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At the Bargaining Table

Outline of Key Contents

- Key characteristics of the bargaining table process
- Why negotiations today call for much more sophistication than they once did
- What it takes for both sides to prepare adequately for the bargaining
- Why exaggerated demands and equally unrealistic counterproposals typically mark the early negotiation sessions
- Major ingredients in the bargaining: packages, trading points and counterproposals, and costing
- What motivates bargaining table agreement and, in some cases, disagreement
- Crisis situations and how to avoid them
- What's involved in testing and proofreading
- The growing threat to labor of multinationals and the prospects of "one big global union"
- Why Boulwarism has both succeeded and failed as a bargaining technique, and why it's not necessarily now dead at all
- Some further complexities: the current healths of both the economy and the industry, technology, the relative strengths of the parties, union politics, assessment of the other side's strengths, union rivalries, management heterogeneity, and the role of personality

However much specific unions may differ, virtually all of them share at least the same primary objective. Whatever in the way of concrete demands may be sought from the employer, the union's major goal is to negotiate with the employer a written agreement covering both employment conditions and the union–management relationship itself on terms that are acceptable to the union. But the employer, too, must be able to live with these terms, and it is because of this second requirement that the 20,000 labor negotiations that take place every year in the United States almost unavoidably contain stresses and strains; more for one party—not only in the economic areas of the contract but, as will be seen, in many of the so-called institutional and administrative areas—all but invariably means less for the other. Moreover, the labor–management tensions are *recurrent* in their nature because contracts are regularly renegotiated—most commonly, today, every 3 or 4 years. No contractual issue can thus ever be said to have been permanently resolved.

There is always a certain glamour to any interorganizational bargaining situation, particularly when such conflicts as those just mentioned can be anticipated. Labor–management negotiations constitute no exception to this rule, and the process of arriving at a labor relations agreement has actually been viewed in a number of colorful ways.

The process has been depicted as (1) a poker game, with the largest pots going to those who combine deception, bluff, and luck, or the ability to come up with a strong hand on the occasions on which they are challenged or "seen" by the other side; (2) an exercise in power politics, with the relative strengths of the parties being decisive;

and (3) a debating society, marked by both rhetoric and name calling. What is done at the union–management bargaining table has also been caricatured in a somewhat less dramatic way—as (4) a "rational process," with both sides remaining completely flexible and willing to be persuaded only when all the facts have been dispassionately presented.[1]

All these characteristics have marked most negotiations over a period of time. The increasing "maturity" of collective bargaining implies enlargement of the rational process, but it is doubtful that there can ever be such a thing as complete escape from the other elements.

And a number of additional factors will also, almost inevitably, have a bearing on the conduct of the negotiations. Items such as the personalities and training of the negotiators, the history of labor relations between the union and management, and the economic environment operate to influence what happens at the bargaining table.

Some negotiators try to bluff or outsmart the other side; others would never even think of employing such tactics. Some employer or union representatives try to dictate a labor contract on a unilateral basis—"take it or else"—but most bargainers recognize that such an approach is ultimately self-defeating. In most instances, unions presenting their original proposals will demand much more than they actually intend to get, and managements' first counterproposals are usually much lower than the employers are actually prepared to offer. In other situations, however, managements and unions do not engage in these practices to any appreciable extent, and original proposals and counterproposals are relatively realistic. Representatives of employers and labor organizations differ in education, experience, and labor relations philosophy.

There are still other sources of variation. In some negotiations, the predominant feature might be union factionalism; in others, disagreement between management officials concerning objectives and policies. The history of labor relations in one situation might reveal that each side has had implicit faith in the other. In other negotiations, because of past experience, the bargaining might be conducted in a climate of mutual distrust, suspicion, and even hatred. Certainly, if the objective of the parties is to find a solution to their mutual problems on the basis of rationality and fairness, the negotiations will be conducted in an atmosphere quite different from one in which the fundamental objective of the union is to "put management in its place" or in which the chief objective of the employer is to weaken or even destroy the union.

Two other preliminary remarks are in order. First, because so many variables do have a bearing on the negotiations, a portion of the following discussion highlights some procedural practices that might help to minimize the possibility of strikes, and to promote better labor relations. Nonetheless, if labor relations have been harmonious in the past, and if negotiations have been conducted with a minimum of discord, there is little reason to change procedures. "Let sleeping dogs lie" is a sound principle of collective bargaining negotiations.

Second, there has been a marked change in the general atmosphere of negotiations in relatively recent years. Not so long ago, bargaining sessions frequently involved a tussle between table pounding, uninformed, and generally ill-equipped people. The side that came out better was often the one whose representatives shouted more loudly or that could use overt power threats more effectively. Each side's taking the adamant position of "take it or else" was a foregone conclusion in such circumstances, and deceit was anything but unknown at the table.

At present, however, collective bargaining is most commonly an orderly process in which employee, employer, and union problems are discussed relatively reasonably and settled more or less on the basis of facts. There is less and less place in bargaining sessions for emotionalism and name calling. Nor do many negotiators use trickery, distortion, misrepresentation, or deceit. Advantages gained through such devices are temporary, and the side that sinks to such low levels of behavior can expect the same from the other party. Certainly, one objective of collective bargaining sessions should be the promotion of rational and harmonious relations between employers and unions. To achieve this, those to whom negotiations are entrusted should have the traits of patience, friendliness, integrity, and fairness. If each party recognizes the possibility that it may be mistaken and the other side right, a long stride will have been taken.

PREPARATION FOR NEGOTIATIONS

By far the major prerequisite for modern collective bargaining sessions is preparation for the negotiations. Both sides normally start to prepare for the bargaining table long before the current contract is scheduled to expire, and in recent years the time allotted for such planning has steadily lengthened. A year or even 18 months for this purpose has become increasingly observable in both union and management quarters.

The Growing Complexities of Contracts

The now general recognition of the need for greater preparation time rests on the previously cited fact that contents of the typical labor agreement have undergone a major transformation in the comparatively recent past. In recognizing and attempting to accommodate new goals of the parties, contracts have steadily become more complex in the issues they treat. Exhibit 5–1, the table of contents for a labor agreement between the United Food and Commercial Workers and the General Foods Corporation, indicates the wide range of topics now dealt with by the typical contract. Exhibit 5–2,

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EXHIBIT 5–1 Table of Contents from a Bargaining Agreement between the United Food and Commercial Workers and the General Foods Corporation

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EXHIBIT 5–2 Index to Contract between the National Association of Flight Standards Employees and the U.S. Department of Transportation

the index to a contract between the National Association of Flight Standards Employees and the U.S. Department of Transportation, shows a few unique issues as well as a far larger number of now standard ones. And note the variety of complicated topics cited even in Exhibit 5–3's brief summary of a round of bargaining between the Screen Actors Guild and the American Federation of Television and Radio Artists, negotiating jointly, and the Alliance of Motion Picture and Television Producers.

Take, for example, wage clauses—which have appeared in essentially all contracts since the days of the earliest unions. Today they make anything but easy reading. Where such clauses once noted little more than the schedule of wages (generally the same for all workers within extremely broad occupational categories) and the hours to be worked for those wages, in recent years they have become far lengthier and considerably more complicated. Today subsections relating to labor-grade job classifications, rate ranges, pay steps within labor grades, differentials for undesirable types of work, pay guarantees for employees who are asked to report to work when no work is available for them, and a host of other subjects are commonplace in contracts. And most of these subsections spell out their methods of operation in detail.

Nor can the question of hours any longer be disposed of cavalierly. The extension of premium pay for work on undesirable shifts, holidays, Saturdays, and Sundays has increased the room for further bargaining. In addition, the contract must resolve the question of remuneration for hours worked in excess

SAG/AFTRA BOARDS APPROVE TENTATIVE FILM-TV AGREEMENT

The combined SAG/AFTRA Board of Directors approved the new Theatrical and Television pact on May 9, and the new contract will be sent to union members in the next few weeks for ratification.

After a marathon 25-hour bargaining session in Los Angeles, the Screen Actors Guild and the American Federation of Television and Radio Artists reached a tentative agreement on March 24, with the Alliance of Motion Picture and Television Producers, and on May 5 with the networks for a new three-year contract for theatrical and television film performers. These early talks started February 7. They were initiated well in advance of the contract's expiration to help insure a smooth flow of production without any interruption.

After some hard bargaining, the unions, the AMPTP and the networks reached an agreement that covers virtually all film and primetime TV production. Performers will receive a 10.9% increase in minimum wages compounded over three years, and a .5% increase in employer contributions to the unions' pension and health plans. The new contract also provides improved affirmative action language covering disabilities. SAG/AFTRA negotiators were also able to address an issue of preeminent concern: new networks. The agreement will generate increases in original employment for guest stars who appear on emerging networks. Residuals at Fox have also seen a significant increase.

Despite management's attempts to erode hard-fought gains for extra performers, SAG and AFTRA won substantial pay increases for all Background Performers & Stand-Ins, which will bring the West Coast general extra daily rate to $86.00 by the third year of the contract – representing a 32 percent increase.

The new tentative agreement must now be submitted to the full memberships of both unions for a referendum vote, prior to the old contract's expiration date of June 30.

SAG National Executive Director Ken Orsatti (right) reaches a tentative agreement with AMPTP head Nicholas Counter after a marathon bargaining session in Los Angeles.

EXHIBIT 5–3

SOURCE: *Call Sheet*, Summer 1995.

of a "standard" day or week: All nonexempted workers in interstate commerce today receive, by law, time and one-half pay after 40 hours in a single week, but an increasing number of contracts have more liberal arrangements from the worker's viewpoint. And having opened these issues to the bargaining process, the parties must now anticipate a whole Pandora's box of further related issues: Do workers qualify for the Sunday premium when they have not previously worked the full weekly schedule? Where employees are normally required for continuous operations or are otherwise regularly needed for weekend work (firefighters, maintenance workers, and security guards in certain operations, for example), can they collect overtime for work beyond the standard week? The bargainers on both the labor and the management side must prepare their answers, and their defenses of these answers, to such questions and many similar ones; all may reasonably be expected to arise during the actual bargaining. And this necessity for anticipation is no less true merely because a previous contract has dealt with these matters, for each party can count on the other's lodging requests for *modifications* of the old terms in the negotiations.

The same can be said concerning the wide range of employee benefits, from paid vacations to pension plans, which have increased dramatically over the past few decades. This benefit list promises to become even lengthier. Job insecurity in an age of rampant competition and changing market demands should lead to increased income-security devices. Topics that were virtually unknown to collective bargaining until recent years—mental health, vision care, the entitlement of same-sex partners to benefits, drug-addiction rehabilitation, and day-care for employee children, to name just five of these—now play an increasing role in labor negotiations and can realistically be expected to spread in the years ahead, even as hard times have fallen on unions. But it is even more likely that the continuous liberalization in the long-existing benefits, and the attendant costs and administrative complexities involved in all of them that have marked the history of each since its original negotiation, will continue. No one is more aware of this fact than the experienced labor relations negotiator.

Finally, increasingly thorny problems have arisen at the bargaining table regarding the so-called administrative clauses of the contract. These provisions deal with such issues as seniority rights, discipline, rest periods, work-crew and workload sizes, the subcontracting of work, and a host of similar subjects that vary in importance with the specific industry. All these topics involve, directly or indirectly, employment opportunities; and, therefore, treatment of them has become ever more complicated in a competitive industrial world that pits a management drive for greater efficiency and flexibility against a commensurately accelerated union search for increased job security.

Fuller discussion of all these areas is reserved for Chapters 7 through 10. Even the cursory treatment offered here, however, offers ample evidence that bargaining the "typical" contract necessitates far more sophistication than in an earlier, less technical age. Labor agreements can no longer be reduced to the backs of envelopes, and ever more specialized subjects confront labor negotiators. Accordingly, the need for thorough and professional preparation well in advance of the bargaining is no longer seriously questioned by any alert union or management.

Sources of Information

In today's increasingly data-conscious society, much general information can aid the parties in their advance planning. The U.S. Department of Labor's Bureau of Labor Statistics is a prolific issuer of information relating to wage, employee benefit, and administrative clause practices—and not only on a national basis but for many specific regions, industries, and cities. Many employer groups stand ready to furnish managers with current and past labor contracts involving the same union with which they will be bargaining, as well as other relevant knowledge. International unions perform the same kind of function for their local unions and other subsidiary units where the bargaining will be on a subinternational basis. (Exhibit 5–4, from the major publication of the International Brotherhood of

A summary analysis of these contract settlements

Prepared by the Research and Collective Bargaining Department of the International Brotherhood of Boilermakers

THIS ANALYSIS of the 34 agreements outlined on pages 18-19, is based on information provided in the Contract Summary and Transmittal Report forms, and covers approximately 2,091 employees.

