9

Institutional Issues under Collective Bargaining

Outline of Key Contents

- Why unions remain insecure as institutions and what they have and haven't been able to do about this insecurity
- Right-to-work laws and why unions don't like them
- How the dues checkoff arrangement works in practice and why most employers and unions haven't made it a crucial point of controversy
- Obligations that labor contracts impose on unions
- Why employers often want "management rights" clauses and why some people think that such clauses aren't necessary
- The two quite different theories of management rights: residual and trusteeship
- Why, although common in some other countries, codetermination has been very rare in the United States, and why this latter situation may finally be changing
- Why unions have historically resisted both employee stock ownership plans and quality of work life programs and why these stances, too, may at last be changing

Labor contracts contain a variety of issues that do not fall into the general category of wages or economic supplements. They deal with the rights and duties of the employer, the union, and the employees themselves. Some of them—such as seniority and discharge—directly serve to protect the job rights of workers and might be most appropriately thought of as "administrative" concerns. These will be treated in such a manner in Chapter 10.

Other subjects, however, tend to supply the institutional needs of either the labor organization or the particular management—through "compulsory union membership" clauses, for example, or by provisions explicitly allowing the management the right to make decisions for the direction of the labor force and the operation of the plant. These matters will be dealt with in the paragraphs that follow in this chapter.

This institutional dimension of collective bargaining can on occasion give the negotiators considerably more trouble than do the wage or benefit issues. It is, for example, at times infinitely easier to compromise and settle a health care controversy than to resolve a heated difference of opinion as to whether a worker should be compelled to join a union as a condition of employment. For all the thorniness of many wage and benefit issues, some of the longest and most bitter individual strikes have had as their source conflicts dealing with the institutional issues of collective bargaining.

UNION MEMBERSHIP AS A CONDITION OF EMPLOYMENT

Prior to the passage of the Wagner Act in 1935, there was essentially only one way in which a union could get itself recognized by an unsympathetic management: through the use of raw economic strength. If the labor organization succeeded in pulling all or a significant part of the employees out on strike, or in having its membership boycott the production or services of the employer in the marketplace, it stood a good chance of forcing the employer to come to terms. Lacking such economic strength, however, the union had no recourse—even if all the organization's workers wanted to join it—in the face of management opposition to its presence.

The 1935 legislation, as we know, greatly improved the lot of the union in this regard. It provided for a secret-ballot election by the employees, should the employer express doubt as to the union's majority status. It also gave the union the exclusive right to bargain for all workers in the designated bargaining unit, should the election prove that it did indeed have majority support. As Chapter 3 has indicated, these newer ground rules for union recognition continue to this day.

Legally fostered recognition has not been synonymous with any assured status for the union as an institution, however. In fact, in the many years since the Wagner Act, unions have still been able to find three grounds for insecurity. For one, the law has given the recognized labor organization no guarantee that it could not be dislodged by a rival union at some later date. For a second, there have still been many communication avenues open to antagonistic employers who choose to make known to their employees their antiunion feelings in an attempt to rid themselves of certified unions after a designated interval following the signing of the initial contract. And for a third, the government has not granted recognized unions protection against **free riders**—employees who choose to remain outside the union and thus gain the benefits of unionism without in any way helping to pay for those benefits.

Under the law, the union clearly has not only the right but also the *obligation* to represent all employees in the bargaining unit, regardless of their membership or nonmembership in the union. At the present time, almost 2 million workers in the United States are, it may be remembered, not union members but represented by a union under a valid, legally binding labor–management contract. Any rights that the card-carrying, dues-paying union member has under this contract, they also have. Unions have particularly feared that the free-rider attitude could become contagious, resulting in the loss through a subsequent election (in which nonmembers as well as members can vote) of their majority status and thus of their representation rights.

Consequently, organized labor has turned to its own bargaining table efforts in an attempt to gain a further measure of institutional security. By and large, such attempts have been successful. Today, about 82 percent of all contracts contain some kind of "union security" provision.[1]

FORMS OF UNION SECURITY

Such provisions, which are frequently also referred to as "compulsory union membership" devices, essentially are three in number: the closed shop, the union shop, and the maintenance-of-membership arrangement. Brief reference has already been made to each. A common denominator to all is that in one way or another membership in the union is made a condition of employment for at least some workers. They differ, however, in the timing for the requirement of union membership and in the degree of freedom of choice allowed the worker in the decision about joining the labor organization.

The closed shop and union shop are dissimilar in that, under the former, the worker must belong to the union *before* obtaining a job, whereas the latter requires union membership within a certain time period *after* the worker is hired. Under a maintenance-of-membership arrangement, the worker is free to elect whether or not to join the union. The worker who does join, however, must maintain membership in the union for the duration of the contract period or else forfeit the job.

These forms of compulsory union membership can also be viewed as differing with respect to the freedom of the employer to hire workers. Under the closed shop, the employer must hire only union members. This constraint allows the union in effect to serve as the employment agency in most situations and to refer workers to the employer upon request. Under union shop and maintenance-of-membership arrangements, the employer has free access to the labor market. The employer may hire whomever it wants, and the union security provision becomes operative only after the worker is employed.

A final significant feature of union security is that it has received considerable attention from both Congress and the state legislatures. The laws these bodies have enacted must be taken into account at the bargaining table, and union security provisions that disregard these relevant public fiats do so only at a definite risk.

The **closed shop,** obviously the most advantageous arrangement from labor's point of view, appeared in 33 percent of the nation's agreements in 1946. Prohibited for interstate commerce by the Taft-Hartley Act of 1947, it visibly decreased in its frequency in the years thereafter, and less than 5 percent of all contracts today contain such a provision. Many of these are in intrastate commerce, of course, but some are in the construction industry on an interstate basis. Much of the latter sector refused, rather bluntly, to abide by the Taft-Hartley stricture and in fact openly flouted it until 1959, when the Landrum-Griffin Act recognized the special characteristics of that sector and officially allowed it a stronger form of union security that approximates the closed shop.

With the decrease in usage of the closed shop, the **union shop** became the most widespread form of union membership employment condition. After being part of only 17 percent of all contracts in 1946, it appeared in about 64 percent of all labor agreements in 1959, and the figure is at about the 73 percent level today.

The **maintenance-of-membership** arrangement, originating in the abnormal labor market days of World War II, is still fully legal but is utilized relatively infrequently. After appearing in about one-quarter of all contracts in 1946, it steadily lost ground thereafter, and only about 4 percent of all contracts now make provision for it. Much of the loss has undoubtedly been absorbed by the gains of the union shop, which maintenance-of-membership employers, having already taken this step toward accommodating the union, have rarely resisted very adamantly. (But some of *this* loss, in turn, is not entirely real: Some arrangements have adopted the name of "union shop" but been modified in practice to equate or nearly equate to maintenance-of-membership. There is sometimes a danger in taking things at face value.)

Two other brands of union security, neither at all common, constitute compromises between the union's goal of greatest possible security and the management's reluctance to grant such institutional status. Under the **agency shop,** nonunion members of the bargaining unit must make a regular financial contribution—usually the equivalent of the union dues—to the labor organization, but no one is compelled to join the union. The money is, in fact, at times donated to recognized charitable organizations. Nonetheless, the incentive for a worker to remain in the free-rider class is clearly reduced in this situation, and the union thus gains some measure of protection. The **preferential shop** gives union members preference in hiring but allows the employment of nonunionists, and its value seems to depend on how the parties construe the word *preference.*

Although the straight union shop appears to be the most popular form of union security, some employers and unions have negotiated variations of this species of compulsory union membership. Under some contracts, employees who are not union members when the union shop agreement becomes effective are not required to join the union. Some agreements exempt employees with comparatively long service with the organization. Under other contracts, old employees (only) are permitted to withdraw from the union at the expiration of the agreement without forfeiting their jobs. Under this arrangement, a so-called escape period of about 15 days is included in the labor contract. If an employee does not terminate union membership within the escape period, he or she must maintain membership under the new arrangement. Newly hired workers, however, are required to join the union.

Whether the straight union shop or modifications of it are negotiated, Taft-Hartley forbids an arrangement that compels a worker to join a union as a condition of employment unless 30 days have elapsed from the effective date of the contract or the beginning of employment, whichever is later. In administering this section of the law, the National Labor Relations Board has held that the 30-day grace period does not apply to employees who are already members of the union. However, it interprets the provision literally for workers who are not union members on the effective date of the contract or who are subsequently employed. Thus, in one case, a union shop arrangement was declared unlawful because it required workers to join the union 29 days following the beginning of employment. Another union security arrangement was held to be illegal because it compelled employees to join the union if they had been on the company's payroll 30 or more days; in invalidating this agreement, the board ruled that it violated the law because it did not accord employees subject to its coverage the legal 30-day grace period for becoming union members *after the effective date* of the contract.

Where some negotiators have adopted variations of the straight union shop, others have devised a number of alternatives to the maintenance-of-membership arrangement. Only at the termination of the agreement are employees under most maintenance-of-membership arrangements permitted to withdraw from the union without forfeiting their jobs, and usually only a 15-day period is provided at the end of the contract period, during which time the employee may terminate union membership. But many agreements have a considerably less liberal period of withdrawal, from the worker's viewpoint, and some contracts allow more than 15 days. If an employee fails to withdraw during this "escape" time, the worker must almost invariably remain in the union for the duration of the new collective bargaining agreement.

Under some labor agreements, maintenance-of-membership arrangements also provide for an escape period after the *signing* of the agreement, to permit withdrawals of existing members from the union. Other agreements do not afford this opportunity to current members of the union but restrict the principle of voluntary withdrawal to newly hired workers.

These modifications are fully consistent with the law in all but the 22 "right-to-work" states, which ban any form of compulsory union membership, but certain other arrangements are not. Reference has already been made to the terms of Taft-Hartley under which an employee cannot lawfully be discharged from a job because of loss of union membership unless the employee loses the membership because of nonpayment of dues or initiation fees. In spite of the existence of an arrangement requiring union membership as a condition of employment, expulsion from a union for any reason other than nonpayment of dues or initiation fees *cannot* result in loss of employment. The National Labor Relations Board will order the reinstatement of an employee to his or her former job with back pay where this feature of the law is violated. Depending on the circumstances of a particular case, the board will require the employer or the union, or both, to pay back wages to such an employee.

The board has, in fact, applied a literal interpretation to this feature of Taft-Hartley. In one case the board held that a worker actually does not have to join a union even though a union shop arrangement may be in existence.[2] The employee's only obligation under the law is the willingness to tender the dues and initiation fees required by the union. In this case, three workers were willing to pay their union dues and initiation fees but they refused to assume any other union-related obligations, or even to attend the union meeting at which they would be voted on and accepted. As a result, the union had secured the discharge of these workers under the terms of the union security arrangement included in the labor agreement. The board held that the discharge of workers under such circumstances violated the Taft-Hartley law, ruled that both the union and the company engaged in unfair labor practices, and ordered the workers reinstated in their jobs with full back pay.

