

Who Wants Collective Bargaining Any Way? Qui veut la convention collective?

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Résumé de l'article

La négociation collective se justifie comme mesure d'intérêt public parce qu'elle est un des systèmes de relations du travail qui tient le mieux compte des valeurs sur lesquelles repose notre régime social et économique. On peut aussi la défendre en s'appuyant sur l'argument qu'« elle offre une agora appropriée pour discuter librement et sans contrainte de solutions multiples et que pareille façon d'agir l'emporte sur toute autre, même si l'on met de côté toute considération morale touchant la liberté et autres valeurs ».

La négociation collective se fonde sur un double paradoxe qui influence à la fois son utilisation et la conception que l'on s'en fait, soit une lutte discontinue entre des intérêts collectifs opposés et aussi un agent puissant d'action politique, ce qui va du fait évident que la négociation collective est en soi une forme d'action collective jusqu'à son utilisation comme instrument ultérieur de transformation politique, sociale et économique.

Cinq dangers semblent planer à l'heure actuelle sur le régime de la négociation collective : une augmentation alarmante du nombre d'heures-homme de travail perdues à cause des arrêts de travail associés au nombre accru de rejets par les travailleurs de la base des projets de règlement, une intensification considérable d'accords sur les salaires qui dépassent à la fois le taux d'inflation et l'indice d'accroissement de la productivité nationale, une amplification marquée des grèves illégales et des autres formes d'activité illicite, la politisation croissante des conflits et l'accentuation des préjudices publics et privés découlant des conflits dans les services essentiels.

La cause de ces dangers, ce sont le chômage, le manque à produire et l'inflation, qui poussent à une espèce de désengagement où l'individu devient indifférent aux conséquences de ses réclamations. La négociation collective n'a jamais été conçue pour détendre de pareilles tensions. On ne peut demander qu'elle soit seule à en porter le poids et elle ne peut assumer l'entière responsabilité.

Par conséquent, nous devons éviter de rejeter à la hâte et pour de faux motifs la négociation collective comme instrument d'action collective, même si, à l'intérieur du régime de négociation collective, il existe certaines possibilités de bonifier le système dans les conditions actuelles. Toute amélioration durable du fonctionnement de la négociation collective ne pourra provenir que d'une clarification de l'atmosphère de façon à réconcilier entre elles les valeurs qui motivent la négociation collective en tant que mesure d'intérêt public.

Who Wants Collective Bargaining Any Way?

A. W. R. Carrothers

Collective bargaining in Canada is undergoing strains today, as it has in different circumstances, which are challenging the process and are causing responsible people to question whether it can be improved or should be replaced.

Canada may be described as a bilingual, multicultural, regionally oriented, determinedly pluralist society, with a mixed enterprise economy and a three-tiered federal system of responsible government, rooted in a public legal system, fostering individual freedom, civil liberties and collective rights, in search of the « humane society ». Those words encapsule, with thumbnail inadequacy, the basic characteristics of the country and the kinds of values adhering to its peoples.

Collective bargaining is, among other things, a system for the regulation of employer-employee relations. Of numerous possible systems, it is the one that is most compatible with those characteristics and values which we have so far been able to create. It is a stratagem to be judged by what it does. It has limitations and flaws which should be assessed and understood and, where appropriate, remedied. But if basic change to the system is to be effected we should be satisfied that the whole of what we think we stand to gain is worth more to us than the whole of what we may stand to lose.

A CONVENTIONAL HISTORICAL RATIONALE : COLLECTIVE BARGAINING AND THE « FREE MARKET »

Collective bargaining in Canada is undergoing strains today, as it was under different conditions, which are challenging it and are causing responsible people to question whether it can be improved or should be replaced. There is danger of throwing the baby out with the bath water, and I think it is now time to take a good look at the baby.

