

CONCESSIONS AND THE PROBLEMS OF COMBATTING THEM

If there is any simple advice that can be given union negotiators facing demands for concessions, it is that concessions are bad and should be resisted at all costs--even at the ultimate cost of plant closure. Even that ultimate cost would not, in many cases, be so high as it would first appear. It would probably have happened anyway and concessions might have, at best, delayed the closure.

We think there can be little doubt that the course dictated by such advice--adamant and unyielding resistance in every case--would, if universally followed, be in the best interest of the overwhelming majority of American workers and unionists. The problem is that it may not be in the best short-run interest of specific groups of unionists and for that reason it has not been followed--and is not likely to be followed. Despite that reality it remains the wisest course for every union, even in cases where concessions seem a foregone conclusion, to take a very adamant and very public "no backward step" stance.

There is no way for any union to keep concessions off the bargaining table. Management has every right--and some obvious and proven reasons--to put them there; during the eighties they did just that. Nor is there any way to keep concessions from being discussed by the membership. Management can and will introduce the subject.

Indeed, the greatest value of concessions to management has come

not from the actual take-backs won at the table but in the reduced expectations of the membership engendered by the employer's threats of take-backs. Too often union leaders and members are counting as a victory a contract that gives back nothing, or less than feared, but that wins little or nothing, not even increases equal to inflation.

Before the present-era of concession bargaining, it had always been the nearly universal experience of union leaders, and the confident expectation of union members, that the old contract was the "base" from which negotiations started and upon which improvements were built. Management negotiators might point out that negotiations started from "zero" and that management had exactly the same right to demand a cut in wages as the union had to demand an increase. While that argument was, technically and legally, entirely correct, it was neither advanced nor received with much seriousness. Both sides of the table knew, and knew that the other side knew, that there were going to be increases and improvements and that the only question was "how much". That happy assumption was fundamentally altered by the fact of concessionary bargaining and at an incalculable cost to unions, their members, and even non-union workers who benefit when unions make gains.

The concessionary bargaining epidemic of the eighties continues to color the collective bargaining landscape. The old assumptions, in many cases, have not only been altered but actually reversed and many negotiations begin with the tacit assumption (sometimes on both sides of the table) that there are going to be

concessions and the only question is "how much".

The danger and pain of give-backs are immediate and obvious, but the full extent of these dangers is often obscured. For some unions, they come to be fully and accurately perceived only when "successful" concessions--made to keep a floundering employer afloat--fuel, in subsequent negotiations, not "catch-ups" or "get-backs" but rather demands for yet additional concessions.

There are "patterns" and "styles" in collective bargaining settlements. Historically union breakthroughs in such areas as paid holidays, paid vacations and health insurance very quickly inspired an irresistible tide of identical demands from other unions. Concessions were an exactly comparable tide--in the opposite direction. Profitable employers, inspired by successful demands for concessions elsewhere and motivated by simple greed, joined in the chorus for concessions ostensibly to "maintain our competitive position" and "protect the job security of our employees."

PAST CONCESSIONS

It is the "pattern, style, trend, or tide" that poses the hazard to unions and the paychecks, benefits, and working conditions of their members and which will also lower the wages and standards of non-union workers. Concessions themselves are not new. Most veteran union negotiators will, if candid, acknowledge that they were involved in making concessions long before the word "give-backs" entered the language. There has always been some "give" in the give-and-take of collective

bargaining, and the "give" has not always been limited to giving up nothing more than a wish expressed in a contract demand.

Negotiators who remember the first breakthrough on paid holidays for factory workers--a major accomplishment that had to overcome entrenched resistance to the notion that hourly workers should not be paid for any hours not actually worked--will recognize the concession or "give-back" made when unions sought to get additional holidays: most union contracts require that, to be eligible for holiday pay, a worker must "work the day before and the day after unless absent for justifiable cause." The restriction on eligibility for holiday pay, granted in response to employer complaints that holidays often led to additional absenteeism immediately before or after the holiday, was clearly a concession made in order to get the extra holidays.

Nor have such simple trades, clearly advantageous to the union, been the limit of past concessions. Contract restrictions on certain employer work practices have frequently been modified in practice, sometimes without any specific change in the contract language, in order to ease a problem of cheaper competition or financial distress. And sometimes the implementation of scheduled increases or improvements has been delayed.

In the past, however, such modifications or delays in enforcement or implementation--"give-backs" in the fundamental sense of the term--were almost always temporary. Whether successful or unsuccessful in their purpose of preserving the enterprise, they were almost always temporary and

exceptional. When "unsuccessful," they only delayed the demise of the employer. When "successful," the employer's return to "normal" health almost always triggered the restoration or re-enforcement of contract standards.

THE POLITICAL AND ECONOMIC CONTEXT OF CONCESSIONS

Whether they are "successful" or "unsuccessful," no union negotiator likes give-backs and it may at first blush appear totally unnecessary to consider why they are bad. Since the power of any union leader lies ultimately in the support and trust of the membership, it would not appear necessary to discuss or discourage a practice so obviously unpopular as negotiating give-backs. But life in the real world of the competitive marketplace economy in which unions operate is never simple and clean, so it may be useful to undertake a re-examination of some trade union principles (too often forgotten or never consciously learned) and of some of the external pressures contributing to the atmosphere of give-back fever before attempting to devise specific strategies and tactics for coping with concessions.

Our own rhetoric about a "fair day's pay for a fair day's work" sometimes obscures the fundamental nature, purpose, and need of trade unionism: to create a labor monopoly in order to control the price of labor. Stated so baldly and boldly, and conditioned as we are to react, generally correctly, to "monopoly" as "bad," the notion may be hard to swallow. We would all be quick to agree, however, that no employer should be permitted to gain a competitive edge through the

employment of child labor at pitiable wages. From there it is but a short logical extension to the proposition that no employer should be permitted to profit, or even exist, through the payment of wages less than needed to maintain a minimally decent standard of living. From there, reflection must lead to the realization that the marketplace will inevitably favor and reward the employer with the lowest labor costs, other factors being equal, and that the only way to effectively resist ever-lessening wages and conditions is to remove the labor component of production from competition--to take labor out of competition or, bluntly, to create a labor monopoly.

The U.S. trade union movement has been effective during the last fifty years in making progress toward this goal in both the political and economic areas--that is, through legislative lobbying and bargaining table negotiations. The outright prohibition of child labor was a landmark legislative step. Subsequently, the legislatively mandated forty-hour week with minimum hourly rates created a floor, even though that floor, in too many industries, determined the limited height of the ceiling.

In highly competitive industries with a large unorganized sector--garments and textiles are notable examples--the best of union negotiators with militant and united memberships behind them have been unable to push wages more than slightly above the federal minimum without incurring the real and immediate risk of rendering the employers of their members non-competitive in the marketplace.

Legislative gains in minimum wages and maximum hours were supplemented, to the benefit of union members and the unorganized alike, by laws providing unemployment benefits, Workers Compensation, and Social Security. Other legislation made a step, at least, toward ending discrimination because of sex or race, mandated equal pay for equal work, regulated and protected pension rights and improved occupational health and safety standards.

Frequently unions have been able to improve on legislated benefits for their members through the negotiation of such items as Supplemental Unemployment Benefits and pensions built on the Social Security base. And although they may not have been of such direct and obvious benefit to workers on the job, labor's successful lobbying for welfare rights, food stamps, and Medicaid tended to minimize the extent that starvation was the standard against which workers had to measure management wage offers.

Because bargaining in America has been conducted on an individual plant or company basis, the efforts to achieve industry standards and thus take labor out of competition have taken the form of minimal standards imposed, with varying degrees of success, on their locals by national and international unions. The history of the American labor movement in the nineteenth century is a history of struggle to create and preserve a national labor movement in response to the reality of a product market, national in scope, which could not be effectively countered with purely local unionism.

American individualism, the dominant pattern of plant- or company-

level negotiations, the tradition of local autonomy in many unions, and the variations in technology and methodology among plants within a company or industry have frequently resulted in situations where (even where industry-wide bargaining has been achieved) there is necessarily plant-level negotiation of "local issues"--usually including at least working conditions and production standards. Such local agreements often very significantly modify actual labor costs--the only costs which count, the cost per unit produced.

Even in auto and steel, where unions had the greatest success in winning and enforcing uniform wages and benefits, there have been plant-level cost differentials resulting from variations in the strength and effectiveness of local unions in imposing standards and constraints on the work pace and other working conditions.

Ironically it has been auto and steel--industries that set patterns and goals for all American unions in the post-World War II period--that contributed most to snowballing demands for concessions. Leaders on the way up, they had the farthest to fall and were most eagerly pointed to by press and politicians on the way down.

Some unionists now argue that the bailout of Chrysler--particularly the concessions made by the UAW--was a fundamental mistake, that it would have been better to have permitted Chrysler to go under. While those Chrysler workers whose jobs were preserved might vehemently and understandably disagree with that hindsight conclusion, the demise of Chrysler would not have destroyed all those jobs; some would

have been picked up by other unionized employers.

More than any other single act, the concessions to Chrysler by the UAW--precisely because of its history and image as a leader in labor negotiations--legitimized concessions. Of course the specific bailout agreement did not arise in a vacuum. Contributing factors included a worldwide economic crisis brought on in part by excess worldwide productive capacity, foreign competition, and the reactionary economic policies at home which generated and maintained high levels of unemployment.

It was perhaps the high unemployment rate, with no relief in sight, that more than any other single factor made the sacrifices palatable to the UAW and its members at Chrysler--and there are those who believe that there was a conscious and carefully orchestrated conspiracy among financiers, industrialists, and politicians to use an extended high-level of unemployment to discipline workers and destroy the U.S. labor movement.

While maintenance of a high unemployment rate was thought to be the principal feature of such an anti-union conspiracy, it was, proponents of the conspiracy theory argue, but part of a more comprehensive strategy. They pointed to the deliberate failure of U.S. steelmakers to maintain and modernize their U.S. plants while exporting capital and technology abroad and shifting investment to other businesses. When, inevitably, outdated and inefficient domestic plants were unable to compete with modernized foreign plants, the failure was blamed exclusively on the

higher wage and benefit rates of American workers and this argument was used to justify continuing demands for ever more concessions.

Whether concessions were the result of conscious conspiracy or merely blind economic forces is of little practical consequence. The results were the same and the danger continues.

The same shifting of production to cheaper labor areas and a pattern of disinvestment in domestic facilities that has created such economic and social havoc in the great steel-producing communities of the northeast and midwest is now taking place in every industry where it is feasible. To compound the problem, dramatic breakthroughs in technology--including the technology of moving information and money as well as machinery--continues to make such foreign production feasible to additional industries.

Simultaneously, the unemployment rate at home was maintained at or near the highest level since the Great Depression through reactionary economic and political policies. The army of unemployed workers, many of whom have long since exhausted all unemployment benefits and some of whom are no longer even counted in the official unemployment figures, serve as an effective damper on the militancy of union members threatened by concessionary demands and are also the biggest barrier to the organization of the unorganized.

THE PRACTICAL PROBLEMS OF CONFRONTING CONCESSIONS

Having started out by advising all unions to take an adamant and public "no concessions" stand, we now proceed to violate our own advice--to speak about the unspeakable, to talk about "what" to concede and "how," if indeed concessions are going to be made. Such discussion and contemplation is essential because employers, with both a right and an incentive to do so, not only may bring concessions to the table, they have often taken their case directly to the members and their families as well as to the community. So successful had some such employer campaigns been that, in at least one case, a rank-and-file member sought and won election to his local's bargaining committee on a forthright platform of concessions. All in the name of job security, of course.

Perhaps the best evidence of the problem of the isolation of one union from another, and the absence of a general national labor policy and philosophy, is that two of the most widely reported and significant concession negotiations occurred within unions that have made major contributions to the extension of collective bargaining rights to public employees. We have mentioned the landmark concessions made by the UAW and the Steelworkers but even earlier, in New York City in the mid-70's, Victor Gotbaum of AFSCME and Albert Shanker of AFT played key roles in making concessions in order to keep the city afloat.

Even though the concessions in New York City antedated the UAW's concessions at Chrysler, their impact on other bargaining was not as great or as immediate, perhaps because most people recognized the unique situation in New

York City, and other employers did not immediately see or appreciate the possibilities for such concessions in their own operations. It is also important to understand and acknowledge that the most important thing that those concessions accomplished was the preservation of the New York City unions which have since been able to recoup significant bargaining strength and effectiveness. One of the advantages in the public sector is that it is hard to move a city to South Korea; more important for its implications to the private sector is that we still believe that government is not supposed to belong to the banks. Somehow we still find tolerable that finance and corporate capital can devastate a city and create the economic conditions which lead to a destitute population and a bankrupt community--all in the name of free enterprise. The public sector is still supposed to belong to the public.

PRINCIPLES AND SAFEGUARDS

Principle number one, we think, is that the worst concession is one that will lead to a weakening of the union. If workers are ever to recoup the losses of the eighties it will require a stronger, not a weaker labor movement. While we do not think that unions or their leaders should be immune from criticism, much of the recent criticism of union leaders for "selling out" their members and making concessions is patent nonsense. The union negotiator who agrees to concessions is, generally and unfortunately, responding not only to management and economic pressure but also to the fears, both real and imagined, of the membership. The membership pays dues, elects officers, and hires staff and it has a right to expect that its needs

and wishes be respected. Doug Frazer and Vic Gotbaum were not representing the "labor movement" when they "pioneered" concessions; they may have been, only too accurately, reflecting the desires of an incumbent, dues-paying constituency.

If, as we firmly believe, preserving the union is principle number one, then it needs to be made clear what that does not mean. It does not mean merely preserving the contract, the dues, the organization. It means that the membership must be involved to a degree not understood to be as essential when "we negotiators" were bargaining improvements for "them." It means that the members must be fully involved and educated, that the significance and dangers of the concessions must be fully and explicitly described and discussed. While it may be true that sometimes you have to eat shit, you never have to pretend it's ice cream.

Safeguard number one is to make every attempt to make whatever concession necessary on a temporary basis and to have the concession expire, and the union standard automatically "snap back," before the expiration date of the contract--even if only one day before the expiration. Of course this may mean that the union will find itself in the position of having to grant the concession again but at least it does not grant the concession to the company in perpetuity and place the union, psychologically at least, in the position of having to beg or fight for a restoration. Rather, it makes management come back to the table and ask again. The union can then attempt to extract whatever price it can, in

exchange for whatever extension of the concession it sees fit to grant.

Keeping in mind principle number one, to avoid concessions that weaken the union, the two-tier wage and benefit system seems to us to be the most pernicious and dangerous. Pernicious because the concession is so totally painless, costing the present members, those who will vote on ratification, apparently absolutely nothing. Dangerous because it creates for the future two classes of union members--both destined to become discontented--and dissension will divide them. The new hires will be understandably angry at a union that sold their birthright and condemned them to second class status while the higher paid old-timers will come to be targeted by management for replacement by the lower paid new hires.

The seeds of destruction inherent in the two-tier wage and benefit system suggest a second principle: be very, very leery of any concession so painless and palatable to the membership that it will be difficult or impossible to mobilize membership support to fight for its restoration. Abolition of the union checkoff, surrender or weakening of other union security language, and any weakening of the grievance machinery come immediately to mind.

When concessions are sought by an employer during the term of a contract the union reaction may be one of surprise that the employer, normally adamantly opposed to any negotiations except at the termination of the contract, should actually be asking for mid-term negotiations.

When employers seek mid-term reopeners, the union may be in a position, at its option, to simply refuse to reopen. Many contracts contain rather stringent "zipper" clauses (usually inserted at management insistence in order to prevent the union from seeking contract changes or improvements in mid-contract) and those zipper clauses can also be used to justify union refusal of a management request to reopen.

Once at the table, the union negotiator is apt to take some personal delight at the reversal of the roles. Normally it is the union negotiator trying to persuade the company to agree, to say "yes." In the case of concessions, however, it is the company doing the petitioning, attempting to persuade the union to say "yes." While some union negotiators take understandable glee in being the one to whom the employer is now coming and asking for something, they should not lose sight of the fact that their important task is to extract the maximum price for any give-backs and to make certain that they retain absolute control over the length of the give-backs.

If, for whatever reason, the union feels it unwise to simply stonewall, if it concludes that some concessions are necessary before the expiration of the contract, one prudent way to accomplish such an objective is to agree to some temporary modification in the employer's compliance with the contract but to leave the legal and contractual obligations to comply unchanged.

Where the union agrees to a reopener, despite the presence of a zipper that it could have relied upon, the union may want to seize the opportunity to demand agreement on the removal of such a

zipper restriction on its own reopener rights before proceeding with any additional negotiations.

A LOOK AT THE BOOKS--BEWARE THE OPTICAL ILLUSION

Any demand for concessions based on financial problems should be initially countered by the union with a demand for more information and financial data than the company is normally willing to provide. The union should argue that any demand for concessions is, on its face, a plea of inability to pay that automatically entitles the union to the company's financial data, to a "look at the books."

Apart from asserting a legal right to the company's financial data, the union should argue that a request for concessions is really a request for union members to loan, donate, or invest a portion of their wages or benefits and are certainly entitled to the same kind of disclosure of information that a banker or investor would demand and receive if they were asked for a loan or investment.

There is, of course, always a danger in demanding financial data. If the data supports the employer position the management may be only too eager to supply it in order to impress (or depress) the membership. Another problem is that few local unions will have the kind of accounting and financial expertise needed to make sense and use of the numbers and not be "snowed" by them. Most unionists recognize that it is all too easy for management to mislead them with numbers; the press frequently reminds us that some of the biggest and most profitable corporations manage to persuade the Internal Revenue Service

that they should not pay any income tax and, indeed, should get a refund on taxes previously paid. But it is so necessary to emphasize that the company's books are not the final word on its financial or competitive position that we cite the following from an Instructional Manual used by the faculty of the Sloan School of Management at Massachusetts Institute of Technology:

Labor negotiators use accounting data to determine how much the company can afford to pay and to determine how much a contract will cost. Without too much explanation, using "generally accepted accounting principles", we can vary a company's earnings reported by 100 percent. Earnings data do not necessarily tell you what a company can pay. A company can be near bankruptcy for lack of adequate cash flow, and still show substantial earnings, or have a low reported income, but huge streams of money pouring into the treasury.

The first logical place to turn for help is the research department of the international union and it is at times like these that small independent unions will recognize most strikingly the value of membership in an international union and the AFL-CIO. If such research help is not available, or is not available in time or in sufficient depth, the local union may have to turn to an outside consultant--but an accountant or actuary picked from the yellow pages is emphatically not the person needed.

Fortunately there are a few professionals who can do a fine job in reviewing a corporation's financial circumstances who are also union sympathizers. They will not only analyze the numbers but, more

important, will work with the local union leaders to help them understand the numbers and their implications. They will provide not only expertise but some valuable training for the local leadership.

Such experts are rare and not always easy to find (nor, for the small union, to afford). The best place to start the search is to seek advice from the international union or to check with proven friends such as other union officials or labor education centers. And it costs nothing, incidentally, to argue that management should bear the costs of the consultants you need, since it is management's request for concessions that is generating the need.

Making sense of financial data, for even the best of experts, can be particularly complicated and difficult when dealing with a single plant of a large corporation. It can be even worse when dealing with a subsidiary of a multi-national. Employers are long-practiced in shifting costs and "profit centers" within the organization. After all, their only real interest is in the ultimate "bottom line". (For these reasons some states have amended their tax laws to require corporations to pay taxes on a defined percentage of the total corporate profit to prevent the shifting of income beyond the reach of state tax collectors.) Of course with multi-nationals the problem is compounded--they are beyond the reach of our nation's laws and are, in effect, a government unto themselves.

Where the union wins any commitment from the employer in exchange for concessions, the commitment should be as clear, firm and enforceable as possible. A binding and

enforceable provision for specific severance pay, when a commitment to maintain employment in exchange for a concession is violated, is far better than a flowery but unenforceable company promise of "job security."

Many of the problems engendered by concessions were brought about by the failure of union leaders to level with the membership about the weakness of the union's situation. Too often workers who have agreed to concessions have done so in the belief that such concessions would guarantee job security and have turned bitterly against their leaders when the concessions failed to accomplish that goal.

MAKING MEMBERS PARTNERS IN THE PROCESS THROUGH EDUCATION

We have already said that, in bargaining about concessions, it is important to involve the membership in the bargaining process to an extent that they have seldom been involved. During the years of relatively easy gains in wage and benefits, it was the usual practice for the leadership to bargain a package and then present it for ratification with confidence that the deal was too good to be turned down. In truth many, if not most, members preferred (and would still prefer) that it be done that way--that the union do it for them.

The very survival of the union is dependent on membership support and participation. Not only is it their wages and benefits that are being eroded, it is literally the sacrifices and struggles of workers long since gone that are being eroded and threatened. While it can be argued that not even the present

membership has the right to give back what others have fought and sometimes died for, certainly no one can or should presume to do it for them. Only by membership awareness, understanding, and involvement can a union survive when forced to take a backward step. That involvement can only come as the result of education. This rather self-evident truth may strike most union leaders--all too aware of the snail's pace at which union education programs proceed and produce results--as evidence that nothing can be done, or at least not done in time to be of help in dealing with an immediate crisis.

We submit that this is not necessarily true. Granted that members do not flock to attend traditional labor education courses on labor history, steward training, or labor economics, it has been our experience that it is possible to take advantage of the crisis atmosphere of negotiations, particularly over concessions, and involve significant numbers of the rank and file in intensive workshops about the union, the industry, and the bargaining process itself.

In such sessions it is entirely possible to share enough information on the negotiations process in general to enable the membership to understand, in a fundamental and profound way, what is at stake. Certainly, the employer can be expected to try to "educate" the workers; nothing does more damage to the union negotiating team than to walk into a bargaining session where the employer has already prepared the membership to expect the worst.

The educational process can inoculate the membership against employer threats in exactly the same way that experienced

union organizers prepare the organizing committee and unorganized workers for the employer's anti-union campaign. Once they understand the employer's anticipated strategy and the need for unity and determination--and the dangers of signaling their weakness--the membership is far more likely to display that unity which is the essence of unionism and which is so clearly in their own self-interest.

One of the important components of such educational campaigns is the establishment of an effective in-plant committee with a communications network touching and involving every member of the local. A telephone tree and a newsletter or similar devices for spreading the word will do wonders not only to combat rumors instigated by management but to collect ideas, questions, and concerns from the membership.

The educational program itself can usually be best conducted through a similar communications device. The officers and stewards are given intensive training in the bargaining process and prepared to serve as teachers in conducting workshops for groups of members. By getting the stewards and similar first line leaders to serve as teachers (and by giving them specific and precise instructions on what and how to teach) they will inevitably learn more than they could have learned in any other way.

A key component of such negotiations workshops should be the factual and dispassionate explanation of the fact that it is quite logical and predictable for both sides to ask for more than they expect to get. Members who

understand this simple and elementary fact are less likely to be frightened by management demands for enormous concessions. One management tactic which has been effectively used in recent years is to demand dozens of concessions, to hold to and advertise and justify all those cut-back demands and then, at the last moment, offer to withdraw some of their concession demands and get the workers to heave a sigh of relief and be grateful that they didn't have to give up everything. Members who understand the nature of negotiations will be, at least somewhat, immunized against the hysteria which management's gloom and doom campaign will create.

LETTING THE SUN SHINE IN

It has traditionally been accepted that collective bargaining, like sex, is most satisfactorily conducted between not more than two parties and in privacy. With some exceptions, unions have traditionally preferred to fight their battles at the bargaining table in private and have resisted allowing the process to be conducted in a fishbowl. Indeed in those few states where public sector bargaining must, by law, be open to the public, the presence of observers (voyeurs) has been so disruptive to the process that union and management negotiators have been known to meet in neighboring states to hammer out their agreements in private and then return to consummate them in public.