Right-to-Work Laws

Right-to-work laws, state laws that ban any kind of forced union membership within the borders of the state, obviously serve as formidable obstacles to union security arrangements in the primarily southern and western states in which they remain on the books. The labor movement in these states does not have much political muscle because union membership there is very low. On the other hand, not only has the effect of the right-to-work laws on labor relations in these states been highly debatable, but twice in the post Taft-Hartley years, the U.S. Congress has come relatively close to repealing the relevant Taft-Hartley section permitting the enactment of such state laws (**Section 14b**): In 1965–1966, a repeal measure passed the House by a 20-vote margin and, although a filibuster in the Senate prevented the bill from being voted upon there, the AFL-CIO claimed that 56 Senate votes, or five more than the majority needed, would have been registered in favor of repeal had there *been* a vote. In 1977, too, the AFL-CIO was quite certain that a newly elected liberal Democratic Congress would rescind Section 14b, although this time labor's efforts were—to the surprise of many observers—tabled by both branches. And although there was at the time of this writing little likelihood that the repeal efforts would soon be resumed on Capitol Hill, it was a safe bet that ultimately they would be.

Were Congress to remove Section 14b, this action would nullify all right-to-work laws as far as these laws apply to interstate commerce, because of the **federal preemption doctrine,** which forbids states to pass laws in conflict with a federal statute. And in that event the right-to-work laws existing in Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming would have application only in the area of intrastate commerce. They would cease to have any effect on firms engaged in interstate dealings. (Exhibit 9–1 shows all of the 22 states currently involved, and also the tendency of these states to be in the Southeast, the Southwest, and the Plains areas of the country.)

In the other direction, there was also a strong chance as this edition approached publication that several states would be battlegrounds for new right-to-work laws. Until 2001, when Oklahoma became the twenty-second right-to-work state, no state had passed such a law since 1986,

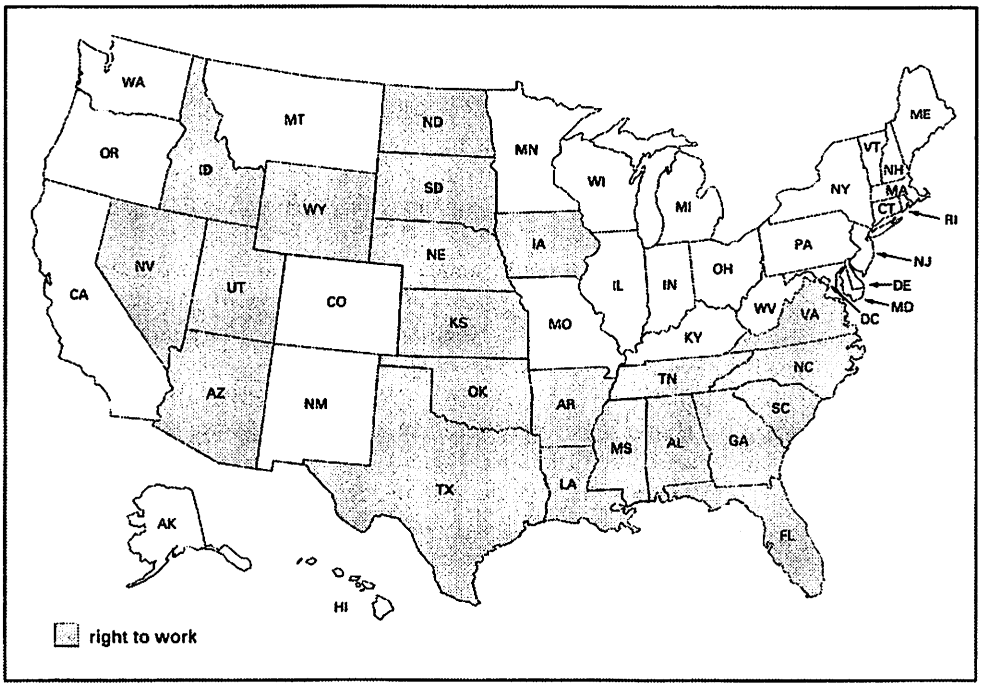


EXHIBIT 9–1

SOURCE: Michael R. Carroll, Norbert F. Elbert, and Robert D. Hatfield, *Human Resource Management,* 5th ed. (Upper Saddle River. NJ: Prentice Hall, 1995), p. 646, as amended by the author.

when Idaho did so. Besides these two states, in fact, only Louisiana (in 1976) and Wyoming (in 1963) had enacted right-to-work legislation since the 1950s. But many right-to-work advocates were optimistic about near-term prospects for antiunion shop legislation in New Mexico, Colorado, and Montana—the three remaining Rocky Mountain states without such laws.

And there was even an outside chance as this was being written that Illinois, Ohio, and Washington—states whose unionized percentages of the workforce were greater than the national average—would have right-to-work laws on *their* books within a matter of an election year or so. If any of them, in fact, did, new ground would be broken in the sense of a northern industrial state's joining the right-to-work states' roster: Indiana, which can fairly also be called a northern industrial state, did have such legislation between 1957 and 1965 but repealed it in the latter year, the only state ever to throw out a right-to-work law after installing it. New Hampshire, certainly northern and increasingly industrial, was viewed by many observers in the 1990s as another potential groundbreaker, but right-to-work advocates in the Granite State suffered defeat in these years when their legislative efforts fell short of passage in the New Hampshire House of Representatives. They also, nonetheless, remained optimistic about the future. And bills urging the passage of right-to-work laws either by direct law-making or ballot initiative had also been introduced in the legislatures of Hawaii and West Virginia—two other states that were more heavily unionized than the average. No action to date had, however, resulted.

Less likely to be enacted is a goal that most right-to-work law supporters understandably favor, because of its sheer efficiency, over any individual state laws: a nationwide right-to-work law, which would automatically prohibit compulsory union membership anywhere in the United States. A bill to do exactly that, in fact, actually made it to a vote in the U.S. Senate in 1996. It lost badly, by a 66 to 33 margin, but even here right-to-work advocates saw some grounds for optimism, because the Republican nominee for president in that year's White House contest, Robert Dole (of the right-to-work state Kansas) was quite willing to be recorded in favor of the bill. He saw nothing in such an action that would hurt his chances of becoming the nation's chief executive and, his Election Day loss to Bill Clinton notwithstanding, there is no evidence that he was wrong.

Nor were the forces seeking these new right-to-work laws exactly poverty-stricken. The National Right to Work Committee, based in Springfield, Virginia, now receives more than $20 million in annual contributions (and sends out approximately 30 million letters to and on behalf of its 2.2 million individual and institutional members). Some of the money goes to such relatively broader projects as attacks on public-sector unionism and investigations into what the organization sees as the spread of prounion materials into public schools, and the committee recently pushed hard, if unsuccessfully, for a congressional bill that would make the committing of violence on picket lines punishable by up to 20 years in prison and a $10,000 fine.

But most of the group's money and efforts are directed to the key item on the committee's agenda, the advance of the right-to-work movement itself. The organization, in fact, describes itself these days as "a coalition of 2.2 million American citizens united by one belief: No one should be forced to pay tribute to a union in order to get or keep a job,"[3] and its primary publication regularly features such articles as "Employees, Employers Like Right to Work States," "Senate Frosh Decrepitly Defends Forced Unionism," "Right to Work State Lands Toyota SUV Plant," and "Exodus From Forced-Unionism States Continues."

A related organization, the National Right to Work Legal Defense Foundation, provides free legal aid to employees "suffering from compulsory unionism abuse." It is also well-endowed financially and—as in the case of the committee—all contributions to it are tax-deductible.

Busily opposing such efforts as those of the committee and the foundation are such groups as the Washington, D.C.–based Center for Policy Alternatives. Its interests are actually broader than those of the two other groups: Its self-description is that of being "the nation's only nonpartisan nonprofit organization working to strengthen the capacity of state legislation to lead and achieve progressive change." But, relying in large part on right-to-work information provided it by the AFL-CIO, it widely distributes printed matter enlarging upon its views that right-to-work laws are designed to financially cripple the labor movement; decrease wages for everyone, especially people of color; and work against the maintenance of safe working conditions. Similarly drawing on AFL-CIO-furnished material to support its claims here, the center is also not shy about publicizing its opinion that right-to-work states have more poverty, higher infant mortality rates, and poorer schools than states without such legislation.[4]

Regardless of the fate of right-to-work laws in the years immediately ahead, however, it seems very likely that the question of whether union security provisions should be negotiated in labor agreements will remain controversial for some time to come–among the general public and some direct parties to collective bargaining if not among the large segment of unionized industry that has already granted such union security.

This controversy actually contains three major elements: morality, labor relations stability, and power. Whether it is *morally* right to force an employee to join a union to be able to work is not an easy issue to resolve. Unions and supporters of unionism often argue that it is not "fair" to permit an employee to benefit from collective bargaining without paying dues, given the fact that the union must under the law represent all workers in the bargaining unit. And the argument is not without logic. Improvements obtained in collective bargaining *do* benefit nonunion members as well as union-member employees, and the union *is* compelled by law to represent nonunion bargaining unit employees, even in the grievance procedure, in the same fashion that it represents union members. Against this argument stands the equally plausible one that employees should not be forced to join a union in order to work. Such compulsion seems to many people to be undemocratic, immoral, and unjust. Almost everyone, however, has different ideas on what is morally correct in this controversy. Even the clergy has been drawn into the fight, and its members have exhibited the same lack of unanimity in their opinions as have other people. And if these stewards of God are not certain what is morally correct, how can two college professors writing a textbook make a judgment that will once and for all resolve the moral issue?

Congress itself, however, has now made a judgment as to what employees should appropriately do when they have bona fide religious beliefs against joining labor organizations or financially supporting them. In a 1980 amendment to Taft-Hartley, it decreed that such workers need not violate those beliefs. Instead, in something of a variation of the agency shop, they must make a contribution equal to the amount of the dues to a nonlabor, nonreligious charity. The amendment also provides that if the religious objector requests a labor organization to handle a grievance on his or her behalf, the union may charge the employee a "reasonable" amount for such servicing.

Some observers claim that union security is the key to *stability in labor relations.* They argue that a union that operates under a union-shop arrangement will be more responsible and judicious in the handling of grievances and in other day-to-day relations with its employers because of its guaranteed status. And, again, there is some strength to this argument. At times, conflict between union members and nonunion employees does hamper effective organizational operation, and on this basis some employers may welcome an arrangement that forces all employees to join the union, as a way of precluding such conflicts. Moreover, unions can also claim that in the absence of a union security provision, the union officers must spend considerable time in organizing the unorganized and keeping the organized content so that they will not drop out of the union. Proponents of this position justifiably declare that if union officers are relieved from this organizational chore, they can spend their time in more constructive ways, which will be beneficial not only to the employees but also to the employer.

On the other hand, other debaters point out with equal justification that unions that do enjoy a union security arrangement sometimes use this extra time to find new ways to harass the employer. The solution to this particular controversy appears to an outsider to depend upon the character of the union involved and upon its relationship with the employer. Clearly, no one would blame an employer for resisting the granting of the union shop to a union that had traditionally made outrageous demands at the bargaining table, continually pressed grievances that had no merit, and, in short, sought to harass management at every turn.

At times, finally, employers and unions themselves argue along morality and labor relations lines to conceal a different purpose—their respective desires for *power* in the bargaining relationship.

It is self-evident that the union does have more comparative influence in the negotiation of labor agreements and in its day-to-day relationship with the employer when it operates under a union shop. And, by the same token, the employer has more comparative influence when employees need not join the union to work and may terminate their membership at any time. Or, in short, the parties may speak in terms of morality merely as a smoke screen to conceal an equally logical but less euphemistic power issue.