Like all babies collective bargaining had an umbilical cord, the Industrial Revolution of the 18th

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century, which drove craftsmen and common labourers alike from the tools of their trade, off the land, and from their station in the feudal estate, into the towns and cities, where misery sought company.

Like all babies, collective bargaining had a mother and a father. The mother was the labour force — the new labour movement — trade unionism — who had a special instinct for the protection, the care and feeding, of the child. It also had a father : capitalism, who took his pleasures not thinking of the consequences and horrified at what he had sired. The father would prefer to deny responsibility, for he never really married the girl, only maintaining support under compulsion and fear of a paternity suit. History has yet to say whether the conception of collective bargaining resulted from an act of fiery seduction, of rape, or of common consent. At least it was not the product of humdrum routine, for labour and capital were not wilfully living together without benefit of clergy. Yet there is not much doubt as to who was getting what.

Like all babies, collective bargaining has a life of its own — a purpose for living and a right to live independent of parental opinion and certainly free of any asserted power of life and death. What then is its purpose for living ?

« Conventional wisdom » dictates that we are enjoying the good life of democratic free enterprise. It is claimed to be the prevailing spirit in our society. Given the democratic component in the formula, trade unionism is a power that countervails against enterprise, and collective bargaining is a mechanism through which the two powers meet, confront and compromise their differences. Collective bargaining is a mechanism by which democracy may be brought to industry. It is a mechanism by which social justice can be pursued in the work-place. Collective bargaining is thus a natural concomitant of private enterprise, because without it the social justice which it produces or promises would be sought through the State ; and the discharge of this responsibility through the State would be the beginning of the end of private enterprise. Is it any wonder that collective bargaining is a love-hate relationship ? Is it any wonder that the more we have of it the more we question conventional assertions of dominance and subservience ? of role-playing ? of interdependence ? In times of present trouble, in which collective bargaining appears to exacerbate problems, it is not surprising that people see salvation in change.

COLLECTIVE BARGAINING AS A PROCESS FOR MAKING DECISIONS

Having offered very briefly a fairly conventional rationale for collective bargaining as one of a number of possible industrial relations systems, I should like to dwell on a more broadly-based appraisal of it as a process for taking decisions.

In seeking a framework within which to analyze and appraise decision-making processes at large, I have found myself considering five questions :

1. what is the dimension or order of magnitude of the issue to be decided ;
2. what is the nature of the issue ;
3. what is the character of the process itself ;
4. what is the quality of the decision ; and
5. what process will likely or should be used.

The dimension or order of magnitude of an issue

There is great variation in the dimension or order of magnitude of the issues to be decided by collective bargaining, from matters of fundamental principle to the mere acceptance of precedent. Most issues occupy a middle range. A principle is something that is not easily compromised or cast aside, and there is much danger in misconceiving a matter of self-interest with one of principle. Many an impasse has been thus produced and many an intermediary has been hard-pressed to facilitate the negotiation of a reasonable reconciliation of conflicting interests while allowing a party to feel he has gained his point of principle.

The nature of an issue

The nature of collective bargaining issues is of course wide-ranging. Historically, I have suggested, collective bargaining developed in response to the adoption of the theory of the free market and to provide acceptable participation in it by the labour force, although there were a number of other justifications from which, over time, there has been much fallout. Since this paper can be no more than a cursory appraisal in any event, I should like to dwell on only one facet, the political.

We are accustomed to recognize the political element in the collective bargaining process. But there can be an important political element in the complex nature of the issue. It is manifest where the process is used for ulterior political purpose : to challenge the policies of the government