The pressures and frustrations of the concessionary era prompted many unions to turn for support in their negotiations to the public. Such appeals naturally required that the unions reveal more about their negotiating stance than

had normally been their habit; such appeals have sometimes come to be labeled "sunshine bargaining." These tactics, however, do not involve the presence or involvement of outsiders in the actual bargaining and should not be confused with the kind of sunshine bargaining mandated by law and requiring bargaining sessions open to the public.

Publicity can, like most other weapons, be a two-edged sword and the union contemplating "going public" should calculate the risks and consider the mind-set, circumstances, and likely reaction of the public. Despite such risks, faced with employer cuts and union-busting, it may well be better to publicize the union's side of the story before a crisis atmosphere, engendered by impasses and picket lines, makes rational appeal to the public all but impossible.

The goal of publicity, naturally, is to generate public support and the pressure of public opinion is generally far more effective on a public employer than on a private company or corporation. In effect the public employee union seeks to go over the boss's head to the boss's bosses--the voters.

**"FOR THE [LABOR MOVEMENT]
MAKES US STRONG"**

The guiding principle in choosing among possible concessions should be, we have asserted, the preservation of the unity of the membership and the continuing viability of the union. Instead of "union" we are tempted to say "union movement" but refrain from doing so in an effort to set out realistic and achievable goals rather than lofty,

but unattainable, ones. At the minimum, however, union leaders must understand that "union" means the whole union and not merely the local. A retreat will become a rout if each local or each division of a union dealing with a particular employer or industry makes its own concessions without regard to the needs and interests of the rest of the union. If there was ever a time for discipline within a union; it is when concessions are considered. No unionist need be told that "scabbing" is a dirty word, but we sometimes fail to consider that it is equally repugnant for one local or one plant to undercut another as it is for one worker to scab on another. Yet that is precisely what has been happening, within the same international union and among separate national unions. It happens usually under the banner of "local autonomy." It is time to remember and pay more than lip service to the slogan of the Knights of Labor: "An injury to one is the concern of all."

We have noted that painless concessions (a two-tier wage system or a weakening of union security or grievance machinery language) are the most dangerous of all. It is also important that the pain of concessions be distributed as equitably as possible among all members in order that it will one day be possible to unite all members to recapture their losses.

**"THE SICKER YOU GET,
THE POORER YOU GET;
THE POORER YOU GET,
THE SICKER YOU GET"**

All concessions are bad but some are not only more dangerous--in that they are divisive or otherwise threaten the foundation of the union--but are simply

"worse" than others. One of the worst, we think, is in the area of health care.

Many of today's members do not recall the difficult struggle to establish the principle that the employer had as much obligation for the maintenance of his workers' health as for the maintenance of his machines. This principle is of such importance that it is preferable to accept a wage cut than to see it jeopardized through the elimination or major reduction in health coverage. Apart from the obvious social and humanitarian considerations, a dollar in health coverage is worth more than a dollar in wages. To the extent that health insurance is a union-principled benefit--taking care of people whose needs are greatest and whose individual ability to meet those needs is least--cuts in employer-financed health insurance are attacks on basic union principles.

This does not mean that the union should not be willing to talk about health care cost containment. The escalation of health care charges is at least partly the result of doctors, dentists, and hospitals taking advantage of the fact that unions have negotiated insurance for millions who were previously unable to pay some of the exorbitant fees now being routinely levied. A joint union-management effort to control the inflationary demands of health care providers may not, of itself, be successful. The costs are normally based on community standards and controlling them requires joint efforts with other union and organizations--an area of activity in which too many local unions have been negligent. The AFL-CIO has a national committee on health care cost containment. There are

parallel committees in many states and they should be consulted in any planning for health care cost containment. We will not successfully deal with attacks on worker health protection at the bargaining tables alone; getting involved in health care cost containment means getting involved in the labor movement.

Having just spoken so passionately for employer-paid health insurance, we must now say a word against it. The seldom-noted fact is that the success of U.S. unions in negotiating good health insurance for their members has been a mixed blessing; it has robbed the sound principle of national health insurance of necessary support. The fact that the U.S. is the only industrialized country (except South Africa) without a comprehensive system of national health insurance is at least partly, perhaps mostly, the result of our successes. It is hard to get the worker with excellent family coverage to fight for the notion of national health insurance that has been so effectively tarred with the label of "socialized medicine." Which is why the labor movement's campaign for health care as a matter of legal right necessarily starts with an internal membership education process.

Our problems at the bargaining table would be far more manageable if we did not have to fight for thousands of dollars per worker for health coverage, if instead that coverage were a matter of national right for all citizens. Certainly the fear of unemployment, the major pressure on workers to accept concessions, is exacerbated greatly by the fear of losing health insurance.

It is interesting that in Canada and the industrialized nations of Western

Europe, unions have been far more effective in resisting concessions than were U.S. unions despite worse unemployment rates and economic problems in the eighties. The contrast has been most notable between the U.S. and Canada because, despite close similarities between the countries and their economies, the Canadian unions have been far more successful in fighting off concessions. In fact the same unions that have made concessions to U.S. companies at home have successfully resisted demands from the same companies in Canada.

In addition to national health insurance, higher unemployment benefits and more liberal eligibility rules also eased unemployment fears in Canada and Europe and helped unions there to successfully fight concessions. The fact that over 70% of the U.S. unemployed are currently not even eligible for unemployment benefits is a significant exception to the rule in the civilized world.

SICK DAYS AND SICK BANKS

Sick days are prime targets for employers bent on concessions; but, unlike health insurance, they may represent an area where a union can afford some give with minimum damage to members. In seeking to reduce the number of sick days employers frequently assert, often with the agreement (even if not openly stated) of the membership, that there is abuse of sick days and that employees take them whether they are sick or not. Under many contracts employees would be foolish not to take them; otherwise they are lost.

Members and employers could both benefit if the present concept of individual workers earning a specified number of sick days per year were replaced with an insurance concept whereby the employer would contribute a smaller number of days per worker (if a concession is indeed inevitable) to a plant or bargaining unit "sick bank" with all members entitled to draw on the total days in the bank on the basis of need. Such sick benefit eligibility will usually be almost without limit because the pooling in a sick leave bank of even a few days per worker creates, in our experience, a tremendous reserve. Even though such a concession might involve the sacrifice of two or three sick days per year by each employee, this sacrifice, we think, would be more than offset by the protection that the bank would provide all workers in cases of serious illness. Sick leave was not, after all, intended to be a personal day off or a paid holiday but was intended, rather, to meet a real need.

Objections of two kinds will be raised to such a scheme. Some people who have seldom or never been seriously sick but who have enjoyed the time off provided by their sick days will figure they are giving up something they "own." People who don't get sick, they may argue, will be "cheated" out of their sick days for the benefit of those who are sick or, worse, the malingerers. The job of the union would be to convince them that the protection provided by the sick bank is worth more than the sacrifice of a few days and that they should no more feel cheated by not being sick than they should feel cheated out of their hospital and surgical insurance because they are healthy.

A perhaps more difficult objection may come from both members and union leaders that such a program would be a headache to administer, would be too easily subject to abuse and would create bitterness and jealousies among the members. The objection is not without merit but since a union is a collective concerned for the greatest good of all its members, it may be a useful difficulty with which to deal. A union committee administering the sick bank would bring the union in closer and more frequent contact with the membership and sick leaves granted for serious illnesses might be perceived as a direct union benefit rather than as an employer gift. Unions which administer Health and Welfare Plans have long been familiar with the advantages won and problems posed when the union is directly involved in the administration of a benefit program: when benefits are distributed, the union gets credit; when benefits are denied, the union is blamed. On balance, in our experience, the union with a benefit program involvement is closer to the members. Sometimes, of course, such closeness (as in a family) can lead to strained relationships.

Gilbert Jewell, retired International President of the Allied Industrial Workers of America, recalled that the first contract with General Motors for the Fisher Body plant in Kansas City where he worked was one page long, stating simply that the company recognized the union as the representative of the workers. "It was," Jewell insisted, "the best contract I ever saw. Every grievance, every dispute was negotiated on the spot and the union's presence was pervasive and never more effective." Similar advantages might

accrue from a union committee administering a sick leave bank.

STRIKES AND THEIR ALTERNATIVES

In cases where the employer is bent upon concessions that the union is not willing to accept, it has frequently happened that unions have struck when, upon expiration of the contract, the employer has attempted to implement reductions. If the contract has expired and the employer has bargained to impasse, the implementation of the employer's last offer is of course entirely legal. It is, however, usually a mistake for the union to respond simply by striking. One of two alternative courses of action is generally far more advantageous to the union.

Under the law in seventeen states (see Unemployment Compensation chapter), the union may offer to continue working under the terms of the old contract and if the employer refuses, the union may refuse to work and claim a lockout. For Unemployment Compensation (UC) purposes the union's claim of a lockout will be honored and the workers will thus be eligible for unemployment compensation. The workers were "ready, willing, and able" to continue working, which is the usual standard for collecting UC, but the employer unilaterally refused to allow them to do so under their existing wages, benefits, and conditions. It may have been legal from a Labor Board point of view to implement the company's final offer, but that does not deprive them of their entitlement to UC. Obviously a far better situation than being on strike with union strike benefits as the sole source of income.

In those states where the Unemployment Compensation regulations make all workers engaged in a "labor dispute," including a lockout, ineligible for unemployment compensation, such a tactic will not work but the union should nonetheless consider a second tactic in lieu of an economic strike. In most such cases the employer is very probably very consciously attempting to break the union and in great likelihood will have committed a variety of unfair labor practices. The union should, after consultation with a competent union labor lawyer, file the most comprehensive possible barrage of unfair labor practice charges and declare an unfair labor practice strike rather than an economic strike. In the event the strike should be lost and the unfair practice charges sustained the rights of the workers to their jobs will thus be protected as they would not have been in an economic strike. The basic advantage of an unfair labor practice strike over an economic strike is that the employer cannot permanently replace an unfair labor practice striker. Therefore, we can imagine no reason why any union should ever under any circumstance call an economic strike. Better to file every reasonable unfair labor practice charge and allege an unfair labor practice strike.

If the strike is successful the charges will ordinarily be withdrawn as part of the strike settlement and thus be of no long-term consequence to either party. Should the union feel it is losing the union may make an unconditional offer to return to work and the employer must make room for the strikers even if it means dismissing strikebreakers. The

employer refuses to do so at his considerable peril.

Consider the dilemma of the employer. At this point the union will have taken care--through the same delaying and appeals tactics so regularly employed by employers--that a final decision on its unfair labor practice charges has not been rendered. The employer is then in the unenviable position of having to fire the scabs (to whom he has undoubtedly pledged undying loyalty) and take the strikers back . . . or gamble on the Board ultimately ruling that the union's unfair labor practice charges are without merit. It is a considerable gamble since if at some point, perhaps years down the road, even one of the unfair labor practices is ultimately sustained, the employer will owe backpay to all of the unfair labor practice strikers not reinstated. Depending on the number of unreinstated strikers and the length of time involved, this could involve a very large sum of backpay indeed. It is a risky gamble, in which the employer can lose big and win little. Since every lawyer has lost cases that he feels he should have won, no matter how flimsy the ULP's may appear, no competent lawyer is likely to give an employer the kind of unqualified assurance of victory that he would like to have before embarking on such a reckless gamble. The employer is likely to be further inclined against taking such a gamble by the fact that the strikers will be (we confidently assert on the basis of no evidence other than long experience) accurately perceived by the employer to be far more skilled, productive, and desirable employees than the replacements. The employer faces an additional dilemma during an unfair

labor practice strike: it must honor the demand of the strikers to return to work and must break any promise made to strikebreakers that they would enjoy permanent employment. The employer, ordered by the law to take back the strikers when they decide to return to work, may now be sued for breach of promise by the scabs who are being displaced. The only way that the employer can avoid being caught in this Catch-22 situation is to not promise the replacements permanent employment. But this poses two further difficulties for the employer. It's harder to recruit scabs if all you can promise them is a few days or weeks of work until the strikers decide--whether they "win" or "lose" their strike--to come back in. And, unless the employer asserts that the strikers have been permanently replaced by the scabs, it cannot refuse them reinstatement even after an economic strike. We are not recommending that you pity the poor employer; we are recommending that when you have to have a strike, you make it an unfair labor practice strike.

The use of the "lockout" instead of the strike as a tactic when confronting concessions and the importance of the unfair labor practice strike instead of the economic strike are two examples of the need to think rather than just react. Knee-jerk reactions such as "No Contract--No Work" may not work. And strikes need to be thought of as only one weapon. Just as the AFL-CIO recommends using "coordinated comprehensive corporate campaigning" in organizing non-union employers, the use of "non-workplace pressure" is even more available in concession situations. As stated in "Concession Bargaining and Unions: Impacts and Implications," (by

Craft, Abboushi, and Labovitz, Journal of Labor Research, Volume VI, Number 2, Spring 1985):

... unions involved in recent concession bargaining often have substantial information about an employer's financial, market, and power bases. Such information is critical and provides a necessary data core to launch programs against a corporation's economic and political foundations. Consultants and the AFL-CIO recently assisted a number of unions in starting corporate campaigns. Illustrative are those by the Pilots union against Continental, the Autoworkers against General Dynamics, and a multi-union campaign against Litton Industries.

In the same vein, scattered recent events suggest that there may be some use of community action groups to put pressure on management in labor disputes. In such cases, the union forms alliances with ad hoc or standing community action groups to pressure the employer to respond to the union's position. The broadened scope of conflict, the publicity, letters to directors or community members, and presence at stockholder meetings can put pressure on a firm to meet labor's demands. The labor/community coalition is most likely generated when a company threatens to close a still profitable plant, to implement massive layoffs, or to take a negotiating position that broadly could be construed as inequitable. Illustrative of this approach are recent actions by the Save our Neighborhood Action Coalition (SNAC) in Pittsburgh. SNAC joined forces with the Bakery and Confectionery Workers to pressure Nabisco to rescind the closing of a

profitable but excess capacity plant and has taken sides with the United Paperworkers Union against Papercraft Corporation, which is demanding wage concessions after earning record first quarter profits.

DAYS OFF AND JOB PROTECTION

While sick days might be a logical place to consider a concession particularly if, as suggested, the concession can be used to build better protection for the members and a stronger union, other paid days off--personal days, holidays and vacation -- do not, in our opinion, represent desirable areas for compromise. Granted they are tempting; giving them up involves only the sacrifice of leisure time and no reduction in wages or other economic benefits.

Such a view may be short-sighted. While employers demand concessions for many reasons (or for no reason at all other than simple greed--42.2% of companies responding to a Business Week poll, June 14, 1982, agreed that "although we don't need concessions, we are taking advantage of the bargaining climate to ask for them."), unions grant them always in the hope that they will preserve jobs. Giving up paid days off may save the employer money and, conceivably, permit a plant to keep operating but it will also inevitably reduce the number of jobs in that plant. Reducing paid time off may merely contribute to reducing the total number of workers needed to produce the product.

Because the purpose of concessions is to prevent unemployment--and because the presence of a body of unemployed

workers undermines the union's strength--the impact of any concession package on employment should be carefully considered. If the employer claims, as it often will, that it must have concessions now but has a plan to come back to productive strength, some alternative to layoff may make sense for both the union and the employer. A temporary layoff is costly to the employer for many reasons but particularly because of the disruptions of bumping down and then recalling and hiring and bumping back up as business improves.

REDUCING LABOR TIME WITHOUT LAYOFFS

While relatively few unions may have considered the assistance that National Health Insurance might give them in fighting concessions or in bargaining generally, at least some U.S. employers who also operate in Canada have noted and benefited from the fact that Canada's National Health Insurance reduces labor costs. In addition it also changes employer attitudes toward keeping the maximum number of workers on the payroll. Since health insurance is a cost per worker, independent of earnings, it is normally to the U.S. employer's advantage to maintain the smallest possible number of workers--even if this means the risk of some premium pay for overtime.

In Canada and in most of Europe a system of worksharing or Short-Time Compensation (STC) is in place. A similar system--under which employers, with union approval, reduce the hours for all workers rather than lay off some of them--has been adopted in several U.S. states (California, Arizona, Oregon,

Washington, Illinois, Florida, Maryland, Texas, and New York). The scheme has been popular with workers and unions in those states. It gives them a reduced workweek without fully reducing earnings since they collect a pro-rata unemployment benefit for the hours not worked--and maintain their fringe benefits. An explanation of STC from our book, Short-Time Compensation: A Formula for Work Sharing, (MaCoy and Morand, Eds., New York: Pergamon Press, 1984) is as follows:

The concept of STC is best illustrated by a simple example. Suppose, because of reduced demand, the employer of 100 workers is planning to lay off 20 of them. Instead, however, he reduces the workweek of all 100 workers by 20 percent, and the same UI benefits that would have been paid to the 20 laid-off workers are divided among the 100. Even though there would be a slight reduction in earnings for all 100 workers, none would suffer the traumatic hardship of total unemployment; the employer would maintain a balanced, skilled, and productive work force; and there would be no significant additional drain on the UI fund.

Despite the popularity of STC with both workers and many employers, it is little utilized even in those U.S. states that have adopted the necessary legislation. Perhaps the main reason that it is not utilized more is the cost of maintaining health coverage for all workers. It is cheaper to lay off as many as possible--even with the cost of overtime--as witness the infamous U.S. Steel memorandum that instructed plants to utilize overtime rather than recall laid off workers and thus re-establish their

eligibility for health insurance and other benefits.

This system of STC described above is available only in those states that have adopted the necessary enabling legislation. There is, however, a way to achieve the same end even in states where legislation has not been enacted. Indeed, it was used by steel workers, rubber workers and garment workers and others long before any states had adopted Short-Time Compensation. It is simply a system of rotational layoff so that workers are off for full weeks at a time and work for full weeks so that they get full paychecks for the weeks worked and full unemployment benefits when on layoff.

The problem and threat of high unemployment is so great that unions should perhaps give serious consideration to a reduction in the workweek. During the early days of the labor movement, shorter working hours were always high on labor's agenda but for more than half a century now there has been no serious agitation for any reduction below the forty-hour standard which has come to be the almost unquestioned norm even though there is no other permanent solution to a problem that threatens to expand exponentially as technology, robotics, and the export of jobs reduce the need for our labor.

PUBLIC SECTOR

Ed McMahon, a Mediator with the Federal Mediation and Conciliation Service, had, before joining the FMCS, a long and successful career in private sector unionism. He mentioned to a friend recently that he had once thought that public sector bargaining would gradually evolve to more closely resemble private sector bargaining. What has happened however, he concluded, is that private sector bargaining is becoming more and more like public sector bargaining.

What also may have happened is that Mr. McMahon simply has become increasingly conscious of similarities that have always existed. While no two bargaining situations are ever identical, bargaining is, after all, bargaining -- whether for a 40 cents per hour wage increase, a change in the civil service regulations, or the price of a refrigerator.

STRIKE LIMITS, LEGAL AND PRACTICAL

But there are differences in public and private sector bargaining and many of those differences are certain to continue. For openers, the strike has traditionally been the union's ultimate and most effective weapon. It is a weapon that is denied by law to many public sector unions. Even where the public sector union enjoys the right to strike, the effect and intent of the strike in the two sectors is vastly different. The private sector strike has as its primary purpose the cutting off of income based on sales of goods or services. The public sector strike does not stop the flow of tax income and usually reduces the cost of government operation. For this reason it has often and over-simply been asserted that while the strike is the motor and motivator which makes private

sector bargaining work, it is politics that is the moving and determining factor in the public sector. There are other differences embodied in and perpetuated by a multiplicity of federal, state, and local laws, ordinances and administrative policies, codes and procedures. And it may be the increasing ineffectiveness of the strike in private sector negotiations that is the major explanation of McMahon's convergence theory."

PUBLIC AND PRIVATE SECTORS: A CONVERGENCE THEORY

The not-very-distinct line between public and private employer and public and private union is apt to be additionally blurred as many private sector unions, notably in the steel and automobile industries, struggle to combat sagging membership rolls by organizing in the public sector while public unions, alarmed at their work being contracted out to private contractors, seek to protect their jobs by organizing the private contractors.

The difficulty of neatly categorizing either jobs, employers or unions as "public sector" or "private sector" was underlined by William Weinberg, a former Director of the New Jersey Mediation Service and a major player in the first public sector higher education bargaining at Rutgers, when he asked in exasperation, "Where the hell and what the hell is the 'private sector'?" Weinberg points out that negotiations are far more different in the private sector between, for example, building construction and electronics manufacturing or between food processing and the waterfront than between schools which are public and schools which are private.

While negotiations are always particular -- to the nature of the work, the nature of the workers, and to the form of ownership or control of the enterprise -- negotiation skills themselves are readily transferable from one area to another. The authors have negotiated literally hundreds of contracts in the public and private sectors including garment and textile manufacturing, local and state government, the plastics and electronic industries, and colleges and universities. Our conclusion: A negotiator is a negotiator.

THE REALITY OF STRIKES

Because collective bargaining in the public sector has grown so massively in the twenty or so years since executive orders and legislation gave legitimacy to the process, it is often wrongly assumed that public sector unions had not previously existed. This is not the case. Just as private sector unions had been in business long before passage of the Wagner Act -- and indeed during the years when unions per se were considered to be illegal conspiracies in restraint of trade -- so too had some public employees succeeded in bargaining before the law said they could. In fact, in some cases they succeeded in the face of specific legal prohibitions. In New York, for example, teachers and transit workers had bargained and conducted clearly illegal but quite successful strikes before as well as after the passage of the Taylor Act legalized the process. Indeed, it may have been those successful strikes more than any other factor that persuaded New York legislators to legitimize a process that legislative prohibitions had proven ineffectual in stopping. Strikes by public servants (which is precisely how they were viewed) had been outlawed in Pennsylvania since 1947; it was the reality of strikes despite the law that provided the momentum

for the Pennsylvania legislature to enact a public bargaining law that recognized the right to strike under certain circumstances.

Some of the specifics of public sector bargaining to be discussed here apply primarily but not exclusively to the public sector. At the same time, public sector unionists should remember that the fundamentals of any successful union bargaining -- unity, communications, education, and support -- certainly apply in the public sector. The applicable law may determine, to a great extent, the process. It may even affect, to a slighter extent, the substance. But the law and its procedures will not, of themselves, produce a contract.

In all public sector bargaining, despite laws that differ from jurisdiction to jurisdiction, there are pervasive similarities. Virtually every law granting public employees the right to bargain either prohibits outright or places limitations on the right to strike. Flowing from the restrictions on the use of strikes are a variety of dispute resolution procedures in lieu of strikes. All of these dispute resolution mechanisms can be, and at times have been, used in the private sector but only one of them -- mediation -- is common private sector procedure. Private sector union negotiators should, nevertheless, be familiar with them, particularly since many union negotiators may never have experienced them in practice.

Despite the all-but-universal prohibition or limitation on the right of public employees to strike, such strikes do indeed occur even when prohibited outright. In addition, public employees have been innovative in devising alternatives to the strike. Some that have gained national

publicity include "work to rule", "blue flu" (police), and "red rash" (fire fighters). Since the threat of a strike is sometimes even more effective than an actual strike, that threat should never be removed even when there is an outright prohibition of such a strike. Public sector unionists, however, before considering an illegal strike, are advised to soberly contemplate the repeated successes that the air traffic controllers had with "work to rule" in the years before their ill-fated strike.

RELEVANCE OF IMPASSE PROCEDURES TO PRIVATE SECTOR UNIONISTS

It may be useful to examine the effect of the presumed absence of a viable strike threat on public sector bargaining and the alternatives, legislated and invented, which make the process, nevertheless, work. Because many of these processes (fact finding, mediation/arbitration, interest arbitration, etc.) are increasingly utilized in the private sector (and because strikes are increasingly difficult to win), we advise private sector union negotiators to read this chapter as carefully as any other.