Wage Increases

TWENTY-FOUR facilities received pay increases in 2001, averaging $0.66 per hour or 2.50 percent. Twenty-seven facilities will receive pay increases in 2002, averaging $0.55 per hour or 2.45 percent. Twenty-seven facilities will receive pay increases in 2003, averaging $0.49 per hour or 2.74 percent. Twelve facilities will receive pay increases in 2004, averaging $0.46 per hour or 2.82 percent. One reported wage increases in 2005 and 2006, not enough for an average.

Pension

ALL FACILITIES participate in some type of pension program. Fifteen facilities participate in the Boilermaker-Blacksmith National Pension Trust. Their contributions range from $0.25 to $2.20 per hour for the first year. Average cents-per-hour contributions are $1.29 for the first year, $1.33 the second year, and $1.37 in the third year. One facility contributes a percentage, not enough for an average.

Fifteen facilities offer a 401(k), 11 also have company-sponsored plans. Three facilities participate in a profit sharing program, and one pays into a local lodge pension plan. In Canada, three facilities participate in the Registered Retired Savings Plan, which is similar to Individual Retirement Accounts (IRAs) found in the U.S.

Shift Differential

TWENTY-EIGHT agreements report a second-shift premium, of which 27 have a cents-per-hour premium ranging from $0.10 to $1.00. The average is $0.40 per hour. The remaining agreement provides a percentage of pay as the premium.

Twenty-eight agreements have a third-shift premium, of which 27 provide a cents-per-hour premium ranging from $0.15 to $1.00. The average is $0.46 per hour. The remaining agreement provides a percentage of pay as the premium.

Sickness & Accident

THIRTY AGREEMENTS provide weekly sickness and accident indemnity. Of these, 22 pay a set dollar amount ranging from $110 to $450 per week. The average rate for the first year is $280.18. Of the remaining agreements, five provide a percentage of the employee's weekly earnings as the benefit. The most common duration of time off is 26 weeks found in 17 agreements.

Life Insurance/AD&D

THIRTY-THREE agreements provide life insurance. In 27 of the agreements, there is a set dollar amount ranging from $5,000 to $41,000. The average benefit for the first year is $18,629.63. The remaining agreements multiply wages by 2080 hours for the benefit amount, or pay equal to the annual salary.

Twenty-six agreements provide Accidental Death and Dismemberment (AD&D) insurance. In 22 of the agreements, there is a set dollar amount ranging from $5,000 to $41,000. The average benefit for the first year is $17,068.18. The remaining agreements multiply wages by 2080 hours for the benefit amount, or pay equal to the annual salary.

Vacation

ALL OF THE agreements have a vacation policy. Twenty-eight of the agreements provide a one-week paid vacation. Thirty-three agreements provide a two-week and three-week paid vacation. Thirty-one agreements provide a four-week paid vacation, 15 agreements provide a five-week paid vacation, and four provide a six-week paid vacation. Of these agreements, 11 provide vacation pay based on a percentage of earnings. One agreement contributes to a vacation fund for their employees.

Paid Holidays

ALL OF THE agreements provide for paid holidays. The number of paid holidays ranges from eight to 13. The average is 10.38 days.

Other Provisions

THIRTY-THREE agreements provide funeral leave. Paid leave for jury duty is found in 31 agreements. Union leave language is found in 16 agreements. Seventeen agreements provide all or partial reimbursement for the purchase of safety shoes, and 23 provide for prescription safety glasses. Seven agreements provide a severance payment package, and eight agreements provide paid leave for those persons who spend two weeks at military encampment each year.

EXHIBIT 5–4

SOURCE: Used with permission of the *Boilermaker Reporter*, March–April 2002, p. 19.

Boilermakers, illustrates some of that union's handiwork in this regard, and Exhibit 5–5 constitutes information compiled and circulated by the Research Department of the Iron Workers Union to guide its affiliated local unions in their wage bargaining.) And for both parties there is also no shortage of facts emanating from such other sources as the Federal Reserve Board, the U.S. Department of Commerce, private research groups, and various state and local public agencies.

Each bargaining party may also find it advisable to procure and analyze information that is more specifically tailored to its needs in the forthcoming negotiations. Most larger unions and almost all major employers today enlist their own research departments in the cause of such special data-gathering projects as the making of community wage surveys.

On occasion, outside experts may also be recruited to make special studies for one of the parties; much of the bargaining stance taken by the Maintenance of Way Employees not long ago, for example, rested on a painstaking analysis of employment trends in that sector of railroading, conducted at union expense by a highly respected University of Michigan professor. As a preliminary to major league baseball negotiations in the relatively recent past, the players commissioned an analysis of the clubs' financial data by a well-known Stanford University economist: His study concluded that the owners had underestimated their expected revenues for the next year—$1.78 billion—by anywhere from $50 million to $140 million (predictably, the managements dismissed this conclusion as "biased").[2]

Many managements have also made major use of the research services of academicians and other outsiders on an ad hoc basis. In multiemployer bargaining situations, whether or not an official employers' association actually handles the negotiations, the same premium on authoritative investigation has become increasingly visible.

The computer, of course, has also become an invaluable assistant to both parties in these preparations. Costs, revenues, and other key information can now be calculated in seconds instead of minutes, hours, or even days. Reliability in such calculations is much more likely than in prior eras of paper-and-pencil mathematics. Alternatives can be summarized and studied with much more assurance that the list is both logical and comprehensive.

The list of uses to which such research can be put is literally endless. Depending on its accuracy and stamp of authority, it can be used to support any stand, from a company's avowal that certain pension concessions would make it "noncompetitive" to a union's demand for increased cost-of-living adjustments. The management may find support for a desired subcontracting clause in the revelation that the union has been willing to grant the same clause to other employers. The union may gain points in its argument for a larger wage increase by mustering the bright outlook for the industry that has been forecast by the Commerce Department.

On the other hand, where poker, power, or debating traits mark the bargaining, and the "rational process" of appeal to facts counts for little, the whole effort may seem a fruitless one. And even amid the most elaborate fact-gathering efforts, very serious differences of opinion, naturally, can still be expected to emerge: In negotiations a few years ago, for example, the four U.S. Postal Service unions asserted with statistics that their wage and benefit demands would add $11 billion to that agency's $20 billion wage bill while the Postal Service management's figures showed a $14.6 billion increase (for a difference that exceeded the gross national products of many nations).[3] Tense 1997 negotiations between 9,000 American Airlines pilots and the parent AMR Corporation were made all the more ticklish by the union's insistence that its "bare minimum" demands would cost "only" $315 million more than a tentative pact that its members had just rejected, whereas by the employer's mathematics the added expenses would amount to $600 million and guarantee that the airline would be noncompetitive.[4] For that matter, in the 1998 bargaining between Northwest Airlines and its pilots, the parties couldn't even agree on the *current* average salary of the pilots. The company insisted that it was $133,000; the union, $120,000.

And it was much the same in late 2005, when the National Air Traffic Controllers Association negotiated with the Federal Aviation Administration (FAA): The head of the FAA asserted that the expiring labor agreement had raised average controller pay by a mammoth 74 percent, to about

The wage report published twice yearly in the Ironworker Magazine directory issue is not to be used for Davis-Bacon determinations. These reports represent the best effort by our staff to provide the most current wages and benefits reported by local unions. For current wage determination data, please contact the local union.

Wage Scales of Outside Local Unions

that are affiliated with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers as of November 1, 2007. Shopmen's wage scales are fixed by contract with each Shop and are not listed.

Code: AO - Architectural Ornamental; SMR - Structural Machinery Movers & Riggers; M - Mixed; MR - Machinery Movers & Riggers; O - Ornamental; R - Rodmen; S - Structural; SO - Stone Derrickmen; M - Metallic Lathers
All Locals work 40 hours per week except New York City Locals 197 and 580; 35 hours. Structural, Rodmen and Ornamental have same basic wage rate except where noted.

STATE AND CITY	TYPE OF LOCAL	LOCAL UNION	WAGE	WELFARE	PENSION	VACATION	ANNUITY AND/OR OTHER	APPR.
ALABAMA								
Birmingham	M	92	$21.70	$4.45	$4.50			$0.50
Sheffield	M	477	$20.10	$3.74	$4.63		$1.00	$0.46
Prichard	M	798	$21.23	$4.85	$4.00		$2.00	$0.40
ALASKA								
Anchorage	M	751	$30.79	$6.64	$6.75		$3.65	$0.76
ARIZONA								
Phoenix	M	75	24 16 1/2	$7.01	6.21 1/2		$1.70	$0.62
ARKANSAS								
Little Rock	M	321	$18.10	$5.04	$5.50		$0.46	$0.21
CALIFORNIA								
Sacramento	M	118	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
Fresno	M	155	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
San Diego	M	229	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
San Francisco	M	377	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
Oakland	M	378	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
Los Angeles	R	416	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
Los Angeles	SMR	433	$30.51	$7.27	$6.21 1/2	$3.58	$3.23	$0.62
COLORADO								
Denver	M	24	$22.50	$4.43	$2.15		$1.24	$0.34
CONNECTICUT								
Hartford	M	15	$31.05	$8.08	$7.70		$2.25	$0.40
New Haven	M	424	$31.05	$8.08	$7.70		$2.25	$0.40
DELAWARE								
Wilmington	M	451	$28.10	$7.20	$9.05		$6.00	$0.65
DISTRICT OF COLUMBIA								
Washington	SO	5	$26.73	5.391/2	$6.15			$0.45
Washington	R	201	$24.00	$4.80	$5.50		$2.10	$0.48
FLORIDA								
Miami	M	272	$23.19	$3.55	$1.78			$0.25
Tampa	M	397	$26.02	$3.65	$2.95		$2.45	$0.60
W. Palm Beach	M	402	$21.62	$3.65	$2.00		$1.00	$0.50
Jacksonville	M	597	$20.14	$3.55	$3.65			$0.42
Orlando	M	808	$22.83	$3.65	$3.00		$2.40	$0.35
GEORGIA								
Atlanta	M	387	$23.52	$3.55	$5.04			$0.67
Savannah	M	709	$21.25	$3.65	$2.00		$1.00	$0.40
HAWAII								
Honolulu	M	625	$30.00	$5.55	$9.04		$2.47	$0.92
IDAHO								
Pocatello	M	732	$22.69	$4.00	$4.00		$3.25	$0.70
ILLINOIS								
Chicago	S&R	1	$39.25	$9.95	$6.28		$6.46	$0.30
Springfield	M	46	$26.15	$5.86	$4.90		$4.01	$0.40
Chicago	AO	63	$37.35	$7.75	$4.65		$5.61	$0.50
Rock Island	M	111	$24.50	$8.14	$4.80		$3.21	$0.50
Peoria	M	112	$26.31	$8.14	$5.01		$2.80	$0.40
Chicago	MR	136	$33.75	$9.94	$8.78		$2.39	$0.67
Champaign	M	380	$27.55	$6.81			$6.65	$0.50
E. St. Louis	M	392	$27.35	$6.36	$5.50		$3.65	$0.42
Aurora	M	393	$38.12	$8.14	$5.00		$9.49	$0.23
Joliet	M	444	$34.00	$6.14	$7.56		$7.46	$0.60
Rockford	M	498	$32.09	$7.20	$13.28		$3.69	$1.20
INDIANA								
Indianapolis	M	22	$24.20	$6.00	$6.45		$2.70	$0.30
Evansville	M	103	$24.00	$5.78	$5.50		$2.35	$.34
Ft. Wayne	M	147	$23.02	$6.00	$6.45		$3.00	$0.22
South Bend	M	292	$23.00	$6.00	$6.45		$2.70	$0.31
Lafayette	M	379	$24.04	$6.00	$6.45		$2.05	$0.60
Hammond	M	395	$32.50	$7.18	$5.73		$3.00	$0.74
Terre Haute	M	439	$25.00	$6.00	$6.45		$2.45	$0.41
IOWA								
Des Moines	M	67	$22.76	$6.09	$4.40		$2.00	$0.34
Cedar Rapids	M	89	$22.91	$5.20	$7.13			$0.55
Sioux City	M	21	$20.00	$4.00	$3.40		$1.09	$0.30
Burlington	M	577	$22.00	$5.76	$5.50		$2.29	$0.26
KANSAS								
Wichita	M	24	$19.65	$4.00	$2.00		$1.80	$0.40
KENTUCKY								
Louisville	M	70	$23.49	$6.00	$6.45		$3.04	$0.50
Ashland	M	769	$26.87	$6.25	$6.45		$2.70	$0.42
Paducah	M	782	$22.54	$5.76	$5.50		$1.89	$0.38
LOUISIANA								
New Orleans	M	58	$19.15	$2.80	$2.15	$1.00	$1.24	$0.29
Shreveport	M	591	$19.10	$2.80	$2.15		$1.00	$0.19
Baton Rouge	M	623	$19.35	$2.80	$2.15		$0.89	$0.15
Monroe	M	710	$19.25	$2.80	$2.15		$1.00	$0.14
MAINE								
Portland	M	7	$20.15	$6.50	$5.45		$3.50	$0.58
MARYLAND								
Baltimore	M	16	$26.23	$5.58	$4.34		$3.35	$0.37
Cumberland	M	568	$25.23	$4.25	$6.75			$0.21
MASSACHUSETTS								
Boston	M	7	$32.69	$7.50	$5.40		$6.75	$0.65
Springfield	M	7	$24.70	$7.50	$5.40		$6.75	$0.55
Worcester	M	7	$32.39	$7.50	$5.40		$6.75	$0.65
Lawrence	M	7	$28.28	$7.50	$5.40		$6.75	$0.65
MICHIGAN								
Detroit	M	25	$28.93	$6.27	$13.31	$5.03		$0.37
Battle Creek	M	340	$24.63	$5.98	$6.00	$1.00	$0.41	$0.41
MINNESOTA								
St. Paul& Minneapolis	M	512	$31.60	$6.57	$8.00		$3.50	$0.72
Duluth	M	512	$27.36	$5.60	$8.00		$3.50	$0.72
Bismarck, ND	M	512	$23.02	$5.60	$8.00		$3.50	$0.72
MISSISSIPPI								
Jackson	M	469	$19.25	$2.80	$2.15		$1.00	$0.14
MISSOURI								
Kansas City	M	10	$26.10	$5.70	$6.85		$6.05	$0.50
St. Louis	M	396	$28.98	$6.36	$5.50		$3.50	$0.50
MONTANA								
Helena	M	732	$21.75	$4.00	$4.70		$4.25	$0.81
NEBRASKA								
Omaha	M	21	$24.87	$4.00	$3.00		$2.00	$0.40
NEW HAMPSHIRE								
Manchester	M	7	$20.62	$7.50	$5.40		$2.77	$0.08
NEW JERSEY								
Newark	M	11	$33.94	$7.75	$7.15	$8.20	$9.00	$0.30
Jersey City	M	45	$33.94	$7.75	$7.15	$8.20	$9.00	$0.30
Trenton	M	68	$30.60	$7.20	$7.05	$7.75	$7.50	$0.55
Atlantic City	M	350	$30.27	$7.20	$9.05	$6.00	$6.00	$0.50