But *power* still remains a rather nebulous term. The old saying that in poker a Smith and Wesson beats four aces is certainly true and lucidly pinpoints exactly where the power lies, and why. However, as a general statement, depending on the assumptions one makes, a union could have infinitely more power than a management, and the reverse would be true under a different set of assumptions and circumstances. Given this elusiveness, as well as the unhappy connotations often placed on the word, it is perhaps not surprising that the verbal controversy over union security continues to be waged along the other lines described as well as those of power.

(Right-to-work law enactment in any state, of course, means that in the political arena management has triumphed over labor and state economic development agencies have not been slow to trumpet such a message in their nationwide employer-wooing advertising campaigns. Exhibit 9–2, typical of such efforts, was placed in several publications not long after Oklahoma's 2001 enactment of its right-to-work law.)

EXHIBIT 9–2

THE CHECKOFF

Checkoff arrangements are included in the large majority of collective bargaining contracts. This dues-collection method, whereby the employer agrees to deduct from the employee's pay monthly union dues (and in some cases also initiation fees, fines, and special assessments) for transmittal to the union, has obvious advantages for labor organizations, not only in terms of time and money savings but also because it further strengthens the union's institutional status. For the same reasons, many managers are not enthusiastic about the checkoff, although some have preferred it to the constant visits of union dues-collectors to the workplace. Once willing to grant the union shop, however, employers have rarely made a major bargaining issue of the checkoff per se. And the growth of this mechanism has been remarkably consistent with that of the union security measure: Where in 1946 about 40 percent of all labor agreements provided for the checkoff system of dues collection, this figure is, as we know, somewhat more than 95 percent today.

Taft-Hartley, as was also pointed out earlier, regulates the checkoff as well as union security; under the law, the checkoff is lawful only on written authorization of the individual employee. And the employee's written authorization may be irrevocable for only one year or for the duration of the contract, whichever is shorter.

Checkoff provisions frequently deal with matters other than the specification of items that the management agrees to deduct. Some arrangements specify a maximum deduction that the employer will check off in any one month, require each employee to sign a new authorization card in the event that dues are increased, indemnify the management against any liability for action taken in reliance upon authorization cards submitted by the union, require the union to reimburse the employer for any illegal deductions, and provide that the union share in the expense of collecting dues through the checkoff method. Not all these items, of course, appear in each and every checkoff arrangement; many labor agreements, however, contain one or more of them.

The checkoff is an important issue of collective bargaining, but understandably it does not normally constitute a crucial point of controversy between employers and unions. It does not contain the features of conflicting philosophy that are involved in the union security problem, falls far short of other problems of collective bargaining as a vexatious issue, and has rarely by itself become a major strike issue, since the stakes are not that high. As a matter of fact, even though the checkoff serves the institutional needs of the union, employers often find some gain from the incorporation of the device in the agreement. This would be particularly true where the labor contract contains a union security arrangement. Not only does the checkoff eliminate the previously noted need of dues collection on the employer's premises, with the attendant effect on orderly operations, but it also avoids the need of starting the discharge process for employees who are negligent in the payment of dues. Frequently, without a checkoff, an employee who must belong to a union as a condition of employment will delay paying dues, and the employer and union are both faced with the task of instituting the discharge process, which is most commonly suspended when the employee, faced with loss of employment, pays the owed dues at the last possible minute. The checkoff eliminates the need for this wasted and time-consuming effort on the part of busy employer and union representatives.

Even when the union shop is not in effect, moreover, the checkoff need not necessarily be given permanent status. The employee is obligated to pay dues for one year only, and if he or she desires to stop the checkoff it is possible to do so during the escape period. But under any circumstances, if the management believes that the union with which it deals is so irresponsible as not to deserve the checkoff, it need not agree to it as part of the renegotiated contract, and the mechanism is, consequently, also revocable from the employer's point of view.

For all of this, problems between the partners regarding the checkoff do, of course, at times arise and sometimes these can only be resolved in arbitration.

In one such situation, where the employer had agreed to make union initiation fees as well as union dues subject to the checkoff, the employer argued that the union's subsequent fivefold raising of its initiation fee (from $5 to $25) was "unreasonable and excessive." When years earlier it had signed the contract incorporating the checkoff provision, it told the arbitrator, it was with the understanding that the fee was $5. It now feared that requiring new hires to pay the higher amount would hurt its recruitment efforts. The arbitrator ruled for the union. Nothing in the labor agreement, he found, prevented the union from raising the fee, and neither the agreement nor the checkoff form said what this fee should be. The union had, he noted, the sole right to establish this fee—which, he was at pains to point out, the National Labor Relations Board had previously ruled to be neither excessive nor discriminatory—and it could change this fee without employer input any time it saw fit.[5]

In another arbitration, an arbitrator ruled for a management that had stopped checking off the dues of union members when they were promoted out of the bargaining unit to supervisory jobs and then refused to resume the checkoff for these same employees when they had returned to the bargaining unit following a reduction in force. The union's basic argument in the arbitration proceedings had been that the supervisors had never revoked their dues authorization cards. The arbitrator begged to differ: In his opinion, the supervisors had ceased being "employees" within the meaning of the contract when they had been promoted; they had, he ruled, returned to their old jobs as new employees who might or might not choose to sign new dues checkoff forms.[6]

UNION OBLIGATIONS

The typical collective bargaining contract contains one or more provisions (such as those listed in Exhibit 9–3, drawn from a current contract between the Oil, Chemical, and Atomic Workers and a medium-sized chemical company) that establish certain obligations on the part of the labor organization. By far the most important of these obligations involves the pledge of a union that it will not strike during the life of the labor agreement. Most employers will, in fact, refuse to sign a collective bargaining contract unless the union agrees that it will not interrupt operations during the effective contractual period.

The incorporation of a **no-strike clause** in a labor agreement means that all disputes relating to the interpretation and the application of a labor agreement are to be resolved through the grievance and

ARTICLE 2

Section 3. No Strike—No Lockout

(1) During the life of this Agreement there shall be no strike, work stoppage, slowdown, nor any other interruption of work by the Union or its members, and there shall be no lockout by the Company. In the event of a violation of this provision, either party to the Agreement may seek relief under the Grievance and Arbitration provisions of the Agreement or may pursue his remedy before the court or the Labor Board, as the case may be.

(2) As an alternative, either party, in the event of an alleged or asserted breach of the no strike—no lockout clause, may institute expedited arbitration by telegram to the Federal Mediation and Conciliation Service and request that the FMCS designate an Arbitrator as quickly as possible. The Arbitrator shall hold the hearing as promptly as possible, notice to be served on any officer of the Company and on the President, Vice President or Secretary-Treasurer of the Union (any one of the three officers of the Union). The Arbitrator shall set the date, time and place of hearing and shall issue his award orally as soon after the completion of the hearing as possible.

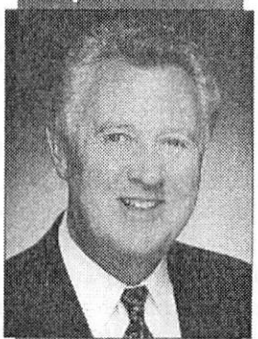
(3) Individual employees or groups of employees who adopt methods other than those provided in the grievance procedure for the settlement of their grievances shall be subject to disciplinary action, including discharge. Any disciplinary action taken by the Company under this clause shall be subject to review under the grievance procedure.

(4) Should any dispute arise between the Company and the Union, or between the Company and any employee or employees, the Union will cooperate to prevent and/or terminate a work stoppage or suspension of work or a slowdown on the part of the employees on account of such dispute. A violation of this paragraph by any employee or group of employees will give the Company the right to administer discipline including discharge. In administering discipline, including discharge, the Company shall have the right to distinguish between those instigating or leading the work stoppage or suspension of work or slowdown and those who simply participate therein. Any disciplinary action taken by the Company under this clause shall be subject to review under the grievance procedure.

EXHIBIT 9–3

arbitration procedure in an orderly and peaceful manner and not through industrial warfare. The pledge of the union not to strike during the contract period stabilizes industrial relations and thereby protects the interests of the employer, the union, and the employees. Indeed, a chief advantage that employers obtain from the collective bargaining process is the assurance that the organization will operate free from strikes or other forms of interruption (slowdowns, for example) during the period of the agreement. (See Exhibit 9–4 for an echoing of this opinion by the president of the Iron Workers Union.)

President's Page



JOSEPH HUNT
General President

No-Strike Clause is Foremost Reason Owners Are Willing to Commit To an All-Union Job

It is my duty to inform you that there has been an alarming increase in work stoppages on jobs governed by Project Labor Agreements.

Often when our members think of P.L.A.s, they think of project agreements that have been negotiated by the local or National Building Trades for a specific project. In fact any agreement that is project specific is a P.L.A. This includes Heavy and Highway, the General Presidents Agreement, The National Construction Stabilization Agreement and The National Maintenance Agreement. These are all P.L.A.s because they are project specific. They also all contain many provisions that help to make us more competitive.

Other characteristics common to all P.L.A.s are a grievance procedure, a procedure to address jurisdictional disputes and a no-strike clause. Essentially we as Ironworkers give our word that we will continue to work and get the job completed regardless of jurisdictional disputes or grievances. In return the employer agrees that there will be no lockouts and that the job will be all union.

"...we as Ironworkers give our word that we will continue to work and get the job completed..."

The no-strike clause is without a doubt the foremost reason owners are willing to commit to an all-union job. We agree to use the methods built into these agreements to resolve any and all problems on the job while we continue to work.

Furthermore, under the National Maintenance Agreement and the National Construction Stabilization Agreement, if we break our word and cause a work stoppage the local union may be required to pay liquidated damages of $10,000 per shift. At the present time we have two locals that are facing substantial fines with the possibility of civil action that may bankrupt one local.

The monetary damages are substantial but there are much broader consequences. If these illegal work stoppages continue, the agreements will lose credibility with the owners and contractors. One automobile manufacturer has already stated that they are going to reevaluate their long standing relationship with us because of job disruption.

These agreements have provided Ironworkers with millions of man hours and a harmonious relationship with our owners and contractors for decades. Clearly, we cannot allow the wildcat behavior of a few locals to jeopardize the future of 140,000 members and their families. I know first hand how frustrating it is to watch another craft perform work that should be done by Ironworkers; but the only sure way to gain jurisdiction is by being safe, productive, well-trained and reliable, not by walking off the job. I want it to be clearly understood that this International will take whatever action necessary to stop this unacceptable behavior, and ensure the credibility of these agreements. I also am asking each and every one of you personally to show our Owners and Contractors that not only are Ironworkers safe, skilled and productive, we also can be trusted to keep our word.

Fraternally,

Joseph J. Hunt

EXHIBIT 9–4

SOURCE: Used with permission of *Ironworker* magazine, May 2002, inside front cover.

Managements and unions have negotiated two major forms of no-strike provisions. Under one category, there is an *absolute and unconditional* surrender on the part of the union of its right to strike or otherwise to interfere with operations during the life of the labor agreement. The union agrees that it will not strike for any purpose or under any circumstances. Employers, of course, obtain maximum security against strikes from this provision.