Public sector unions are no longer a minor appendage of the union movement. While public unions, in their infancy, depended on private sector unions for strength and support -- particularly in the legislative and political process by which they gained their rights to recognition and negotiation -- this is no longer the case. Today, both in Congress and in the state legislatures, public unionists are apt to be fully as active and effective as those from the private sector. Proportionately to their numbers they are usually more active since the members of public unions know, even

without being told or persuaded by their unions, that their wages, hours, and working conditions are immediately and directly impacted by politics and political decisions. All public unionists indirectly or, in some cases, very directly, have the opportunity to vote for or against their boss. What some private unionists wouldn't give for the power to fire their boss!

The importance of public unions is likely to continue to increase in the foreseeable future for while the membership of private unions has been decreasing, both in absolute numbers and as a percentage of the workforce, the ranks of the public unions have grown. This trend is apt to continue as employment opportunities shift from the manufacturing to service industries. Already the gap has narrowed to the point that there are about as many union members in the public as in the private sector.

NEGOTIABILITY

A major distinction between public and private sector negotiations lies in the concept of "negotiability." While there is in fact an important distinction, that importance is usually exaggerated. The most important thing about negotiability is ability -- if you are able to negotiate about a given issue, it is almost always possible to find pathways around any legal obstacle to negotiating about it.

As pointed out in "The Law of Labor Negotiations," there are, in the private sector, very few prohibited subjects of bargaining. Generally, the parties are free to negotiate about anything they choose. Hot cargo clauses, secondary boycotts, a closed shop and, in right-to-work states, a union shop encompass the bulk of the exceptions.

The National Labor Relations Act (NLRA) declares wages, hours, and terms and conditions of employment to be "mandatory" subjects of bargaining and generally the Board, in enforcing the statute, has interpreted these terms very broadly. The NLRA makes no attempt to define or enumerate any non-mandatory or "permissive" areas of bargaining but instead leaves them in an uncharted no-man's land between mandatory and illegal.

State and local government provisions, however, may typically be rather specific in defining bargaining subjects as "mandatory", "permissive", or "prohibited." Some management rights are frequently classified as "non-mandatory" or "permissive."

While the law has the first, it may not necessarily have the last word on the subject. The laws in Pennsylvania, New York, and dozens of other jurisdictions track the NLRA trilogy in mandating bargaining over "wages, hours, and terms and conditions of employment." But they also permit management to refuse to negotiate about "management rights" which are broadly defined to include matters of "policy." The definition may be broadened even further in interpretation.

While the language of the legislation appears clear to the legislators, it can become cloudy indeed when applied to specifics. Take what at first blush would seem to be a simple and straightforward example: class size. To teachers, class size clearly affects their working conditions and is therefore a "condition of employment" and thus a mandatory subject of bargaining. School boards have generally been equally convinced that class size is a matter of

"educational policy" and therefore not a mandatory -- perhaps even a prohibited -- subject of bargaining.

In different states identically worded laws and facts have been interpreted in such startlingly different ways that class size has been variously declared to be mandatory, permissive and illegal. Even within the same state class size has been, at different times, ruled to be mandatory and permissive.

More important, from the negotiator's point of view, at the very time that the Pennsylvania Supreme Court was trying to make up its mind as to whether class size was mandatory or not, Philadelphia teachers were negotiating class size limits as part of a contract settlement. If you have the ability, the clout and the smarts, things that are not mandatory, that the employer is not compelled by law to bargain about, may be won at the table.

The Philadelphia teachers had the clout -- the ability and willingness to effectively strike -- and they also had the smarts to leave mandatory bargaining issues on the table unresolved so that their strike could be over those mandatory issues. Otherwise the strike would have obviously been over class size, not a mandatory bargaining subject, and therefore an illegal strike issue.

IMPACT BARGAINING

Even more useful to the shrewd union negotiator in navigating around legal obstructions can be the concept of "impact" bargaining. The same state laws that restrict the union in bargaining over management "policy" decisions sometimes give the union the specific right to bargain over the "impact" of those decisions on wages, hours,

and terms and conditions of employment. Thus, while the union may be impotent to bargain about a school administration's policy decisions in determining the school calendar and thus total days worked, it may legitimately bargain over demands for premium pay -- time and a half, double time, or whatever -- for additional days worked.

SCOPE OF BARGAINING WIDENS

Public sector unionists who feel frustrated at the limited scope of bargaining may take heart from the history of "scope" in the private sector. Few today would question that collective bargaining agreements ought to be in writing or that pensions, vacations, and health benefits are all issues affecting "wages, hours, and terms and conditions of employment." Yet it was more than five years after passage of the Wagner Act before the requirement to reduce the collective bargaining agreement to writing was established in a case involving the Heinz Ketchup Company.

Management for years successfully argued that pensions were not a mandatory subject of bargaining since they were, by definition, benefits for people who were not employees. That position was not rejected until a Supreme Court decision in a Steelworkers case against Jones and Laughlin fifteen years after passage of the Act. Employers were particularly emotional, but ultimately unsuccessful, in arguing against the "communist" notion of paying people for not working during vacations and it is not difficult to imagine the indignation provoked by the first demands for maternity benefits.

The trend toward an ever wider scope of bargaining in the private sector continues

and in many sophisticated company/union relationships today the scope, in practice, is far wider than the law requires with workers participating in hiring decisions, the control of scheduling and the assignment of overtime and planning for new technology and plant layout. As Justice Douglas observed in a landmark Supreme Court decision, there is a "common law of the shop" and what is negotiable evolves in response to employer, union and industry practice.

MEET AND DISCUSS: AN UNDER-APPRECIATED TOOL

Public sector unionists can frequently be effective in broadening the scope of bargaining, even without changes in existing laws, through the judicious use of the "meet and discuss" or "meet and confer" provisions of many public sector bargaining laws. Meet and discuss is a widely misunderstood and frequently maligned process that may be useful in all the following circumstances:

Managerial rights which are deemed by law to be non-negotiable but in which employees are recognized as having an interest may be "discussible" in the meet and discuss forum in order to provide for employee "input."

Some managerial employees, usually first level supervisors, may have the right to form and join unions for the purpose of meeting and discussing, but not negotiating, their wages, hours, and terms and conditions of employment.

In jurisdictions where collective bargaining is not authorized by law, a meet and discuss forum is sometimes provided as an alternative. In these instances the process

may be available not only to majority units that would, if there were collective bargaining, enjoy exclusive representation status, but also to minority groups of defined size.

Since the laws that establish meet and discuss forums invariably require only discussion and never bargaining in good faith, many public sector unionists -- particularly those with roots in private sector unionism -- tend to be contemptuous of the process and fail to make maximum use of it. If we bear in mind however that the legal requirement to "bargain in good faith" is, for practical purposes, meaningless even in the private sector, then the distinction between bargaining and meet and discuss may in many circumstances be a distinction without a difference. In a case where a public sector union, either because of a legal prohibition or inherent membership weakness, is, for all practical purposes, unable to strike or make a credible strike threat, there may be little practical difference between negotiations and meet and discuss.

Indeed there may sometimes actually be an advantage to meet and discuss since many public employers may adamantly and successfully refuse to bargain about subjects that they would be completely comfortable about dealing with at meet and discuss. And if the union negotiator is sufficiently skilled, then s/he may be able to gain agreement at meet and discuss and have that agreement codified either in a letter from the employer to the union, a memorandum of understanding signed by both parties or even in a management directive, rule or regulation. It is even possible to have the application or interpretation of such memoranda or directives be subject to arbitration or to have them incorporated by

reference into the contract and subject to the contract's grievance machinery. In public sector bargaining particularly, what you call something can make a world of difference in its acceptability to the employer.

The current private sector interest in "employee involvement", "quality of work life (QWL)" and other workplace cooperation programs is tending to duplicate in the private sector many of the features of meet and discuss in the public sector. Most QWL programs start off with disclaimers that QWL is not collective bargaining, that it will not deal with issues covered by the contract, that QWL disagreements will not spill over into contract disputes, that QWL agreements will not be a part of the contract and that either party may terminate all or any part of the QWL process at any time.

The structure of the process and the reassuring disclaimers tend to create a relaxed atmosphere closely analogous to that of meet and discuss with the result that QWL discussions even invade such sacrosanct managerial areas as the firing of supervisors and the investment of capital. And, despite the disclaimers, it is difficult to imagine many meaningful QWL decisions that do not impinge rather directly on working conditions -- for it is both the quality of the product and the quality of the work environment that quality of working life programs are all about. Indeed, the establishment and structure of the QWL process is often, and probably should always be, incorporated into the collective bargaining agreement.

OHIO: AN EXAMPLE OF A COMPREHENSIVE LAW

The most recently adopted (effective April 1, 1984) state public sector bargaining law, that of Ohio (S.B. 133; R.C. ¶ 4117.01 et. seq.), is notable for many features but we refer to it because it attempts to incorporate into one law almost every variation on public sector labor relations tried in any other jurisdiction. Some of the provisions and options of the Ohio law are:

TIME DEADLINES:

A terminal date for the completion of bargaining:

For new contracts, 90 days from start of negotiations.

For existing agreements, the contract's termination date (with a requirement of a 60-day notice to modify or terminate).

MUTUALLY AGREED PROCEDURES:

The parties may negotiate their own impasse resolution procedures including:

Binding interest arbitration of all unsettled issues.

Final offer arbitration as a single package.

Final offer issue by issue.

Fact finding recommendations.

Settlement by a citizen conciliation council.

F. All or any portion of the above plus any other.

MEDIATION:

If no settlement is agreed to by the 45th day before expiration, mediation is mandatory.

FACT FINDING:

If no settlement through mediation within two weeks, a fact finding panel is required.

FACT FINDING RECOMMENDATION:

Fact finding recommendation must be issued no later than 17 days before contract expiration. (Fact finder may also mediate).

RATIFICATION:

Fact finder "recommendations" are binding unless rejected by a 3/5 vote of the total membership of the employers legislative body or of the total membership of the union.

INTEREST ARBITRATION:

In the event fact finder recommendations are rejected, there must be final offer issue-by-issue interest arbitration for units of police, fire, highway patrol, sheriff's department, emergency medical personnel, exclusive nurses units, state schools for the deaf and blind, public retirement system and penal and mental institution guards.

STRIKES:

For all others--a strike is permitted with ten days notice.

INJUNCTIONS:

The court may issue an injunction for 72 hours against a strike that presents a clear and present danger to the health or safety of the public. If the state labor board does not agree that there is a clear and present danger,

the injunction expires on the 72nd hour. If it agrees there is a clear and present danger, the injunction may be extended for 60 days.

ONGOING NEGOTIATIONS:

Bargaining must continue during the injunction. There is an ultimate right to strike at the expiration of 60 days. In Ohio, as in other states that have legitimized public employee bargaining, there is heavy emphasis on dispute resolution procedures as substitutes for strikes. Understanding these procedures is critical to effective public sector bargaining.

MEDIATION

The most common dispute resolution process required in the public employee bargaining laws is mediation. Mediation is also, of course, rather commonly used in private sector disputes but its usage is seldom mandated by law. Exceptions are the Railway Labor Act and emergency disputes under the Taft-Hartley Act.

Since the parties in public sector bargaining are so frequently required to utilize mediation before the union may legally strike, the public sector union should be sensitive to the opportunities and pitfalls of mediation. The possibility or probability of a mediator appearing on the scene will influence the negotiator's strategy and tactics. It is important to understand what the mediator can do and, particularly, what he or she should not be permitted to do.

Mediation cannot guarantee a contract and, most emphatically, cannot guarantee a good contract. A mediator is a man or woman, almost always a state or federal government employee, who has no power

beyond that of status and persuasion. Too often we have observed public employee unionists reacting to the mediator with undue deference and permitting themselves to be unduly swayed and even intimidated by the mediator. Public employees, for a variety of reasons, not the least of which is their own role in implementing laws and governmental regulations and processes, tend to have a greater awe of and respect for the law than other citizens. [This respect for the law can be a major asset for public employee unions to the extent that it influences and moderates the conduct of their public employer.] The status of the mediator as a government official carries with it advantages and disadvantages for the union.

Where the public entity is a county or municipality, or even a state agency, the mediator as a state government official may be perceived by the employer as having authority that, in fact, s/he does not have. But the mere presence of the mediator is a reminder of the basic public policy of the bargaining law which authorizes or mandates his or her intervention, a positive bias in favor of collective bargaining. While the Taft-Hartley Act also speaks of a national policy to encourage the practice of collective bargaining, private employers feel no inhibition about breaching that policy or breaking the law.

While many public employee unionists, inexperienced with the realities of the private sector, will angrily and vociferously disagree, the fact is that public employers -- both from a respect for the law and because of bureaucratic inefficiency -- have usually refrained from firing and otherwise threatening and intimidating workers to discourage unionization. They tend to be equally reluctant to risk being found guilty

of failure to bargain in good faith. In fact, bad faith bargaining by a public employer which led to an illegal strike has frequently been weighed as an extenuating circumstance by labor boards and courts in handing out penalties on the union. For these and other reasons the mediator tends to be seen as representing state authority in favor of collective bargaining.

At the same time, the union bargaining committee will normally consist of public employees who have been socialized to comply with orders from government officials. We have observed mediators -- good ones determined to do their job and bring the parties to agreement, any agreement, and prevent a strike -- cow and browbeat union committees into making concessions far beyond the concessions that could have resulted in agreement at the bargaining table.

The mediator can only recommend and suggest and the union negotiator should bear in mind that the mediator's "supposals" ("Suppose that I can get the employer to agree to an additional holiday -- would you then be willing to make some movement and show good faith by withdrawing your demand on the vacation schedule? You've got to give me something to work with...") should be evaluated for their intrinsic worth but given no more deference because it is coming from the mediator than if made by the employer.

There is normally no way to know for certain whether an idea or "supposal" is the mediator's own or if it was previously suggested by or tried out on the employer. Many times a mediator will claim that a suggestion has not yet been tested on management when, in fact, it represents an

offer that management is willing to live with but is reluctant to make unless certain that it will be accepted by the union. It is in just such situations that a skilled mediator is frequently able to get stalled negotiations off dead center and moving again.

STUDYING MEDIATION AND MEDIATORS

The union negotiator should anticipate mediation and therefore study it. It may prove valuable for both the chief negotiator and bargaining team members to view one of the films on mediation that the Federal Mediation and Conciliation Service (FMCS) provides without charge. Normally, the FMCS will send a mediator along with the film -- an easy and inexpensive way for the union to increase the knowledge and confidence of the team.

The mediator will usually manage to subtly profess sympathy for the union's cause and goals and, thus, be able to more effectively press the union team toward compromise. S/he will often be a former union leader and, in this role, s/he may be very effective in persuading a recalcitrant team member who is holding up a settlement because of some minor point to look at the total settlement and not just at the interests of a particular job, classification, or department.

But do not permit yourself to be deluded. Even though the mediator may be a fellow public employee and even at one time (and still "in my heart") a fellow unionist, s/he is not on your side. His/her job is to get a settlement and s/he will try to do that job and is not about to let any personal sympathies get in the way of doing that job. In a fundamental sense s/he is totally amoral and

concerned only secondarily with the kind of settlement s/he is able to achieve.

In his/her attempts to fashion an agreement, the mediator is ever conscious that it must be an agreement that s/he can sell to both sides. His/her perception of your determination and of your real bottom line is critical because s/he will tailor his/her behavior and recommendations accordingly. Not only must the chief negotiator be sure that s/he gives the mediator the right message, through words and body language (the mediator is a pro and s/he'll pay more attention to your tone and the set of your jaw than to your words), but must also make certain that the message is reinforced by team members (particularly if you should decide, on rare occasion, to invite the mediator to the union caucus). There is need for candor and open communication in the caucus generally but practice role playing when the mediator is present. The mediator has no right to attend your caucus but you have the right to invite him/her.

Despite the fact that public employee unionists tend to be manipulated by the mediator in the ways just cited, it is also true that there is a natural tendency on the part of the public employees to be suspicious of the mediator...but for the wrong reason. They are generally too quick to suspect that since the mediator is a government employee that s/he will be subject to undue pressure from management and is in fact simply a tool of management. It has been our experience that this is seldom the case, that most mediators are eager to preserve their integrity, and are usually able, thanks to their civil service protection, to do so. The question is seldom worth debating. As long as the union team understands that the mediator has no power to compel their agreement to anything and

effectively resists his attempts at manipulation, s/he can be used and useful. And this could be true even if s/he were, in fact, a willing and subservient tool of management.

USING MEDIATION AND MEDIATORS

Most mediators utilize a very simple and obvious truth -- a truth that academicians have labeled "settlement range" and thereby make this simple concept sound very learned and complicated. On any given issue both parties will normally be asking for more than they are willing to accept and offering less than they are willing to give. When the minimum that the union will accept is higher than the maximum that management will offer, there is no possibility of settlement. When the union minimum is equal to or less than the management maximum, then the two parties are said to be within "settlement range" and the mediator knows that settlement is possible. The danger is that there may well be several points of settlement within the settlement range and if the union has been too candid in revealing its bottom line, it may end up with a lesser settlement than management was willing to give.

FACT FINDING

Another intervention strategy for bargaining impasses frequently used in public sector negotiating is fact finding. Legislatures provide for fact finding as a step in the negotiations process because it is a substitute for the strike and because they assume that there would be no irreconcilable conflicts between public employers and public employees if both parties would only address themselves to the facts. Often, however, there are no "facts" to find but

rather the fact finder sums up, analyzes and comments on facts of which the parties were already aware. There are several important things regarding fact finding which union negotiators must bear in mind.

1. Structurally and procedurally fact finding is akin to arbitration.

- a) It is a quasi-judicial procedure
- b) The neutral fact finder is jointly selected by the parties or appointed by a government agency
- c) Both sides prepare a "case" which includes a statement of position regarding each unsettled negotiation item that is at impasse.
- d) Both sides offer to "prove" their points through evidence.
- e) Evidence may be documentary or testimony of witnesses which is subject to cross examination. Hearings generally include opening statements and final briefs. Many public sector unions rely on outside professionals -- staff, attorneys, consultants -- to present a case in fact finding. Fact finding in regard to contract impasses is of far greater importance and of far wider impact than is the arbitration of most grievances. If you would demand someone to present your discharge or discipline case to an arbitrator who was skilled and experienced, you need no less a person to present a fact finding case.
- f) Fact finding can lead to a recommendation from the fact finder (fact finding without recommendation is really mediation).

- g) Fact finding recommendations may be published if not accepted by either or both parties. This is intended to create public pressure on the parties to agree to a "fair and neutral person's" recommendation. The decision of a union to accept or reject a fact finder's recommendation is fraught with political/public relations implications. Public acceptance of the recommendation can increase pressure on management to accept. A union rejection of a fact finder's recommendation should usually be accompanied by a carefully-drafted explanation of why the recommendation is not "fair."
- h) Fact finding recommendations may be binding unless rejected by vote of the governing body.
- i) Where, as in Ohio, the law stipulates that fact finding is binding unless rejected by a 3/5 vote of the employers legislative body and/or a 3/5 vote of the total membership of the union (not just those who vote) the union is faced with a major internal organizational problem. How the union conducts its ratification/rejection process is critically important. A union leadership which wants to encourage membership rejection has a major mobilization and education task. Every member who does not vote is, in effect, voting for acceptance.
- j) Occasionally fact finding is tripartite -- in which case it poses similar problems to the union as those discussed below under "Tripartite Interest Arbitration".
- k) Since fact finders normally make only non-binding recommendations and since

acceptability is a crucial consideration as the fact finder weighs his/her recommendation, it is important to communicate to the fact finder (as it is to the mediator and arbitrator) those issues on which the union is adamant.

- 1) Other concerns mentioned in regard to mediation apply here because fact finders frequently attempt to mediate before, during, or after the hearing.

Fact finding is rarely mandated to be applied in all bargaining situations. Most public sector labor laws provide for its use at the option of the labor relations authority, often dependent on a recommendation from the mediator. It may be used either because it is really anticipated that settlement may be thus achieved or merely as a means of delaying a strike since public sector labor laws permit a strike only after the exhaustion of all legally mandated impasse resolution procedures.

INTEREST ARBITRATION

Interest arbitration is frequently the strike substitute mandated in public employee bargaining laws for work units where a strike would be presumed to endanger public safety. Even in states where public employee strikes are legal, strikes by firefighters, police, and other "public safety" employees are proscribed entirely with bargaining deadlocks resolved through arbitration.

Most unionists are familiar with grievance arbitration -- where the arbitrator hears testimony, weighs the facts and arguments, and interprets the collective bargaining agreement. Relatively few have had experience with "interest" arbitration, as the

arbitration of deadlocked negotiations is called, where the judgment of a third party, the arbitrator, as to what constitutes a "fair" agreement, is substituted for that of the parties.

Interest arbitration is totally unlike grievance arbitration where the right set of facts, if established through credible testimony and other evidence, will ordinarily lead to a predictable decision from the arbitrator. In interest arbitration there simply are no "facts" that can possibly bring the arbitrator to the "right" decision. Indeed, there is no "right" decision.

While some arbitrators might deny it, interest arbitration is far more political than judiciary in nature and most interest arbitrators strive to dictate the agreement that they imagine the parties might have negotiated had they been able to negotiate an agreement. A primary aim will be not to displease either party too much. The pattern of other recent settlements -- in the geographic area and in comparable work units -- will mightily influence the arbitrator and s/he will strive for a settlement that will not stand out in any direction. It will usually be neither the best nor the worst among those recently settled.

Even more than the grievance arbitrator, the interest arbitrator will decline to answer non-essential questions and s/he will shun innovation and follow the past practices of the parties to the maximum extent possible.

Lest interest arbitration be too readily embraced as, as it is sometimes claimed, more "civilized" than agreements won on the picket line or through threat of strike, it should be underlined that the interest arbitrator does not innovate. Paid vacations

and retirement benefits were won on the picket line and no interest arbitrator would ever have dreamed of awarding them had they not already been established as the norm. And even the "pattern" of settlements by which the arbitrator measures his/her own award was established by conventionally negotiated settlements and not by the awards of other arbitrators. The grievance arbitrator studies and gives weight to the awards of other arbitrators in similar cases; the interest arbitrator looks rather to negotiated settlements.

While it is probably rare for an interest arbitrator to simply split the difference between the parties on a given issue, the end result does tend in that direction. It may be taken as almost axiomatic that neither union nor management will end up with more in an interest arbitration award than they had demanded at the table.

It is almost axiomatic that no interest arbitrator will award more than the union has asked or less than management has offered for no better reason than that such an award would be certain to infuriate one of the parties. So far as we know, it is true without exception that no arbitrated settlement has ever been (or is likely to be) for more than the union demand.

There have been, however, cases where an arbitrator awarded less than management had offered (in an atmosphere and area of economic decline) and the union negotiator should be conscious of this danger and not always assume that an arbitrator will award more than management's final offer. If a management offer is reasonable and if the fiscal restraints on management are real and severe, the offer should be examined carefully and seriously before being rejected

in favor of an arbitrator's unpredictable award.

The existence of a binding, compulsory arbitration procedure inhibits successful negotiations. The threat and fear of a strike nudges the parties toward agreement but arbitration poses no comparable fears and dangers. When interest arbitration is available, both parties tend to hang tough, preferring to ultimately use the arbitrator as a scapegoat on whom to blame a less than satisfactory settlement rather than agree to unpopular compromises at the table. While this is particularly true of elected public officials who are loathe to take the political heat for tax increases necessitated by a wage increase, the union leader also faces serious political pressures and may be tempted to pass the buck to the arbitrator.