EXHIBIT 5–5

SOURCE: Used with permission of *The Ironworker*, November 2007, pp. 27–28.

STATE AND CITY	TYPE OF LOCAL	LOCAL UNION	WAGE	WELFARE	PENSION	VACATION	ANNUITY AND/OR OTHER	APPR.
Perth Amboy	M	373	$33.94	$7.75	$7.15	$8.20	$9.00	$0.30
Camden	M	399	$35.49	$7.20	$9.05	$5.25	$5.35	$0.60
Elizabeth	M	480	$33.94	$7.75	$7.15	$8.20	$9.00	$0.30
Hackensack	M	483	$33.94	$7.75	$7.15	$8.20	$9.00	$0.30
NEW MEXICO								
Albuquerque	M	495	$22.75	$4.00	$3.00		$2.12	$0.48
NEW YORK								
Buffalo	M	6	$25.31	$10.36	$5.99			$0.40
Niagara Falls	M	9	$27.57	$5.65	$6.20		$3.00	$0.38
Albany	M	12	$24.95	$5.00	$6.18		$2.00	$0.41
Rochester	M	33	$23.80	$5.65	$6.25		$3.59	$0.50
Syracuse	M	60	$23.50	$3.30	$6.70		$5.00	$0.50
Newburgh	M	417	$31.90	$10.00	$7.25	$5.00	$7.25	$1.15
Utica	M	440	$22.65	$5.65	$6.61		$4.17	$0.40
METROPOLITAN NEW YORK								
New York City	S	40	$38.40	$10.30	$7.50	$13.25	$9.13	$0.58
New York City	M(R)	46	$35.60	$6.51	$10.85	$8.00	$11.00	$1.01
New York City	SD	197	$38.36	$9.55	$5.79	$9.00	$10.00	$0.39
Brooklyn	S	361	$38.40	$10.30	$7.50	$13.25	$9.13	$0.58
New York City	O	580	$38.85	$10.30	$7.48	$7.90	$8.87	$1.25
NORTH CAROLINA								
Raleigh/Charlotte	M	843	$21.00	$3.65	$2.75		$1.00	$0.50
OHIO								
Cleveland	M	17	$27.40	$5.60	$9.50		$2.10	$0.38
Cincinnati	SMR	44	$25.02	$6.00	$6.45		$2.70	$0.22
Toledo	M	55	$27.10	$6.86	$8.10		$1.00	$0.37
Columbus	M	172	$24.84	$6.00	$6.45		$2.25	$0.28
Youngstown	M	207	$25.81	$4.40	$7.36		$3.30	$0.32
Dayton	M	290	$24.28	$6.00	$6.45		$3.00	$0.30
Cincinnati	R	372	$25.15	$6.00	$6.45		$2.40	$0.40
Canton	M	550	$25.29	$5.58	$7.82		$2.02	$0.55
OKLAHOMA								
Oklahoma City	M	48	$20.85	$3.50	$2.15		$3.62	$0.45
Tulsa	M	584	$20.85	$3.50	$2.15		$3.62	$0.45
OREGON								
Portland	M	29	$30.25	$6.45	$4.95		$3.55	$0.57
PENNSYLVANIA								
Pittsburgh	M	3	$29.13	$7.05	$5.52		$4.70	$0.69
Easton	M	36	$28.20	$7.20	$9.05		$4.60	$0.17
Philadelphia	SO	401	$39.55	$7.20	$9.05	$6.50	$6.00	$0.65
Harrisburg	M	404	$24.92	$7.20	$9.05		$3.75	$0.45
Philadelphia	R	405	$33.48	$7.20	$9.05		$6.00	$0.50
Reading	M	420	$25.25	$7.20	$9.05		$4.00	$0.20
Scranton	M	489	$27.07	$7.20	$9.05		$5.00	$0.50
Clearfield	M	772	$24.77	$7.60	$5.41		$3.35	$0.55
RHODE ISLAND								
Providence	M	37	$29.00	$7.25	$5.40		$4.25	$0.27
SOUTH CAROLINA								
Charleston	M	848	$21.00	$3.65	$2.75		$1.00	$0.50
SOUTH DAKOTA	M	21	$20.00	$4.00	$3.40		$1.09	$0.30
TENNESSEE								
Memphis	M	167	$20.50	$4.21	$3.16		$2.00	$0.54
Knoxville	M	384	$20.16	$3.74	$4.63		$0.50	$0.43
Nashville	M	492	$20.60	$3.74	$4.63		$0.60	$0.43
Chattanooga	M	704	$19.90	$3.74	$4.63		$1.00	$0.74
TEXAS								
San Antonio	M	66	$17.40	$2.60	$1.00	$0.60	$0.50	$0.30
Houston	M	84	$20.15	$2.70	$1.00	$0.75	$0.50	$0.30
Galveston	M	135	$25.20	$2.70	$1.00	$1.00	$0.50	$0.30
Dallas-Ft. Worth	M	263	$20.10	$2.60	$1.00		$0.70	$0.30
Austin	M	482	$18.35	$2.60	$1.00	$0.50	$0.50	$0.30
UTAH								
Salt Lake City	M	27	$23.61	$4.25	$3.50	$1.50	$2.50	$0.90
VERMONT	M	7	$20.62	$7.50	$5.40		$2.77	$0.80
VIRGINIA								
Richmond	M	28	$21.28	$4.30	$4.00		$2.00	$0.50
Norfolk	M	79	$22.45	$2.80	$5.36		4.50%	$0.41
Roanoke	M	697	$19.75	$4.91	$4.42		$2.75	$0.35
WASHINGTON								
Spokane	M	14	$28.22	$6.45	$4.95		$3.55	$0.57
Seattle	M	86	$32.40	$6.45	$4.95		$3.55	$0.57
WEST VIRGINIA								
Charleston	M	301	$23.46	$6.00	$6.45		$2.70	$0.34
Wheeling	M	549	$25.07	$5.58	$7.32	10.00%	$2.00	$0.19
Parkersburg	M	787	$26.27	$6.00	$6.45		$2.70	$0.35
WISCONSIN								
Milwaukee	M	8	$28.96	$8.17	$5.37		$4.00	$0.35
Madison	M	383	$29.30	$4.80	$5.96		$3.60	$0.38
WYOMING								
Casper	M	27	$24.61	$4.00	$3.00	$1.25	$2.50	$0.90
CANADA								
Vancouver, BC	M	97	$30.54	$2.16	$4.60	$3.66	$0.27	$0.40
Windsor, ON	M	700	$32.75	$2.99	$5.64	$3.28		$0.23
Montreal, QC	M	711	$30.27		$3.50%	11.50%	$1.85	
Edmonton, AB	M	720	$31.96	$1.50	$4.96	$1.92	$1.28	$0.40
Toronto, ON	M	721	$32.37	$2.99	$5.64	$3.29		$0.13
Calgary, AB	M	725	$35.13	$1.50	$4.96	$2.11		$0.40
Winnipeg, MB	M	728	$25.45	$1.64	$4.00	$2.95		$0.14
Hamilton, ON	M	736	$32.78	$2.99	$5.64	$3.23		$0.23
Halifax, NS	M	752	$25.20		$5.09	$2.27	$0.30	$0.34
Thunder Bay, ON	M	759	$32.24	$2.99	$5.64	$3.23		$0.23
St.John, NL	M	764	$22.76	$1.50	$5.00	$3.07		$0.47
Ottawa, ON	M	765	$32.73	$2.99	$5.64	$3.28		$0.23
Regina, SK	M	771	$30.16	$1.95	$5.50	$1.39	$1.36	$0.50
Sudbury, ON	M	786	$32.73	$2.99	$5.64	$3.28		$0.23
Saint John, NB	M	842	$29.00	$2.00	$5.25	$3.19		$0.50

EXHIBIT 5–5 (continued)

$128,000 annually (counting overtime and certain premiums such as extra pay for living in high-cost areas); the union spokeswoman responded that the union figure for this average pay was less than $110,000 and—when asked if the increase in the expiring contract had been in fact 74 percent—she answered, "Don't I wish."[5]

And while, in the course of the fruitless 2004–2005 National Hockey League negotiations, league commissioner Gary Bettman frequently declared that the league had lost a not inconsequential $224 million the season before, union officials argued that the situation was not nearly as dire as it appeared, since a mere six teams out of the thirty had accounted for $170 million of the loss total and many teams had made considerable profits.

Bookkeeping selectivity may also prevent a meeting of the minds. In major league baseball, a few teams are genuinely poor. But in this sector, where many owners isolate the financial pictures of their teams from those of their other, often quite related, business activities, tax allowances for player depreciation may conceal large overall profits. The Boston Red Sox had an "operating loss" of $11 million for 2001, but were sold in early 2002 for $700 million (mostly because of an affiliated cable network). And while the Los Angeles Dodgers technically lost $30 million in 2001, they added $200 million in value that year to a related holding of their owner, Rupert Murdoch—the Fox Sports Network. For collective bargaining purposes, team owners typically plead poverty. But, as *The Economist* magazine drily reported on the eve of the 2002 negotiations, they "would undoubtedly revise their estimates if you offered to buy their baseball operations."[6]

The prize for imaginative statistical interpretation, as it happens, might in fact be deserved by a former baseball team owner. Walter O'Malley—a predecessor to Murdoch as owner of the same Los Angeles Dodgers—once lamented to members of the media that in the previous year his team had "lost" some $4 million. Upon investigation, it was discovered that the Dodgers had *made* by any standard a good deal of money in the year referred to, but that this amount had fallen short of the prior year's profits by $4 million.

