work.

In sum the logic of our argument runs as follows:

1. The wage relationship under collective bargaining is a species of exchange in which human effort is exchanged for a wage.

2. The labor transaction under collective bargaining involves both congruence and incongruence; congruence because one wants something from the other; incongruence because the sides invariably differ on the relative values which should prevail.

3. In order to generalize validly as to whether the exchange relationship in the case of the labor transaction is generating *undue* conflict the following conditions have to be met:

- a. A theory of the universe of conflict which takes into account not only strikes but turnover, absenteeism, sabotage, indiscipline or latent tendencies with these results.
- b. A theory of latent and overt conflict.
- c. A theory of conflict pathology; that is, when does conflict become dysfunctional?

This grouping toward a theory of conflict and its pathology is not intended to infer blame or merit for one side or another. Only rarely are there heroes and villains in industrial relations.

Nor are we necessarily making a judgment as to whether normality or pathology represent inferior or superior, lower or higher stages. They may very well be one or the other but this depends on how the "higher" purpose is defined. However, if the object is a going industrial relations system, then tension and conflict must be assumed as given and some understanding and managing of that tension and conflict constitute the essential industrial relations technique, or may be art is the better word. Pathological conflict can destroy or endanger the system.

The practical questions which this line of argument is meant to address are two: (1) the tendency of bargaining antagonists committed to the existing industrial relations order who nevertheless press their conflict to the

point of dysfunction; (2) the tendency to impute dysfunction to conflict which is, in fact, functional. The latter is a misconception of both the right and the left. On the right the tendency is to mistake the absence of overt conflict as an indicator of management effectiveness or to overlook the significance of certain forms of shop-floor behavior (quits, for example) as conflict. On the left the tendency is to see any escalation of industrial conflict as the herald of the "final conflict".

Beyond conflict is the utopian vision of relationships at work governed by altruism and trust: that is, by nonexchange considerations. One suspects that some measure of power parity is a first condition for this version of utopia. The negative imprint which Marx and Engels have put on the utopian mode of speculation ought not to deter additional reflection.

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I have glossed over lightly points which I have treated more fully in other places:

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La négociation collective et la théorie du conflit

Le conflit, dans le domaine des relations du travail, est en soi loin d'être aberrant et pathologique à moins qu'il ne s'éloigne de certaines normes. Le conflit, manifeste ou latent, contient la semence de sa propre solution. On ne peut d'ailleurs le concevoir sans l'existence d'un cadre de référence qui inclut sa solution car, dans le contexte de négociation, le conflit n'est pas une fin en lui-même, mais un moyen d'en arriver à une entente.

La négociation est une forme coopérative de conflit dans laquelle les parties cherchent à échanger ce qu'elles veulent l'une de l'autre. Contrairement aux concurrents qui visent à l'évincer, les parties à la négociation collective veulent en arriver à un échange mutuel. Le concept de lutte de classe, qui culmine dans le triomphe de la classe ouvrière, n'a pas place dans la négociation collective, même lorsque celle-ci atteint le stade de la grève.

Toutefois, bien que le conflit soit un élément du maintien du système de relations du travail, il y a un point au-delà duquel il devient «anormal», «aberrant» et «pathologique», mais il n'est pas facile de déterminer où cela commence. Il faut se contenter d'indices. D'une façon générale, les conflits deviennent «pathologiques» lorsqu'ils se produisent dans un climat de violence, de lutte de classe, de désorganisation sociale, de faible productivité et de grands écarts dans les revenus et les pouvoirs.

Toute la logique d'un exposé sur le sujet tient dans les considérations suivantes.

D'une part, sous le régime de la négociation collective, en matière de rémunération, les rapports entre les parties consistent dans une espèce de troc où l'on échange l'effort humain contre un salaire. Cette transaction est à la fois adéquate et inadéquate. Elle est adéquate en ce que l'une des parties veut obtenir quelque chose de l'autre; elle est inadéquate en ce que les parties diffèrent invariablement d'avis à propos des valeurs relatives qui devraient prévaloir. D'autre part, pour savoir si ce rapport d'échanges mutuels engendre un conflit indû, c'est-à-dire qui va à l'encontre des règles, il faut que l'on retrouve les trois conditions suivantes:

1. une théorie de l'universalité du conflit dans laquelle on tienne compte, non seulement de la grève, mais du roulement de la main-d'oeuvre, de l'absentéisme, du sabotage, de l'indiscipline, d'une faible productivité ou de tendances en ce sens;

2. l'existence d'une théorie de conflit ouvert ou latent;
3. l'existence d'une théorie d'un conflit pathologique, c'est-à-dire le point où le conflit devient dysfonctionnel.

Le tâtonnement dans la recherche d'une théorie du conflit et de son état pathologique n'est pas destiné à jeter blâme ou mérite sur l'une ou sur l'autre des parties. Il y a rarement des héros ou des gredins dans les relations du travail.

Les questions pratiques que se dégagent de l'exposé précédent sont au nombre de deux: 1) la tendance des antagonistes engagés dans le régime actuel de relations du travail à pousser le conflit à un point où il deviendrait pathologique; 2) la tendance aussi à juger dysfonctionnel un conflit qui est en réalité normal. Dans ce dernier cas, il s'agit d'une fausse conception selon que l'on se réclame de la droite ou de la gauche. Du côté de la droite, on a tendance à considérer l'absence de conflit ouvert comme une indication de l'efficacité de la direction ou encore de négliger la signification de certaines formes de comportement dans le milieu du travail. Du côté de la gauche, la tendance est de voir toute escalade dans un conflit industriel comme le signe avant-coureur du «conflit final».

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