Under the second form, far less common, the union can use the strike only under certain *limited* circumstances. For example, in the automobile industry the union may strike against company-imposed production standards. Such strikes may not take place, however, before all attempts are made in the grievance procedure to negotiate production standard complaints. Other collective bargaining contracts provide that unions can strike for any purpose during the contract period but only after the entire grievance procedure has been exhausted, when the employer refuses to abide by an arbitrator's decision, or when a deadlock occurs during a wage-reopening negotiation. The union cannot strike under any other conditions for the length of the contract.

In the vast majority of cases, labor organizations fulfill their no-strike obligations just as most unionized employers fulfill all their contractually delineated responsibilities. However, in the event that violations do take place, employers have available to them a series of remedies. In the first place, under the terms of Taft-Hartley, they can sue unions for violations of collective bargaining contracts in the U.S. district courts. And, although judgments obtained in such court proceedings may be assessed only against the labor organization and not against individual union members, additional remedies are provided for in many collective bargaining contracts. Under some of them, strikes called by a labor union in violation of a no-strike pledge terminate the entire collective bargaining contract. In others, the checkoff and any agreement requiring membership as a condition of employment are suspended.

In addition, the employer may elect to seek penalties against the instigators and the active participants, or either group, in such a strike. Many contracts clearly provide that employees actively participating in a strike during the life of a collective bargaining contract are subject to discharge, suspension, loss of seniority rights, or termination of other benefits under the contract, including vacation and holiday pay. The right of an employer to discharge workers participating in such strikes has been upheld by the Supreme Court.

And arbitrators will usually sustain the right of employers to discharge or otherwise discipline workers who instigate or actively participate in an unlawful strike or slowdown. Such decisions are based on the principle that the inclusion of a no-strike clause in a labor agreement serves as the device to stabilize labor relations during the contract period and as a pledge to resolve all disputes arising under the contract through the grievance procedure.

Nor, for management to win in arbitration, does a union inspired activity have to be officially labeled a "strike" or "slowdown." If there is an unconditional no-strike clause, a showing by the employer that there was *any* union-generated action that interfered with production is normally sufficient. On this basis, arbitrators have considered as violations of the no-strike clause, for example: employee gatherings where workers assert that they have a pressing matter that management must deal with before they start working; the refusal of employees to return to work after meeting with their supervisor regarding an incentive wage disagreement until after a private meeting with their union grievance representative; and the simultaneous absences from work of several employees, unless the union can show that these are a sheer coincidence (and that each absentee's reason for being absent is an acceptable one).

Arbitrators have also frowned up the failure of a group of employees to report to work because the management had not assigned a nurse to the first aid room (the union in this case presented no evidence that working conditions were dangerous); and the refusal of employees to cross the picket line of another union when there was no contractual language allowing them to do so.[7]

In 1970 the Supreme Court provided employers with a powerful legal weapon to deal with strikes that violate a no-strike clause. The high court, in *Boys Markets* v. *Retail Clerks*,[8] held that, when a contract incorporates a no-strike agreement and an arbitration procedure, a federal court may issue an injunction to terminate the strike and to command that the parties use the arbitration procedure in their contract as a substitute means of dispute settlement as long as the issues involved are "arbitrable" under the prevailing standards of arbitrability. The practical result of this has been to make strikes arising under an existing labor agreement—as opposed to those taking place after a contract has expired—almost always illegal, assuming, of course, that the parties themselves have not removed the issue or issues involved from the list of grievance topics subject to arbitration.

Wildcat Strikes

At times, however, strikes and other interruptions that are not authorized by the labor organization do occur. These work stoppages, commonly known as **wildcat strikes,** are instigated by a group of workers, sometimes including union officers, without the sanction of the labor union. Under many labor agreements, the employer has the right to discharge such employees or to penalize them otherwise for such activities. At times in the past employers imposed a stiffer penalty on local union officers, including stewards and grievance committee persons, than on rank-and-file employees who committed the same offense. Disparate discipline was justified, they thought, because union officials had a greater obligation to comply and enforce the no-strike clause. In a 1983 case, however, the U.S. Supreme Court held that employers may not impose more severe discipline on union officials who commit the same offense as rank-and-file employees.[9] If both, for example, instigate a wildcat strike, engage in picketing, or encourage other employees to join the strike, an employer may not discharge the union officials while only suspending the rank-and-file employees. Should a management desire to penalize union officials more severely, it must negotiate a contract provision that specifically authorizes disparate treatment by placing special obligations on the officials. It is not likely, however, that many unions would agree to such a contractual provision.

A special problem has been created by Taft-Hartley in reference to wildcat strikes. Under this law, a labor union is responsible for the action of agents even though the union does not authorize or ratify such conduct.[10] Thus, an employer may sue a union because of a wildcat strike even though the union does not in any way condone the stoppage. As a result of this state of affairs, unions and employers have negotiated the so-called nonsuability clauses, which were mentioned in Chapter 3. Under these arrangements, the management agrees that it will not sue a labor union because of wildcat strikes, provided that the union fulfills its obligation to terminate the work stoppage. Frequently, the labor contract specifies exactly what the union must do in order to free itself from the possibility of damage suits. Thus, in some contracts containing nonsuability clauses, the union agrees to announce orally and in writing that it disavows the strike, to order the workers back to their jobs, and to refuse any form of strike relief to the participants in such work stoppages.

Other Strike Considerations

Other features of some contracts also deal with strike situations. Under many labor agreements, the union agrees that it will protect the employer's property during strikes. To accomplish this objective, the union typically promises to cooperate with the management in the orderly cessation of operations and the shutting down of machinery. In addition, some unions agree to facilitate the proper maintenance of machinery during strikes even if achieving this objective requires the employment of certain bargaining unit maintenance personnel during the strike. Nor is it uncommon for unions to agree in the labor contract that management and supervisory personnel entering and leaving the premises in a strike situation will not be interfered with by the labor organization.

Other Union Obligations and Constraints

Many contracts place other obligations upon unions, not relating to strikes and slowdowns. Under some agreements, for example, the union obligates itself not to conduct on the employer's time or property *any* union activities that will interfere with efficient operations. The outstanding exception to this rule, however, involves the handling of grievances: Meetings of union and employer representatives that deal directly with grievance administration are usually conducted on employer time. Some agreements also permit union officials to collect dues on employer property where the checkoff is not in existence. Another exception found in many contracts involves the permission given to employees and union officers to discuss union business or to solicit union membership during lunch and rest periods.

Another frequently encountered limitation of union activity on the employer's property involves restrictions of visits by representatives of the international union with which the local is affiliated. Still another denies unions permission to post notices on the premises or to use employer bulletin boards without the permission of the employer. Where the union is allowed to use bulletin boards, many labor contracts specify the character of notices that the union may post; notices are permitted, for example, only when they pertain to union meetings and social affairs, union appointments and elections, reports of union committees, and rulings of the international union. Specifically prohibited on many occasions are notices that are controversial, propagandist, or political in nature.

MANAGERIAL PREROGATIVES

Once upon a time, a vice president for industrial relations of a large corporation was bargaining against a strike deadline with only hours to spare and making no progress whatsoever. The parties remained poles apart, and the executive—not an especially calm person to start with—was approaching the condition of a nervous wreck.

Suddenly, a messenger informed him that his wife, 9 months pregnant, had been taken to the hospital, and the union (which had not to that point shown itself to be particularly accommodating) in no way argued with his suggestion that he make a quick trip to see her. At his wife's bedside, a strange contrast could be seen: The baby had not yet arrived, and his wife, though in considerable pain, was amazingly calm and composed; he, however, was more of a nervous wreck than ever.

The industrial relations man asked the nurse to explain his wife's commendable placidity and was told, "It must be that wonderful new tranquilizer that she's been given: Twilight Zone." The executive said, "Great! Great! Give me some, too! Give me some, too!" The nurse responded, "I'm sorry, sir, but that's only for labor." And the executive replied, "My God! Is there nothing left for management?"

That collective bargaining is in many ways synonymous with limitations on managerial authority is an observation that was offered on the earliest pages of this book. A fundamental characteristic of the process is restriction on the power of the management to make decisions in the area of employer–employee relations, and much of the controversy about collective bargaining grows out of this factor. On the one hand, the labor union seeks to limit the authority of management to make decisions when it believes that such restrictions will serve the interests of its members or will tend to satisfy the institutional needs of the union itself. On the other hand, the responsibility for efficiency in operation of the enterprise rests with management. The reason for the existence of management, in fact, is the overall administration of the business, and executives attempt to retain free from limitations those functions that they believe are indispensable to this end.

The problem is, moreover, hardly disposed of simply because most union leaders assert—and normally, in good faith—that they have no intention of interfering with the "proper functions of management." Years of witnessing official union interest expand from the historical wages and hours context into such newer areas as those outlined in this portion of the book have understandably led managers to conclude that what is "proper" for the union depends on the situation and the values of the union membership.

Nor do employers find much consolation in the fact that the managerial decision-making process is already limited and modified by such economic forces as labor market conditions, by such laws as those pertaining to minimum wages and discrimination, and by the employee-oriented spirit of our society. If unionism is not by any means the only restriction on employer freedom of action in the personnel sphere, it is nonetheless a highly important one for managements whose employees live under a union contract.

Beyond this, finally, the controversy is hardly confined to the personnel area, for managers can point to numerous (although proportionately infrequent) instances of strong union interest in such relatively removed fields as finance, pricing, and other "proper" management functions. In recent years, for example, some railroad unions have constantly blamed their employers' high degree of bonded indebtedness for depriving railroad workers of "adequate" wage increases; the Teamsters have accused Coca-Cola of "closing its eyes" to the intimidation, torture, and assassination of unionized employees who bottle its drinks overseas and demanded that the company enact and enforce rigid protection for all Coke bottling-plant workers worldwide; the Communications Workers have asked AT&T stockholders (in vain) to reject that company's proposed plan to break itself into four separate pieces; and the United Automobile Workers' interest in the pricing of cars has become a constant in automobile industry bargaining rooms (although the UAW's freely offered advice on this subject has yet to be accepted by the automobile manufacturers). Given the present state of the government's "legal duty to bargain" provisions, as Chapter 3 has indicated, no one can assert with complete confidence that such examples will not multiply in the years ahead.

In many ways, in fact, ramifications of the subject extend far beyond the two parties to collective bargaining. There is justification for arguing that the "managerial rights" issue really pivots upon the broader question of what the appropriate function of labor unions should be.

Managements have frequently translated their own thoughts on the subject into concrete action. Approximately 80 percent of all labor agreements today contain clauses that explicitly recognize certain stipulated types of decisions as being "vested exclusively in the management." Such clauses are commonly called **"management prerogative," "management rights,"** or (more appropriately, to many managers) **"management security"** clauses.

Fairly typical of management prerogative provisions is the following, culled from the current agreement of a large midwestern durable goods manufacturer:

> Subject to the provisions of this agreement, the management of the business and of the plants and the direction of the working forces, including but not limited to the right to direct, plan, and control plant operations and to establish and to change work schedules, to hire, promote, demote, transfer, suspend, discipline, or discharge employees for cause or to relieve from duty employees because of lack of work or for other legitimate reasons, to introduce new and improved methods or facilities, to determine the products to be handled, produced, or manufactured, to determine the schedules of production and the methods, processes, and the means of production, to make shop rules and regulations not inconsistent with this agreement and to manage the plants in the traditional manner, is vested exclusively in the Company. Nothing in this agreement shall be deemed to limit the Company in any way in the exercise of the regular and customary functions of management.