Negotiators who approach the bargaining table without sufficient factual ammunition to handle the growing complexities of labor relations, however, operate at a distinct disadvantage. The burden of proof invariably lies with the party seeking contractual changes, and in the absence of facts, "proof" is hard to come by.

Other Prerequisites for Bargaining

As painstaking a task as the fact-accumulation process may seem to be, far-sighted managements and labor leaders recognize that considerably more must be done to adequately prepare for bargaining. Increasingly, the top echelons within both union and management circles have come to appreciate the necessity of carefully consulting with lower-level members of their respective operating organizations before framing specific bargaining table approaches. Supervisors, industrial engineers, union business agents, union stewards, and various other people may or may not ever become directly involved in the official negotiation sessions, and the distance separating them from the top of the management or union hierarchy is usually a great one. But the growing maturity of labor relations has brought with it a stronger recognition by the higher levels of both organizations that the success or failure of whatever agreement is finally bargained will always rest considerably upon the acceptance of the contract by such people. In addition, unless the official negotiators are well informed on actual operating conditions in advance of the bargaining, there is every chance that highly desirable modifications in the expiring agreement will be completely overlooked.

On the management side, since the daily routines of the operating subordinates require their close contact with the union, such people are in a position to provide the bargainers with several kinds of valuable information. They can be expected to have knowledgeable opinions as to what areas of the expiring contract have been most troublesome; they can, for example, provide an analysis not only of grievance statistics within their departments but of employee morale problems that may lie behind the official grievances that have been lodged. They presumably have some awareness as to the existing pressures on the union leadership, and their knowledge of these political problems can help management anticipate some of the forthcoming union demands. They may be able to assess how the union membership would react to various portions of the contemplated management demands.

Not to be dismissed lightly, either, is the fact that this process of consultation allows lower managers genuine grounds for feeling some sense of participation in at least establishing the framework for bargaining. The employer thus stands to gain in terms of morale, as well as in information.

For the union, the need for thorough internal communication may be even more vital. The trend to centralization of bargaining in the hands of international unions has in no way lessened the need of the union officialdom to be responsive to rank-and-file sentiments. It has, however, made the job of *discovering* these sentiments, and incorporating them into a cohesive bargaining strategy, considerably harder; and "middlemen" within the union hierarchy must be relied upon to perform this assignment. Thus, business agents, grievance committee members, and other lower union officials can play a key role even when negotiations themselves have passed upward to a higher union body, for only they are in a position to take the pulse of the rank and file.

The long list of widely varying and frequently inconsistent rank-and-file demands cannot, however, be passed upward to the international level without some adjustment. Most internationals screen these workers' proposals—inevitably giving more weight to those of important political leaders at the lower levels than to those stemming from totally uninfluential constituents—through committees composed of the subordinate officials at successively higher levels within the union hierarchy. Ultimately, a "final" union contract proposal may be placed before the membership of each local, or at least before representatives of these locals, for their official stamps of approval. And here again, the support of lower union officialdom is vitally needed by the union negotiators—to rally rank-and-file support behind the finalized union demands and to gain membership willingness to strike, if need be, in support of those demands. Aside from the fact that the local unionists may be as well equipped to help the negotiators plan their strategy as are their management counterparts, local leaders who have been bypassed in the consultation process do not typically make loyal supporters of the union's membership-rallying effort. Thus, "campaign kickoff" rallies, not unlike the ones shown as Exhibits 5–6 and 5–7, are common. Both show members of the Air Line Pilots Association before recent negotiations.

Finally, both legal and (on many occasions) public relations considerations now clearly demand a major place in preparation for bargaining. Specialists in both these areas must be engaged and used by both sides to ensure that bargaining demands will be compatible with the labor statutes and that public support (or, at the very least, public neutrality) will be forthcoming if it is needed. The legal ramifications of present-day trucking contract negotiations, for example, have necessitated for the involved union the employment of a huge corps of lawyers, who have become collectively known as the "Teamsters' Bar Association." Through their high levels of remuneration former Teamster president James R. Hoffa could claim to have "doubled the average standard of living for all lawyers in the past few years," although the personal legal problems of Hoffa accounted for some of the high statistics. For the importance of public relations to both parties in the railroad industry, one need look no further than to the myriad full-page newspaper advertisements placed separately over the past two decades by the railroad unions and managements to state their respective labor relations cases to the general citizenry in advance of the bargaining. Exhibit 5–8 shows a UNITE HERE public relations effort, made in conjunction with the New York City Central Labor Council. Relating to a 2004 strike, this ad appeared in several newspapers, including *The New York Times*.

For both management and union, bargaining preparation also involves more mundane matters. Meeting places must be agreed on and the times and lengths of the meetings must be decided. Ground rules regarding transcripts of sessions, publicity releases, and even "personal demeanor" (a designation that in labor relations can deal with a spectrum extending from the use of profanity to appropriate attire for the negotiators) are sometimes drawn up. Payment of union representatives at the bargaining table who must take time off from work as paid employees of the employer must also be resolved.

EXHIBIT 5–6

SOURCE: *Air Line Pilot*, March 2007, p. 19.

CAPT. BRAD MAHONEY (FEDEX)

EXHIBIT 5–7

SOURCE: *Air Line Pilot*, April 2004, p. 12.

A MESSAGE TO UNION MEMBERS & RETIREES

We Stand With the 10,000 Striking Atlantic City Casino Workers

THE NEW YORK CITY CENTRAL LABOR COUNCIL is proud to stand with the 10,000 Atlantic City casino workers who are on strike. We urge the millions of union members and retirees in the New York City area to honor the picket lines at the seven casinos that are trying to cut health benefits and turn Atlantic City into a low-wage, no-benefit town.

DO NOT go to Harrah's, Showboat, Caesars, Bally's, Hilton, Tropicana or Resorts. That's where courageous working families are on strike to save good jobs in Atlantic City.

In the past we have supported the unionized part of the casino gambling industry because workers had good, middle-class jobs. But we can't support the huge casino companies now that they want to destroy those good jobs.

We will be talking to labor councils across the country to spread the word about Atlantic City and ensure these companies don't prosper while workers suffer.

NEW YORK CITY CENTRAL LABOR COUNCIL • AFL-CIO

BRIAN M. MCLAUGHLIN, President • **TED H. JACOBSEN,** Secretary • **IDA INES TORRES,** Treasurer

Contributions to the Strike Fund can be sent to: UNITE HERE Local 54 Strike/Hardship Fund, 203 Sovereign Avenue, Atlantic City, NJ 08401

EXHIBIT 5–8

Only on rare occasions have the parties reached a major prebargaining impasse on such issues as these, but if relations are already strained between union and management such joint decision making can be a time-consuming and even an emotion-packed process.

The latter condition was certainly the case a few years ago, for example, when the large earth-moving equipment producer Caterpillar Inc. and the United Automobile Workers were still deadlocked in a dispute over where to hold the negotiations for their new contract just 48 hours before these critical talks were supposed to begin. The company was holding out for its hometown of Peoria, Illinois. The union was arguing that such a site would give the employer an unfair advantage not only in ready access to its headquarters but in the prospect of homecooked evening meals. It was proposing instead the "neutral" location of St. Louis. Objective observers suggested that both sides simply wanted to show who was boss from the outset. (The company won in this tense battle of wills, as it by any standard won in the negotiations themselves, but only after a bitter five-month strike and after Caterpillar's threat of permanently replacing the strikers, both previously noted in this volume.)

THE BARGAINING PROCESS: EARLY STAGES

No manager who is prone to either ulcers or accepting verbal statements at face value belongs at the labor relations bargaining table. Negotiations often begin with the union representatives presenting a long list of demands in both the economic and noneconomic (for example, administrative clause) areas. To naïve managements, many of these avowed labor goals seem at best unjustified and at worst to show a complete union disregard for the continued solvency of the employer. Although extreme demands, such as a new golf course and free transportation in company cars to and from work for all employees, are rarely taken seriously, the management negotiators may be asked for economic concessions that are well beyond those granted by competitors and noneconomic ones that exhibit a greater use of vivid imagination than that shown by Penn and Teller, Stephen King, and Woody Allen combined.

A while ago, for example, the local police association in Rockville Centre, Long Island, demanded from its employer municipality 85 concessions, including a gymnasium and swimming pool; 17 paid holidays, including Valentine's Day and Halloween; and free abortions. And these public servants hold no record for ambitiousness. The union leader Walter Reuther used to open automobile bargaining with so many holiday demands that on one occasion his management counterpart at General Motors asked, "Walter, wouldn't it be faster if you merely listed the days on which you would like to work?" (It is not known whether or not Reuther appreciated the humor here. By reputation, he was singularly devoid of a funny bone: One of his management adversaries allegedly said that, if you told him a joke that had a double meaning, he wouldn't understand either one of them; and another Reuther watcher declared, legend has it, that the UAW president smiled so rarely that, when he did, dust came out of his mouth.)

Almost four decades after Reuther's 1970 death, his union has toned down its approach only slightly: In recent UAW-GM negotiations, the union began by handing the management bargaining team members a spiral-bound document containing demands that consumed 115 pages and asked for everything from free chiropractic care to a union seat on GM's board of directors. For most labor organizations, this kind of behavior is today much more the norm than the exception.

The experienced management bargainer, however, takes considerable comfort in the fact that the union is, above all, the *political* animal that the preceding chapter has depicted: There is no sense in the union leaders' alienating constituents by throwing out untenable but pet demands of the rank and file (beyond what the various screening committees have been able to dislodge) when the employer representatives stand fully ready to do this themselves and thus to accept the blame. This is particularly true when the pet union demands originate from influential constituents or key locals within the international; alienation of such sources is a job for which the employer representatives, not being subject to the election procedure, are better suited.

There are other logical explanations for the union's apparent unreasonableness. Excessive demands allow leverage for trading some of them off in return for management concessions. In addition, the union can camouflage its true objectives in the maze of requests and thereby conceal its real position until the proper time—a vital ploy for any successful bargaining.

Beyond this, labor leaders have frequently sought novel demands with the knowledge that these will be totally unacceptable to managements in a given bargaining year, but with the goal of providing an opening wedge in a long-range campaign to win management over to the union's point of view. Only in this light can, for example, Reuther's demand for supplementary unemployment benefits in the early 1950s be understood. Much more recently, "30 and out," or retirement after 30 years of service in the automotive industry regardless of age, had a similar genesis. Originally the managements in each case essentially accepted the initial union demands subject to only one condition: that implementation of what the union wanted had to be done over their dead bodies. After several years of pondering each request (and concluding that neither involved any important sacrifice of principle), however, the employers recognized both demands as desires for novel but completely acceptable kinds of employee benefits. They returned to the bargaining table fully prepared to grant them in return for union concessions in other economic areas.

Finally, since contract negotiations frequently extend over a period of weeks (on occasion, months), the union can gain a buffer against economic and other environmental changes that may occur in the interval. Technically, either party can introduce new demands at any time prior to total agreement on a contract, but the large initial demand obviates this necessity.

There is thus a method in the union's apparent madness. Demands that seem to managements to be totally unjustified and even disdainful of the enterprise's continued existence may, on occasion, be genuinely intended as union demands; far more often, however, they are meant only as ploys in a logical bargaining strategy. They are to be listened to carefully but not taken literally.

In fact, if imitation is the sincerest form of flattery, there is ample evidence that some managements have increasingly come to appreciate the strategic value of the large demand. Many employer bargainers have, in recent years, engaged in such **blue-skying** in their counterproposals, and for many of the same reasons as unions have. As a result of the premium placed on exaggerated demands and equally unrealistic counterproposals, however, the positions of the parties throughout the early negotiation sessions are likely to remain far apart.

Standing in the way of early agreement, too, is the fact that these initial meetings are often attended by a wide variety of "invited guests" from the ranks of each organization. Given a large and interested audience of rank-and-file unionists, a sizeable contingent of union retirees (as was the case, for example, at the opening session of the 2007 General Motors-UAW negotiations, where some 250 retirees from GM plants made their presences known) or a union negotiating committee that is so large as to be totally unable (and unexpected) to perform the bargaining function but is nonetheless highly advisable from a political point of view, the actual union bargainers sometimes find it difficult to refrain from using creative but wholly extraneous showmanship. Management representatives also frequently succumb to a temptation to impress their visiting colleagues as to their negotiating "toughness." When lawyers or other consultants are engaged by either party to participate in the bargaining sessions, the amount of acting is often significantly expanded. And when the negotiations are so newsworthy as to attract at their openings people from the worlds of radio, television, and print journalism, even more grandstanding can be expected.