of the day, to seek a change in the government of the day, or even to seek a transformation in political structures. Each gives shape to the issue to be resolved. Each in its own way is a challenge to the sovereign authority of the government. Where the trade union movement is an integral part of the political process, as it is in a number of Western European countries in varying forms and degrees, the first two of these objectives may be attainable, in some form or in some degree, within the system. Where the trade union movement is not so integrated, as tends to be the case in North America, the collective bargaining process takes from the nature of the issue such a substantially different character that students of conventional industrial relations may not recognize it as belonging or relating to an industrial relations system. As a Western Canadian student of industrial relations I have long accepted that Quebec is a province not like the others. I encountered not long ago the assertion — it was an indigenous one — that the effective *de facto* Opposition to the economic and social policies of the government of the day is to be found not so much on « the other side of the House » as within the labour movement. The potentialities of trade unionism go far beyond participation in collective bargaining. I do not presume to judge the truth or falsity of the assertion ; but it is an observation which I find will not allow itself to be dismissed abruptly. If it is a fair observation, the character of the issue will affect the character of the process, and sanctions and settlements may have little to do with a more restricted concept of collective bargaining.

The character of a process

The character of the collective bargaining process is that of a synthesis of a great many processes.

The process has two engines, the main and the spare. The main engine is a highly complex affair ; some parts are concurrent, some sequential, as witness the uniquely Canadian strategy of postponing the right to resort to economic sanctions. There is the economic component of the marketplace : coincidence of the forces of supply and demand. There is a psychological component at the bargaining table, well understood by masters of the craft, and not always clearly distinguishable from poker or chess. There is a central administrative component in the role of labour boards, from the disposition of bargaining rights to the administration of the collective agreement. There is a legal component, including the role of the courts and the functions of arbitration. There is a moral component,

for instance in defining the role of the interceder : is he there to discover what will work or to determine what is « fair » ?

From the outset there is a political element in the process because the system has been embraced by governments as public policy and can be withdrawn in the name of public policy. Industrial conflict may be put into the public domain through the work stoppage and attendant publicity through which the contestants may each seek to recruit sympathetic public opinion. In a free market with easy substitution of goods and services, public opinion may provide little comfort to either party. In a restricted market, the sanction of the work stoppage impinges on the user or beneficiary who is not a party to the dispute. At what point that prejudice passes the limits of public tolerance is a neat political question. Where work stoppage in an essential service becomes intolerable, the the government is pressed to exercise sovereign power such as to override in the private sector the process which the government has adopted as public policy, and to replace itself as employer in the public sector with itself as sovereign. Settlement is no longer the product of collective bargaining but of the political process.

The auxiliary engine is driven by the economic force of the work stoppage. It turns on when the first one falters. Although it sometimes anticipates failure of the main engine, its potential start-up is often what keeps the main eccentric Rube Golberg machine functioning.

The process presents itself as one of bargain and agreement. But, like a Mother Hubbard dress, what consensus conceals can be more interesting than what it reveals. Behind the consensus there often is nothing more than a temporary truce, which makes the process look more like one of coincidence than consensus. Yet the collective agreement so long as it lasts binds the parties together. The process was described a quarter century ago as one of antagonistic cooperation. It can of course be one of consensus based on a recognition of common interests ; circumstances indeed alter cases.

The quality of a decision

The quality of the decision produced by collective bargaining basically is normative : it prescribes the terms and conditions under which the parties are to live together. There may be descriptive elements, but those are more likely to be hortatory and polemical, producing rhetoric for other occasions. The sanctions tend to be legal, but not exclusively so.

The decision is of course heavily economic, with clear social implications. The labour factor of production is competing with others for the spoils of the market. The market for labour itself is not free, but that is what collective bargaining as social policy is about.