The reality of the interest arbitrator's decision-making, being as subjective and political as it is -- coupled with the fact that there are at best few "facts" to "prove" the legitimacy of the union's demands -- there is an understandable but dangerous temptation to spend too little time and effort on the preparation and presentation of the union's case to the arbitrator. But the arbitrator will want a rationale for his/her decision and will not want to risk that decision being criticized as not supported by the record, and the union should make every effort to give him/her as many reasons as possible to support its position on every point. And since the arbitrator will want to know, among other things, the strength behind each of the union's demands and its priorities, a strongly argued and supported case is essential.

The composition of the union negotiating team is frequently mandated by its by-laws and to the extent that this may preclude the

team's use of competent and experienced professionals, it may be unfortunate. It can also be extremely ironic. Many unions with which we are familiar will automatically retain a lawyer for the handling of grievance arbitrations but will not only entrust but insist that negotiations -- which may spell victory or defeat in dozens of subsequent grievance arbitrations -- be done by amateurs. This is a little like seeking out a surgeon for the removal of a splinter but entrusting brain surgery to an amateur.

In cases where union practice, politics or by-laws have ruled out the use of professionals at the table, the presentation of an interest arbitration case may present an opportunity for the team to obtain professional help -- either from the national union or from outside consultants.

When interest arbitration is mandated by the law it is usually compulsory and strikes by the affected units are declared illegal. While there is generally nothing to prevent the parties to any negotiations, public or private, from voluntarily agreeing to interest arbitration, it is an option seldom utilized. The Steelworkers experimentation with the concept in the early 1970's was a notable private sector exception.

When arbitration is not mandated, the union in a negotiations dispute, most commonly a public employee union, may frequently challenge management to agree to impartial arbitration but more often than not the challenge is little more than a public relations gambit designed to garner public support. It is lightly made with the confident expectation that it will not be accepted by management.

While interest arbitration is normally binding on the parties -- either through provisions of the law or the agreement of the parties -- it is sometimes "advisory." In such cases, it is really fact finding.

Where interest arbitration is binding on the union but merely "advisory" to the public employer which retains the right to adopt or reject legislation to implement the economic portion of the award, this is the worst of all possible worlds for the union and it serves to emphasize the inherently political nature of the public sector bargaining process.

FINAL OFFER

Since the ultimate option of interest arbitration tends to chill compromise and thus successful negotiations, a concept known as "final offer" arbitration has been introduced in an effort to overcome this defect. Final offer requires the arbitrator to choose between the final offers made at the table by the parties. Sometimes s/he is required to choose the entire package of one of the parties but in other variations s/he may choose issue by issue or the contract may be divided into economic and non-economic packages.

In theory, at least, the existence of final offer arbitration propels the parties toward agreement since both parties will strive to make the most reasonable possible final offer and may thus narrow their differences to the point that arbitration is not needed.

TRIPARTITE INTEREST ARBITRATION

The laws providing for compulsory interest arbitration frequently stipulate that the dispute be submitted to a panel of three arbitrators -- one chosen by the union, one

by management, and the third to be an impartial third party -- rather than to a single arbitrator. At first blush it might appear to be a variation without any meaningful difference since the union and management arbitrators would ordinarily cancel each other out and the third neutral thus be left to make the decision.

There are some differences, however, and they are important enough to lead us to believe that a tripartite panel can be preferable to a single arbitrator. The decision of such a panel will, because of the informal negotiations going on within the executive sessions, more closely resemble a negotiated settlement and the parties will be at least somewhat protected from any totally impractical settlement made because of an arbitrator's lack of familiarity with the problems and special circumstances of the particular work unit.

THE TRIPARTITE PANEL--WHERE TO PLACE THE CHIEF NEGOTIATOR

The tripartite form of interest arbitration as the conclusion of collective bargaining poses an interesting dilemma for the union negotiator. With the single arbitrator system, it is clear what the role of the negotiator for the union is -- to make the most powerful possible presentation at the hearing before the arbitrator.

But in the case of tripartite arbitration there is a serious question: which role should the union assign to its best negotiator. Certainly it is essential to put in the best case -- you can't win what you don't convincingly demand.

Who then should be the union's representative on the arbitration panel? It is

sometimes naively assumed that all the union needs on this panel is someone to "vote" for the union position. In some rare cases this might be the case.

But the job has at least two important responsibilities. During the hearing the union arbitrator has a right -- along with the other arbitrators -- to ask questions. Thus, s/he can aid the union advocate in eliciting or emphasizing points from the union witnesses. More important, s/he can, by asking questions of management witnesses, in effect contribute to the cross examination. Since s/he is cloaked with the authority of a neutral arbitrator his/her questions may be answered more openly, honestly and less defensively and carefully.

Following the hearing the three-member panel may meet in executive session. This may occur immediately upon the adjournment of the hearing or after the neutral arbitrator has come to a tentative decision and wants to run it by the two advocate arbitrators.

Where the panel must make its award by a majority vote, it is almost always the case that the three arbitrators will meet and discuss their views of the appropriate decision -- the two advocates will each be trying to convince the neutral. The neutral may be trying to gain one vote at least for his/her position -- and would much prefer to have a unanimous decision. (Even the interest arbitrator who has sole power over the decision -- in which case the other two "arbitrators" are more properly seen as advisors -- is anxious, as are all neutrals, to achieve acceptability.)

Nor is it unusual for these executive sessions to become open, overt, all-out

private negotiation sessions. The neutral arbitrator often acts as mediator -- with, of course, the additional club in the closet of being able to make the ultimate decision.

This bottom line power usually places the union arbitrator in a more disadvantageous or high-pressured role and under greater pressure than is the management arbitrator. In most instances, the impasse which led to the arbitration arose because management refused to give what the union thought it had to have. It is, therefore, the union which most wants a resolution -- in the absence of which management's refusal stands. So the union arbitrator -- if the structure of the tripartite hearing requires a majority vote (which, for this reason, the union should always try to avoid) must vote for the neutral's decision -- or risk getting nothing. There may be good reason for submitting all or part of a negotiation impasse to tripartite arbitration with the union and management advocates on the panel choosing the third neutral. There is no reason from the union point of view, however, to require a majority vote except in that rare instance where the tripartite panel will be considering a management demand for a reduction -- in which case, as in other concessionary situations, normal rules and principles get turned upside down.

It is clear that whether the tripartite panel is going to be operated by majority vote or whether the neutral has the power to issue a decision is an important question for the union. Whether the executive sessions are merely exploratory and advisory or whether they rise to the level of full-scale negotiations in another (closed) forum, the union needs to be well represented on the panel.

It is a close question as to whether to use the union's biggest gun as advocate before or as an arbitrator on the panel. Both the union advocate and union arbitrator must be fully knowledgeable about the union's bargaining position -- not only as to what is on the table but what the union's priorities are and the rationale which justifies the union's position.

FROM POLITICS TO BARGAINING TO POLITICS

In the early movement by public sector unionists to gain legislative authorization for the right to negotiate, the assertion was made that they would thus move from collective begging (lobbying the political boss for a little "more") to collective bargaining. But collective bargaining, to the surprise of some, has not reduced the public union's need for political action. Rather it has increased union involvement and effectiveness in the political and lobbying process. Just as private sector unionists in the U.S. have been forced into greater activity in the political arena as conglomerates and multi-nationals, together with a hostile political environment and chronic underemployment, have undermined the effectiveness of the strike, so too have public employee unionists been forced to see negotiations as one, but not the exclusive, weapon in their hands.

The public sector union negotiator needs not only all the tactical table skills needed by the private sector unionist but also a strategic understanding of the political and public relations roles to be sustained throughout the bargaining process. To the extent that the public sector union negotiator will of necessity both bargain at the table with management's assigned team and appeal to and place pressure upon the political bosses

of those management negotiators, all that we assert throughout this work about the importance of an informed, mobilized membership backing the negotiator is true here too.

COSTING

It has become common in recent years for union negotiators to "cost out" their proposals for contract improvements. It was not always thus. In earlier days the cost of a particular proposal was considered a problem for the employer to dope out; the union concentrated on the benefit itself.

With the development of the wage-benefit "package" approach, it became necessary for union negotiators to develop at least minimum competence in estimating (in round figures, at least) the cost of the items in their proposal and the dollar value of management's counterproposals.

The reasons for this are:

1. The union needs to know how important each item might be to the employer in cents-per-hour terms.
2. When it comes down to item-swapping time, the union needs to know if it is trading an item worth a dime for one worth a nickel.
3. When a proposed contract is submitted to the union membership for ratification or rejection, the union usually wants to give the total of the wage-benefit package (in dollars and cents-per-hour) rather than just the wages.
4. The employer's cost estimates need to be tested. If, as is usual, the boss' estimates are high the union may want to challenge them in specific detail or simply say, "Look, we both know that your estimates are on the high side."

What Constitutes a Labor Cost?

There are as many different ways to calculate labor costs as there are differing management and worker interests in individual workplaces across the United States. One reason is that there is no complete agreement on what constitutes a labor cost for the purpose of costing a labor contract.

Of course, such direct labor costs as wages, paid vacation, holiday, sick leave, various health insurances, etc. should be included when costing a contract. But for years the U.S. Chamber of Commerce, that great protector of business interests, has argued that paid time not worked – such as coffee and lunch breaks, time getting ready for work, time spent for grievances and negotiations, paid time traveling to and from the job, and clean-up time at the end of the day – should be considered employee benefits for costing purposes. Other organizations, including the U.S. Bureau of Labor Statistics, exclude these "benefits" because, they argue, these are granted to improve employee work performance and employers benefit as much as employees from them.

Other "controversial" benefits that may or may not be included in costing the labor contract are:

- Employee discount plans
- Employee meals
- Reduced rates for parking

- Recreational facilities
- Free medical service from company physician/nurse
- Educational expense reimbursement
- Uniform allowance
- Laundry service

Admittedly there may, with regard to some or all of these, be differences of opinion among reasonable people as to whether or not these items should be included in costing the contract.

Cost is not the only factor of importance; in many cases it is not even the most important. The union membership may strongly desire some particular benefit, whether it costs a little or a lot. Historically, relief periods for auto assembly-line workers were a case in point. They wanted the relief time and were monumentally indifferent to what it cost.

What tends to concentrate the union negotiators' attention on cost is management saying: "OK, if you insist on such and such a provision you'll have to take less in wages." All of a sudden, the cost factor gains in importance. Some experienced negotiators have commented that it was well that unions had in place sound benefit packages before "costing" became so much in vogue; otherwise, they feel, the membership might have opted for wages instead. If a pension benefit cost a quarter many workers would have doubted that they'd be around to collect a pension 25 years from now and might have grabbed the 25 cents in the pay envelope.

Management knows that costing is a very inexact science. In the Instructor's Manual for their text *Human Resources Management* and the course they teach at MIT's Sloan School of Management, authors Barocci and Kochan state: "There is no way to come up with the true or current cost of a contract; the cost has to be a function of a number of assumptions and projections". Assumptions made by management are usually worst case assumptions; projections of costs are likely to be the highest imaginable cost.

An example used by Barocci and Kochan is a union demand for an increase of one vacation day: the employer will multiply number of workers by hours per day by rates per hour and conclude that the union's demand will cost "X." For example, if it has 100 workers who work eight hours per day at an average of \$10 per hour, it will declare that the holiday will cost \$8,000. It may even try to add certain other payments such as Social Security, Unemployment Insurance (UI), and pension that may go along with wage costs. But, be wary on three accounts:

1. Not all costs that go along with wages go along all the time. For example, if wages go up, Social Security will cost more, up to (as of this writing) a maximum of \$68,400 per year; UI (as of this writing in our state, Pennsylvania) is only paid on the first \$8,000 of earnings in a year so an increase in wages will not increase UI costs for workers already earning over \$8,000 a year. Once the employer has paid on \$8,000 in wages in a year; pension costs will or will not go up, depending on the nature of the pension plan.

2. There may be 100 workers, but they may not all get vacation pay, in which case costs will obviously be lower.

3. An increase of a day's paid vacation is more likely a decrease in hours worked than an increase in total money paid out. And that is the clue to other big differences in calculating costs. As Barocci and Kochan point out:

a. Additional time off may have no impact on production volume (i.e., workers on vacation will not be replaced if there is sufficient slack in the given work crews). If this is the case the cost of the vacation day will be near zero.

b. Or, non-vacationing employees will be required to do the work by working overtime or (it may be done) by vacationing employees working overtime prior to leaving. In either case, the cost will be more.

c. The company may hire additional personnel paid the union rate, but they are temporary and thus the benefits are less. However, the cost of hiring must be considered also.

d. If the Company is operating at maximum capacity and cannot find new workers, production will decline and "costs" must include some estimate of the variable profit on goods that it will not be able to produce.

Another argument, one not mentioned by Barocci and Kochan, is that an increased vacation day might improve morale, reduce absenteeism, improve productivity, reduce turnover, etc. And since the only cost that counts for the employer is the unit production cost, those factors might be more important than the hours not worked or the dollars paid out for the vacation day.

Although costing is not the same as "ability to pay", they are related and certain caveats about the accounting information used in both a firm's financial statements and its labor cost analyses need to be considered. Since it may be a point you will want to make to the management you deal with, we quote again from the professors from the Sloan School of Management at MIT:

Sources of Information

There are two principal sources of information that can be tapped to cost a labor contract: 1) the collective bargaining agreement (CBA), and 2) the employer. The information sought falls into five broad areas of labor costs:

- A. Employees and their hours of work or employment
- B. Direct payments to employees (for time worked)
- C. Direct payments to employees (for time not worked)
- D. Indirect expenses (not payroll) for employees
- E. Miscellaneous expenses

The Collective Bargaining Agreement (CBA)

Without question, the contract is the governing document in the costing of a labor contract. It will contain the basic rates and – equally importantly – the rules governing the application of those rates. Of course, information gotten from the contract will have to be supplemented by a considerable amount of data gotten from the Company regarding actual costs. Nonetheless, costing begins with the collective bargaining agreement.

All labor contracts contain a set of similar, basic provisions. But beyond them, there is no such thing as a standard collective bargaining agreement. The first step in gathering information, therefore, is to carefully study the existing contract and identify all provisions relating to labor costs. A unionist must become thoroughly familiar with them.

Getting Information from the Employer

The Union must decide what information to request from the employer – based on the nature of the contract, the Company, the topics likely to be discussed, etc. Generally, it is safer to ask for too much information than to omit something that may be needed.

The U.S. Supreme Court has ruled that employers are obligated to provide information needed by union representatives to perform their duties. [NLRB vs. Truitt Manufacturing Company, 351 U.S. 149, 10 L. Ed. 1027 (1956) and NLRB vs. Acme Industrial Company, 385 U.S. 432, 17 L. Ed. 495 (1967)] Within the five areas listed above, a union representative can request information regarding each employee as well as for the entire bargaining unit.

This does not mean, unfortunately, that the Company will supply the information in easy-to-use form. The Company's own administrative systems may not contain the information in exactly the form you want it. And, legally, the Company is not obligated to go through Herculean labors to give you exactly what you want. So, recognize that this is a grey area and avoid getting into disputes with them over what you need. Be prepared to "massage" the information the employer supplies into the form in which you will use it.

Information Summary Chart

Obviously, it is not easy to keep track of all this information as you collect it. The purpose of an Information Summary Chart is to help you do this as you go through the collective bargaining agreement and prepare your request for information from the Employer. Organized according to the five cost areas, the Chart tells you the What, When, Where, and Who of each piece of information.

What

The Chart is a checklist which tries to cover all the possibilities – all of the major types of costs that appear in today's labor contracts. But not all of them will appear in your contract. Your first job will be to identify those that do – you can ignore the rest.

When

Nearly every Item relates to some specific period of time. It is important to keep these time periods straight. This will help you avoid trying to compare figures from two different time periods – apples and oranges – later on.

You should specify a date when requesting information from the employer – for example, information as of December 31, April 30, June 30. Or ask for the "Latest Period". Usually, this will be a 12-month period so that any normal seasonal variation in operations are taken into account.

The 12 months should be the period immediately preceding preparation for costing – not necessarily the calendar year, the contract year, or Company fiscal year.

If your contract expires in November and you begin to prepare for negotiations and costing in June, the information should be for the previous 12-month period from July to June. In such a case of course, the information would be at least 6 months "stale"; on the other hand, the employer would not be able to claim the information is not yet available.

Where

For each Item to be costed, you get the information either from the collective bargaining agreement or from the employer.

Who

Some information should be broken down by each individual worker. Other information need only be provided as totals for the whole bargaining unit.

Likewise, information can cover full-time employees (FT), part-time employees (PT), or both.

Capsule Definitions.

To create an Information Summary Chart, the first step is to identify which Items – which pieces of information – apply to *your* contract and which don't. The capsule definitions below should help you make those decisions.

A. Employees and Hours of Work

Employee Information.

These Items should be gotten from the employer for each full and part-time employee in the bargaining unit as of some specified date. This information should be kept up-to-date by the Union as a check of its membership files.

"Length of Service" is especially important. Nearly all contracts contain provisions where eligibility is determined by length of service or seniority. Costing these provisions requires a breakdown of the number of workers in each seniority class. It is best if the employer provides such a breakdown; it will save you the work of going through the list,

worker by worker, and making your own totals. On the other hand, getting the length of service of each employee is absolutely necessary. During negotiations, changes in the definitions for the seniority classes may be put forward and it will be necessary to do a new seniority breakdown.

Total Employees/Each Pay Grade.

The number of employees at each pay grade should be supplied by the employer as of a specific date. This Item is an absolute requirement.

Total Employees/Each Shift.

The total number of employees working each shift that the employer operates. This information should be as of a specific date.

Average No. Employees.

This information is very useful for costing purposes if the number of workers in the unit varies widely over the year. The employer may supply the average or only the number of employees in each pay period.

Hours of Work.

The contract normally describes the number of hours in a work day and in a work week. Whatever the employer might argue for costing purposes, these are the figures to use.

Definition of Full/Part-time.

The contract will usually specify the number of hours of work that constitute full-time and part-time employee status.

Total Straight-time Hours.

Here, you want only the straight-time hours paid for time actually worked. Straight-time hours paid for time not worked – vacations, sick leave, bereavement, etc. – are included under separate items.

You will want both a detailed computer printout by employee for the latest period and any totals of hours the employer can provide. Make sure part-time employees are included.

It is essential to know exactly what the Company includes when they report any totals of hours. There should be no overlap or double-counting of hours in the totals for overtime, vacations, sick leave, longevity, severance pay, etc. These Items must be separated for costing purposes. Closely check the computer printout by employee with the totals the employer provides to make sure of this.

If your contract specifies pay ranges for each job class or pay grade, you may also want totals of straight-time hours for each different pay rate.

Total Overtime Hours.

If your contract specifies extra pay for overtime, you will need to know how many hours were worked at the overtime rate. Overtime hours should be gathered both for individual workers and the entire bargaining unit.

Total Shift Hours.

You will need to know the number of hours worked by each shift – and, perhaps, the number of employees working each shift. Shift hours information should be gathered for individual employees as well as the entire bargaining unit.

B. Direct Payments for Time Worked

Total Straight-time Wages.

This is the total of straight-time wages for each employee and/or the entire bargaining unit for the latest 12-month period.

The same qualifications stated above under Item 16 apply here: the total amounts should not include any premiums – for overtime, shift work, etc. Likewise, wages paid for time not worked – vacations, sick leave, holidays, etc. – should not be included. All of these will be handled separately.

Total Overtime Wages.

The overtime premium is the amount paid over and above straight-time wages for overtime work. It will be stated in the contract, usually as a percentage of straight-time wages. For example, "time and one-half" means for each hour of overtime, a worker is paid their straight-time hourly wage plus 50 percent (.50) of that wage. Likewise, "doubletime" means for each hour worked, a worker receives their straight-time hourly wage plus 100 percent (1.00) of that wage.

From the employer, you will need the total amount paid out in overtime premiums in the latest 12-month period – not including the straight-time base wages paid for those overtime hours.

Total Shift Wages.

The amount(s) of the shift premium, if any, will be found in the contract. From the employer, you will need the total amount paid out in shift premiums in the latest 12-month period – excluding the straight-time base wages paid for those hours worked on shift.

Cost of Living Allowance; Incentive and Piecework.

These Items do not appear in every contract. If they are in your contract, you will need to know the total amount paid over the latest 12-month period for each.

C. Direct Payments for Time Not Worked

The Items in this section can be expressed in dollar amounts or in numbers of days/hours. Converting days/hours to dollars or vice-versa can easily be done.

For those Items that are not uniform for each employee (i.e., Bereavement), the employer will have to supply information for each employee.

Vacations; Sick Leave.

The contract will state the number of vacation and/or sick leave days/hours an employee is entitled to, based on his/her seniority. Data on actual use of vacations and/or sick leave will have to be provided by the employer.

"Buyout" refers to contract provisions which require employers to pay employees for any vacation or sick time unused by the end of the year. It is best expressed in dollar totals.

Holidays.

The contract specifies the number of holidays the bargaining unit is entitled to. Where 24-hour coverage is required to preserve the integrity of the schedule, employees may receive full holiday pay on top of their normal pay for working on holidays.

Bereavement; Jury Duty; Military Training; Union Activity; Management/Labor Meetings.

The number of days/hours actually used for any of these Items would have to be gotten for individual employees because they do not affect every employee.

Call-in Pay; Lunch, Coffee Breaks, Washup, Travel to Job.

The Union should protest the inclusion of these Items unless records have been maintained for employees who have worked through lunch hours and coffee breaks to get the employer's work done!

D. Indirect Expenses for Employees (Other than Payroll)

These Items constitute what we have come to know as fringe benefits – various insurances, bonuses, and amenities provided wholly or partially by the employer for the benefit of employees. Some reference to each of these would appear in the Contract where

they have been won by the Union. For costing purposes, the employer would have to provide the Union with the yearly cost of each benefit.

Insurance.

As the forms of insurance proliferate, more and more are finding their way into labor contracts. The general rule is: if it's not mentioned in the contract, it is not a cost you should be concerned with.

The employer pays a monthly, quarterly, or yearly "Premium" to insurance companies for each type of coverage. You will need to know the dollar amount of the total premium for each form of insurance over the latest 12-month period.

"Dividends" or "Credits" are sometimes paid to employers for "low loss" periods – 12 months during which lower than average claims were made on the insurance carrier by the employer. Make sure you request information from the employer on any insurance dividends or credits. They reduce the cost of insurance and should be subtracted from the total premium.

In some cases, employees make some payment toward the insurance benefit. If so, a rate for "Employee Contributions" will be usually stated in the contract. The annual amount of employee contributions should be subtracted from the total premium.

The "Loss/Experience Report" is provided by insurance carriers to their clients. This reports the insurer's loss and the client's experience in paying out benefits to those covered by the terms of the policy. The employer will get such a report from each of its insurers; these can be useful to the Union in providing evidence of the kind of "experience rating" the employer is likely to get – and therefore, the premiums it will have to pay.

Other Fringe Benefits.

These Items may or may not affect every employee. Therefore, they should reflect actual payments that the employer made over the latest 12-month period. They should NOT include any employee contributions.

Other Employee Subsidies and Allowances.

These Items mostly exist outside the contract and are instituted by the employer to get something from employees: there are no "free lunches". For example, a child care center might be established to insure women workers' attendance at work. (We're not suggesting that there is anything wrong with establishing a child care center. In fact, we encourage their existence. However, the tactical decision to set up a child care center to induce employees to show up for work is an employer decision.)

If the decision to provide one of these subsidies was mutual between the employer and the Union and is included in the contract, then perhaps, it should be part of the costing process.

Generally, employer-instigated subsidies should be viewed on that basis; if the Union was not part of the decision to set them up and maintain them, they should be excluded. In effect, they are costs the employer has taken upon itself.

E. Miscellaneous Expenses

Social Security; Workers' Compensation; Unemployment Compensation.

These are forms of employee insurance mandated by law and wholly or partially paid by employers.

The total employer's contribution for Social Security over 12 months can be supplied by the employer.