Even amid the theatrics and exaggerated stances of these early meetings, however, there is often a considerable amount of educational value for the bargainers. The excessive factors still do not preclude each party from evaluating at least the general position of the other side and from establishing weaknesses in the opposing position or arguments. Frequently, indeed, if negotiators are patient and observing at this point, they will be able to evaluate the other side's proposals along fairly precise qualitative lines. Thus, during the first few sessions when each side should be expected to state its position, it can often be discerned which demands or proposals are being made seriously and which, if any, are merely injected for bargaining position. Such information will be of great help later on in the negotiations.

Actually, the principle of timing in negotiations is very important. There are times for listening, speaking, standing firm, and conceding; there are times for making counterproposals, compromising, suggesting. At some points, "horse-trading" is possible; at others, taking a final position is called for. There is a time for an illustration, a point, or a funny story to break ominous tension, and there is likewise a time for being deadly serious. Through experience and through awareness of the tactics of the other side, negotiators can make use of the time principle most effectively.

THE BARGAINING PROCESS: LATER STAGES

After the initial sessions are terminated, each side should have a fairly good idea of the overall climate of the negotiations. Management should now be in a position to determine what the union is fundamentally seeking, and the union should be able to recognize some basic objectives of management. In addition, by this time, each side should know fairly well how far it is prepared to go in the negotiations. Each party to the negotiations in secret internal sessions should establish with some degree of certainty the maximum concessions it will be prepared to make and the minimum levels it will be willing to accept. Negotiators will be in a better position to bargain intelligently if certain objectives are formulated before the negotiations enter into the "give-and-take" stage. However, even at this stage it is not wise to take extreme positions and to appear inflexible in the approach to the problems under discussion. Skilled negotiators who are striving to avoid a strike—and this is the attitude of the typical management and union—will remain flexible right down to the wire. It is not a good idea to climb too far out on a limb, since at times it may be difficult, or at least embarrassing, to crawl back to avoid a work stoppage.

In fact, after the original positions of the parties are stated and explained, skilled negotiators seldom take a rigid position. Rather than take a definite stand on a particular issue, experienced negotiators (often, where negotiation units are large, through the use of subcommittees to focus on the major bargaining issues individually before these are dealt with at the main bargaining table) "throw something on the table for discussion and consideration." The process of attempting to create a pattern of agreement is then begun. In this process, areas of clear disagreement are narrowed whenever they can be, mutual concessions are offered, and tentative agreements are effected. Counterproposals are frequently offered as "something to think about" rather than as the final words of the negotiators. In this manner, the parties are in a better position to feel out one another as to ultimate goals. By noting the reaction to a proposal thrown on the table for discussion and by evaluating the arguments and the attitudes in connection with it, negotiators can make a fairly accurate assessment of the maximum and minimum levels of the other side.

Actually, flexibility is a sound principle to follow in negotiations, because the ultimate settlement between managements and unions is frequently in the terms of "packages." Thus, through the process of counterproposals, compromise, and the like, the parties usually terminate the negotiations by agreeing to one package selected from a series of alternative possibilities of settlement. The package selected will represent most closely the maximum and minimum levels acceptable to each of the parties. The content of the various packages will be somewhat different, because neither side in collective bargaining gets everything it wants out of a particular negotiation. The maintenance of flexibility throughout the negotiation allows certain patterns of settlement to be established over which the parties can deliberate.

The package approach to bargaining is particularly important in reference to economic issues. Once the parties obtain an agreement on a total cost-per-hour figure, it becomes a relatively uncomplicated task to allocate that figure in terms of such matters as basic wage rates, supplements to wages, and wage inequities. The more difficult problem, of course, is to arrive at a total cost-per-hour figure. If, for example, through the process of bargaining, the parties established $1.80 per hour as the level of agreement, they might finalize the money agreement in terms of $1.22 per hour basic wage increase, $0.20 per hour to correct any wage inequities, $0.19 per hour to improve the insurance program, and $0.19 per hour to increase pensions. Other subdivisions of the $1.80 would be possible depending on the attitudes of the parties and their objectives in the negotiations.

Trading Points and Counterproposals

In establishing the content of the alternative packages, experienced negotiators employ a variety of bargaining techniques. Two of the most important are trading points and counterproposals. These procedures are best explained by illustrations.

TRADING POINTS Let us assume that management employs the **trading point** procedure. The first prerequisite in the use of this technique is to evaluate the demands of the union. Evaluation is necessary not only along quantitative lines but also along the line of the "intensity factor," which requires an assessment of the union demands to determine which of them the union is most anxious to secure. Management representatives should make mental notes of these strongly demanded issues as the negotiations proceed. For example, after a few sessions it may become apparent that the union feels very strongly about securing the union shop. At the same time, the labor organization also demands a $1.50 per hour wage increase and three additional paid holidays. Use of the trading point technique in this situation may be as follows: Management agrees to the union shop but insists that, in return for this concession, the union accept a $0.70 per hour increase and just one more paid holiday.

Labor organizations also employ the trading point technique, as illustrated by the following example. Assume that, during the course of the negotiations, the union representatives sense that management will not concede to the union demand for a reduction of the basic workweek from 40 hours to 36 hours. Assume further that the union feels that the issue is not worth a strike. Under these circumstances, the union may be able to employ the hours issue as a trading point. Let us say that, along with the hours demand, the union has insisted on also securing a union shop and a $1.40 per hour increase in pay. After the union presses the hours issue vigorously for some time (as part of the strategy, it may, of course, threaten a strike over the issue), the union negotiators agree to withdraw the hours demand in return for obtaining the union shop and the wage increase.

COUNTERPROPOSALS **Counterproposals** are somewhat different from trading points. They involve the compromise that takes place during the bargaining sessions. As a matter of fact, the use of counterproposals is one element that the National Labor Relations Board will consider to determine whether management and labor unions bargain in good faith. However, under the established rules of the board, employers and unions do not have to make *concessions* to satisfy the legal requirement of bargaining in good faith: The implementers of public policy are more interested in whether there have been *compromises*. The union may request 4 weeks' vacation with pay for all employees. Management might counter by agreeing to 3 weeks' vacation with pay for employees with 10 years of service and 2 weeks for the remainder. A union may demand a $1.44 per hour increase, and management may agree to a $0.70 per hour increase. At times three or four counterproposals may be made before a final agreement is reached on an issue of collective bargaining.

Costing Out the Contractual Changes

It is suicidal, needless to say, for either party to proceed without a firm understanding of the costs of the contemplated changes. And these costs encompass more than just the additional direct payroll expenses. They also include changes in costs that directly stem from the added payroll costs—in the FICA contributions, for example. Nonpayroll costs such as the employer's annual payments for health insurance and life insurance and nonwork paid time such as any additional holidays, vacations, or sick leave allowances must also be taken into account. Exhibit 5–9 illustrates costing the labor contract. Stephen Holoviak's *Costing Labor Contracts and Judging Their Financial Impact* and Bruce Morse's *How to Negotiate the Labor Agreement*, both of which are fully cited in the selected references at the end of this chapter, are valuable for a more thorough discussion of costing.

CHANGES IN COSTS

I. Direct Payroll—Annual

Straight-time earnings—60¢ per hour general increase
100 employees
100 × 2,080 hrs. × 60¢ =
Premium earnings, second-shift established differential—25¢ per hour
30 employees involved
30 × 2,080 hrs. × 25¢ =
Overtime: Overtime costs increased by increased straight-time rate, average straight-time rate increase 60¢
60¢ × 12,000 overtime hrs. × .5 overtime rate =
Bonus—none
Other direct payroll cost increases
Total Increase in Direct Payroll Costs =

II. Added Costs Directly Resulting from Higher Payroll Costs—Annual

FICA—7.65% times increase in average straight-time earnings below $90,000 annually
100 employees
100 × 60¢ × 7.65% × 2,080 =
Federal and state unemployment insurance tax
Number of employees × 4,200 × tax rate (2.5%) =
Workmen's compensation
(Total cost or estimate)
Other
Total Additional Direct Payroll Costs =

III. Nonpayroll Costs—Annual

Insurance—company portion
Health insurance, no change
Dental insurance, none
Eye care, none
Life insurance—added employer contribution
$300 per year
$300 × 100 employees =
Pension Costs
Fully vested pension reduced from 25 years and age 65 to 20 years and age 62
Estimated additional cost per year =
Miscellaneous
Tuition reimbursements
Service rewards
Suggestion awards
Loss on employee cafeteria
Overtime meals
Cost of parking lots
Company parties
Personal tools
Personal safety equipment
Personal wearing apparel
Profit sharing
Other
Total Additional Nonpayroll Costs, Annual =

IV. Changes in Nonwork Paid Time

Holidays—2 new holidays added to 8 already in contract

EXHIBIT 5–9 Costing the Labor Contract

SOURCE: Adapted from Reed C. Richardson, *Collective Bargaining by Objectives: A Positive Approach*, 2nd ed., 1985, pp. 85–86. Reprinted by permission of Prentice Hall, Inc., Upper Saddle River, NJ.

100 employees × 8 hrs. × 2 holidays × Average new wage ($8.20) =
Vacation, new category added—4 weeks (160 hours annual vacation) with 20 or more years service; former top was 3 weeks after 15; average number of employees affected annually, 15
15 × 40 × Average new wage ($8.20) =
Paid lunchtime—paid 1/2 hr. lunchtime added to contract
100 employees × 1/2 hr. × days worked yearly (236) × Average new wage ($8.20) =
Paid washup time, none
Coffee breaks, no change
Paid time off for union activity—new, one hour per week per shop steward
10 shop stewards × Average new wage shop stewards ($8.60) × 1 hr. × 52 weeks =
Paid sick leave
Paid time off over and above workmen's compensation paid time, none
Jury-service time off, no change
Funeral-leave time off, no change
Paid time off for safety or training, no change
Other
Total change in Hours Paid For but Not Worked, Annual =

V. Financial Data Derived from Costing Out

Total increase in contract costs
I + II + III
Average total increase in contract costs per employee payroll hour
I + II + III ÷ 2,080 hours
Average total increase in direct payroll costs per man-hour
I + II ÷ 2,080 hours ÷ 100 employees
Average total increase in nonpayroll costs per payroll-hour, per employee
III ÷ 2,080 hours ÷ 100 employees
Average total increase in nonwork paid time per payroll-hour per employee
IV ÷ 2,080 hours ÷ 100 employees
Average total increase in direct payroll costs per prod. (worked) hour (per employee)
I + II ÷ 1,888 hours ÷ 100 employees
Average total increase in nonpayroll costs per prod. (worked) hour (per employee)
III ÷ 1,888 hours ÷ 100 employees
Average total increase in nonwork paid time per prod. (worked) hour (per employee)
IV ÷ 1,888 hours ÷ 100 employees

EXHIBIT 5–9 (continued)

THE BARGAINING PROCESS: FINAL STAGES

There is almost no limit to the ingenuity that skilled negotiators use in attempting to create an agreement pattern. At more sophisticated bargaining tables, even highly subtle modes of communication may do the trick while at the same time allowing the party making a concession to suffer no prejudice for having "given in." Carl Stevens, for example, has pointed out that

> in some situations, silence may convey a concession. This may be the case, for example, if a negotiator who has frequently and firmly rejected a proposal simply maintains silence the next time the proposal is made. The degree of emphasis with which the negotiator expresses himself on various issues may be an important indication. The suggestion that the parties pass over a given item for the present, on the grounds that it probably will not be an important obstacle to eventual settlement, may be a covert way of setting up a trade on this item for some other. . . . The parties may quote statistics (fictitious if need be) as a . . . way of suggesting a position, or they may convey a position by discussing a settlement in an unrelated industry.[7]

Yet, however much the gap between the parties may be narrowed by such methods, even the most adroit bargainers frequently reach the late stages of negotiations with the complete contract far from being resolved. Given the potential thorniness of many of the individual issues involved, this should not be surprising; more than bargaining sophistication and flexibility is still generally required to bring about agreement on such delicate substantive topics as management rights, union security, the role of seniority, and economic benefits. And the fact that the bargainers seek an acceptable package that in some way deals with *all* these issues clearly makes the assignment a much more complicated one than it would otherwise be.