PRESENT THREATS TO THE COLLECTIVE BARGAINING SYSTEM

The sources of present threats to the collective bargaining system appear to be five :

- (1) an alarming increase in man-hours lost through work stoppages, accompanied by a rise in the rate of rejection by union members of tentative settlements ;
 - (2) an increase in wage settlements substantially in excess of the rate of inflation and any increase in national productivity ;
 - (3) an increase in the number of illegal work stoppages and other forms of unlawful behaviour ;
 - (4) an increasing politicization of disputes ; and
 - (5) an accumulation of public and private harm from disputes in essential services.
-
- (1) Time loss figures provide no cause for complacency, but they should be kept in perspective. The direct and indirect effects of work stoppages on productivity can vary tremendously. Further, they are only one cause of time and productivity loss, and a minor one at that, compared with illness, absenteeism, accidents, breakdowns, logistical failures and bad weather. Moreover, work stoppage figures are only a crude proxy for hard data on the real condition of industrial relations.
 - (2) Studies suggest that collective bargaining is a neutral mechanism which of itself is not inflationary : it may reinforce a deflationary environment ; at the same time there is little doubt that it tends to act as an accelerator in an inflationary environment.
 - (3) The danger of illegality goes much deeper than the present labour relations environment. Flouting of the law is being rewarded by undertakings not to pursue legal remedies as a condition of settlement. It is becoming a legitimate question whether the law is to be viewed as a norm to be adhered to or merely as a guideline from which deviations may be measured. Among other things, such deviations are bound to have their impact on leadership : where illegality is the order of the day, leaders will tend to surface to accord with the order.
 - (4) The political component in collective bargaining has escalated substantially. The curve of acceleration of *ad hoc* legislation matches

that of public inconvenience. Other evidence can be derived without difficulty from last winter's public press.

- (5) Observers sense that the rising accumulation of public and private harm is leaving a residue of bitterness the social significance of which is difficult to assess, and which presents one of the most important unknowns in public affairs today.

CAUSES OF THE THREATS TO COLLECTIVE BARGAINING AS PUBLIC POLICY

The source of problems in collective bargaining is less in what is happening in the labour management system than it is in external forces. There are today three major causes of the threats : unemployment, lack of productivity, and inflation ; and the greatest of these is inflation.

The good news is that although unemployment is high, in other countries it is higher ; although productivity is down, it is not out ; and although we have double digit inflation, other countries have it worse. That, of course, is not good enough. Unemployment, however it may be offset by insurance and welfare schemes, creates an environment of insecurity which is being reinforced by a drop in productivity and a persistent, unacceptably high rate of inflation. Unemployment is indiscriminating, and when it bites hard it hurts hard. Productivity fell off in the second half of 1974 and did not start to recover until the summer of 1975 ; where there is no growth there is no play in the system, no cushion for short-falls or catch ups. The silent thief of inflation is eroding the social fabric by forcing more people to become more dependent on the state. It is eroding the political fabric through repeated failure of the political system to master it and through repeated toleration of or accommodation to uncivil disobedience engendered by it. It is eroding collective bargain by inciting increased rejection of tentative settlements, the imposition of *ad hoc* political and quasi-judicial settlements, and a growing sense of injustice over the processes of voluntary arbitration. The product is not merely a short-fall in expectations, even expectations discounted by adversity : it is an enormous threat to individual security and to relative well-being. It generates alienation from the present and the future — a form of « social disengagement » in which the individual becomes indifferent to the impact of his claims on his today, let alone on the consequences for his tomorrow, and in which « beggar my neighbour » becomes part of the culture. Inflation is redistributing wealth with a vengeance, and in so doing it is redesigning the social dynamic. Free collective bargaining was never

planned to accommodate such strains ; it cannot carry the burden alone, and it should not take the blame.

ASSESSMENT OF COLLECTIVE BARGAINING

In judging the system today we should not allow our attention to be deflected by the fact that, being now under attack, it tends to be defended in public debate by those who appear to stand to gain by its use or by those who sense that they stand to lose by advocating its constraint or elimination. At the same time, it is, I submitted in the statement of my thesis, a stratagem, and should be judged accordingly. As a system of industrial relations it is not the only game in town. Yet, if there is to be systemic change we should be careful about what we buy in the form of relief from present dilemmas and what we pay for the change in terms of values, freedoms and interests. At present, collective bargaining accommodates a host of forces and produces a vector the strength and direction of which is the sum of those forces. Is the object of change to change that vector ? If so, to what direction and with what force ? and with what impact on the component forces ? And are we sure that our present discontent is really rooted in the industrial relations system ?