The total Workers' Compensation premium paid over 12 months should be reduced by any dividends and credits received by the employer; request that these be reported separately. The Union should also request the report on losses (payouts) over the latest 12-month period.

Every state's Unemployment Compensation rules are different. The Union should become familiar with the method for paying unemployment that the employer uses and request the amount paid over the latest 12-month period, less any credits to the employer's account.

False Arrest Insurance; Umbrella Liability Insurance.

These Items should not be included in the costing process and the Union should protest their inclusion. They are purchased by the employer to protect his interests just as surely as fire insurance is purchased to protect the employer's physical property.

Costing Out a Labor Contract

When a company is selecting an auditing firm, it asks each potential candidate one question: "How much is two and two?" The firm that gets the job is not the one that answers "4", but rather, the one that answers "What figure did you have in mind?" The point is not to discredit accountants, but rather that one should never completely trust accounting data. There is no such thing as true cost; there is no such thing as true revenues.

Labor negotiators use accounting data to determine how much the company can afford to pay and to determine how much a contract will cost. Without too much explanation, using "generally accepted accounting principles," we can vary a company's earnings reported by 100 percent. Earnings data do not necessarily tell you what a company can pay. A company can be near bankruptcy for lack of adequate cash flow, and still show substantial earnings, or have a low reported income, but huge streams of money pouring into the treasury.

The key notion is that accounting data cannot ever be taken at face value. Creative accounting is "pejorative" but can lead to a better understanding of creative collective bargaining.

Since contract costing consumes a great deal of time; since the process of costing takes persons with a flair for arithmetic; since, even when you "prove" that the employer's cost estimates are excessive and that they can afford to pay they don't necessarily grant your demands, why waste time on it?

The answer varies with the circumstances ranging from "don't touch it with a 10 foot pole" to "you may have no choice." Consider some of the arguments for doing costing and doing it well:

1. If you are involved in fact finding or interest arbitration as a result of a negotiation impasse, the apparent rationality of the process and the possibility that a neutral third party is going to influence or determine the economic aspects of the contract may compel you to look at costs as well as income, budgets, etc.
2. You may know the firm's figures are exaggerated and they may know that you know it, but do your members, their families, friends, and community know it? While you may prefer not to get into a public relations battle over the numbers (to a large extent they are their numbers and you're at a disadvantage trying to disprove them), you may not be able to simply ignore their numbers, nor to just call them liars.
3. If you have to prepare for costing, it will force you to start early to prepare in general. Since it will be obvious that costing can't be done quickly (and shouldn't be even approached if it can't be done reasonably well--that's really the way to get ensnared in the boss' data web) doing it may help to move the union into the early preparation mode it needs anyway.

Using the Costing Figures in Negotiations

There is no way to predict beforehand what will happen during negotiations. So, there is no way to state exactly how to use the costing figures we have worked up. However, some general points can be made.

During negotiations, management generally loves to wring its hands over the "millions" that this or that item is costing them. See if what they are saying squares with your estimates. It may not. If it doesn't, politely point it out to them.

During negotiations, proposals may be put forward which involve increasing – or decreasing – the number of workers. These can be emotional issues for both sides and arguments over them can quickly lose sight of the actual costs involved. This will give you a fair idea of the costs or savings these proposals might actually involve.

The heat of negotiations sometimes generates a lot of smoke. Things sometimes get bogged down in wrangling over a contract provision and no one realizes that the amounts involved are so small as to be of little consequence to either the workers or the company. Of course, not everything can be reduced to dollars. A contract provision might be important to workers far out of proportion to the money involved. But where money is the issue, knowing the approximate numbers could be very important.

Finally, sooner or later the negotiations process comes down to horse trading. This is what management waits, hopes, and dreams for. They have a way, say, of offering to pick up the employees' contributions to life insurance while asking workers to give up a week's vacation and making it all sound like workers are getting a real windfall. A few simple calculations from figures on your scratch sheet should be able to ferret who is really getting what in the horse trade.

How complicated the negotiators get in costing out proposals depends in part on the scale of the negotiations (the size and complexity of the bargaining structure) and the practice of the parties. With AT&T and the Communications Workers, everything is carried out to three decimal places. With Joe's Tool and Die Shop and the Machinists, it might be done on the back of an envelope.

We are including, however, a rule-of-thumb method of costing that is sufficient to meet the four reasons enumerated at the beginning of this section – particularly providing a rough check on management's cost figures which are usually provided at the bargaining table.

The Rule-Of-Thumb Method

First of all, you want to express costs in cents-per-hour or dollars-per-year per worker. One reason for reducing costs to cents-per-hour is understandability for the employee. Management may well understand what it means to say "This will cost us \$175,000 a year" but the employee does not. However, if you say "This will cost five cents an hour per employee or \$100 a year," it becomes understandable. Furthermore, psychologically it is better for the union to be expressing its proposals in smaller numbers. Let the boss be the one who tosses around the big numbers.

It is quite possible to put too fine a point on the costing process, to give it, in other words, a false precision. It is really based on a number of assumptions that are, at best, rough estimates; and therefore, it is stretching the matter to carry out the results of these "calculations" to several decimal places.

What you need in order to do "ball-park" costing for most calculations is three figures:

- Average straight-time hourly earnings of a worker in the bargaining unit
- Number of workers in the bargaining unit
- Average number of hours worked per worker per year. (Last year's figures will do fine, if it is a normal or representative year)

The Cost of One 8-Hour Day

One of the most basic costs to figure is for a paid day not worked – whether that day is a holiday, vacation day, sick day or whatever. There are a couple ways to get at this. One: Figure the cost of one week out of a year. It's two per cent (2%). How do we know that? Well, there are 50 weeks in a year (52, really, but we're doing "ballpark" costing). So one week out of 50 weeks – $1/50 = 2\%$. If one week – which is five (5) days – is 2% then one day is one-fifth ($1/5$) of 2% or .4%; 2 days is .8%; 3 days is 1.2% and so forth. So, if the average hourly rate is \$9.00 an hour, a one week vacation costs 2% of \$9.00 or \$.18 per worker per hour. And one day of vacation (or holiday or sick day) is .4% of \$9.00 or \$.036. (Which is also $1/5$ of \$.18 – \$.036. $\$.036 \times 5 \text{ days} = \$.18$.)

You should always be looking for a chance to use ratios to find a short cut in costing. If a benefit will cost \$.20 an hour but only half the workers will get it, the cost is one-half of \$.20 or \$.10.

Another way to get into "ball-park" costing is to figure the cost of one additional day's pay for this bargaining unit, as follows:

Assume: \$9.00 per hour average straight-time hourly earnings
500 workers
2,000 hours worked per year

Cost of one additional day:

\$9.00 per hour $\times$ 8 hours = \$72

$\$72/2,000 \text{ hours} = \$.036 \text{ per hour}$

This method gives you the cost of one additional paid holiday, personal leave day, used sick leave day, and so on for one worker. To get the total yearly cost for the entire bargaining unit just multiply the $\$72 \times 500 = \$36,000$.

Another Cost of Time Paid For But Not Worked

Let's figure the cost of 30 minutes of break-time. The cost of one day (\$9 per hour $\times$ 8 hours) is \$72. Thirty minutes is $1/16$ of 8 hours. Therefore, it appears that the cost would be \$72 divided by 16 or \$4.50. (Of course, as you may have noticed, this could be figured even more simply: 30 minutes is $1/2$ hour and if an hour is \$9 then $1/2$ hour is \$4.50.) Either way you calculate it, this assumes that all workers will get the additional time; if they do not, the cost will be reduced by the proportion of workers not receiving the benefit.

It also assumes that there is no gain in productivity from the break-time, a most unlikely assumption. The workers may actually have produced as much in a shift after the break time off was granted as they did before, in which case the cost was zero.

Which is also true for some other forms of paid leave. The only real cost that counts is cost per unit of product or service. Most workers know that if you didn't get any

break-time you'd inevitably take it anyway, if in no other form than slowing down because of fatigue. Assembly line supervisors have come to realize that it's not really economizing to tell people they can't be relieved to relieve themselves.

In the same way the apparent cost of a holiday or vacation day has to be offset by considering its effect on morale and productivity. That's hard to estimate. But a little more obvious example of the same principle is the calculation of the cost of a personal day off. On the one hand it may be what we said one day costs: four-tenths of one percent (.4%) or, in our \$9.00 an hour example \$.036. But if the people who are at work that day when this individual is on a personal holiday cover the work that needs to be done, then it can be asserted that the personal day off didn't cost the employer anything.

The Cost of Additional Paid Vacation Time

The calculation here is a little trickier, since normally proposals for additional paid vacation time will benefit only a proportion of the workers in the bargaining unit.

Example: An additional 4th week of paid vacations after 20 years of service. (No 4th week in present vacation schedule.)

The first task is to determine how many workers will be eligible for an additional week of paid vacation; that is, how many have 20 years of service. If the answer is 50, that represents 10% of the bargaining unit of 500. If everybody got an additional week (5 days), the cost would be 5 days x \$.036 (cost of one day) or \$.18. Since only one-tenth of the workers will receive the benefit, the cost is 10% of \$.18 or \$.018.

But life is rarely that simple. Suppose your present vacation schedule looks like this:

- One week for one year's service
- Two weeks for two years' service
- Three weeks for ten years' service

The union proposal is for one week after six months, two weeks after one year, three weeks after five years, and four weeks after fifteen years. To figure the cost of this proposal, you need a complete run-down on length of service for everyone in the bargaining unit. Let's say the seniority roster looks like this:

Seniority	6mo	1yr	2yr	3	4	5	6	7	8	9	10	11	12	13	14	15+
# Workers	50	100	50	25	25	25	25	25	25	25	25	25	25	10	15	25

Proceed as follows:

1. Figure the number of workers who would be eligible for an additional week of paid vacation under the union's proposal.

No. Eligible for Extra Week

Proposal:

For one week after 6 months (prior contract-no vacation) -	50
For two weeks after 1 year (prior contract-1 week) -	200
For three weeks after 5 years (prior contract after 10 years) -	125
For four weeks after 15 years (no such prior benefit) -	<u>25</u>

Total Eligible 300

2. Figure the additional cents-per-hour cost to the whole bargaining unit if the union's proposal is accepted. Use the following formula:

Total cost = number eligible (300) x cost of one additional week (40 hours x \$9 per hour or \$360 is the cost of a week's vacation for one worker) is \$108,000.

Cents-per-hour cost = total cost/total hours worked for all workers. \$108,000 is the cost which must be divided by the total hours worked by all workers. Total workers 500 X total hours per year 2,000 (40 hours a week multiplied by our "rounded off" 50 week year) is 1,000,000 hours, \$108,000 divided by 1,000,000 is 10.8 cents per hour.

In general, it is useful to use ratios in order to avoid detailed calculations. For example: if 50 workers will be eligible for a new benefit out of the 500 workers in the unit, that is 10% or 1/10. If the cost of a new benefit would be \$.18 if all workers got it, the actual cost in this example would be 1/10 of \$.18 or \$.018.

In the negotiations, the union did not get everything it wanted. The vacation schedule stayed the same as at present, except that a fourth week was added after 15 years service. In order to figure the additional cost to the employer of this change in the first year of the new contract. Since there are only 25 workers with seniority of 15 years plus . . .

$$25 \times \$360 = \$9,000 / 1,000,000 \text{ hours} = 9/10 \text{ of a cent (\# eligible} \times \text{cost/total annual hours of all workers)}$$

Answer: \$.009 per hour

Sometimes the employer will try to include in the cost calculation the number of workers who will be eligible for an additional week of vacation in the second year of the contract (14 years moving up to 15) and even in the third year, if it is a three-year contract (13 years moving up to 15).

It may not be unreasonable to use such assumptions, but it is just as reasonable to assume that some of the 15+ year people will retire in the second or third year. When you get down to workers with less than five years' service the assumption of zero turnover is totally unwarranted. If any effort is made to project costs based on length of service, then both increases in the number of long-service people and decreases through retirement,

death, and other forms of attrition must be considered.

Another assumption the employer may make is that "average" straight-time earnings should not be used when calculating the cost of an additional week of paid vacation for long-service workers. The idea is that long-service workers are paid above the average. Usually this is true. Simply ask that the union be provided with the actual earnings of these workers (e.g., those with 15 years or more of service), average them, and use that figure in your calculations. It will not make much difference anyway in the cost per hour.

The Cost of Insurances

The method described below can be used for life insurance, medical insurance, disability, sickness and accident--in fact, any type of insurance for which an annual premium is charged. To compute the additional cost of union-proposed improvements, use the following formula:

Additional cost in dollars

Annual hours worked in bargaining unit

Example: The additional premium cost is \$175,000 per year. (Use earlier example of 500 workers @ 2,000 hours per year for a total of 1,000,000 hours.)

Then: $\$175,000 / 1,000,000 = 17\frac{1}{2}$ cents per hour (additional cost)

There are two cautions to the union negotiator in insurance costing.

1. Make sure the additional premium cost is for members of the bargaining unit only and does not include unorganized or supervisory workers.
2. Make sure the figure is a net cost, after any credit the employer may get based on experience rating. If the employer says he will not have a net figure until the end of the year, use the percentage of the premium credited (or refunded) for last year and reduce the additional premium cost by that amount.

Employers have been faced for a number of years now with rising costs of the medical package, even without improved benefits. They have a legitimate reason for wanting to contain these costs, and a number of unions have cooperated with their employers in such endeavors. The union, however, should be sure that these efforts are really aimed at cost containment and not at just shifting the cost to employees by means of worker co-payments, deductibles, and reduced benefits.

The Cost of a General Wage or Salary Increase

Unions typically negotiate general wage increases on a cents-per-hour or percentage basis, although combinations are not unusual.

Example: 6% with a \$.50 minimum (everybody below \$8.34 would get \$.50; everyone above \$8.34 would get 6%. Why? Because at \$8.34 50 cents and 6% are the same).

Sometimes the scheduled raises might look like this:

\$.35 up to \$ 6.50
 \$.45 up to \$10.00
 \$.55 over \$10.00

Costing of a straight cents-per-hour or percentage increase is simple. The combinations gets a little tricky. In any case, whether you try for cents per hour, percentages or a combination of both you need to start your costing by getting a weighted average.

Suppose you have a bargaining unit with 5 job classes such as:

A	6.50
B	7.50
C	8.00
D	9.00
E	10.00

What is the average? If you total these you would get \$41 which, divided by the 5 classes is \$8.20. But this is not the weighted average. To get the weighted average you have to know how many workers work how many hours in each job category.

For Example:

Class/Rate	#of workers	#of hours	Total
A/6.50	200	400,000	\$2,600,000
B/7.50	50	100,000	750,000
C/8.00	20	40,000	320,000
D/9.00	3	7,000	63,000
E/10.00	2	5,000	50,000
Totals	275	552,000	\$3,783,000

Total payroll/Total hours = weighted average
 $\$3,783,000 / 552,000 = \6.85

Loading – Front and Back

The total cost of a multi-year agreement can be juggled in a union's favor by putting the heaviest increase early and the lightest one in the final year. It is usually to the

employer's advantage to do just the opposite; to put the lightest increase up front and the heaviest at the rear. In the jargon of the trade, this is known as "front-loading" or "back-loading."

Example: In each of the illustrations below, the average straight-time earnings will be increased by \$1.50 at the end of the three-year agreement. But the amounts paid each year in the 2nd and 3rd illustrations differ from the first; the 2nd is "front-loaded; the 3rd is "back-loaded."

Illustration 1. (Workers get \$.50 per yr. of 3-yr contract)

1st year	2nd year	3rd year	
\$.50	\$.50	\$.50	
	\$.50	\$.50	
		\$.50	
\$.50 +	\$1.00 +	\$1.50 =	\$3.00 total costs-per-hour over 3 years

(In the second year they still have the raise from last year plus the second raise; same for the third year.)

Illustration 2. (front-loaded--workers get \$.55, \$.50, \$.45)

1st year	2nd year	3rd year	
\$.55	\$.55	\$.55	
	.50	.50	
		.45	
\$.55 +	\$1.05 +	\$1.50 =	\$3.10

Illustration 3. (back-loaded--workers get \$.45, \$.50, \$.55)

1st year	2nd year	3rd year	
\$.45	\$.45	\$.45	
	.50	.50	
		.55	
\$.45 +	\$.95 +	\$1.50 =	\$2.90

Time-Weighting. The above process is known as "time-weighting." It can also be applied to phasing in increases in benefits as well as wages. For example, an additional paid holiday effective in the second year of the agreement; or an extra week of paid vacation after 20 years' service, effective in the third year of the agreement. Because the time in which the benefit is in effect is reduced, the total cost to the employer during the contract period is also reduced. Using time-delay is sometimes a way to ease in a benefit or wage adjustment which will then continue in future years.

Roll-Up or "Creep"

Obviously an increase in a straight-time hourly rate, through a general increase, will also increase the cost of any other items that are directly tied to that hourly rate.

Examples:

- paid holidays
- all other paid days off (personal leave, birthdays, used **sick leave**, etc.)
- paid vacations
- pensions (if the benefit formula is tied to earnings--**highest**, three-or five-year, career average, etc.)
- shift differentials if stated as a percentage of the hourly **rate** (not if so many cents-per-hour)

(Note: in calculating the cost of shift differential changes – for example, going from 5% for the second and 10% for the third shift to **7% and 12%** – you calculate first how many workers will receive the increase [that is, **how many** are on the 2nd and 3rd shifts]. Then, you figure what the total cost **would be** at their average hourly rates. Finally, you spread the cost over the entire work-force, not just those on shifts, because you are seeking the cents-per-hour cost **for the** whole bargaining unit.)

Some employer-oriented textbooks have estimated roll-up at 30%. To get a figure this high, however, they throw in everything, including increases in Social Security taxes because workers' earnings will be higher. (Of course, the workers' taxes will also be higher.) Since roll-up costs are difficult to assess precisely, use **20%** as a rule-of-thumb if your benefit package is about average (more if it is fat, less if it is **skinny**).

Cost of Living Allowance: COLA

Workers are concerned with the real values of their wages, **what** their paycheck can purchase. The nominal value, the number that is written on the **paycheck**, is not as important as the real value, what their wages will buy. Since **prices** seem to always go up, sometimes faster and sometimes slower but always up, union **negotiators** have to worry about holding the workers harmless against the effects of these **price** rises or inflation. Particularly once we got away from negotiating a new contract **every year**, a formula for helping against inflation, a way of automatically adjusting **paychecks** to reflect price increases, needed to be devised. That's the origin of COLA.

If you keep thinking about it in those simple terms then **the details** of the calculation won't get too confusing. Let's suppose your wages at the first **week** of the contract were \$600.00. Let's also suppose that you could buy everything for **your household** – mortgage payments, food, utilities, clothing, insurance, entertainment, **tuition**, dental bills, car payments, etc. – for \$580.00. Then, suppose a year later the **cost of living** has risen by 7% so that the \$580.00 price tag is now \$620.60. You're still making **\$600.00** and you're in trouble. You want a raise. How much? Will \$20.60 be ok? **After all**, it will enable you to pay your bills. NO. You want a 7% raise at the very least – **7% on your \$600.00** wages will give you \$642.00 – keeping you in the same relative position **as previously**.

Why do we say 7% "at the very least"? Because, while **7%** puts you back where you were at the start of the contract, it does not "make you whole". Every day, every week, every month of the year, inflation has been creeping along. The **price** rises which averages 7% at the end of the year didn't all come in one day. Your **paycheck** has been eaten away

gradually. To make up for that gradual loss there are **two possible** approaches:

First, have your wages adjusted continuously. **Just as** there are banks which can and do have daily or continuous compounding of interest **on** the money you deposit, so, too, could your employer adjust your pay every time the **cost** of living went up. But, you know how hard it would be to get such a procedure. **Next best**, along these lines, is to get your COLA, your adjusted wages, more than once a year. Every six months would be better, every three months even better. But, whenever **your pay** adjustment is slower than the increase in the cost of living, you've lost something. **So**, the other way is....

Second, get a little ahead of the inflation. If prices **rise** at the rate of 7% and if when you get your adjustment you get 8%, the extra 1% **will** make up for part of what you've lost.

There are two cardinal points to remember:

One: to offset the losses due to inflation, the COLA adjustments should be as frequent as you can get them.

Two: to make up for the losses to inflation **which** occur between adjustments and during the life of the contract, the **adjustment** must exceed the rate of inflation.

How is the rate of inflation measured? It is measured by the Consumer Price Index (CPI). This index is kept not in percents and not in pennies **but** in points. The easiest way to think of it is as if the CPI was the currency a foreign country. If you go to Italy or Sweden you trade your dollars in for Lira or Krona and **buy things** with those currencies. Let us use a loaf of bread as being representative of all the **things** we buy. Assume the loaf of bread here costs \$1.00 and the same loaf of bread (that is the same total of housing and food and healthcare and clothes and entertainment, etc.) **costs** 7 Krona in Sweden. When the loaf of bread goes up in price by, say, 10%, it costs \$1.10 in U.S. currency and 7.70 in Sweden. The fact is, that it went up 10 points in U.S. **dollars** and 70 points in Swedish Krona but it went up by the same percent in both countries.

In the U.S. the Bureau of Labor Statistics (BLS) **publishes** the Consumer Price Index. It calculates this figure by shopping for hundreds of **goods** and services and the averages household buys. Then it goes shopping a month **or** a year later and buys the same things and sees what they cost.

Let's say you sign a contract on July 1, 1990 and **on that** date the CPI was 126. The last time the BLS bought a new basket of stuff was in 1984. **They** shake up the basket – change the mix – periodically to try and reflect changes in **consumer** buying habits. For instance, people weren't buying VCR's and renting videotapes in the sixties. So they declared the total price of that basket of goods and services **to be** equal to 100. Every time they shop for that "basket" again they compare the price **to that** of the 1984 base. As of July, 1990 it had gone up from 100 to 126, or, you could **say**, the cost of living has gone up by 26%.

Let's say the next time you check the CPI it is at 139. Does that mean that inflation has been 13% – 139 compared to 126? No, the difference between 139 and 126 is 13 points and 13 points on the 126 base is a little more than a 10% increase (13/126 or 10.3%).

Final Word On Costing

It is easy for a union representative to get carried away with all this costing business. Very often the union membership will want some item in preference to another regardless of the fact that it costs less than something else they could have in its place. Bargaining is not a totally rational process or, rather, the majority of the workers' ideas of rationality might not be the same as yours.

An experienced negotiator tells this story. The union was engaged in large-scale bargaining with a major employer. The company had already offered a package worth \$1.15 – \$.85 in wages and about \$.30 in various fringes. The union members, however, had made a virtual slogan out of a \$1.00 an hour wage increase. The chief union negotiator told the company to re-formulate their proposal. He emphasized the union's commitment to the \$1.00 in wages. The company re-shuffled its proposal and came back with an offer of \$1.00 in wages and \$.15 in fringes. The union grabbed it and celebrated their "victory." But the extra \$.15 on wages was taxable, whereas the \$.15 they traded in could have gone into non-taxable benefits. A "political" or "psychological" victory was an economic loss.

More important, if there had always been this same emphasis on costing out everything that there is today, unions might not have in place the solid benefit packages that now exist. Workers might have opted to take the cash and let the insurance and pensions go. Had they done so, they would have, in a very real sense, a lower standard of living than they enjoy today. Costing, like everything, when carried to extremes can be dangerous if it blinds the negotiator to the main goal of getting the best possible deal while preserving the unity of the bargaining unit.

WHY DO THEY SETTLE?

Much of the discussion, particularly the argumentation, that goes on at the bargaining table is irrelevant to the agreement finally reached. The cost-of-living statistics, area wage rates and profitability data that the union negotiators spend so much time in accumulating and expend so much energy on expounding, are not likely to mean a lot more to the company than the company's arguments about competition and responsibility to shareholders mean to the union.