The Strike Deadline

It is the *strike deadline* that is the great motivator of labor relations agreement. Exactly as most students hand in their term papers just before the deadline set by the professor for doing so, most taxpayers fill out their Internal Revenue Service forms in the days immediately prior to midnight on April 15, and most Christmas shoppers do their Christmas shopping in the last week before that holiday, deadlines produce action. This is no less true in union–management contract negotiations. Labor deadlines can always be extended, but they usually aren't: They are typically viewed as urgent, so much so that in some negotiations (as in recent Ford-UAW bargaining) the negotiators face fines (here, $5 per minute for the UAW bargainers) should they arrive late.

As the hands of the clock roll around, signaling the imminent termination of the old contract, each side is now forced to reexamine its "final" position and to balance its "rock bottom" demands against the consequences of a cessation of work. And, with the time element now so important, each party can be counted on to view its previous bargaining position in a somewhat different light.

For example, paid holiday demands, which once seemed of paramount importance to the union, may now appear less vital when pursuing them is likely to lead to the complete *loss* of paid holidays through a strike. The labor leaders may also conclude now that, although the union membership has authorized the strike should this prove necessary, a stoppage of any duration would be difficult to sustain—through either lack of membership esprit de corps or union resources that are insufficient to match those of management.

On its part, the management may also prove more willing to compromise as the strike deadline approaches. Up until now, it has sought to increase its net income by improving its labor-cost position. Now the outlook is for a *cessation* of income if operations stop.

These threats, in short, bring each party face to face with reality and can normally be expected to cause a marked reassessment of positions. The immediacy of such uncertainty generates a willingness to bridge differences that has not been in evidence at the bargaining table before.

The final hours before time runs out are, therefore, commonly marked by new developments. Frequent caucuses are held by each party, followed by the announcement from a caucus representative that his or her side is willing to offer a new and more generous "final" proposal. Leaders from each side often meet with their counterparts from the other side in informal sessions that are more private and have fewer participants than the official sessions themselves. These are also likely to result in new agreements. And sometimes, in these last moments, one side will successfully suggest to the other that language relating to an especially sticky issue be intentionally left unclear, or even omitted altogether, with an unwritten "understanding" between the parties serving as a less inflammatory substitute. Stevens has described the implications of the deadline in the following terms:

> The approach of the deadline revises upward each party's estimate of the probability that a strike or lockout will be consequent upon adherence to his own position. . . . An approaching deadline does much more than simply squeeze elements of bluff and deception out of the negotiation process. It brings pressures to bear which actually change the least favorable terms upon which each party is willing to settle. Thus it operates as a force tending to bring about conditions necessary for agreement.[8]

And the imminence of the deadline can foster positive attitudes, as well as positive actions, between the parties: Its approach dramatically brings home to both groups that each will pay major costs and thus emphasizes the existence of a common denominator. The potential consequences of not settling tend to be so unsettling to the parties that they, most of the time, now settle.

Why Strikes Occur at All

Strikes do, however, occur. Sometimes the impasse leading to a work stoppage stems from a genuine inability of the parties to agree on economic or other terms; the maximum that the management feels it is able to offer in terms of dollars and cents, for example, is below the minimum that the union believes it must gain to retain the loyalty of its members. Or, where rank-and-file ratification is required to put the contract into effect, the negotiators may misjudge membership sentiments, bargain a contract that they feel will be fully acceptable to the membership, and then see their efforts overturned by the members' refusal to approve what they have negotiated.

On other occasions, inexperienced or incompetent negotiators fail to evaluate the importance of a specific concession to the other side and refuse to grant such a concession where they would gladly have exchanged it for a strike avoidance. At times, pride or overeagerness causes bargainers to adhere to initial positions long after these have become completely untenable.

And, in rare instances, one or even both of the parties may actually *desire* a strike—to work off excessive inventories, to allow pent-up emotions a chance for an outlet, or for various other reasons.

A few years ago, the managements of three Bell Telephone companies—Bell Atlantic, Pacific Telesis, and Nynex—were anything but dismayed when 157,000 members of the Communications Workers struck them. There was little disruption of phone service as sophisticated computer switches and elaborate software systems routed billions of calls, and the Bells could save the entire salaries of the striking employees: On the basis of an average union annual wage of $25,000, they had realized more than $75 million in savings after merely 1 week of the strike and presumably were something less than exhilarated after that as, in various locations, the strikers returned to their jobs.

And it is widely believed among students of major league baseball's labor relations that at least one or two of the four bargaining impasses in that sector in the 1980s and 1990s could be mainly attributed to a desire for a strike on the part of many owners. The latter had consistently agreed that the players had been ruining the game by getting too much money and that only a hard line against such excesses—even at the cost of letting, if need be, an entire season go down the tubes—could save America's national pastime. From 1994 to 1995 much of an entire season was in fact erased: A 234-day strike wiped out, among other things, the 1994 League Playoffs and World Series and the first 3 weeks of the next season, and if the players clearly must accept some of the responsibility for this unprecedented stoppage, it seemed to many insiders that the owners should be credited with even more of a hand in triggering and maintaining it.

Unions, too, have been known to favor a strike to a settlement without one, at least on occasion. When 57,000 members of the Machinists Union halted work on $80 billion worth of aircraft at Boeing not long ago, most of these workers welcomed the inactivity as allowing them a needed rest. They had been under pressure to turn out one new commercial jet every day, four times the pace of just 2 years earlier, and many had complained of exhaustion from 7-day workweeks and mandatory overtime. (In this situation, some analysts also believed that Boeing itself was happy to see the strike take place: It would ultimately fill the entire $80 billion in orders, anyhow, because these orders were firm ones; and the work stoppage allowed it, no less than the employees, to enjoy a bit of a "breather.")

And, while on the surface the National Hockey League Players Association derived little tangible benefit from its 10-day strike against the team owners in 1992 beyond some marginal gains in bonus money for playoff games and for individual awards, many of these unionists felt that the strike still was eminently justified. After a quarter-century of peaceful contract renegotiations, they believed, a work stoppage was imperative just to show the managements that it *could* happen.

The strike incidence has been almost steadily declining in the United States since the beginning of the 1960s; and strikes today, as noted earlier, idle only about one-twentieth of 1 percent of total available working time. As long as workers are free to engage in work stoppages, however, it is realistic to expect that they will occasionally do so.

CRISIS SITUATIONS

It would be strange, as a matter of fact, if there were not *some* crisis items involved in *any* particular negotiation. In the typical situation, some issues will be extremely troublesome, and they will severely tax the intelligence, resourcefulness, and good faith of the negotiators. Actually, if both sides sincerely desire to settle without a strike, a peaceful solution of any problem in labor relations can usually be worked out. As previously implied, the possibility of a work stoppage is increased when both sides are not sincere in their desire to avoid industrial warfare or when one of the parties to the negotiation is not greatly concerned about a strike. If negotiators bargain on a rational basis, keep open minds, recognize facts and sound arguments, and understand the problems of the other side, crisis situations can be avoided or overcome without any interruption to operations or any impairment of good labor relations.

And, perhaps above all, it doesn't hurt to keep an open mind about every statement that is seriously advanced as the bargaining proceeds. There is a lesson for all of us in the fate of U.S. Civil War General John Sedgwick, whose last known words were, "They couldn't hit an elephant at this distance."

Bypassing the Difficult Issues

One way to avoid a state of affairs where negotiations break down because of a few difficult issues is to bypass those issues in the early stages of the bargaining sessions. It is a good idea to settle the easy problems and delay consideration of the tough ones until later in the negotiations. In this way, the negotiation keeps moving, progress is made, and the area of disagreement tends to be isolated and diminished. Thus, at the early stages, the parties might agree to disagree on some of the items. If only a few items are standing in the way of a peaceful settlement toward the close of the negotiations, there is an excellent chance for full agreement on the contract. Moreover, what might appear to be a big issue at the beginning stages of the negotiations might, of course, appear comparatively insignificant when most of the contract has been agreed upon and when time is running out. (Nonetheless, contingency plans must inevitably be made just in case. Exhibit 5–10 shows the many variables that may well have to be dealt with.)

Human Relations Mistakes

At times, crisis situations are created not as a result of the merits of certain issues but because some negotiators make mistakes in human relations. For example, it is good practice to personalize the things that are constructive, inherently sound, and defensible, and to depersonalize the items that are bad, destructive, or downright silly. Under the former situation, the union or the management, as the case may be, commends the other party, by saying "That is a good point," or "The committee definitely has an argument," or "Bill certainly has his facts straight." In the latter situation, it is sound policy to deal with the merits of a situation.

Thus, in the face of a destructive or totally unrealistic proposal, the reaction of the other side might be something like this: "Let's see how this proposal will work out in practice if we put it into the labor agreement." Doing this is far preferable than, for example, likening the person who made the proposal to the north end of a horse walking southward. It is elementary psychology that people like being commended and dislike being criticized. If this is recognized, rough spots and danger areas in the negotiations may be avoided.

1. Fuel Oil
2. Food Services
3. Trash Removal
4. Janitorial Supplies
5. Mail Delivery
6. Maintenance Supplies
7. Security Equipment
   - Cameras and Film and Tape Recorder
   - Police and Guard Service
   - Keys and Locks
   - Passes and Parking Lots
   - Portable Radios
   - Flashlights/Binoculars
   - Extension Cord
8. First Aid
9. Standby Facilities
10. Sleep-in Arrangements
11. Mechanical Maintenance
12. Electrical Maintenance
13. Emergency Transportation
14. Switchboard Operations
15. Supervisory Shift Coverage
16. Picket Line Instruction
17. Observer Teams and Forms
18. Salaried employee assignments-If/When permitted to enter facility
19. Communication Tree
20. Radio Stations to listen to
21. Vendor Notification
22. Payroll Distribution
23. Warehousing Requirements
24. Mailing Lists—labels/envelopes
25. Emergency Personnel Team
26. Hazardous Material Storage
27. Fire Brigade Team
28. Removal of necessary equipment/systems information
29. Return of all leased vehicles
30. Obtain all keys from union employees
31. Contact local police
32. Contact fire department
33. Check all locks on buildings
34. Check perimeter lighting of buildings
35. Establish location for Company-owned vehicles

EXHIBIT 5–10 One Major Corporation's Emergency Plan Checklist for Strike Situations

The Advance Framing of Alternatives

Another way to avoid crisis situations is to be prepared in advance of negotiations to propose or accept alternative solutions to a problem. For example, suppose that the union desires to incorporate an arrangement into the labor agreement making membership in the union a condition of employment. In mapping its overall strategy for the negotiation, the union committee might decide first to propose a straight union shop but be prepared, in the face of strong management resistance, to propose a lesser form of union security. Suppose, for another illustration, that an employer wants to eliminate all restrictions on the assignment of overtime. It plans first to suggest that the management should have the full authority to designate any workers for overtime without any limitation. At the same time, it is prepared to suggest some alternative solution to the problem in the event that this proposal appears to create strong resistance. For example, it may propose that seniority be the basis for the rotation of overtime insofar as employees have the capacity to do the work in question. If both sides are prepared in advance to offer or to accept alternative solutions to particular problems, there will be less possibility for the negotiations to bog down. Instead, they will tend to keep moving to a peaceful climax. The momentum of progress is an important factor in reaching the deadline in full agreement on a new contract.

Joint Study Groups

One additional procedure is available to minimize the chances of negotiation breakdowns. It has already been pointed out that many of the topics of contemporary collective bargaining are complicated and difficult. Issues such as working rules, pension plans, insurance systems, and production standards require study and sometimes are unsuitable for determination in the normal collective bargaining process. As contract termination deadlines approach, a strike may result simply because not enough time has been allowed for *jointly* attacking these particularly complicated matters in a rational, sound, workable, and equitable manner. All the *unilateral* preparation in the world still does not dispose of the problem. The parties are, however, at liberty to consider such issues by the use of a joint study group, composed of management and union representatives *during the period of the new contract.* At times, managements and unions may see fit to invite disinterested and qualified third parties to aid them in such a project. The joint study group does not engage in collective bargaining as such; its function, rather, is to identify and consider alternative solutions. But, by definition being freed from the pressure of contractual deadlines, such a group can gain sufficient time to study these necessarily difficult issues in a rational manner.