Some rights clauses, by way of contrast, limit themselves to short, general statements. These are much more readable than the one above, but considerably less specific—for example, "the right to manage the plant and to direct the work forces and operations of the plant, subject to the limitations of this Agreement, is exclusively vested in, and retained by, the Company." On the other hand, the management rights clause cited is itself a model of brevity when compared with that of at least one of its counterparts: The current agreement between the Kuhlman Electric Company of Detroit and the UAW contains one that consumes more than a dozen pages; it is, as one observer commented when it was originally inserted in a prior contract, a "likely candidate for the *Guinness Book of Records*."[11]

No matter which way management injects such clauses into the contract, however, two industrial relations truisms must also be appreciated: (1) The power of the rights clause is always subject to qualification by the wording of every other clause in the labor agreement; and (2) consistent administrative practices on the part of the management must implement the rights clause if it is to stand up before an arbitrator.

The Residual Theory of Management Rights

According to one point of view, moreover, the inclusion of such a clause in a labor agreement is unnecessary, and, of course, a sizable minority of the agreements does not make any reference to managerial rights. This practice of omission is often based on the belief that the employer retains all rights of management that are not relinquished, modified, or eliminated by the contract. In the absence of collective bargaining, according to this view, the management has the power to make any decision in the area of labor relations that it desires (subject to considerations of law, the marketplace, and so on). This right is based on the simple fact that the employer is the owner of the business. For example, the employer's right to promote, demote, lay off, make overtime assignments, and rehire may be limited by the seniority provisions of the collective bargaining contract. Or the contract may stipulate that layoffs be based on a certain formula. However, to the extent that such a formula does not limit the right of the employer to lay off, it follows that management may exercise this function on a unilateral basis.

This concept of management prerogatives is sometimes called the ***residual theory* of management rights.** That is, all rights reside in management except those that are limited by the labor agreement or conditioned by a past practice. Where a management embraces the residual theory, it most commonly takes a stiff attitude at the bargaining table relative to union demands that would tend to further limit rights of management. It views the collective bargaining process as a tug of war between the management and the union—management resisting further invasions by the union into the citadel of management rights, which are to be protected at all costs as a matter of principle.

Such employers are not particularly concerned with the merits of a union demand; *any* demand that would impose additional limitations on management must be resisted. For example, such a management, regardless of the merits of a particular claim, would typically resist the incorporation of working rules into the labor agreement—rules dealing with such topics as payment to employees for work not actually performed, limitations on technological change or other innovations in the operation of the business, the amount of production an employee must turn out to hold a job, and how many workers are required to perform a job. One can also safely predict that a residualist management would strongly resist any demand that would limit its right to move an operation from one plant to another, shut down one plant of a multiple-plant operation, subcontract work, or compel employees to work overtime. In addition, such a management would quite probably try aggressively, when the occasion seemed appropriate, to regain rights that it had previously relinquished.

Today, in fact, many employers are striving to reclaim the right to make unilateral determinations of working rules. Many recent strikes in a host of sectors as diverse as the airlines, television, and teaching have been waged because managements desired to erase from the bargaining relationship working rules to which they had agreed in previous years. It is understandable why labor organizations resist these attempts of management: With the elimination of working rules, employees could more easily be laid off, for example. Because new technology and changing market demands constitute in many relationships constant threats to job security, it is no mystery why some unions would rather strike than concede on this point.

The Trusteeship Theory of Management Rights

The opposing view of the theory of residual rights is based on the idea that management has responsibilities other than to the maximization of managerial authority. It proceeds from the proposition that management is the "trustee" of the interests of employees, the union, and society, as well as of the interests of the business, the stockholders, and the management hierarchy. Under the ***trusteeship theory,*** a management would invariably be willing to discuss and negotiate a union demand on the merits of the case rather than reject it out of hand because it would impose additional limitations on organizational operations. Such an employer would not necessarily agree to additional limitations but would be completely amenable to discussing, consulting, and ultimately negotiating with the union on any demand that the latter might bring up at a collective bargaining session. The trusteeship management does not take the position that the line separating management rights from negotiable issues is fixed and not subject to change. Rather, it attempts to balance the rights of all concerned with the goal of arriving at a solution that would be most mutually satisfactory. As such, the trusteeship and residual theories are poles apart in terms of management's attitude at the bargaining table and even in the day-to-day relationship between the employer and the union.

There is no "divine right" concept of management in the trusteeship theory, a statement that cannot be made for the residualist camp. No better summary of the differences between the two theories on this score has ever been made than that offered many years ago by the then general counsel of the United Steelworkers of America:

> Too many spokesmen for management assume that labor's rights are not steeped in past practice or tradition but are limited strictly to those specified in a contract; while management's rights are all-inclusive except as specifically taken away by a specific clause in a labor agreement. Labor always had many inherent rights, such as the right to strike; the right to organize despite interference from management, police powers, and even courts; the right to a fair share of the company's income even though this right was often denied; the right to safe, healthful working conditions with adequate opportunity for rest. Collective bargaining does not establish some hitherto nonexisting rights; it provides the power to enforce rights of labor which the labor movement was dedicated to long before the institution of arbitration had become so widely practiced in labor relations.[12]

It is impossible to determine how many employers follow the residual theory of management rights and how many follow the trusteeship theory. Crosscurrents are clearly at work: the previously mentioned management attempt to regain work-rule flexibility and the equally visible trend to more employee-centered management that was cited in Chapter 1. Trusteeship managements, however, from all of the evidence definitely do remain in the distinct minority. Moreover, there is no universal truth as to which would be a better policy for management to follow or whether some compromise between the two might form the optimum arrangement. The answer to this problem must be determined by each employer in light of the particular labor relations environment.

CODETERMINATION AND UNIONS IN THE BOARDROOM

The concept of workers' *directly* playing a major role in corporate decision making by means of board of director membership, or **codetermination** as it is generally called, has never taken root in the United States. At least to date, American labor leadership has preferred to oppose rather than to join in any kind of partnership with management, and the official AFL-CIO position has been one of not desiring "to blur in any way the distinctions between the respective roles of management and labor in the plant." Managers act; unions react.

Yet in other countries codetermination has become a reality, most notably in Germany, where in 1946 the occupying British administrators in the Ruhr Valley introduced the idea to the West German steel industry as something of a compromise between nationalization and free enterprise. It was extended to the coal industry in that country in 1951 and—in the face of concerted union pressure magnified by the threat of a general strike—to larger companies in all German industries one year later.

Even in Germany employees have not received literal codetermination powers in the typical situation. Only in steel and coal, the original frontiers, have stockholders and workers controlled an identical number of directors; in all other sectors workers were legally allowed only a one-third representation on corporate boards until 1976, and they still, under a complicated formula, lack fully equal representation in practice. But after more than six decades, even executives in Germany seem to be wholly adjusted to the concept. They are, indeed, cooperating—as are their unions—in helping other European countries (Sweden and Denmark most notably) experiment with it, being in the main convinced that Germany's economic prosperity and generally peaceful labor relations owe something to the idea.

Why codetermination has nonetheless been as welcome to U.S. business managers as a drunkard at an Alcoholics Anonymous meeting, and not of much interest to American unionists either, can undoubtedly be explained along several lines. Western European workers, as a general rule, have historically lacked the prospects for upward mobility that their American counterparts have had and thus have had greater incentive to improve their present working environments, because they feel more tied to these. And in the United States, the values of private enterprise, property rights, and individualism have been developed to a degree absolutely unknown in other lands. Against this backdrop, codetermination seems dangerously socialistic. Nor can the general resistance of U.S. employers throughout labor history to unionizing efforts be completely overlooked as an explanation. On such adversarial initial relationships are adversarial later relationships often built.

Yet even in the United States the situation may finally be changing. In 1980 the Chrysler Corporation gave the then UAW president Douglas A. Fraser one of the 18 seats on its board of directors. And the impressive performance that he registered in the several years following this milestone, the first instance of a major American corporation's electing a union leader to such a position, had led at least some observers to predict that the future would see more such union directors.

Chrysler had not offered Fraser, despite his universal reputation as a man of considerable intellect and unimpeachable character, this seat with any notable enthusiasm. It had done so quite reluctantly, in fact, as part of the price that it had to pay to win from the UAW economic concessions vital to its survival. And even within Chrysler's managerial hierarchy itself, many people had undoubtedly shared the sentiments of the then General Motors Chairman Thomas A. Murphy that the move would make "as much sense as having a member of GM's management sitting on the board of an international union."[13] Nor did Fraser's acceptance of the directorship, his considerable popularity within the union notwithstanding, occur without a good deal of negative comment from his own constituents: The word *sell-out* received particularly frequent mention from the UAW rank and file. Some other critics—among them, law professors—feared that a conflict of interest on Fraser's part was unavoidable, because the interests of the shareholders and those of the union would inevitably operate, at times, in opposing directions.

Within months of the UAW leader's advent to the board, however, all of these sentiments appeared to have been groundless. Chrysler itself could muster nothing but praise for Fraser's contributions, especially his ability to ask pointed, well-informed questions: "He has," corporation Chairman Lee Iacocca could assert, "stimulated our board to think."[14] Another company insider declared that "Doug [can] speak with credibility to the workers because, as a director, he [has] seen the detailed financial data."[15] And there was general agreement among all who saw Fraser in action that the UAW leader, who temporarily suspended his participation in the board meetings when UAW members in Canada struck Chrysler in later 1982, had been flawless in avoiding not only any conflict of interest but even the appearance of such conflict.

By his own admission, Fraser's chief objective in accepting the board seat had been to incorporate worker thinking into managerial decision making. ("I can't represent my members if I'm always reacting to management decisions," he had said, ". . . we can bring an important resource to the board. People in the plants will tell me things they won't tell management").[16] When he retired 4 years later, to be succeeded on the board by his successor as UAW president—Owen W. Bieber—his board tenure as judged by this standard had clearly been a successful one. Iacocca had in fact come to have so much respect for Fraser that despite the latter's retirement from the union, the Chrysler chief executive reportedly tried, without success, to keep him on as a director instead of Bieber.

And to some extent, the favorable precedent set by Fraser had generated interest in duplicating such union participation elsewhere. By the time of this writing, the now-defunct Pan American World Airways, Eastern Airlines, TransWorld Airlines, United States Steel, Inland Steel, LTV, Northwest Airlines, Goodyear Tire and Rubber, USAirways, United Airlines, and Weirton Steel had followed Chrysler's lead in electing union-proposed directors. At some of these companies, moreover, union nominees had filled not just one board seat, but several of these: In the recent past they have, for example, occupied three seats at both Northwest and United, and four seats at US Airways. And at times labor directors had even wielded power disproportionate to their number of seats—as at United, where until 2003 the three union representatives on the 12-person board had effective veto power over such key decisions as acquisitions, divestitures, and the selection of United's CEO.

Almost every major aluminum company had by the time of this writing also implemented the Fraser precedent, most of them in response to union demands in the past dozen years. So, too, had a variety of smaller trucking, steel, and food industry employers. Companies in other industries—communications, most notably–were seriously studying the board membership idea and appeared on the verge of implementing it. Most of these companies had, moreover, also accompanied their bestowal of board membership with a transfer of stock ownership into bargaining unit member hands (discussed in the next section).