This is not to say that the argumentation is useless, or even undesirable. It is perhaps a necessary part of the process and tends to wear both sides down to the point of desiring a settlement. But since it is not logical argument or brilliant oratory that finally persuades management to say "yes," let's consider why they do say "yes," ever. Obviously any management would much prefer to make a decision about wages and working conditions (objective, logical, practical, fair and generous--in their mind) and simply impose it whether the union liked it or not. Why don't they? Why don't they simply come to the table, tell the union what the settlement is going to be and stick to that position?

The obvious answer that might come to the mind of the inexperienced is that they can't, that the law compels them to "bargain in good faith."

Hogwash. True enough, the law requires both parties to "bargain in good faith" but the very same law does not require either party to make any concession or to grant any benefit. Theoretically the law

would prevent an employer from taking and implementing the kind of hardnosed position described above. Practically, however, any employer can, with competent legal guidance, do exactly that with the comfortable assurance that it will not run afoul of the law (which provides no meaningful penalties in any event--in the half century history of the National Labor Relations Act no employer has ever paid one penny in fines or spent one day in jail for simply violating its provisions).

What then does keep management from simply dictating the terms of settlement? Why should management ever say "yes" to any union demand. There are several reasons and the union negotiator should keep them firmly in mind. Listed in approximate order of importance they are:

Fear of a strike or other job action that would disrupt or curtail production and thus cost the employer money.

Hope of increased production or efficiency due to improved morale.

Normally these are by far the two most important factors. Remember that we said that the union negotiator has two principal levers to nudge the employer toward agreement, the carrot and the stick. "If you don't give us a fair agreement we'll hit you. If you do give us a fair agreement we'll work better and harder and you'll not only make more money but will save other money through a reduction in costly turnover and the ability to attract and retain competent, efficient workers."

Remember, also, that neither the stick nor the carrot is in the hands of the union negotiators. It is only the members,

the employer's workers, who can deliver the punishment or the reward and it is crucial that the employer understand that the members will support the union negotiating team and will follow its advice, to strike or not to strike, to cooperate or not cooperate.

Obviously if the membership is weak, frightened and divided, the union negotiating team must still pretend that it has the power to call an effective strike. The employer is unlikely to be fooled, however. Sadly, the employer frequently knows more about the mood and determination of the membership than the team itself. If on the other hand the members are united and determined in their goals, the boss will know that too and there will be no need for the negotiating team to make threats. The boss will understand and respond to the existence of the club no matter how politely it may be concealed at the table.

So much for factors one and two. Remember that neither the carrot nor the stick is maximally effective unless the membership has been educated both before the beginning of negotiations and during the negotiating process. There are some other reasons why the boss says "yes." They are:

Acceptance of the inevitable. Most of us tend to accept or to resist only half-heartedly, things that we figure are "inevitable," things that are certain to happen no matter what we do.

Most of the contracts that the authors have negotiated were negotiated with the powerful assistance of this factor: the bosses knew that there were going to be improvements in wages and benefits and the only thing we were negotiating about was how much. They never admitted that they

knew. They always pointed out, accurately, that negotiations begin from zero and just because we had seven paid holidays in the last contract didn't mean that we had to have seven in the next contract. There might be only six.

That's what they said. But they didn't believe it. In their heart of hearts they knew that if there were seven paid holidays in the last contract that the only real question was whether there would be eight or nine. They knew it. And they knew that we knew that they knew it and after a bit of posturing and debate we both set about the real business of deciding whether there would be eight or nine.

That was a powerful advantage and one that union negotiators have been laboring without for some time now. As a matter of fact this advantage has been turned on its head in too many work places and is working to the benefit of the employer.

The real price of those first concessions that unions were compelled to make was not the dollars and benefits surrendered but rather the message sent to managements all over the country: "Hey, we were right all along! Bargaining really does start from zero! We don't have to always go to the bargaining table to give. It's a two-way street. We can take!"

And they began taking with a vengeance--whether they needed it or not. And the message went not only to management but was heard equally clearly, and with even more devastating results, by union members. During the '80s we asked union negotiators, as they prepared to go into bargaining, what the members were saying, what was the talk on the shop floor

(within easy earshot of the foreman-- sometimes even directed to the foreman). Too frequently we got the answer: "We hope we don't have to give up too much."

Which meant, and means, of course, that they had already accepted giving up something...which in turn guaranteed that they were going to give up something. From there on the debate was likely to be only about how much they were going to give up--just as the debate twenty years ago had been about whether there would be eight or nine holidays.

Again, the job of the union negotiators is to educate the membership, to make the members understand that they must send repeated, believable messages to management that they are united and determined and have high expectations. Every way possible must be utilized in the attempt to convince management that it is again "inevitable" that they agree to improvements in wages and benefits.

The fourth factor that influences a "yes" answer from management is:

The desire of management negotiators to "succeed" in the negotiation of a contract.

With very few exceptions union negotiators will be meeting at the table not with the owner or even a plant manager but rather with a professional negotiator, perhaps personnel director or lawyer, whose assignment is to negotiate a contract. He or she will want to succeed, to accomplish their "mission". They can only do that through cooperation with the union--in order to get an agreement they must compromise by

agreeing to at least some of the union demands.

This may not always be the case. It may, and does, happen that the management negotiator's assignment is to not reach an agreement, to go through the motions of bargaining and to be careful to never put a package on the table that the union can accept. If this is the case it will be impossible for the shrewdest union negotiator alive to reach agreement and s/he must be careful not to squander resources or too much energy on the meaningless bargaining. Rather, prepare for war for it is certain to come, perhaps in the form of a decertification election or a deliberately provoked strike that will give the employer the opportunity to hire strike breakers and begin non-union operations.

Where the management negotiator's assignment has been to bargain a contract, s/he will normally be given guidelines or parameters that may not be exceeded. It is normally impossible to know what those guidelines are or even in what form they have been stated. Sometimes top management may have dictated that the total additional cost for a new three-year agreement may not exceed x dollars. Or the parameters may be spelled out in more detail: no more than a 10% pay increase, no new holidays, cost shifting on medical benefits, etc.

The task of the union negotiator is to gauge exactly how far the management negotiator can go, and in what areas, and then push him to that limit--and, hopefully, beyond. How?

Consider it the point of view of John Smith, management negotiator. He is not

making the important decisions on limits himself, he is simply following orders and bringing a message. The union may not have the opportunity of talking with the real decision makers, so the goal is to pressure the management negotiator into negotiating for you. He has access to the people who are making the decisions and what you hope will happen is that you can persuade him to plead for more--because he is convinced he can't get a settlement any other way.

Once you convince Joe that you're never going to agree to a contract that isn't 8% rather than 7%, you want him to go to the people who are giving him his orders and making the decisions and say: "Look, I know you told me that I can't spend over \$500,000 but that's just not in the cards this time. In order to wrap up a contract and avert a lot of trouble and a lot more expense down the road, I've got to have a little more money to work with." He won't say it if he doesn't believe it. Your job is to convince him that it is true.

Remember that even though Smith, the professional negotiator, may have been given \$500,000 to settle a three-year contract, he doesn't want to spend a single dollar foolishly and if he can go back and report that he's settled the contract for only \$350,000, he'll be absolutely delighted to let his boss include that it was his skill and savvy that saved the company \$150,000...and he hopes that it won't be forgotten when the time for Christmas bonuses rolls around.

Ordinarily the company will be interested primarily in the bottom line and will not be overly concerned how the money is spent. If you want to trade five holidays for a week's vacation, the cost is the same

and it should make little difference to the company. This, however, is not always the case and it is crucial to try to figure out where the management negotiator has room to move, and push him to the limit, and to understand when he (and, therefore, you) are up against a stone wall.

Sometimes the company may have sound, logical reasons for preferring to spend the money one place rather than another (to give it to machinists rather than assemblers, for instance, because their rate for machinists does not permit them to recruit machinists whereas potential assemblers are waiting in line). Sometimes, however, the decisions may be emotional, personal and irrational. Where they are you will want to exploit them. A company official who has been appointed to serve on the Governor's Commission on Child Care may readily agree to money for a day care center but would argue that the company could not afford the same or lesser amount of money for improved pension benefits.

Several years ago we encounter what may be the classic example of the point. A Steelworkers Rep in Texas had negotiated a contract with a personnel director with whom he had been dealing, pleasantly and fruitfully, for years. The contract included an additional paid holiday and several days after the conclusion of negotiations the personnel director called to plead with him to forego the paid holiday even though it had clearly been agreed to. "This man is crazy," the Personnel Director reported to his boss. "He told me not to give any more holidays. Somebody at the Country Club had poked fun at him for being a soft touch and paying more holidays than any other employer in Dallas. But I thought the total package was fair and that he would be delighted. He's not

only not delighted, he's going to fire my ass. He was serious about the holiday."

Jackson is not only a shrewd negotiator but a gentleman from whom the milk of human kindness fairly oozes and he gave the holiday back. Or, more accurately, he traded it for an extra week's vacation and everybody was happy. The Personnel Director couldn't give a holiday, but he could give a week's vacation. The moral is to go fishing where the fish are. The trick is to know where they are.

The fifth fact we want to consider may, in many cases in the private sector, be almost irrelevant but it will always be important in the public sector and in specific cases in the private sector it may be an available tool:

Public opinion.

The ultimate decisions of the public employer are made of course by elected officials who are, by definition, concerned about and dependent on public opinion. Unfortunately, the popular image of public employees is one of overpaid drones happily feeding at the public trough and combatting this image is one of the most important and difficult tasks confronting the public employee unions.

In specific campaigns and negotiations, expressions of public support, frequently in the form of letters to elected officials, can be very helpful. Care must be exercised however that an appeal for letter of support does not generate an equal or greater volume of adverse mail. Circumstances will naturally vary widely.

Ordinarily, the private sector employer will not be nearly so concerned about public opinion but here again this will vary widely. The machine shop making pipe molds for export to China may not care a fig about what the public in its community may think, but the attitude of the local department store owner may be quite different.

The attempt to utilize public opinion to pressure an employer into reasonableness was spectacularly successful in gaining at least some victories for the struggling farm workers in California. It was public opinion, and the subsequent willingness to boycott certain farm products, that won those victories.

Corporate campaigns (which rely at least partly on public opinion to generate boycott pressure at many different corporate points) have met with mixed success. It was unquestionably the corporate campaign that ultimately succeeded in bringing J.P. Stevens to the table after years of successful resistance.

Why do they settle? Because of fear of trouble and hope of improved productivity. Because it's inevitable, it's what they're paid to do and they don't want to look bad.

MOBILIZING THE MEMBERS

We have repeatedly made the point that the most important factor for success at the bargaining table is the unity, determination and high expectations of the membership. How to achieve the membership unity and the involvement needed to exert pressure on management is a question that many Negotiating Teams never consider--or even think of as part of their job. A mistake, we think.

If members truly understand that certain behavior (defeatist talk, criticism of the union, etc.) may directly and adversely affect their future pay and working conditions while other behavior (attending union meetings, wearing union insignia, etc.) may in fact mean more money in their pay envelopes and better working conditions, then those members are far more likely to act and behave in the way that is in their own self-interest.

If that message is printed in the union newspaper, as it repeatedly is of course, few members are likely to read it or pay much attention to it. If a speaker brings the same message to a union not many members are going to hear it because in the ordinary course of events not many members ever attend union meetings. And if the speech is advertised as a speech on "union organizing" or union philosophy" or just "unionism", even fewer are likely to come.

There is a way to involve the members in negotiations, to make them understand in a profound way that it is the unity of the membership that constitutes the union's most effective pressure on management and to mobilize those members

in active support of the negotiations team. It is simple. It is inexpensive. And it works. We will outline the process in some detail and explain why it is important that this "game plan", if adopted, be closely followed with few, if any, deviations.

Step one is to read the pages entitled "negotiations Workshop Leader's Guide" at the end of this chapter. And in order to better understand the plan we suggest that you turn to those pages now and read them carefully--preferably aloud--before continuing.

Thousands of Union leaders and activists have read or heard the material in that mini-workshop and not one had ever disagreed with any of it. Always the reaction has been: "Fine. But how do we get the members to understand"? Read on.

The next step is to type the pages of the Workshop Leader's Guide and then make any necessary changes in the material to make it fit your union and your situation, using terms, titles and job descriptions, for instance, in common usage among your members. Once the editing and changes have been made and you have a clean, double-spaced typed copy, duplicate a few more copies that you figure you are going to need. The copies should be bound in attractive binders. A few dollars spent on printing or quality copying and good binders is a sound investment.

The most crucial step of the process is to recruit the members who are to act as Workshop Leaders. Our suggestion is to go outside the existing leadership group of the Local and look for people who have leadership potential and are respected by their fellow members.

Not only do the members of the Executive Board, Negotiating Team and Stewards have enough work to do already, but there are obvious advantages in broadening the leadership of the Local. In addition, rank and file members may enjoy more credibility and be more effective as Workshop Leaders than would existing leaders. It will, essentially, be the task of the Workshop Leaders to motivate all members of the Local to support the Negotiating Team. A member of the Negotiating Team serving as Workshop Leader will therefore be in the position of saying: "Support me". That sounds suspiciously self-serving. A rank and file member can deliver a far more attractive message: "Join me in supporting our Negotiating Team".

Your goal should be to recruit one Workshop Leader for every 20 to 30 members of the Local and to warn the volunteers up front that they will be expected to attend a half-day training session that will very probably be conducted on a Saturday. The training session will consist primarily of using (and following exactly) the Workshop Leader's Guide and allowing ample time for the discussion and participatory activities built into the Workshop Leader's Guide.

Following the demonstration workshop, the group of potential Workshop Leaders should be given the opportunity (indeed encouraged) to reconsider and withdraw unless they are seriously willing to commit themselves to:

Conduct one or more workshops for their fellow members in groups of 10 to 20

and to assist in scheduling and recruiting participants for those workshops.

Serve as a "RED" leader or communicator on the telephone tree to be established for the Local with the obligation to regularly pass telephone messages to five "BLUE" Leaders (who in turn will each pass messages on to five "WHITE" level members). (20 "RED" leaders would therefore pass messages to 100 BLUES who in turn would pass them onto 500 WHITES and thus be able to quickly contact every member of a Local of about 600 with no one having to make more than five telephone calls. Obviously the numbers can be adjusted as needed to fit any size Local. Nor do we have any particular reason, other than habit, to pick the colors red, blue and white).

When the demonstration workshop has been completed--and the workshop leaders given ample time for discussion--the attention of the group should be turned to ways to persuade the rest of the members of the Local to attend a Negotiations Workshop. Immediately after the end of a shift is normally the best time to schedule workshops. The workshop can be completed in an hour and it is easier to persuade members to stay after work for the workshop rather than going home and returning. If you have a Union hall, or some other appropriate meeting room, in close proximity to the plant, it is an enormous advantage.

The workshop leaders should each be given a red button (old political campaign buttons are usually available for free and can be easily spray painted red, blue and white in the required quantities) and instructed to wear the button at work. Just a solid red button with no message but the potential for

attracting attention and starting conversation. Assuming that you have a union bulletin board or boards in the plant, notices should be posted on every board with a message that should go something like this: "Our union contract will expire on September 30. Negotiations for a new contract will begin on June 1. To give every member the opportunity to learn about negotiations process (exactly what is negotiating and how does it work?), your Local will schedule a series of one hour workshops for all interested members. Contact any member wearing a red button like the one on this notice to arrange to attend a workshop".

At this point, if you are like the hundreds of local union leaders to whom we have given these suggestions face to face, you're thinking: "You don't know our members. They never come to union meetings and they're sure as hell not going to come to a one hour workshop on negotiations".

Okay. So your members are different. But how many would come? 10%? 5%? 1%? Those are the kinds of predictions we usually get. But your members are not different. No place in America are members turning out for union meetings. But the fact is that every Local union that has ever seriously tried this program has found to their amazement that at least 50%--and frequently far more--of the members have in fact been willing to attend the workshop.

Workshop leaders should be given complete freedom to schedule the workshops any time and place they choose and to conduct the workshops in teams of two or more if they prefer--and they

frequently will. They should also be cautioned to allow plenty of time for discussion and participation. They should in turn encourage the workshop participants to let their imaginations run wild (to "brainstorm") and come up with all the ideas and suggestions possible without worrying about whether they are good or bad ideas. At this stage the goal is simply to produce a large number of ideas from which good ones may be culled.

From the members attending the workshops, the Workshop Leaders should solicit volunteers to serve as "BLUE" leaders or communicators with the task of passing telephone messages to five other members. Members who do not volunteer should be plugged into the "WHITE" level of the telephone tree and assigned to one of the Blue leaders. Everyone should be given an appropriately colored button and urged to wear it at all times. Members who never attend a workshop would of course be assigned to the White level. (Don't worry about "secrets" getting into the wrong hands. You're not going to be putting secrets on the telephone tree.)

Early on in the process some members, or a team of two or three members, should be assigned the responsibility of diagraming the tree on paper (with names and telephone numbers) and periodically testing and maintaining the tree. When a Red or Blue leader fails to pass messages on promptly they should be diplomatically urged to either shape up or resign and give the job to someone who will do it.

Implementation of this program in a Local union will have a variety of benefits,

some of them straight forward and obvious, some not so obvious. Consider:

The organization and use of the telephone tree will "connect" all members to the Local union in a tangible way that they have seldom been connected before. They will feel themselves part of the local.

The quick and inexpensive communication provided by the tree will permit the Negotiating Team to poll members for needed information (how many members have need of a day care center?) and to keep the members informed and involved.

Creation of the Red and Blue leaders will dramatically increase the number of union leaders and activities--good insurance in the even of a strike.

Members who attend the Negotiations Workshop will understand why high expectations, unity and determination will affect the outcome of negotiations and will act in their own self interest. In the process of "acting" like good union members they will in fact become good union members.

Workshop leaders who go through the process of conducting a workshop will inevitably convince themselves even if they don't convince anyone else. The words and ideas in the Workshop Leader's Guide will become their words and ideas and thus the ranks of the convinced and truly committed will ordinarily be more than doubled.

In the process of generating ideas and suggestions for union actions, the members acquire ownership of those ideas and suggestions and thus are far more likely

to enthusiastically participate in implementing them. If the Union president, by way of example, urges all members to wear a Union T-shirt on a union designated solidarity day, the turnout will not be nearly so impressive as it would have been had the idea been recognized by the members as their own.

The presence in the plant of a sea of red, blue and white buttons will be tangible symbols, to the members, of their unity and will demonstrate that unity to management. Members who would never wear a button saying "I'm ready to strike" will wear without question the plain buttons that convey the same message. Each Red Leaders and his or her five Blue Leaders and their 25 White level members comprise a natural team and competition between the teams, to see which team has the highest percentage of button wearers, can be easily encouraged. The Red and Blue Leaders should keep an extra supply of buttons on hand to replace ones that are lost or forgotten.

There is a downside. There is a danger. Members may well have their expectations raised to unrealistic levels (indeed their sights should be set above the achievable . . . if you get everything you ask for, you didn't ask for enough!) and then suffer a letdown and frustration when those expectations are not met. Another, perhaps greater danger, is that membership militancy may be increased to the point that a strike, even a clearly ill-advised strike, can not be avoided.

Those dangers should be soberly weighed by the leadership and every effort made to educate the membership about the negotiations process, to make certain that

they under-stand that a fight for more will probably not get them everything they're fighting for . . . but will almost certainly get them more than they would ever have gotten without that fight. And sometimes that "more" may be simply giving up less than they would otherwise have had to give up. In a nutshell, as one of the two dozen rules (final chapter) points out, you have to convince yourself that you'll never settle for less than 10 . . . and then settle for 8 and understand that you make a good settlement.

NEGOTIATIONS WORKSHOP LEADER'S GUIDE

Welcome. Let me state briefly the central purpose of this Workshop. It is to give you a basic understanding of the negotiations process and the crucial role of every member in that process so that we can come out of the current negotiations with the best possible contract for all members.

The unity, the determination, the high expectations, and the informed participation of the maximum number of members is the single most important factor for our success at the bargaining table.

The members of our bar-gaining team have spent many hours in training for negotiations. Together with other Union volunteers, I spent a full day recently in preparation for this workshop. I know that we have a determined and well-trained team representing us at the table. But they can do very little without the support of the members.

Since it is important that all members receive exactly the same message, I will be reading this Workshop material which has been prepared especially for our Union.

Because of our limited time, we are going to have to summarize some of the more technical points of negotiations in order to focus as much as possible on the role of each individual member. When we are through, you will under-stand that what our members say and do on the job during the coming weeks will be far more important than what our Negotiating Team says at the table.

I know that many of you may have questions and comments. Some of your questions may be answered during the course of this Workshop. In addition, the members of the Negotiating Team will be making periodic reports to the member-ship and you will have the opportunity to ask them questions and to make suggestions to the members of the Team and our Chief Negotiator. We are going to have to move quickly here today. Questions and comments are welcome but, if possible, please hold them until the end of the Workshop.

Many people have mistaken notions about negotiations. They imagine that there is some sort of magic that a shrewd and skilled negotiator uses to get management to agree to wage increases and improved benefits. The truth is that there isn't any magic and that management is going to give up only as much as it thinks it has to. Our job is to convince them that they have to give up more than they had planned on giving up.

Negotiations is really a very simple thing that most of us have engaged in every time we bought a car. It may help you to understand the negotiation process if you imagine that you're buying a car. Suppose

you see a sign on a car reading: "For Sale. \$3,500. Price negotiable."

What you know immediately, of course, is that you can buy that car for less than \$3,500. What you don't know is just how much less. So you're likely to offer less than you're really willing to pay. You certainly don't want to pay a penny more than you have to. From then on it's a game with you trying to figure out the absolute minimum the buyer is willing to accept while he's trying to figure out the absolute maximum that you're willing to pay. If you're a good negotiator, you'll buy it for the bottom dollar.

Now the negotiations table is not much different. Management will make proposals and we will make demands. Since the name of the game is negotiations, we can be reasonably certain of two things. One, your team is not going to get everything it is asking for. If they did, they should be court martialed. It would mean they didn't ask for enough. The second is that we are not going to swallow everything management is trying to ram down our throats.

What the management is going to be doing, just like the car dealer, is trying to figure out the absolute minimum that we are willing to accept. Your team will be hanging tough trying to convince management that while we're willing to compromise a little, we're not backing down very much from those union demands.

That is the message your team will be delivering at the table. But management will be far more interested in what you, the members we, are saying. If supervisors are reporting that what the members are saying is: "We hope we don't have to give up too

much" . . . then we can be certain that we will have to give up something. Management will figure they know our bottom line and certainly won't pay more.

The bargaining will be going on as much or more at the workplace than at the table and we have to make certain that management gets the right message, that we don't undercut our team and cut our own throats. What management wants to know is not what the team is demanding but what the members would be willing to accept.

Let's look at the negotiations table and what will be going on there. The law requires management to meet with the Union team and to "bargain in good faith." Almost every-one knows that but very few people understand that it doesn't mean a damned thing. The law does not require management to give us one penny or agree to a single union demand. Management can meet forever and never agree to anything. That may not be right but it is legal.

So, why does management settle? Since the law will be of no help to us in getting a fair contract, let us consider some of the practical reasons that will cause our management, or any management, to say "Yes". Three of those reasons that you can make work to our benefit in this round of bargaining are:

Fear of a strike or other job action that would disrupt services and cost the company money. Even should a strike be highly unlikely, the union and its members should never, never do anything to free management of this fear--particularly since it is usually the fear and threat of a strike rather than a strike itself that constitutes effective pressure on the company.

Hope that a fair contract with better pay and working conditions will motivate employees to increase productivity and efficiency.

Acceptance of the inevitable. All of us tend to accept things that we know are going to happen no matter what we do. Management has done quite a job in convincing some employees that concessions are inevitable and that we might as well accept them. We have to do an equally good job in convincing management that our members are determined to get improvements and that management might as well accept that.