We have already seen shattered the myth that inflation and unemployment occupy seats on a seesaw and that as one goes up the other goes down ; a government, so runs the myth, by manipulating the fulcrum can bring about the balance which its policy dictates. We have witnessed the inability of government to constrain inflation with levers it judges to be acceptable. Governments have a larger piece of the economic action than ever before. One can't help wondering whether that very participation has weakened the leverage of economic policies which governments appeared to have had in earlier times. What appears to remain now is the prospect of a consensus in favour of voluntary restraint, a consensus which a projection of present trends tells us is not a high probability. I wonder also whether these developments are not reflected in the admission of the Minister of Finance in his May budget speech that « if we expected restraint from the country, the country expected restraints from governments ».

The magnitude and rate of growth of impingement of government activities at all levels on the lives of individuals — in some respects to the point of pre-emption — are giving rise to an insistent distinction between public interest and government interest. Government activities — or enterprises — can and do take on a will of their own that is not

quite the same as the will of public policy that created them. They bear the name of government but they carry their own genes. It is not a novel distinction ; but perhaps it is fortuitous that the distinction should be assertive now, lest we slip into a false consensus that the interests are identical. The only case of identity that seems at all persuasive is that of a newly elected government that has had no time to do anything ; but even there the very inheritance of orderly change mars the identity. Thus there may be perceived a distinction between government policy levers and public policy levers : and for the former to be effective, both may have to be seen to overlap.

And so I fall back on Karl Popper's « Open Society », with which collective bargaining appears to be congenial, which he offers as providing « a forum for the free and untrammelled propounding of alternative solutions and [having an approach which] is superior to any alternative, even when all moral considerations about freedom and other values are left aside ». I sense a certain harmony between that and two further public statements of last May. The Minister of Finance in his budget speech stated that the severe use of fiscal and monetary restraint, with whatever price it commanded in unemployment, « would be completely at odds with my own instincts ». A brief report of a speech of the Prime Minister in Montreal at the end of May reads as follows : « Officially during his tour, he stuck to the policy that inflation in Canada can best be managed by the exercise of voluntary restraint in the different sectors of the economy. *More convincingly* (italics added), he expounded on the economic and civil drawbacks of compulsory controls on income and prices ». One can taste the salt air of journalistic pragmatism.

Collective bargaining is now so much a part of the fabric of our country that I suspect that substantial change will come about only with the attenuation of pluralism and diversity on which it is built. Centripetal forces are not a gracious host to collective bargaining, as they are not to other interests. It may be that collective bargaining will become a specific electoral issue and the electorate will opt, for whatever reasons, for centralized authority over present pluralism. It may be that our social-economic-political system is fated to grind slowly to a crawl. And we should not dismiss as implausible the prospect that we may be on the eve of a transformation in political structures. It can happen here.

I described Canada as a pluralist society and collective bargaining as a decentralized process. That is the way the process was designed and that is the way it has operated. The certification of localized bargaining

units is evidence of the design ; the power of the rank and file in the unit to accept or reject settlement is evidence of the operation.

The presence of a national labour congress does not negate the independence of affiliate unions nor the separate status of union locals within the collective bargaining system. Similarly the existence of national organizations representing and serving the interests of employers in the private sector does not negate nor attenuate the responsibility of the individual employer and the predilection for individualistic behaviour which is characteristic of private enterprise and the free market.

I am quite aware of significant cases of industry — wide collective bargaining and of country-wide bargaining under the federal law. The labour movement has organized itself to match the structure of the three spheres or levels of government in Canada and employers have coalesced to match the structure of the labour movement and its *de facto* impact on the collective bargaining process. Employers' organizations also have drifted apart under the thrust of competition, and drifted together again under the force of confrontation. Divide and rule is a strategy which has its antidote in the counter-strategy of squaring off at the bargaining table. It raises the incidental question of which is the prevailing and which the countervailing power.