But most American companies, nonetheless, remain adamantly opposed to such union activities. "The pure and simple notion of opening the books and being a member of the board is a cure for which there is no known illness," one not-atypical company negotiator has said.[17] And many managers also continue to advance the argument, presumably in all sincerity, that having a unionist on the board would expose the corporation to lawsuits for conflict of interest, Fraser's performance notwithstanding. Moreover, it is not irrelevant that virtually every employer that has granted unions the greater privileges has been, as Chrysler, confronted with significant financial problems at the time of the offering and has sought some kind of union pay concession in return. Nor does any reputable authority in the field see anything that remotely resembles full German-style codetermination in the United States as being closer than several million light-years away.

Nor, ironically, has Chrysler itself been steadily wedded to the concept of having a U.S. labor leader sit on its board in the years since 1980. In 1991 the automobile company cut its number of directors from 18 to 13 by not renominating Bieber and four others. The company defended its move as part of its then-current $3 billion cost-cutting campaign, although detached observers (who realized that the most that would be saved in annual directors' fees and expenses was a relatively modest $150,000) thought that the action was an unnecessarily gratuitous insult to a unionist who simply hadn't measured up to the high Fraser standard. (Bieber at least began a new tradition: After he retired in 1995 as UAW president, Chrysler's interest in *his* successor, the tough-talking Stephen P. Yokich, as a member of the board was equally invisible.)

And although, in 1998, the UAW finally was allowed to return to the board, the employer was no longer officially Chrysler. It had become DaimlerChrysler through a merger that year between the German automotive giant Daimler-Benz and itself, and the American union hardly came away with massive clout on the new 20-seat board: German labor got, as it was entitled to do under existing legislation in Germany, 10 board seats and even the single UAW seat was exclusively caused by an agreement by the German metalworker union IG Metall to give up one of *its* allotted seats and not to any particular desire for the arrangement on the part of the American component of the new management. A decade after the DaimlerChrysler merger, moreover, Daimler divested itself of Chrysler and under the latter's new majority owner (Cerberus Capital, a private-equity firm) the UAW-appointed seatholder, union president Ron Gettelfinger, stepped down. At present, once again the Chrysler board is without a labor leader.

Yet some thoughtful students of the subject were in the first years of the twenty-first century starting to believe that the concept of unionists in the boardroom would spread. They pointed, of course, to the U.S. managements that *had* accepted unionists in the years following the landmark Fraser appointment. Some also saw such moves as logical trade-offs for financially troubled corporations (as a way of gaining greater economic cooperation from the unions involved), as a means of broadening corporate social responsibility not unlike the appointment of women and minorities to boards, and as a method of getting unions to more fully appreciate employer problems and need for profitability.

It seems safe to say, under any conditions, that whether or not the Fraser precedent ever becomes a normal part of American corporate governance, the topic can never again really be ignored.

EMPLOYEE STOCK OWNERSHIP PLANS

Employee stock ownership plans, or ESOPs, have their share of enthusiastic supporters. Such supporters did not, however, until very recent years, include union leaders. Until the mid-1970s, organized labor was generally against the concept, but by the 1990s many unions were actively participating in ESOPs.

Labor's historical antagonism to employee ownership tended to be based on two considerations. First, many past plans—most notably in the paternalistic era of the 1920s—had a definitely antilabor purpose. If the worker could be given more reason to identify with the management, it was reasoned by plan advocates, there would be less need to identify with management's bargaining table adversary.

Second, labor was—and is—well aware that a major decline in the price of the company stock would carry with it obvious penalties for the participating employee. Such major declines did, of course, occur on a wholesale basis in the 1930s (as did, even worse, bankruptcies) and presumably could be expected to occur again—a presumption that has, of course, been validated in recent years. Postdepression employee stock ownership plans were, therefore, in union eyes something like lexicographer Samuel Johnson's description of a second marriage, the triumph of hope over experience.

Such misgivings continue to be nursed by unions. But increasingly since the mid-1970s they have been outweighed, at least for many labor leaders, by another consideration: Many hard-pressed employers have simply been unwilling to allow further increases in fixed payroll expenses and have refused to consider anything but compensation that is tied to the firm's economic performance. Labor has, in short, embraced ESOPs because it has had little choice.

Board representation—costless to the employer economically, if not philosophically—has usually been accompanied by such stock ownership. And, in fact, most companies cited in the previous section have, as noted, granted both. Employees have owned as much as 55 percent of the stock at UAL Corporation (the parent company of United Airlines), 37.5 percent at Northwest Airlines, and some 15 percent at the U.S. operations of Chrysler. At TWA, which went out of existence in 2001 when American Airlines purchased most of its assets, they held 45 percent. At Weirton Steel, they owned literally all of the company, the 8,000 workers there having been forced in 1984 by Weirton's then-parent National Steel either to buy it or let it die a natural death. ("We had to buy the mill. It was either that or nothing," in the words of one mill worker.[18])

But board representation is hardly an inseparable part of an ESOP, and many more unionized employers—in steel, autos, rubber, glass, trucking, the airlines, and food—have granted only the latter than have given both kinds of concession to their unions. As of 2008, some 9,200 companies—many of them unionized—had placed a meaningful percentage of their stock shares in the hands of their employees, but only a relative handful had allowed employee representatives on their boards. Typical of a large ESOP organization is Avis, whose 13,500 employees bought the company in 1987 for $1.75 billion but two decades later had yet to acquire either board seats or voting rights.

Actually, many employers have seen a variety of advantages for themselves in the ESOP beyond the reduction of wage pressures and often have needed very little if any prodding before installing it. Under the Employee Retirement Income Security Act of 1974 and the 1975 enactment of a further congressional sweetener, significant tax benefits are allowed employers who implement ESOPs. And the plans can help capital-intensive companies raise vast amounts of money cheaply: Even if the provisions of the ESOP let workers buy their shares at some kind of discount, a not uncommon situation, the monies involved are still usually far less than managements would have to pay a bank or, in the case of floating debt issues, less than the underwriting costs. Moreover, as the median age of employees rises markedly, the cost of pension plans is bound to climb and ESOPs become a relatively more desirable way for organizations to help their employees develop some kind of supplemental savings plan.

In an era of corporate takeovers, ESOPs can also both finance takeover attempts and frustrate them, depending on which goal is embraced: Investors trying to take over can decrease their costs of borrowing if part of the stock is reserved for employees; but raiders can also be thwarted by using the ESOP device to put a portion of the company into presumably friendly hands. Nor can management's long-held belief that when workers have an ownership interest they may well have an incentive to put forth extra effort be ignored in explaining why companies have warmed to the ESOP concept. Unionized employees—as well as nonunion workers—have not necessarily had their stock forced upon them, but unions that have indicated a willingness to accept an ESOP in lieu of a wage improvement have generally found a ready audience on the other side of the bargaining table. A good deal of the notable growth in ESOPs since 1975 —from a mere 200 plans then to the aforementioned total of 9,200 by 2008, with the 10 million participating workers typically owning from 15 to 45 percent of the company's stock and ESOPs collectively controlling assets worth an estimated $600 billion today[19]—has been caused by the concessionary bargaining of unions in this area and management's favorable response.

As in the case of union board membership, fears of a potential conflict of interest have accompanied the growth of labor–management ESOPs. "Some observers and many international labor officials worry," as one expert has pointed out, "that worker [representatives] may be co-opted, getting caught up in the predominant interest to make company profits rather than fight for individual worker rights." He sees, with or without board representation, "a dangerous potential for stock ownership . . . to lead to a type of in-house unionism, in which there is the appearance of a . . . battle, when in reality, labor representatives are simply going through the motions of conflict for political reasons."[20]

Against this consideration, however, can be stacked the very real fact that the new arrangement has already shown that it can improve the level of corporate efficiency. At one leading airline, for example, within a year of the ESOP's implementation, the productivity of that carrier's mechanics was increasing at an annual rate of 5 percent. ("There is a tremendous dynamic for employees to run a better company and provide the best service," the union president involved could comment with obvious pride, "because they're owners now.") Similar performances have been registered in parts of the steel, trucking, and food industries, while Avis seems to be trying even harder with its ESOP to overtake first-place Hertz in market share and has recorded considerably higher profit-sales ratios than its arch-competitor in most of the years since it sold the company to the workers.

On the other hand, major worker ownership could not rescue the Rath Packing Company, which continued to have as many financial problems as ever and closed its doors in 1985, or a host of other poverty-stricken ESOP work places. New Jersey's Hyatt Clark Industries, a ball-bearing maker that its workers bought from General Motors in 1981 in a buy-or-die situation, died 6 years later, its widely heralded ESOP notwithstanding. Retailer Carter Hawley Hale, about 45 percent employee-owned, suffered through a series of lean years before declaring bankruptcy in 1993. Nor did workers at Burlington Industries (49 percent worker-owned until a controversial public offering by the North Carolina company diluted this portion to 3 percent not long ago) have much optimism at the time of this writing that their barely solvent firm would ultimately return to them any of the nonfunded, uninsured ESOP monies on which they had once counted for their retirements. And at Weirton Steel, in the many years since the employees bought 100 percent of that operation, notwithstanding a series of sizable wage and job cuts the company was almost continually in a precarious financial situation before it filed for bankruptcy protection in 2003. A new owner, the International Steel Group, bought it the following year for pennies on the original dollar, and soon sold it to Mittal Steel, and today this once world-preeminent producer of tin plate products has been so heavily downsized that it is almost invisible and appears to be well on its way to extinction.

For that matter, even in the once-happy Avis organization, all was not sweetness and light at the time of this writing, either. Avis workers, one-third of them represented by the Teamsters, had become increasingly outspoken in complaining about their lack of board seats and voting rights, something to which they thought that their 100 percent ownership had entitled them. And while for many years the ESOP at United was proudly and liberally used by that organization in its marketing efforts (e.g., "The employee-owners of United invite you to come fly the friendly skies" was a favored advertising theme, and telephone callers were customarily informed, "Thank you for calling United Airlines; please hold and one of our owner-representatives will be with you shortly"), the novelty had worn quite thin a few years after the employees purchased their 55 percent ownership in 1994 (by granting a staggering $4.9 billion in concessions). By 2000 the 55 percent had, amid the company's severe financial problems, dwindled to a less than 20 percent ownership; and in late 2002, UAL Corporation—having failed to secure much-needed additional capital—joined the ranks of ESOP companies entering bankruptcy and the ESOP there became essentially worthless.

Again, as in the case of unions in the boardroom, it could be said with certainty only that the ESOP even in its relative infancy as a labor relations topic was something that the parties could never again entirely overlook.

QUALITY OF WORK LIFE PROGRAMS

Still something else that may be changing in labor–management relationships is the historic unwillingness of both parties to allow joint worker and management problem solving of workplace problems. An increasing number of unions, either on their own initiative or on the employer's, have become involved in so-called **quality of work life** (QWL) activities, denoting a movement whose title has no fully acceptable simple definition but basically connotes direct participation by workers in day-to-day decision making on the job. Most often, employees get a voice in work scheduling, quality control, compensation, a determination of the job environment itself, and/or other significant working factors. The goal is twofold: increased productivity and improved union–management relations.