To work effectively, the joint study group should be established soon after a contract is negotiated; it should be composed of people who have the ability to carry out appropriate research and the necessary qualities to consider objectively and dispassionately the tough issues confronting labor and management. These are no small prerequisites, but such a procedure has worked successfully in industries such as basic steel, and modified versions of it are also currently being used with beneficial results in the automobile, glass, rubber, and aluminum industries. There is no reason to believe that other collective bargaining parties, including those bargaining on an individual plant basis, could not also profit from it in avoiding crisis situations.

Mediation

Some parties have found the **mediation** process helpful when crisis situations are reached in negotiations. The Federal Mediation and Conciliation Service (FMCS) of the U.S. government, and state conciliation services, make mediators available to unions and employers. The Federal Service maintains regional offices in New York, Philadelphia, Atlanta, Cleveland, Chicago, St. Louis, and San Francisco, as well as field offices and field stations in many other large industrial centers. It employs some 250 mediators, whose services are available without charge to the participants in the collective bargaining process, and it currently mediates about 5,000 labor disputes a year.

Sometimes, the parties prefer private citizens in the mediation role: Long after his tenures as Richard Nixon's FMCS director and Gerald Ford's Secretary of Labor, William J. Usery, Jr. was requested by the involved unions and managements to help resolve major coal strikes (which he did with remarkable success in both 1990 and 1993) and major league baseball's 1994–1995 bargaining impasse (one of the rare Usery failures). During the tense 2004 negotiations between the Chicago Symphony Orchestra and its musicians, retired federal judge Abner Mikva accepted an invitation from the parties and mediated with effectiveness. And in late 2005 former House Minority Leader Richard Gephardt helped end a stormy strike between Boeing and its largest labor union, the Machinists: Gephardt had actually been hired solely by the company to serve as a consultant, but his quite visible labor relations expertise, combined with his established

Congressional reputation as a friend of labor, made him at least equally desirable to the union and the latter was quick to welcome him as an objective peace promoter once the work stoppage was underway.

There is no correlation between the fame of the private citizen and his or her acceptability as a mediator, however: During the 2002 baseball bargaining, former President Jimmy Carter—arguably looking for something to do—offered his services as mediator, but the parties preferred to do without him.

Mediation is based on the principle of voluntary acceptance. Suggestions or recommendations made by the mediator may be accepted or rejected by both or either of the parties to a dispute. Unlike an arbitrator, the mediator has no conclusive powers in a dispute. This person's chief value is a capacity to review the dispute from an objective basis, to throw fresh ideas into the negotiations, to suggest areas of settlement, and at times to serve to extricate the parties from difficult and untenable positions. The profession constitutes, as one of the nation's more active mediators once observed,

> the public or private exercise of the last alternative. It is not repression. It is not dictation or decision making for others. It is third-party participation in the bargaining process to minimize the external manifestations of conflict and to maximize the chances of agreement. It is intended to hasten agreement in the least offensive way. A mediator's lack of the customary forms of power is his greatest asset. The power of persuasion can be more potent than the powers of compulsion or suppression.[9]

But if the successful mediator must obviously be impartial, this does not by any means demand that he always be neutral. "He is," as Walter E. Baer once wrote, "not merely a badminton bird to be knocked back and forth between the parties. When he thinks a proposal is completely out of line, he tells the parties so. When the situation dictates, he offers positive leadership."[10] Under any conditions, the mediator is a potentially valuable appendage to the bargaining table process when the results of that process lead to crisis situations.

TESTING AND PROOFREADING

When all issues under consideration have been resolved, the contract should then be drafted in a formal document. Many unions and managements permit lawyers to draft the formal contract. No objection is raised against this practice provided that the lawyer writes the document so that it can be understood by all concerned. A lawyer does not perform this function effectively by including in the contract a preponderance of legal phraseology. Such a contract will serve to confuse the people affected by its terms.

Regardless of who writes the final document, the author or authors should draft the agreement in the simplest possible terms. No contract is adequately written until the simplest, clearest, and most concise way is found to express the agreement reached at the bargaining table. Whoever drafts the agreement should recognize the basic fact that unfamiliar words and lengthy sentences will cause confusion once the document is put into force and may lead to unnecessary grievances and arbitration. Hence, it is sound practice to use words that have special meaning at the place of work or in the industry. Some contracts wisely include illustrations to clarify a particular point in the agreement. It is of particular value to explain in detail the various steps of the grievance procedure, and just what employees are entitled to as benefits. The contract is designed to stabilize labor relations for a given period. It is not drawn up for the purpose of creating confusion and uncertainty in the area of employer–employee relations.

Before signatures are affixed to the documents, the negotiators should have the contract test-read for meaning. No person who was associated with the negotiations should be used; each individual's interpretation will be colored by his or her participation in the negotiations. A better practice is to select someone who had no original part. For this purpose, the union may use a shop steward or even a member of the rank-and-file. An office employee, such as a secretary, or a supervisor can serve the same purpose for management. If those who are to administer the contract were not parties to the negotiation, such people should also be used for testing purposes; this is an excellent opportunity for them to determine whether they understand the provisions before they attempt to administer the document. If the testing indicates confusion as to meaning, the author must rewrite the faulty clause or clauses until the provision is drafted in a manner that eliminates vagueness.

The final step before signing is the proofreading of the document by each negotiator. Particular attention should be given to figures. Misplacing a decimal point, for example, can change a sum from 1 percent to one-tenth of 1 percent. Human errors and typographical mistakes are inevitable, and the proofreading of the contract should have as its objective the elimination of any such errors.

The signing of the contract is an important occasion. Newspapers and television stations may be notified of the event. Pictures may be taken to be inserted in management house organs and union publications. The tensions of the negotiation terminated, the parties to the conference may well celebrate. They have concluded a job that will affect the welfare of many employees, the position of the labor union, the operation of the business, and, indeed, sometimes the functioning of the entire economy. They have discharged an important responsibility. Let us hope that they did it well!

COORDINATED BARGAINING, MULTINATIONALS, AND UNIONS IN OTHER COUNTRIES

An employer who must bargain with not just one but a number of different unions can frequently capitalize on a built-in advantage to the situation. There often exists the possibility of dividing and conquering the various unions by initially concentrating on the least formidable of them, gaining a favorable contract from it, and then using such a contract as a lever from which to extract similar concessions from the other unions. Recent corporate trends toward merger have increased such occurrences, not only by bringing together under one company umbrella a large number of unions but also, generally, by augmenting management bargaining strength as a consequence of the greater resources now provided the company. But even without mergers, many companies have—whether because of historical accident, union rivalry, or planned and successful management strategy—enjoyed this ability to play off one union against another, often even gaining widely divergent contract expiration dates (thus blunting the strike threat of any one union) in the process.

In recent years, many unions so affected have sought to offset their handicap by banding together for contract negotiation purposes in what has come to be known as **coordinated bargaining.** The concept, which has no rigorous definition but which universally denotes the presentation of a united union front at the bargaining table and often also involves common union demands, was first applied with any degree of formality in the 1966 General Electric and Westinghouse negotiations (and has been reapplied there in each triennial negotiation ever since). By 2008 it had also been used by organized labor as a weapon in bargaining with Union Carbide, Campbell Soup, the major companies in the copper industry, American Home Products, Olin, and General Telephone, among others.

Such union attempts to change the traditional bargaining structure had, understandably, been received with something less than enthusiasm by the managements involved. Many had felt that it made no sense at all for them to expose themselves to more all-encompassing work stoppages just because their employees had selected different unions as their bargaining agents in different units of the company. Ironically, however, the management opposition *had* led to strikes, and some of these had been quite lengthy. At Union Carbide, a dozen plantwide strikes had occurred, with the shortest of them lasting 44 days and the longest going 246 days. The bulk of the copper industry was shut down for more than 8 months. One set of General Electric negotiations was marked by a strike of more than 3 months' duration. Nor could it be said, at the time of this writing, that particularly impressive union victories had been recorded by the new labor strategy. In general, unions that had not previously cooperated had found it hard to adjust to a policy requiring the sublimation of their own often intensely desired demands for the common good. In addition, the uncertain legal status of coordinated bargaining had remained a force to be reckoned with for organized labor.

At the moment, cooperation between unions is, at least in the opinion of the U.S. Court for the Second Circuit (New York), "not improper, up to a point." But the absence of a clear-cut Supreme Court ruling to dispose of this issue once and for all has meant that the legally permissible boundaries of coordinated bargaining remain unclear.

Generally speaking, spokespersons for unions that have thus far used the coordinated bargaining approach seem to be encouraged by its results for their specific situations and optimistic about its general growth prospects, but at the same time they appear to be realistic in assessing its general applicability. They know that it is no magic answer to the challenges of bargaining, but they do generally believe that as corporations become more diverse and complicated this mechanism, still a young one, will become more finely tuned and more effective.

On the other hand, the long-lasting failure of the United Steelworkers to form a genuinely strong multiunion coalition to bargain with the major copper companies because of internal schisms cannot be overlooked as a guide to the future, either. Many copper unionists, both leaders and rank and file, have vocally preferred their bargaining here to be at the local level and have been especially fearful that the Steelworkers would force "carbon copies" of its settlements elsewhere on them.

Whatever the future may bring, coordinated bargaining has grown relatively little lately. Company resistance and union parochialism are generally given most of the blame by labor leaders, who continue to view the recent corporate merger trend with much alarm.

Nor is organized labor happy about another growing phenomenon—that of the U.S.-based **multinational,** or corporation operating plants in various countries. For many years, unions have watched fearfully as such firms—attracted by a combination of tax concessions, lower-cost labor abroad, and accessibility to vital materials—have expanded their employment well beyond not only the borders of the United States but also, quite probably, the reach of U.S. labor law. By any estimate, thousands of jobs each week are being exported in this fashion by U.S.-based multinationals, and it is of no consolation at all from the viewpoint of displaced workers (or those who because of the exporting have never been employed at all) that multinationals often make huge sense if corporate return on investment is the criterion applied.

The UAW was the first major union to be touched by this threat, long before other labor organizations noted any grounds for alarm. But UAW president Walter Reuther's advocacy of "one big global union" was all but universally believed to be unrealistic. Given the continuing absence of international collective bargaining laws, the wide disparity in union strengths and ideologies throughout the world, the millions of totally unorganized workers, and interunion rivalries, it still is.

Each nation still has its own labor laws dealing with everything from pensions to what constitutes an unfair management bargaining tactic. Workers in each country invariably have their own sets of contract negotiation preferences, too: Unionists in India, for example, have in recent years often urged their union representatives to give their greatest attention to problems involving worker safety, while job security and health insurance issues have generally been pushed to the forefront by United States union members. And in some countries—Belgium and Luxembourg, to name just two—organized labor is very active in the everyday activities of government, even taking a strong interest in such issues as the administration of the social security system; in other nations (South Korea, for example), if there is any such union interest it has escaped detection.

The relatively conservative, capitalistic, bread-and-butter oriented unionist in America has, moreover, frequently viewed his or her socialistic union counterparts in, say, Italy, France, or Germany with nothing so much as intense suspicion. Language barriers obviously play a further role in dampening the chances for "one big global union." And organized labor is, as has always been the case in recent decades, relatively strong in some nations and relatively weak in others. More than 80 percent of the labor forces of both Finland and Sweden, for example, are currently unionized, and unions in Belgium, Denmark, and Norway also represent heavy majorities of all workers in their countries, while at least 40 percent of the workforce is unionized in such other lands as Ireland, Austria, Italy, and Portugal. But the corresponding figures for Spain and France at the other extreme are not much higher than 10 percent and—as in the United States at the present time—labor's clout in those lands and its ability to influence the international policies of their governments is something less than awe-inspiring.[11]

Nor are these differences the only roadblocks in the way of "one big global union." In most Central and Northern European countries, unions have historically had a cooperative relationship with employers, with worker representatives (as will be elaborated on later in this volume) even at times playing a major role in corporate decision making by means of significant board of director membership; in most Latin American and Anglo-Saxon nations (the United States hardly excepted) such a concept as the latter is virtually unheard of and unions are rarely consulted at all in any meaningful way by managements. In Germany, the Netherlands, and Portugal, among many other countries, negotiations between labor and management have been highly centralized, with unions having little power or authority at the company level; in places such as Italy, the parties have considerable clout at the local level. And although in much of Southeast Asia strikes are illegal, in both Great Britain and France such actions seem, to some observers at least, to constitute the national pastime.

The international diversity in union situations is, in short, very large, and to expect anything that meaningfully approaches a united labor front to offset the growing problem of globalization is to expect the impossible.