These factors that cause the company to say "Yes" all reveal pressure points, and our job in the coming weeks is to apply maximum pressure wherever it may be effective. Stated simply, the message that all union members should be sending through every supervisor, is essentially this: "An over-whelming majority of Union members support our negotiating team. We are not happy with conditions as they are and we want pay increases and improved benefits. And if we get these things in a satisfactory contract we will do a better job."

Our Negotiating Team will deliver that message but the team will be disastrously undercut if supervisors are reporting that the members are still expecting concessions and will accept them. And now we are going to discuss . . . and practice a bit . . . the translation of theory into action.

END OF OPENING STATEMENT

MESSAGES TO MANAGEMENT

Our first job is to consider some of the practical ways that we can send messages to management to convince management that our members are united and determined, that we expect increases and improvements, and that we are prepared to fight for them.

When I say "messages," I'm not talking about words but about actions. We will be constantly telling management that we are united and that we are sticking together. But they may or may not believe it. But if we call a union rally and hundreds of workers show up, that they have to believe. But if only a handful show up, it will send the opposite message and that, too, will be believed.

There are many small things that we can do and say that will send the right kind of message, that will tell management that we are united and that we support our union and our Negotiations Team.

Let's take a few minutes now and see how many ideas we can come up with to demonstrate to management our unity and determination. Break up into groups of 3 to 5 and spend about ten minutes brainstorming to see how many ideas you can come up with. Have one person in each group keep a record of all the ideas and then report them to the entire group after we get back together.

(AFTER ABOUT 10 MINUTES THE WORKSHOP LEADER SHOULD RECONVENE THE GROUP AND GET A REPORT FROM EACH GROUP. IF PRACTICABLE LIST THEM ON LARGE SHEETS OF NEWSPRINT AND SAVE THEM TO POST IN THE UNION HALL.)

MANAGEMENT-MEMBER ROLE PLAYING

Part of the very serious work at the bargaining table, work that is not on the official agenda, is a constant probing by both sides, an at-tempt to read, mostly through non-verbal communications, the "real" position of the other side--the "bottom line." What will they really take? What will they really give?

As negotiations get underway in earnest, you will discover that in supposedly idle chit-chat with the members, supervisors are trying to read our bottom line: What will be members really accept without being too upset? Supervisors who last year didn't have time to say "Good Morning" will suddenly become very friendly and the information they pick up in those friendly chats will be instantly relayed to the management team. It will either hurt us or help us. We want to make it help.

The right message--about high expectations, unity and determination--could be printed on cards and given to all union members to give to every supervisor in sight. But it would not be believed if the information came in that form. The words are frequently not the most important part of the message. What you say must be believed and for it to be believed it must be true. Look for things to say that are true and that tend to confirm the message. Don't lie . . . but avoid saying things that would tend to discredit it. If the idea of a strike scares you, talk about something else.

Supervisors might well try to sow a few seeds of discontent by talking to you about union demands that they know or

suspect are not popular with you. You should avoid discussion of these or any other specific contract demands. You might explain that the Negotiations Team has the incredibly difficult job of trying to be fair to all groups and that they've done a fantastic job in soliciting and considering membership input and that you support your team. And if that's not true, it ought to be and we had better work on ways to make it true.

We're now going to try a little role playing to practice giving management the right message when they come looking for information. Pair off into groups of two and flip a coin to see who will play the role of the supervisor and who will be the union member.

The job of the supervisor is to engage the union member in friendly conversation and to learn as much as possible about his or her attitude toward the Negotiation Team and what they really hope to get in the contract.

The job of the union member is to let the supervisor know--through tone and attitude as well as words--that he or she, and the overwhelming majority of all union members, support their team down the line, expect wage increases and benefit improvement and are ready, willing, and able to strike for them if necessary. Now pair off, take five minutes and then let's get back together and see what happened. (IF PRACTICAL LIST COMMENTS ON LARGE SHEETS OF NEWSPRINT AND SAVE THEM TO POST IN THE UNION HALL.)

COMMUNICATIONS TREE

The need for fast and reliable communications with the membership during negotiations is obvious. The team may need to quickly poll all members. The membership may have to be informed to wear their Union T-shirts on Thursday . . . or to come to a Union rally on Tuesday . . . or whatever.

A particularly useful communications tool is a communications or telephone tree. It is a device for dividing an enormous task--making telephone calls to hundreds of members--into many easily accomplished pieces. It can provide fast, reliable, and inexpensive communications. All that is required is cooperation.

We have devised a structure whereby 20 "red" level communicators will each pass the same message to 5 "blue" level communicators who, in turn, will each pass the same message to 5 "white" level communicators (who will be at the end of the tree and thus not have the responsibility of passing the message on to any-one else). The entire membership can thus be reached in three steps with no one having to make more than 5 telephone calls.

It is obviously important that the red and blue level communicators be conscientious and reliable since the failure of one red level communicator to pass a message on would result in many members not being reached.

The 20 red level communicators are already in place. If you are willing to serve as a blue level communicator with the responsibility of passing message on to 5 other members, let me know and I will give

you a blue card. If you hate making phone calls or know that you're not going to have the time to do it, do NOT volunteer and I will give you a white card so that you won't have to pass any message on.

Now those of you with blue cards will find a name and telephone number on one side of it. That is the red level communicator from whom you will be receiving messages. Your job now is to find 5 other members . . . either at work or from those here now who have white cards--who are not yet on the tree and put their names and telephone numbers on the other side of the card. Those are the people to whom you will be passing messages.

Those people with white cards should give their name and telephone number to one of the people with blue cards and write his or her name and telephone number on your card. That is the person from whom you will be receiving messages.

The people with blue cards should try to see that the five people to whom they will be passing messages all live with-in their toll free calling zone.

We hope to have the tree completed within the next couple of weeks and will immediately begin testing it.

And now that's it for the Workshop. I appreciate your cooperation. I asked that you hold questions and comments for the end. While I may not be able to answer your questions or do anything about your comments, let's have them now and I'll try to see that they get to someone who can answer or act on them. Thank you very much. Any questions?

TWO DOZEN RULES FOR UNION NEGOTIATORS

1. Negotiation is an art. As in piano playing and other arts, practice is important. In negotiations there are no rules, this one excepted, to which there are no exceptions.

2. Every member of the union team has a role to play. The negotiation table is much like a poker table and it is the job of the spokesperson to decide when and if hole cards are to be exposed. Do not undercut him or her by exposing those hole cards through displays of anger, happiness, or amusement. Adopt a role that will convey to management the total unity of the Team. Disagreements within the Team (there'll be plenty!) are appropriately dealt with in the privacy of a caucus.

3. Select a chief negotiator for the union team and respect that role. No other member of the Team should speak except by direction of the chief negotiator. Do not permit management to engage members of the union team in dialogue. If a management representative asks you a direct question, politely request that the question be directed to your chief negotiator.

4. Remember that your chief negotiator is under tremendous pressure and needs your confidence and support. Do not add to his or her burden with trivial or personal problems or through the introduction of even important problems or questions at inappropriate times or places.

5. Be certain that you share all relevant information about the issue under discussion with your chief negotiator.

6. Your demands must be credible.

Management must believe that you are serious, that your demands are not simply negotiating ploys and that you expect to get what you are demanding. Amateurs violate this cardinal rule when, in selling a used car, for instance, they use such phrases as "I'm asking \$2,500 but make me an offer." Clearly they'll never get \$2,500.

7. Disavow any intention to "play silly games," "haggle," and "horse trade." Assert that you're not even interested in achieving unrealistic increases or benefits since they would not, in the long run, be in the interest of either side.

8. Don't get carried away by your own b.s. Horse trading is the game and you're going to end up with less than you ask. (If you don't, you probably didn't ask for enough.) You're going to have to almost convince yourself that you will never settle for less than 10 ... and then settle for 8 ... and be happy about it. Fortunate is the negotiator who represents members who also understand this without having it spelled out in the union newspaper.

9. Treat the members of management with courtesy and respect but remember that you sit at the table not as an employee but as the legally certified representative of all the employees in the bargaining unit. The two sides meet as legal equals. Gently, but firmly, establish that equality and expect that you be accorded equal courtesy and respect. Some points to remember:

A. Meeting times and places and procedural rules must not be dictated by management but can only be established by mutual agreement.

B. Do not permit management to subtly establish a "Master-Servant" relationship. Do not call them "Mister" if they call you "Jim."

C. Avoid using work problems of team members to illustrate your points. Use similar problems of others to avoid casting the union negotiators in the role of employees.

10. Know your adversary. Use all of your resources to learn everything you can about the individuals on the other side of the table. Is there someone there with a pet theory that shorter hours increase productivity? Someone who has a Friday night poker game starting at 7? Someone who used to be president of a local union? Some of the people on the other side of the table may have published books and articles. Read them.

11. Generally it is better to meet on a neutral ground rather than on management's turf. This is especially important in private industry.

12. On every issue attempt first to reach a broad agreement in principle and try to avoid, until that agreement is reached, getting bogged down on specifics. Once the agreement in principle has been reached, struggle to sweeten it on the specifics as you draft the language.

13. Do not box management into a position from which they can not retreat. Try to leave them a graceful, face-saving way to capitulate. Asserting that you will never agree to compulsory overtime leaves management only the options of agreeing or capitulating. Suggesting that if management carefully weighs all factors you think they

will see that voluntary overtime will actually increase productivity gives them a way to agree without losing face.

14. Regardless of what you suspect or know, do not hesitate to assert at the table that you are confident that the management representatives want to treat employees fairly and that you are certain that they are skillful enough to draft, and "sell," a collective bargaining agreement that will do that. In other words here, and whenever possible, flatter. Remember that Disraeli, that negotiator par excellence, pointed out that you should not hesitate to apply flattery generously except in dealing with royalty, where it should be applied with a trowel. Management representatives frequently confuse themselves with royalty.

15. Search for arguments in support of your demands that are meaningful to management. Ask for an extra week's vacation after 20 years not because it is "fair" or has been "earned" but because it will reduce turnover, increase efficiency, and save management money.

16. Search for and emphasize areas of agreement and be quick (not too quick) to capitulate to management's position on trivial and unimportant issues. Remind management that you start with essential agreement on the mutual goal: to reach agreement on a contract that will treat all employees fairly and equitably; that will attract and retain competent workers; that will save money by reducing the training costs and inefficiency associated with employee turnover.

17. Forget about scoring debating points. Let management win all the rhetorical points and you take the extra week's vacation.

18. Establish your credibility with the management team. Do not give your word lightly but once given, honor it. Be careful not to promise what you cannot deliver.

19. Avoid agreeing to management's almost certain demand that you promise not to bring any additional proposals to the table. Point out that you will always try to reach agreement on all issues and that it could well be that the introduction of a new demand could provide the key to agreement on other issues.

20. Never lose your temper. . . except by design and after careful deliberation.

21. Do not threaten. And if the time comes to break this rule, deliver your threat with calmness and sadness rather than in anger.

22. If there is any single "secret" to successful negotiation, it is patience. A cast iron bottom is to be valued far above a silver tongue.

23. Patience and a cast iron bottom are important but the other side of the coin is knowing when to say "yes." The ability to recognize when there is nothing further to be gained (and possibly something to be lost) by additional stalling is perhaps the key attribute of a good negotiator. Resolve doubts in favor of quick agreements on relatively unimportant issues; in favor of further delay on important ones. Excessive reluctance to say "yes" is the most certain indicator of an insecure and inexperienced negotiator.

24. Logic and reason should clothe every argument and support every demand -- but in the end they count for little. Your

negotiating success will depend on membership support -- which is based on membership confidence and built on membership understanding. Obviously you cannot give every member every detail of each negotiating session -- and certainly you cannot reveal the specifics of your bargaining strategy. All the more reason to concern yourself during and after each session with what and how you will communicate to (and with) the members. Communication should be a two-way street. Be alert for membership response and reaction.

SUGESTIONS FOR RATIFICATION MEETING

1. Carefully plan all details of the ratification meeting. This important first step should be taken before negotiations begin: Obtain a commitment from all team members that each member will support the decision of the team in recommending ratification or rejection.
2. Allow sufficient time between final negotiations session and ratification meeting to prepare the meeting.
3. Give all members at the ratification meeting a written summary of the agreement. Wages will normally be the most important item to most members. Make certain that increases are: included in tabular form so that every member can look at the table, identify their present wage rate and then see how much each increase will be; what their new wage rate will be after each increase; how much their total increase will be after each increase; and how much the agreement will be worth to them in total dollars over the life of the agreement.
4. The team member who presents the agreement need not be the chief negotiator or team captain. You want an effective speaker who is popular with the membership. There are some advantages in not having the chief negotiator do the job. Someone else can more effectively tout the fantastic job he or she did.
5. Begin the presentation by requesting that all questions be held until after the end of the presentation.
6. Disarm critics by admitting up front that the agreement is not everything wanted, not everything the team wanted and certainly not everything that the membership wants, needs and deserves... but that it is, in your judgment and the team's judgement, the best that could be obtained under certain circumstances. If it's true—an it frequently will be—you can point out that the agreement is far better than you feared you were going to have to settle for. Give credit for the victory to the unity, determination and hard work of the team, the skill and experience of the chief negotiator and, above all, to the unity, determination and support of the membership. Point, if possible, to specific examples of membership support—100% turnout of the second shift with union T-shirts, large attendance at meetings, etc. Next time we'll do better... and get better.
7. Avoid specifics of the negotiations. Never reveal that you traded away an extra week's vacation for a dental plan... the fifteen-year people will all have false teeth and will never forgive you.
8. Conclude your presentation with a strong, positive recommendation for ratification. Then have every member of the team come to the microphone and make a strong positive recommendation. Or, if your recommendation is to reject, explain in detail the reasons and implications and next steps.
9. There can be times when you may not want to make a recommendation but they were few far and between. [For instance, I personally agree with the stance of the PSSU leadership in not

making a recommendation in the recently concluded state negotiations]. You know more about the matter than the membership. You are a leader and you have a moral obligation to give the membership the benefit of your knowledge and judgement.

10. Don't waste time talking about how hard it was, how long the sessions were and the sacrifices you made. You may want to talk about how tough and unreasonable management was, or perhaps talk about one particular management bastard. But this can be dangerous in the long run for the future relationship.

11. Leave nothing to chance. Have supporters ready to move and second a motion to accept and-if it becomes necessary—move the question.

12. Permit a reasonable amount of time for questions and discussion before the vote but do not let the questions—particularly when they begin to reflect personal gripes and grievances—drag on too long. If this threatens the final outcome, suggest that it would be better to have the vote before anyone has to leave. Offer to have a team stay on for as long as necessary to answer personal questions after the vote.

13. Begin planning the next negotiations.

Quiz

Included throughout this book are materials for training the Negotiations Team and Negotiations Committee. Training is essential. Union members would not entrust their medical or legal problems to doctors or lawyers who weren't trained. The jobs and the lives of the union members are on the line during every contract negotiation. They deserve to be represented by persons who have been as well trained as possible.

The first step in the training is to designate one person who will be in charge (and who will be provided with assistance on request). That person needs to review all of the training possibilities mentioned in the text and appendix and develop a game plan and time table for training. It will quickly become apparent that training and related preparation for bargaining should begin many months before contract talks start. It may be unavoidable but it is very risky to have on the Team which goes to the table persons who either can't or won't participate in training preparation. The training needs of the Committee are less than those of the team. Committee members can and should be given as much of the training as possible but no less than the training described in the chapter on "Mobilizing the Members".

After review of the text, the training leader will have identified the following elements of training:

1. Quiz: Is to be used in connection with Chapter 2, "Negotiations for Unionists". The quiz can be used in several ways:

a. Make a copy of the quiz and have it filled out by those to be trained before assigning them a chapter to read. Then have them fill out a separate form and see if they have changed any of their answers. (They should, or they probably missed some points in the chapter).

b. Distribute copies of the quiz to a training group. Tell everyone to fill it out but not to place their name on the sheet. Collect and shuffle the sheets, hand them out again and then ask for a show of hands on each question as to whether the answer on the sheet they are holding is True or False. (The shuffling and redistribution is to eliminate any possible embarrassment by someone whose answer is judged to be "wrong"). Record the responses on a chalkboard or flipchart as follows:

QUIZ: NEGOTIATIONS FOR UNIONISTS

	T	F
1. Both union and management must deal with the same or similar problems in negotiations.	___	___
2. The goal of the union team is to negotiate the best possible wages, hours and working conditions and to assure the continuing unity and health of the union.	___	___
3. For the union, the most crucial aspect of negotiations is the skill of the negotiator.	___	___
4. The union must go to the bargaining table with its membership unified in its support of the team and their decisions.	___	___
5. The bargaining team must always act by consensus.	___	___
6. There are not constraints on the size of the negotiating committee.	___	___
7. The communications tree provides for virtually instantaneous communications.	___	___
8. It is not important to assign specific tasks to each negotiating team member.	___	___
9. Both the team and the committee must be thoroughly familiar with all aspects of the bargaining process.	___	___
10. Union busting management consultants have found that the most effective way to do their job is to have it done by first level supervisors on a one-to-one basis.	___	___

When all members of the group give the same answer, whether it be True or False, there is not a need for extended discussions. Just have one volunteer from the group read the question and explain why it is True or why it is False. Where there is a difference of opinion (and there will be; the questions are deliberately worded so as to leave room for argument) volunteers should be asked to argue both sides. After some discussion, try to find some way of restating the question so that all can agree on whether it is True or False.

For example, in question 5, if the words "attempt to" were inserted after the word "always" probably everyone would agree. In the process of discussing the truth or falsity, and reaching consensus on the result, the group will have learned a better understanding of the concept of "consensus".

Labor Board Investigators Checklist on Refusal to Bargain Charges

Following are instructions which Labor Board Agents have received as guidelines for investigating a charge of refusal to bargain in good faith.

In collective bargaining 8(5) cases, difficulty arises in cases where meetings have been held; the question then is whether the employer has attempted to bargain in good faith. On the issue of good faith, it is important whether or not the employer advanced counterproposals, whether he agreed or refused to enter into a written agreement for a specific length of time if satisfactory terms could be arrived at, whether he agreed or refused to recognize the union as a representative of his employees or of their members, etc.

Following are other factors in an 8(5) charge to be considered. Any one factor listed below cannot be isolated or considered entirely as evidence by itself, but should be considered as part of a pattern of behavior by an employer which would indicate violation of Section 8(5).

- Did the union notify that it represents a majority in appropriate unit and request to bargain exclusively as to wages, hours, and working conditions.
- The appropriate unit: has the Board ever decided the unit is appropriate? What employees does the union claim to represent: history of negotiations in the past, union eligibility rules; character of work performed by employees and rates of pay, skills required, etc.
- Majority: any elections recently held; proof available to show majority at time of alleged failure to bargain within the above unit, or any conceivable unit which might be appropriate; willingness of union to produce their membership cards for a cross check, etc.
- Company acceptance of majority claim; did question arise at any conference; did union offer to prove majority and how; any concessions by company officials that union had majority.
- Negotiations in good faith, meetings between company and union; any contracts presented by union as a basis for discussion; management's reply; willingness of company to sign agreement if terms could be reached; counterproposals of company; in other words the story of each meeting and its results. Was there any action or indication that either party had no intention of bargaining in good faith?
- Duty of employer to embody understanding reached with representatives of employees in binding, written agreements for definite terms.

- Was there a refusal to meet or negotiate with representatives of the union--or with a particular representative of union?
- Refusal to recognize representative as bargaining agency which represented its employees.
- Using dilatory tactics; postponement and delay of conferences.
- Distraction of representatives by misleading information.
- Refusal to recognize and negotiate with union as exclusive representative.
- Strike caused by employer's refusal to bargain.
- Breach of collective agreement. Obligation to bargain collectively does not end with signing of contract, but continues as long as union is a bargaining agent.
- Using negotiating process as strike-breaking device.
- Attempt to destroy union's majority during negotiations.
- Attempts to bargain with employees individually.
- Individual contracts in order to discourage employees from joining union.
- Recognition of another organization as the exclusive bargaining agent known not to be the free choice of the majority of the employees.
- Presumption of continuation of majority in certified organizations in absence of proof to contrary.
- Refusal to answer letters or phone calls for union.
- Promptness of employer's answer to letters.
- Employer makes unreasonable conditions in his bargaining.
- Refusal to negotiate specific issues.
- Employer refusal to supply union with facts necessary to intelligently discuss an issue (classifications, wages, other working conditions).
- Granting unilateral wage increase or other employee benefits during negotiations.
- Tell employees to repudiate the union negotiations.

- Appeals to employees to accept proposals which union negotiators have rejected.
- Necessity of employer making counterproposals.
- Appeal to strikers to return to work while negotiating with union on same issue.
- Untrue or misleading statements by management about progress of negotiations evidence of bad faith, unless such statements are within freedom of speech clause of Bill of Rights.
- Employer's failure to have at meeting a representative authorized to make decisions, or policy, or to have authority to really bargain with union.

Although an employer cannot, absent unusual circumstances, lawfully refuse to bargain with union during the certification year on the ground that it doubts the union's majority, an employer can, after the first year of certification has lapsed, lawfully refuse to bargain with the union on the ground that it doubts the union's majority even in the absence of unusual circumstances, provided that the doubt is in good faith.

Essential prerequisites to finding that an employer has in good faith questioned the majority of union certified for more than a year are that (1) there must be reasonable grounds for believing that the union lost its majority since its certification, and (2) the majority issue must not have been raised by the employer in a context of illegal antiunion activities or other conduct aimed at causing disaffection from the union or indicating that in raising majority issue the employer was merely seeking to gain time in which to undermine the union(Celanese Corp. Of America, 28 LRRM 1363; 95 NLRB No. 83.).

Unemployment Compensation During Work Stoppages--by State

The following states, as of 1990, permit workers to receive Unemployment Compensation during a labor dispute if the dispute is caused by a lockout.

Arkansas
California*
Colorado**
Connecticut
District of Columbia
Georgia
Illinois**
Kentucky
Maryland
Michigan**
Minnesota
Mississippi
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Dakota
Tennessee
Texas*
Utah*
Virgin Islands
West Virginia
Wisconsin

* By judicial construction of statutory language.