It is impossible to know how many organizations currently have such programs, because not only is there no formalized record keeping but many QWL programs go by some other name—"employee involvement," "jointness," or "worker participation," for example. The list of unionized users even now, less than 3 decades after the first major implementation, is nonetheless impressive. All of the nation's automobile manufacturers have a QWL program, most notably General Motors, which has one in each of its plants, and Ford, where thousands of worker–management teams at almost all of that company's more than 60 locations meet every week to attack production and quality problems; Westinghouse has worker–management "quality circles," small groups that meet regularly to discuss product quality improvement, in 50 facilities (63 such groups are in its Baltimore defense complex alone); the major steelmakers have a variety of "labor–management participation committees"; and every Bell System company is experimenting with QWL principles. Programs have also been installed in coal mining and retail food.

General Electric, which for years resisted the concept, rapidly implemented it in the last years of the 1980s, and an estimated 40 percent of the unionized GE workforce is now included in QWL arrangements. The list of unionized employers with QWL efforts very much in place now also includes, among literally hundreds of others, Boeing, Caterpillar, the U.S. Postal Service, the Philadelphia Zoo, the New York Sanitation Department, Levi Strauss, and the U.S. Department of Health and Human Services.

Many nonunion organizations have had such worker involvement efforts for years, often with the thought that such projects might help preserve nonunion status by improving employee morale. But unions have almost unanimously opposed the idea, partly because of fear that membership loyalty to the labor organization might be weakened by closer exposure to management and partly because of a suspicion (often fully justified) that the concept (as in the case of ESOPs) constituted a direct effort on the employer's part to pave the way for ultimate nonunion status. ("You've got to put up or shut up," one union chief executive told a group of major industrial leaders a while ago on this subject. "You can't ask unions to walk hand in hand into the unknown land of worker participation while going full speed ahead with union-bashing antilabor programs. There has to be a greater acceptance of unions in this country. I want very much to cooperate in consensus-building and problem-solving, but management can't expect cooperation when the hand it puts around my shoulder has a knife in it."[21]) Many unions still take a dim view of worker participation. (Exhibits 9–5 and 9–6, illustratively, constitute something less than a resounding endorsement on the part of the United Mine Workers.) And such developments as the NLRB's 1992 *Electromation* ruling (the board decision, discussed in Chapter 3, that a nonunion company's "action committees" composed of both rank-and-file employees and managers were illegal employer-dominated labor organizations established to keep genuine unions out) have reinforced some further fears on the part of some unions regarding management motives.

Why, then, the new collaboration? One reason has certainly been the same factor that has generated offers of board membership and ESOPs to unionists: economic adversity. Most, if not all, of the unionized organizations have suffered financial hardship, and jobs have definitely been at stake. Employees recognize that if they can improve quality and productivity, their employers will be healthier and they will consequently be able to retain their jobs as might not otherwise be the case. Another reason for the collaboration seems to be an increasing awareness on the part of unions (and managements) of a trend toward a dehumanization of work in many situations: Kahlil Gibran may have called work "love made visible" and the Benedictines may say that "to work is to pray," but most people have always been less than enthusiastic about their own jobs, and in recent years the level of discontent amid new technology and an ever-lessened worker control over the working environment appear to have grown appreciably. Many unions have been willing to explore new solutions in the face of this development.

Saturn's Ambitious QWL Program

A QWL landmark of sorts was reached in late 1990 when the world's largest industrial company, General Motors, opened a new $5 billion automobile plant 35 miles south of Nashville in the town of Spring Hill, Tennessee. Designed to produce an entirely new small car, Saturn, in GM's first new car-making division since the company acquired Chevrolet in 1918, the facility was conceived with the idea of enlisting the United Automobile Workers as a virtually equal partner with management and in so doing to narrow the existing $2,000 per car cost advantage enjoyed by the Japanese on their smaller cars. Over the previous decade, this advantage had been a major factor indecreasing GM's share of the U.S. market from 46 percent to a frightening 32 percent.

Spring Hill opened with UAW representatives on all planning and operating committees from the shop floor to the top management of this wholly owned GM subsidiary. The unionists had been granted a major role in these committees, which make decisions on such matters as deciding on the suppliers of parts and equipment as well as on more orthodox labor–management issues. And the

'COOPERATE OR ELSE'

How To Avoid Management Traps

It goes by many names—"worker participation," "labor-management cooperation," "quality of work life circles"—but no matter what it's called, UMWA members should proceed with caution if your employer tries to implement one of these programs.

If your company tries to implement, or approaches your local union about negotiating, a so-called cooperative agreement you should *immediately* contact your UMWA regional director. The four UMWA regional directors have been trained to distinguish legitimate efforts to improve labor-management relations from attempts to circumvent the union structure.

✔ **Watch out** if management attempts to impose a "cooperative" program without first negotiating with the union. It's not cooperation when when one side has no say-so in the formulation or implementation of the program.

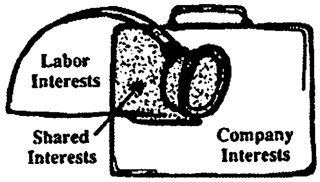
✔ **Watch out** if management attempts to cut the union out of the process by using a cooperative program to subvert or go around contractual provisions. "Cooperative" efforts which require workers to go without things like job classifications and seniority rights undercut the reason our union fights for a contract in the first place.

✔ **Watch out** if the company attempts to get the union leadership to endorse questionable business decisions. If those decisions later turn out to be bad, management can then blame the union.

✔ **Watch out** if management's only goal seems to be to increase production. A truly cooperative effort means that *both* sides get something they want: if the union helps management increase production or meet other company goals, then the company should give the workers, through the union, more control over the day-to-day conditions that affect the quality of workers' time on the job.

No two cooperative programs are alike, but those that are in the best interest of the union and the company, such as the union's EESP agreement with Island Creek Coal Co.*, share several characteristics:

- Top-level management must be involved. Otherwise, middle and lower management, down to the mine level, may make agreements with the union that the ultimate decision makers in upper management can later abandon, claiming "miscommunication" with lower-level managers.
- The company must recognize the union leadership as the representative of the workers. "Cooperative" efforts that minimize the role of local



union leadership are usually nothing more than elaborate union-busting techniques designed to get workers to believe they don't need a union to solve problems on the job.

- The union leadership must have a co-equal role in formulating and implementing the program. Cooperation is a two-way street, and any program that allows management to independently decide and change the rules is not about cooperation.
- Both parties must be committed to making the program work. Efforts continually plagued by "miscommunications" and "misunderstandings" between upper management (the policy makers) and middle and lower management (the implementers) or by agreements between upper-level management and the union that somehow never get implemented may be signals that the company is not serious about making the program work.
- There should be regular progress meetings to evaluate the program and a mechanism to deter management from ignoring the parts of the program that benefit workers or from unilaterally ending the program.

* **Note:** A future issue of the *Journal* will examine the Employment and Economic Security Pact (EESP) begun by the UMWA and the Island Creek Coal Co. in 1987.

EXHIBIT 9–5

SOURCE: *United Mine Workers Journal,* July 1990, p. 6.

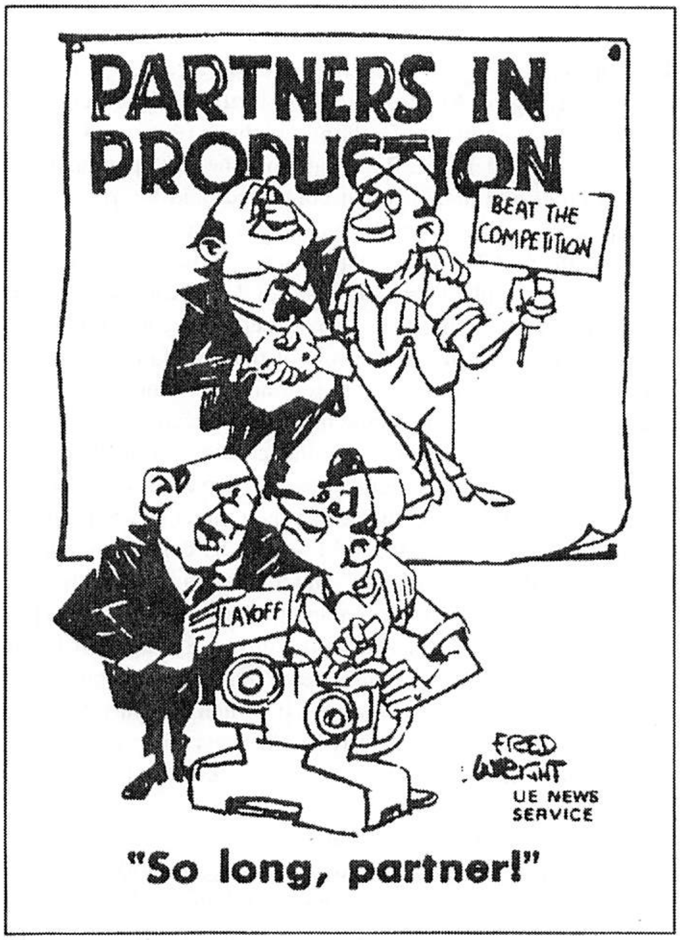


EXHIBIT 9–6

SOURCE: *United Mine Workers Journal,* July 1990, p. 7.

workers could in fact block a potential decision, although not indefinitely ("In the event an alternative solution is not found," in the words of the GM-UAW agreement at Saturn, "the blocking party must reevaluate [its] position in the context of the philosophy and mission").

In addition, all 4,500 Saturn production employees had been assigned to work teams of 6 to 15 UAW members and permitted to make all of their decisions—including work and vacation scheduling and the controlling of variable costs—without the presence of any supervisor in an attempt to substitute peer pressure and work pride for the traditional management methods that in recent years had seemed not to serve GM so well. Teams of workers were even charged with doing the hiring in an attempt to ensure that only those who could accept the new autonomy on a day-to-day basis would be included in the new arrangement. All workers were to get virtually total protection against layoffs and annual salaries instead of hourly pay.

As the dean of MIT's Sloan School of Management said in examining all of this,

> If Saturn is successful it will prove that it's possible to junk the old bureaucracies, change the corporate culture, change the adversarial relationship between union and management, and put it all back together right. If they succeed, it will be a big positive for America. If not, it will be a huge downer.[22]

The Saturn venture got off to a slow start. Bugs in the form of faulty seat backs that could flip over without warning and bad engine coolants forced the management to back off from its initial daily production goal of 900 cars to a more realistic 700. And another key innovation at Spring Hill—the tying of 20 percent of pay to the achievement of the original productivity and quality goals and the payment of a bonus if these objectives were exceeded—was accordingly, at the union's request, delayed. But even amid the inauspicious beginning, great expectations on the part of both labor and management continued, and the parties indeed pointed to the mutually agreed upon pay basis adjustment as an example of teamwork and goodwill.