All these activities evolved, I submit, within a general context of pluralism and within a Gompers-style perception of collective bargaining : to get out of the prevailing economic system all that the process will permit. I believe this characterization continued to be accurate even after the introduction of collective bargaining in the federal public service : the philosophy of the legislation and the operation of collective bargaining are consonant with that characterization.

It is easy to say we are in the midst of change. It is much less easy to detect with confidence the direction of change : to identify a medium to long term trend relevant to policy determination as distinct from short term shifts which invite pragmatic recalculations of tactics and strategies. We should not, however, avoid the question because its formulation is difficult or the answers unclear. If we can but « see through a glass darkly » then so be it.

The trend to bigness is a centralizing force, and an external threat is a centralizing stimulant. The process or institution that emerges from the stimulation is designed to contend with that threat and possesses enduring qualities, interests and objectives often congruent with but

nonetheless distinguishable from those of progenitor systems. The conditions in Canada over the past few years — economic, political, social, psychological — of which inflation has become the evil symbol, are a threat to the collective bargaining system. That threat and the trend to bigness are centripetal factors which are causing coalescences with capacities, interests and objectives beyond conventional collective bargaining. In short, I suggest there is an evolving centralization and politicization of organisms conventionally associated with collective bargaining, but geared to perform a role beyond collective bargaining. The political role of the labour movement has heretofore been uneven and, outside Quebec, ineffectual compared with the closest external prototypes in the United States and the United Kingdom, or with those in numerous other western democracies. In the United States John L. Lewis may have set his own ambush in 1940 in pitting his job against the re-election of President Roosevelt, but George Meany continues to ride tall in the political saddle. In the United Kingdom the Labour Party is the creature of the labour movement, and the government of the day finds itself negotiating with its creator on critical economic policy in the name of a latter-day Social Contract. In western European countries the negotiation of national wage rates, from which local and regional rates may drift upward, is really the negotiation of a piece of national economic policy.

If the unsuccessful efforts of the federal government to reach consensus on voluntary wage and price restraint are evidence of evolving roles, we are witnessing substantial change in the realistic interests and attainable objectives of the labour movement within which conventional collective bargaining may have a comparatively minor place. It may be that the answer last spring to the quest for voluntary restraint was « no » because centralizing forces do not yet surpass the needs and wants of pluralism. To put it more bluntly, perhaps the answer had to be « no » because respondents could not deliver on an affirmative one. The event nevertheless may be a significant failure as a foretoken of transformation in *de facto* political structures. Not only can it happen here : it may be happening here.

I don't know the answers. Two and a half decades of hindsight suggest to me that there is no « final solution » which is capable of supporting life and growth ; nor should we expect one, for a dynamic society knows no « Final Act ». In the long thrust of history perhaps in the industrial world of the west we are at last in a period of post-conjugal let-down, and we have not got a grip on reality. As society continues and

civilization survives, the processes or stratagems or devices by which human beings relate on issues of public interest will be reworked and new devices or new forms of old devices will appear ; that is one of the ways in which « society » will change with time and will, for those with long and gentle memories, turn the present into « the good old days ». Who among you wants collective bargaining any way ?

Qui veut la négociation collective ?

La négociation collective se justifie comme mesure d'intérêt public parce qu'elle est un des systèmes de relations du travail qui tient le mieux compte des valeurs sur lesquelles repose notre régime social et économique. On peut aussi la défendre en s'appuyant sur l'argument qu'elle offre une agora appropriée pour discuter librement et sans contrainte de solutions multiples et que pareille façon d'agir l'emporte sur toute autre, même si l'on met de côté toute considération morale touchant la liberté et autres valeurs ».

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