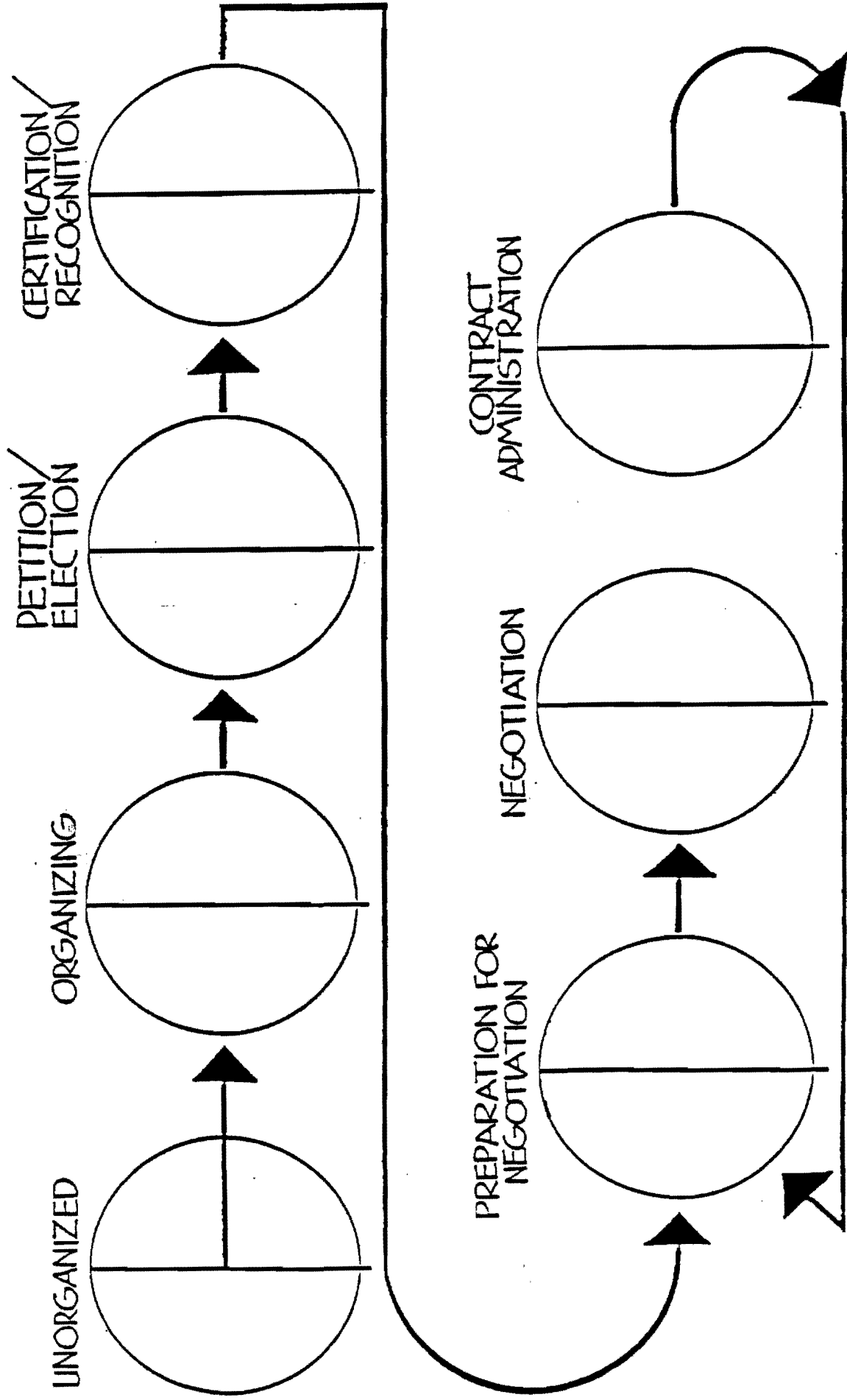
** Applicable only to establishments functionally integrated with the establishments where the lockout occurs, Mich. Employee not ineligible: unless the lockout results from demands of employees as distinguished from an ER effort to deprive the employees of some advantage they already possess, Colo.; if individual was laid off and not recalled prior to the dispute, if separated prior to the dispute, if obtained bona fide job with another ER while dispute was in progress, Ohio; if the individual was laid off prior to dispute and did not work more than 7 days during the 21 cal. days immediately prior to the dispute or if his position was filled and the individual unilaterally abandons the dispute to seek reemployment with the ER, Oreg.; if the claimant was indefinitely separated prior to the dispute and otherwise eligible, Tenn.; if the ER was involved in fomenting the strike, Utah; if the ER refused to meet under reasonable conditions with the union to discuss the lockout, if the ER during the lockout refused to bargain in good faith with the union over the lockout issues and there is a final adjudication under the NLRA, or if the lockout violated the existing union agreement, Ill.

In addition, in the following states if an employer fails to conform to the contract or the labor law, workers may receive Unemployment Compensation:

	Contract	Labor Law
<u>Alaska</u>	<u>x</u>	<u>x</u>
<u>Arizona</u>	<u>x</u>	<u>x</u>
<u>Maine</u>	<u>x</u>	<u>x</u>
<u>Minnesota</u>	<u>x</u>	<u>x</u>
<u>Montana</u>		<u>x</u>
<u>New Hampshire</u>	<u>x</u>	<u>x</u>
<u>Oregon</u>	<u>x</u>	
<u>Utah</u>		<u>x</u>
<u>West Virginia</u>	<u>x*</u>	

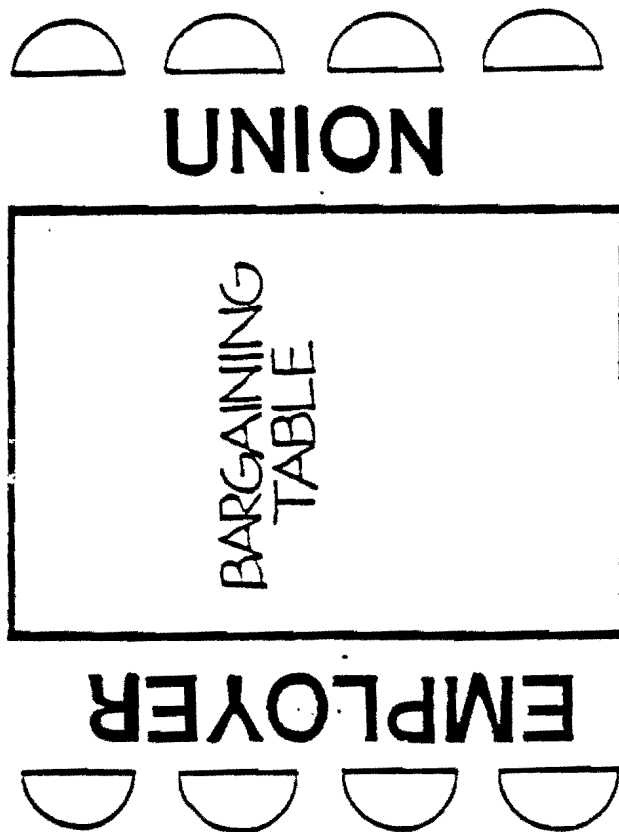
* Disqualification is not applicable if employees are required to accept wages, hours, or other conditions substantially less favorable than those prevailing in the locality or are denied the right of collective bargaining.

LABOR RELATIONS PROCESS



As soon as contract is negotiated — you start to prepare for the next

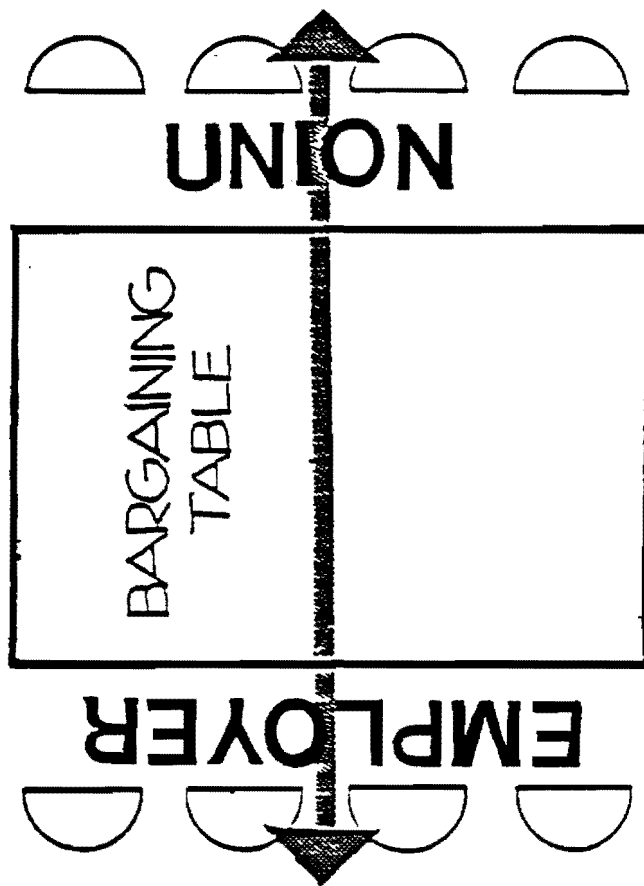
DIMENSIONS OF BARGAINING



DIMENSIONS OF BARGAINING

HORIZONTAL

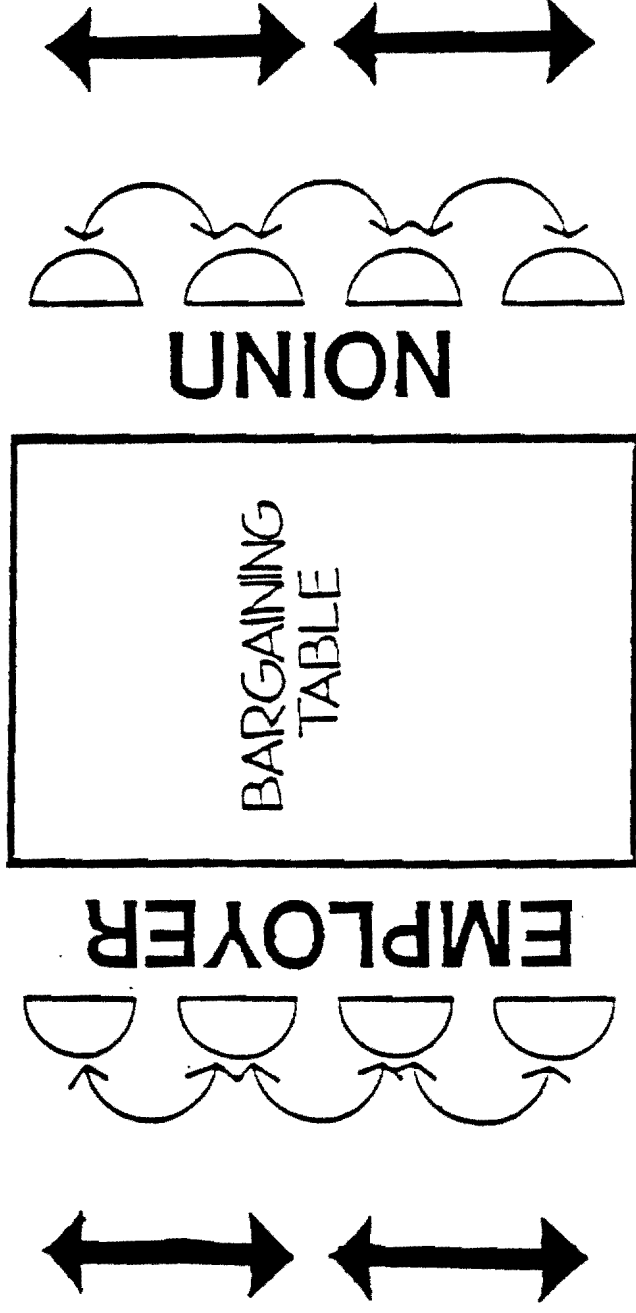
(ACROSS THE TABLE WITH OTHER TEAM)



DIMENSIONS OF BARGAINING

INTERNAL

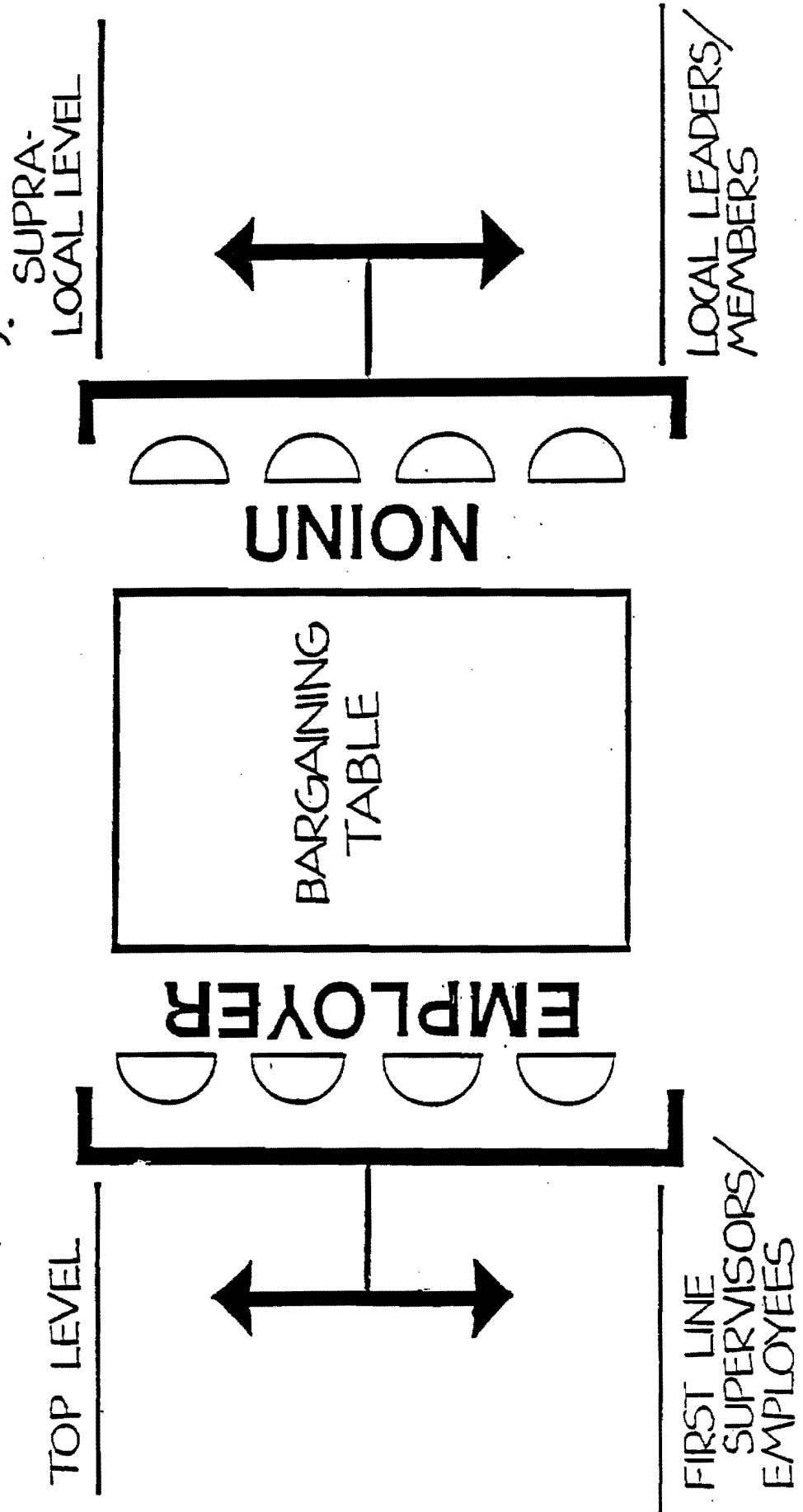
(WITHIN EACH BARGAINING TEAM)



DIMENSIONS OF BARGAINING

VERTICAL

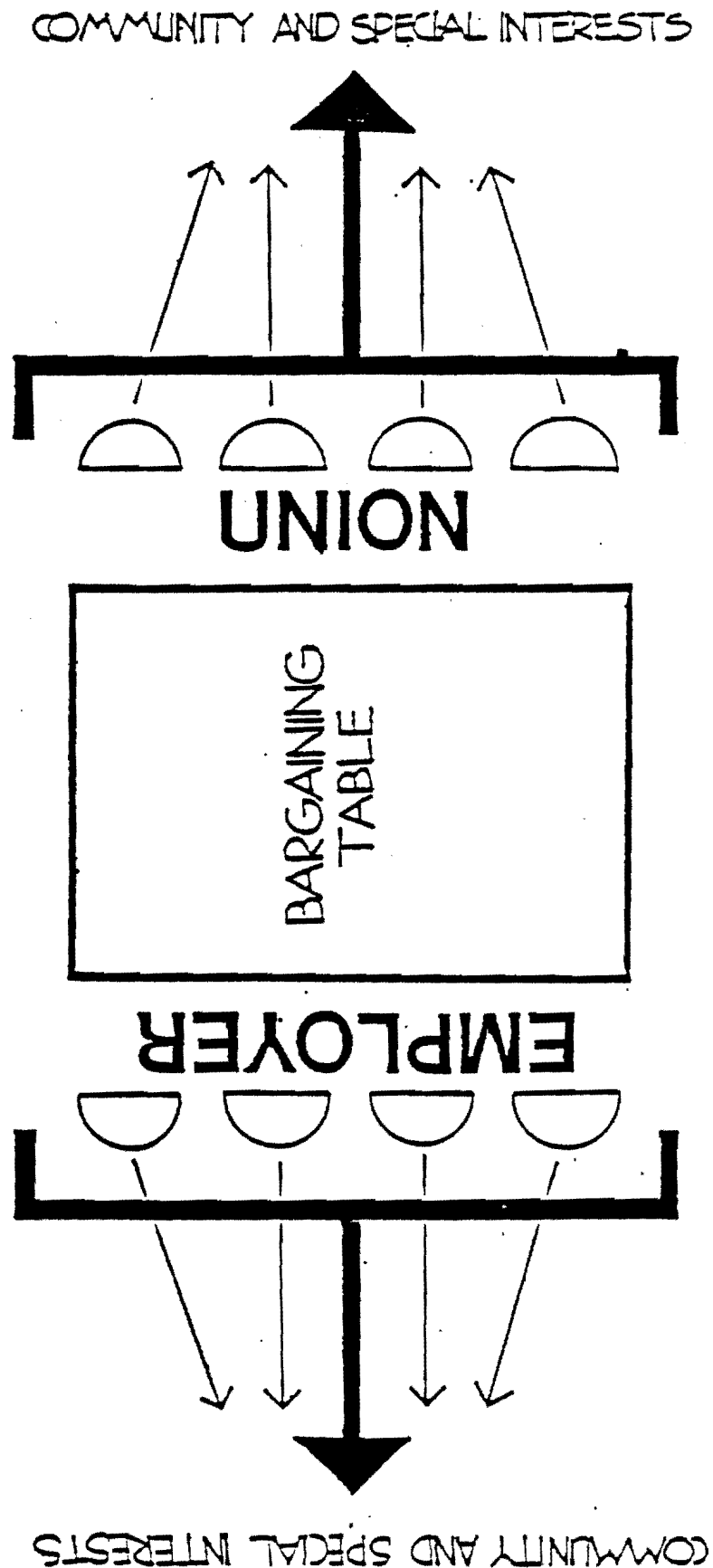
(WITH UPPER AND LOWER CONSTITUENCIES).



DIMENSIONS OF BARGAINING

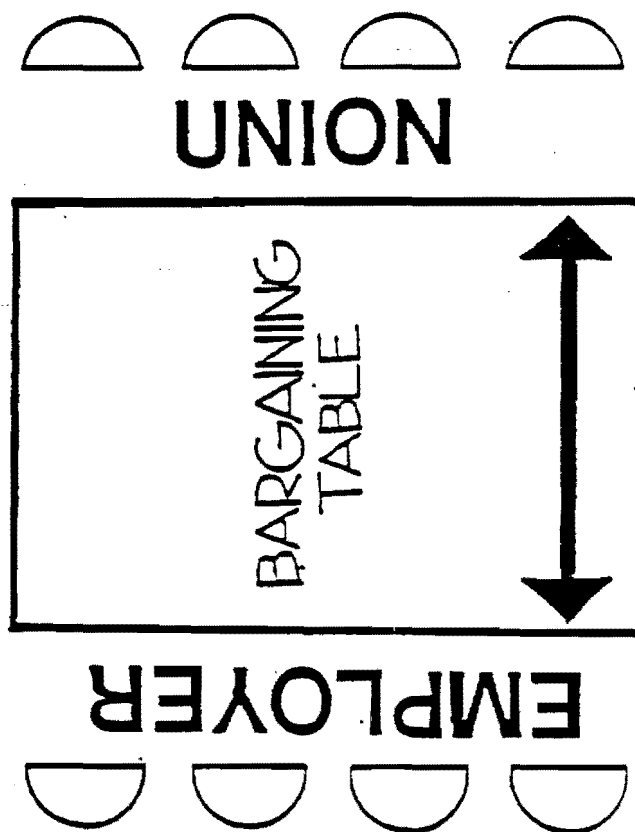
EXTERNAL

(WITH COMMUNITY AND SPECIAL INTERESTS)



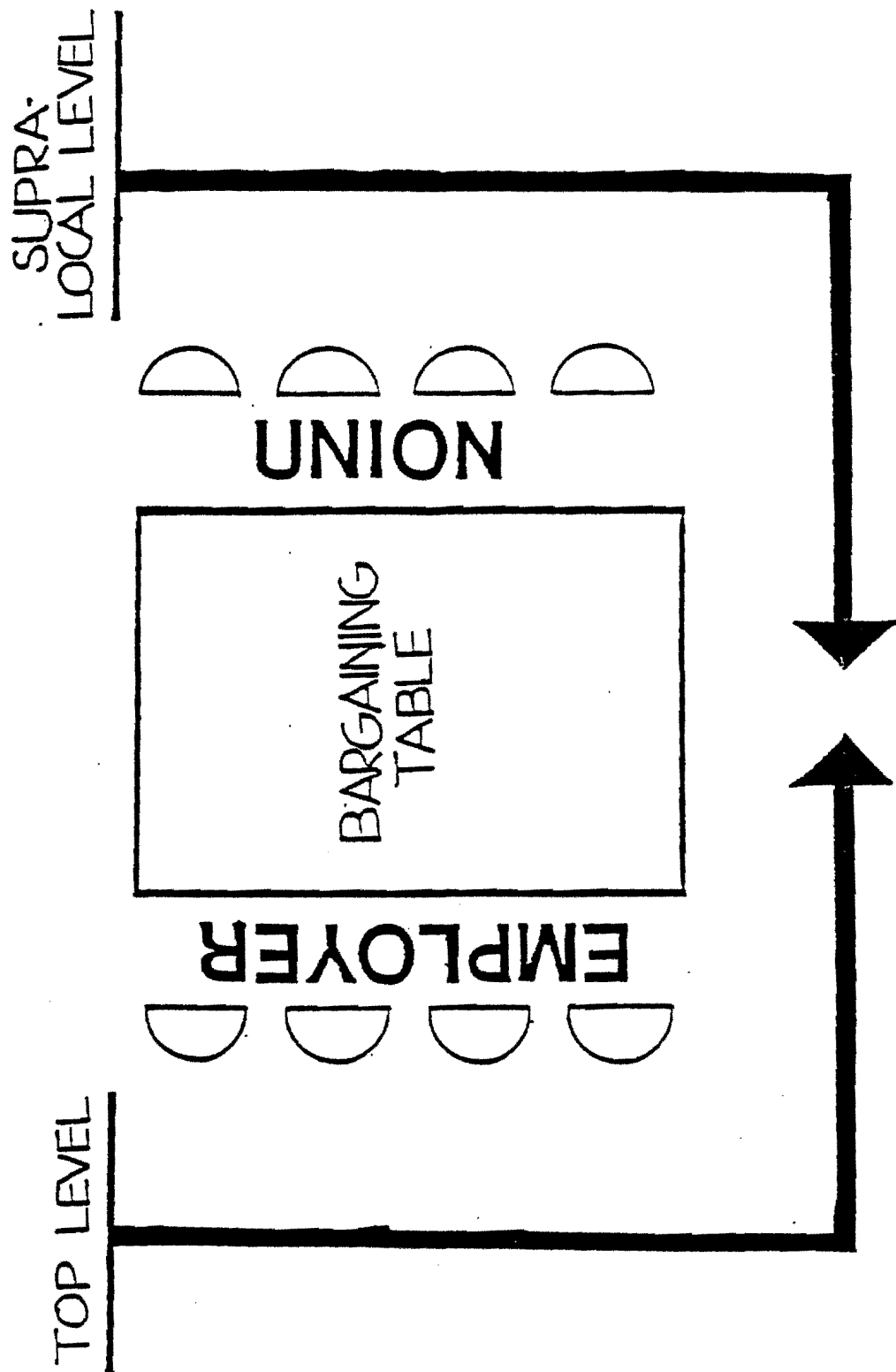
DIMENSIONS OF BARGAINING

ACROSS THE TABLE ONE-ON-ONE



DIMENSIONS OF BARGAINING

AWAY FROM TABLE ONE - ON - ONE



DIMENSIONS OF BARGAINING