By the mid-1990s, the experiment was paying off handsomely. Daily production had for some time been at the plant capacity level of 1,133 cars, and the Saturn—now one of the fastest-selling subcompacts in the industry—was generally regarded as one of the highest-quality American cars, with defect rates at the low levels of the best Japanese automobiles. Absenteeism was averaging barely 2.5 percent (in contrast to four and five times that percentage at other GM plants). With their now-restored bonus arrangement, the unionized workers were earning close to $50,000 annually, with about $10,000 of this amount coming from the bonuses. Overall, the now-7,000 Saturn employees, although averaging some 12 percent less in salary than GM's other workers, were making about $4,000 more than their counterparts elsewhere in the organization as the productivity and quality goals were exceeded. GM was freely capitalizing on all of this with an advertising theme of "not just another car company" and a focus in its marketing campaigns on happy employees working cooperatively with management to build outstanding vehicles. And visitors from other corporations all over the world were flocking to Spring Hill to study the operation with thoughts of implementing its essential ingredients into their own businesses. Nor were these visitors coming to some isolated hamlet: The town itself, which had only 1,500 residents when GM was first considering it as a new plant location (one old-timer there recently, if facetiously, recalled that "the place was so small then that the town streetwalker used a treadmill") had grown to encompass 17,000 people.

But problems were also arising in these years. To meet the large market demands, the plant had gone on a 50-hour (and sometimes longer) workweek, and this was taking its toll on employee morale. New hires, often GM workers laid off at other GM installations across the country, were frequently less enthusiastic about the Saturn employee-participation framework than the handpicked original workers had been. The newcomers also tended to view with unconcealed misgivings the UAW's close relationship with the Spring Hill management.

Amid Saturn's huge prosperity, these challenges could probably have been surmounted by the company. But in the late 1990s a different kind of development, one that was far more frustrating on all fronts, arose: The market for all small cars, Saturns included, began to slump, falling 10 percent in 1997 and close to 20 percent in each of the next 2 years. The Saturn bonuses inevitably dropped as the management cut shifts as part of the reductions in production, and as the times turned bad the workers also, increasingly, complained that the company was now freezing them out of major decisions. The UAW leader at Saturn announced in mid-1998 that "GM management isn't working with us anymore. They make decisions on things such as [subcontracting] without our input. There's no partnership here."[23] The union was especially upset by a GM decision that it claimed had been made unilaterally to build a midsized Saturn in an existing GM factory in Wilmington, Delaware, instead of at Spring Hill.

In 1999, giving vent to their frustrations, the Spring Hill unionists voted out all of the local leaders who had supported the cooperative experiment with management over the past 9 years and replaced them with union officials who advocated a more traditional union–management relationship. Yet the cooperative arrangement remained very much alive because two-thirds of the workers had *also* voted (in a separate election) to retain the program. And in 2002, the 1999 victors were themselves thrown out of office in a new UAW election and replaced—in a classic illustration of "the more things change, the more they remain the same"—by new leaders who were favorably disposed towards the cooperative concept. All of the original basic ingredients of the plan, including the no-layoff arrangements, still governed. And, with a new production ratio of one larger vehicle for every two small ones produced, Spring Hill hoped to round the corner and return to profitability under the rules that had served workers so well in the 1990–1997 period.

It was not to be. The economic adversity suffered by the entire U.S. automobile industry in the early years of the twenty-first century not only continued but accelerated and Saturn's financial performance was no better than anyone else's. The division lost $1 billion in both 2002 and 2003. Amid a now-significant shrinkage in the bonuses, rumors mounted that GM and the UAW in Detroit would join forces to strip the Tennessee operations of their stand-alone, autonomous labor contract.

The rumors were true. In late 2003, a new agreement for Spring Hill that called for bringing the Saturn workers into the national GM-UAW contract that had been inked in Detroit a few months earlier was agreed to by the parties, and in mid-2004 it was officially ratified by the now-disillusioned unionists at Spring Hill by a 77 to 23 percent margin. As part of the settlement, the company would invest some $100 million in the Tennessee facility, enabling it to double its production and to build other GM brands in addition to Saturn. But all of Spring Hill's unique arrangements—the protection against layoffs, the shared decision making, and everything else—would eventually be terminated. Spring Hill, conceived with so much imagination, was to be just another General Motors facility.

Even if Saturn's ambitious QWL program had survived, however—and for a while in the mid-1990s its future could not have looked rosier—the possibility that the *overall* growth of QWL may reflect nothing more than a fad cannot be dismissed. It is reasonable to expect that if no satisfactory rewards for both managements and unions can be attributed to QWL, the latter's tenure on the collective bargaining landscape may be short-lived. To date, even allowing for economic hard times that cannot be expected to continue indefinitely, the returns in many workplaces have not been particularly impressive, indeed, in terms of documented major improvements in either morale or productivity. And it must be recognized again (as it was in Chapter 1) that the United States has never been a particularly fruitful territory for the genuine union–management cooperation that QWL obviously requires if it hopes to survive.

John F. Kennedy frequently declared to proud parents who presented him with their new baby for what was at least for them a memorable moment, "It looks like a nice baby. We'll know more later." The same statement can perhaps be made on behalf of quality of work life programs.

SOME CONCLUDING THOUGHTS

If unions and management are viewed as institutions, as distinct from the individuals whom they represent, the issues considered in this chapter take on special meaning. Institutions can survive long after individuals have perished, and in a real sense the problems of union security, union obligations, and management rights are related to the *survival* of the bargaining institutions. Union security measures preserve the union per se (although in so doing they may also allow it to do a better job for its members). Similarly, to survive and function as an effective institution, management must be concerned with its prerogatives to operate the business efficiently. It must also be concerned with union obligations as these might affect its continued effectiveness.

In principle, therefore, the devices of collective bargaining that feed the institutional needs of the union and the firm are cut from the same cloth. They are designed to assure the long-run interests of the two organizations. The objectives of unions and employers are quite different, but to carry out their respective functions both need security of operation. Business operates to make a profit and thus must be defended against encroachments of organized labor that might unreasonably interfere with its efficiency as a dynamic organization in the society. Its insistence on management prerogatives stands as a bulwark of defense in this objective.

But unions also justify themselves as institutions on the American scene in their attempting to protect and advance the welfare of their members, and union security arrangements are an important avenue toward the realization of this objective. Although there may be philosophical objections to compulsory union membership, there cannot be any question that union security arrangements serve the long-run survival needs of organized labor.

Over the years, employers and unions have been relatively successful in reconciling these fundamental objectives however much the verbal controversies continue to rage (and however foreign to both of their philosophies the idea of full "codetermination" may be). Businesses that have engaged in collective bargaining relationships have by and large not only been able to survive but often have flourished. Many of the most influential and prosperous firms in this country (the automobile companies and the airlines, at least in normal years, come immediately to mind) have, as we know, been highly unionized for years. Likewise, organized labor not only has survived but has grown appreciably in strength over time, the contemporary unexciting performance of union membership totals being accountable chiefly by causes other than management destruction. Although the objectives of the two institutions are quite different, and although occasional major impasses are reached in the bargaining on these issues, sufficient protection for both organizations has been provided in the vast majority of unionized organizations.

Discussion Questions

1. Arguing in favor of right-to-work laws, a publication of the National Association of Manufacturers has expressed the view that "no argument for compulsory unionism—however persuasive—can possibly justify invasion of the right of individual choice." Do you agree or disagree? Why?
2. "From the viewpoint of providing maximum justice to all concerned, the agency shop constitutes the optimum union security arrangement." To what extent, if any, do you agree with this statement?
3. "Good unions don't need compulsory unionism. Bad unions don't deserve compulsory unionism." Comment.
4. Evaluate the opinion of a former Steelworker Union president that "nothing could be worse than to have . . . management appease the union, and nothing could be worse than to have the union appease management." Relate your remarks to the areas of management rights and union security.
5. Even though the closed shop has been illegal in interstate commerce since 1947 (except in the construction industry), should it be? Why or why not?
6. If you were a top manager engaged in contract bargaining with a union, which theory of management rights would you pursue—the residual theory or the trusteeship theory? Why?
7. How sympathetic are you to the statement of a former General Motors chairman that offering a union leader a seat on GM's board of directors made "as much sense as having a member of GM's management sitting on the board of an international union"? Explain.

Minicases

1. A Question of Freedom

"I can see arguments both for and against right-to-work laws," says a fellow student in your class. "But there is one overriding reason why I'm on balance against these laws. And it involves the question of freedom.

"Specifically, it relates to freedom of contract, a basic and critical right in this land of free enterprise and individualism in which we live. A union shop can only come about in one way: the union—for whatever reason—has asked for such an arrangement in its collective bargaining with the management, and the management—again, on whatever it considers to be good grounds—has agreed to grant the union shop. This being the case, what right does the government have to intrude and tell the two parties, 'That's too bad—you still can't have it'?"

How would you respond? ■

2. An Original Proposal

MEMORANDUM TO: John T. Kelly, Chairman of the Board, Fenwick Chemical Corporation

FROM: Sarah Bellum, Senior Vice President for Labor Relations

SUBJECT: Proposed Appointment of Four Union Leaders to Fenwick Board of Directors

I'm not saying that it would solve all our problems, but I'd like to know what we'd lose by giving four of the twenty seats on our board of directors to officer nominees of the Chemical Workers Union.

By my calculations, we're talking about only one-fifth of the board membership, so there's no way that board decisions could actually result from just union desires even if all four union people were united on something. And because the union has been yelling for years for just one seat, imagine how pleased it would be with four: we'd save a bundle in the wages and benefits that the Chemical Workers wouldn't demand in the face of our magnanimity. Maybe one or two of the union people would make real contributions to board deliberations at least once in a while. And can you imagine a union voting to strike under these conditions?

I know that almost no U.S. company has even one such director, but with our currently depressed earnings and gloomy near-term financial outlook we've got to do something. The race these days is won by those who are imaginative.

How much of a point, if any, does Bellum have? ■

Notes

1. All statistics in this section are based on information furnished by the Bureau of Labor Statistics, U.S. Department of Labor.
2. *Union Starch & Refining Co.*, 87 NLRB 779 (1949).
3. *National Right to Work Newsletter*, November/December 2007, p. 1.
4. See, as an example of all of this, the center's 2007 publication, *Right to Work—For Less.*
5. *Grievance Guide*, 11th ed. (Washington, DC: Bureau of National Affairs, 2003), pp. 453–54.
6. Ibid., p. 452.
7. Ibid., pp. 427–30.
8. 398 U.S. 235 (1970).
9. *Metropolitan Edison Co.* v. *NLRB*, Case No. 81-1664, April 4, 1983.
10. Section 301(e) states: "For purposes of this section, in determining whether any person is acting as an 'agent' of another person as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."
11. *The New York Times*, December 12, 1976, p. F13.
12. "Management's Reserved Rights under Collective Bargaining," *Monthly Labor Review*, 79, no. 10 (October 1956), p. 1172.
13. *Time*, May 19, 1980, p. 78.
14. *Wall Street Journal*, March 12, 1981, p. 33.
15. Ibid.
16. *Business Week*, November 22, 1982, p. 30.
17. *Business Week*, February 1, 1982, p. 17.
18. *Wall Street Journal*, September 17, 1985, p. 1.
19. *The Economist*, April 14, 2007, p. 78.
20. Warner Woodworth, "Promethean Industrial Relations: Labor, ESOPs, and the Boardroom," in *Proceedings of the 1985 Spring Meeting, Industrial Relations Research Association, April 18–19, 1985* (Washington, DC: Industrial Relations Research Association, 1985), p. 623.
21. A. H. Raskin, "Frustrated and Wary, Labor Marks Its Day," *The New York Times*, September 5, 1982, p. F6.
22. *Time*, October 29, 1990, p. 74.
23. *Wall Street Journal*, July 20, 1998, p. A4.

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