Thus, American labor's counterattack to date—beyond a few mergers and affiliations with Canadian unions—has essentially been confined only to loose consultation with unions and labor federations abroad. On this latter basis, such particularly threatened internationals as the United Steelworkers of America (USWA) have in the recent past met with leaders of metal and mining industry unions from such countries as Argentina, Bolivia, Brazil, Chile, Mexico, Peru, and Trinidad to talk about creating a permanent coalition of Western Hemisphere miners and metalworkers. The USWA has also hosted a five-country conference of labor leaders representing workers under labor contracts with the large Goodyear Tire & Rubber Company. As Steelworker president Leo Gerard has explained, "We wanted to make sure companies didn't play us off against each other."[12] U.S. longshoremen have built a regularized meet-and-confer relationship with Japanese longshoremen. The United Automobile Workers Union has done likewise with its Japanese counterpart, emphasizing in particular ways to organize hourly employees who work for Japanese-owned auto manufacturers in the United States.

And the 7-union breakaway Change to Win coalition has announced plans to work more closely with Chinese unionists in comparable industries in that country exploring means to raise wages and working standards there. The targets in China are especially bothersome to American unions. General Motors, for example, pays assembly workers at its Shanghai factory $9 per hour (including benefits), while the GM worker scale in the United States is currently $70 to $75 for so-called "core" employees and about $28 for "non-core" workers (although under terms of GM's current contract most new workers in both of these categories, as noted below, will receive less money than this).

But situations such as these represent very modest, informal efforts. And if the rationale for worldwide bargaining expiration dates, global strikes and boycotts, and constant international exchanges of information on a major scale have all been intensively discussed, after many years no move toward genuine international collective bargaining at the global level can be even remotely detected.

It is not very conceivable that the American labor relations systems and its NLRB protection will prove to be of much help to unions even though their target employers are American-based themselves (in most cases). Actions taken by U.S. unions could well turn out to be illegal secondary boycotts, and most American laws could hardly be expected to bind Japanese, Chinese, or German workers in any event. A potent adversary for unionism, the multinational is something that to date has caused only frustration for the labor movement in the United States.

BOULWARISM: A DIFFERENT WAY OF DOING THINGS

It can be argued with some justification that, for all its ultimate ability to effect a contract with which both parties can live for a fixed future period of time (even on the relatively infrequent occasions when a strike interrupts the negotiations), the conventional bargaining pattern is highly inefficient. With its exaggerated opening demands, equally inflated counterproposals, and particularly its seeming inability to motivate the parties into making satisfactory concessions until the fixed strike deadline is approached, it consumes the time and talents of many people for weeks, if not months, in a role-playing exercise that is often theatrical and almost always heavily laced with ritual. Could not the parties, it could well be asked, devise a system that comes to the point more quickly and deals with reality from the very beginning? The General Electric Company (GE) for many years had no doubts that such a system could be initiated. Its bargaining approach for almost three decades attempted to do exactly that.

From the 1940s until the 1970s GE religiously pursued a policy of (1) preparing for negotiations by effecting what company representatives described as "the steady accumulation of all facts available on matters likely to be discussed"; (2) modifying this information only on the basis of "any additional or different facts" it was made aware of, either by its unions or from other sources, during the negotiations (as well as before them); (3) offering at an "appropriate," but invariably a very early, point during the bargaining "what the facts from all sources seem to indicate that we should"; and (4) changing this offer only if confronted with "new facts." In short, the company attempted "to do right voluntarily," if one accepts its own description of the process. It alternatively engaged in a ruthless game of "take it or leave it" bargaining, if one prefers the union conclusion.

Aided by a highly favorable combination of circumstances—chief among them the presence of several competing unions, major internal friction within its most important single union (the International Union of Electrical Workers), a heavy dependence of many of its communities on the company as the primary employer, and an abundance of long-service (and thus less mobile) employees—GE was highly successful with this policy, known as **Boulwarism** after former GE Vice President of Public and Employee Relations Lemuel R. Boulware, until the late 1960s. With essentially no exceptions, the company offer in its original form was transformed into the ultimate labor contract. Constantly communicating to both its employees and the general citizenry of the various General Electric communities on the progress of the negotiations as these evolved—another major part of the Boulwaristic approach—the company could point with pride to the value of its policy.

For their part, GE's unions attacked Boulwarism not only as an unethical attempt to undermine and discredit organized labor but as an illegal endeavor in refusing to bargain. Triggered by charges lodged by the IUE following the 1960 negotiations, the NLRB did in fact (in 1964) find the company guilty of bad-faith bargaining in those negotiations. And almost 5 years later the U.S. Court of Appeals at New York upheld this NLRB ruling, as did the U.S. Supreme Court shortly thereafter by refusing to disturb that decision. But the facts on which these judicial actions were taken were, of course, those pertaining only to 1960, and it appeared that Boulwarism itself was far from dead.

By 1969, however, other changes had started to work against Boulwarism. The long-competitive GE unions had (as mentioned earlier) been able to coordinate their efforts. The IUE itself had been rescued from its intramural warfare by a new slate of officers. The GE communities had broadened their industrial bases and, hence, were no longer as dependent as they had been on the company's goodwill. And the high number of long-service employees on the GE payrolls had, by the normal processes of attrition, been greatly reduced. These factors all served to lessen the company's ability to transfer its offer in pristine form into the final contract. In 1969 a long and bitter strike did motivate GE to adjust its offer somewhat, with the strike itself being the only visible "new fact" in the picture. And in the 1973 negotiations, the original company offer was also modified in the course of the negotiations. Both the 1969 and 1973 changes were relatively minor and seemed to lie far more in the packaging than in the substance, but they presaged a new approach to the bargaining.

In the years after the mid-1970s, this new approach came to total fruition. Triennial bargaining sessions were all conducted without one serious accusation of Boulwaristic practice being levied at the company. And, although an armed truce philosophy could still be said to characterize the relationship, the old "doing right voluntarily/take it or leave it" strategy was completely supplanted by the far more typical pattern of proposals, counterproposals, and ultimate compromises in all of these contract negotiations. That pattern continues to this day.

But if Boulwarism has been long dead at General Electric, more than a few other managements have at least partially utilized the Boulwaristic pattern in *their* bargaining in the much more recent past. Employers at AMF, Timken, Allis-Chalmers, the Public Service Company of Oklahoma, and in part of the newspaper world—as well as those in professional baseball—have acknowledged some indebtedness to the approach even within the past decade. Many smaller and less visible organizations have also embraced Boulwarism in these years, without any fanfare at all. And still other managements, while admitting nothing, have rightly or wrongly given some impression of having been influenced by Boulwarism in shaping *their* bargaining approach in at least one round of contract negotiations in this period: A list here would include the National Hockey League, Food Lion, the major Southern California supermarkets (see below), and the Alabama Symphony Orchestra.

Whether or not such efforts and alleged efforts as the latter represent anachronisms or—with the tougher recent stance of management in general—the shape of things to come, Boulwarism even at the time of this writing thus could not be entirely disregarded. Whatever its deficiencies, it was at least a different concept that, certainly in the case of one major corporation, for a time operated with enormous efficiency. Such successes, however temporary, are never totally forgotten.

SOME FURTHER COMPLEXITIES

Generalizations such as those offered in the bulk of this chapter cannot, of course, do justice in accounting for a *specific* contract settlement or strike. To adequately appreciate the complexities and variations involved in the negotiation process, one must turn to the interdependent variables that are apt to be influential in determining bargaining outcomes.

The *current healths of both the economy and the industry*, for example, have been of major effect in determining the relative settlements of the United Automobile Workers and the three major U.S. car manufacturers for years. In 1967, when automobile-company production and profitability set new all-time records and the general economy was booming, the management quest for uninterrupted production led the companies to grant terms that dwarfed all earlier times. In 1970 company costs were way up and sales were way down at the same time that union members felt themselves badly hurt by inflation. A strike (at General Motors, the target employer of the UAW) was probably inevitable as a result, and the union, even after 67 days of striking, achieved a settlement that was so relatively unexciting to its members that for a while its ratification was in definite doubt. In 1973, a rather intermediate year for both the economy and the industry, union gains were moderate. In 1976 the economy and the industry had rebounded nicely from a lean period a year earlier, and the union fared well indeed, particularly with the negotiation of an additional 12 days off with pay annually to counter any future threats of unemployment.

In 1979 an average economy produced average gains. In the bargaining of the 1980s and early 1990s, hard times unknown to the industry since the 1930s generated mammoth economic concessions (described in Chapter 7) from the union in its desperate quest for maximum job retention. In the late 1990s, and particularly in 1999, red-hot sales led to mammoth profits for the companies and their desire to have labor peace was such that the UAW extracted contracts that were the most generous in decades. (Nor were the GM, Ford, and Chrysler workers in these boom years themselves very anxious to strike: They were receiving sizable profit-sharing checks and lucrative overtime opportunities. The last thing that they wanted, too, was a cessation of such financial rewards.)

But by the time that bargaining was scheduled for the 2003–2007 contract, not only had the economy cooled off considerably but the Big Three American automakers had suffered severe declines in their market share because of the heavy recent inroads of foreign car competition, especially from Japan. In the negotiations, which were concluded in a record-breaking mere 5 days, the union agreed to let the companies close six assembly plants and it accepted wage increases that were by any standard modest.

And when the bargainers met in 2007 to negotiate what would be the three 2007–2011 national agreements, the situation had become absolutely dire. Despite a generally healthy United States economy, the three automakers had lost more than $30 billion in just the last two years. For the union, whose membership had fallen from a high of 1.5 million in 1979 to not much more than 560,000 in 2007 (at GM, the 73,000 bargaining unit members in 2007 represented more than an 80 percent decrease since the 1970 strike, which had been waged by the 400,000 UAW workers then on the payroll), this was not the time to seek much from the companies.

Accordingly, the new contracts allowed all three employers significant labor cost savings. Where they had been paying their "core" workers (production line and skilled employees, primarily) $70 to $75 per hour in wages and benefits, most new "core" employees, as stated earlier, would henceforth cost them only $45 to $50 hourly (or about the same as the Japanese corporations were paying their equivalent workers in the United States). Compensation for new "non-core" or secondary workers would fall to about $14 per hour, or to about half the rate that existing non-core workers were receiving.[13] And buyout offers at all three companies, it was expected, would encourage many older and more senior members of the work force to leave their employers, thereby reducing overall costs even further. In addition, a health care plan would be set up at each company to pay for the otherwise uncapped benefits of the retired employees: This would allow the managements to get billions of dollars ($51 billion at GM alone) of liabilities off their books, at a discount of some 70 cents on the dollar (because of expected future trust returns).

The UAW would manage and invest the trust monies, and it got some rather limited job security guarantees and a promise that a relatively few temporary workers (5,000 of them at GM) would be hired as new full-timers at the higher "tier one" compensation rate. Beyond this, however, there were essentially no concessions to the union. Poor economic health had trumped everything else.

Excellent economic health, in contrast, did this trumping for the major hotel union, UNITE HERE, when in 2006 it negotiated its 2006–2012 contract with more than one hundred New York City hotels. Just as the Big Three auto companies in their best years, the hotels were then raking in record profits (based on high rates, both of occupancy and nightly), and they were unwilling to upset this enjoyable situation with a labor dispute. Well aware of sticky UNITE HERE negotiations that were operating to severely crimp hotel revenues in San Francisco at the same time, the New York hoteliers offered no more than token resistance to the union demands.

Paradoxically, some years ago, at a time when most unions were relatively pleased to come away with wage increases of 6 percent per year, Eastern Airlines granted the Machinists a whopping 32 percent over 3 years—not because it was rolling in wealth, however, but because it was so relatively poverty-stricken that it simply could not afford a strike: By its own admission, a strike would have caused severe cash problems for it within 2 weeks.

On the other hand, the shoe industry has been plagued by consistently poor economic conditions for many of its individual employers for many years, and, in the face of this variable and its persuasive logic, the Shoe Workers have shown considerable bargaining self-restraint for over three decades. And when the Brewery Workers struck several breweries a while ago, they undoubtedly regretted the actions (forced on the leadership by militant memberships) far more than did the employers: The industry had been hard hit by too great a beer-making capacity and slumping sales—particularly, indeed, involving several of the struck facilities—and, not urgently needing the plants in operation, the managements basically felt no great pressures to settle. (Even the entertainment industry, for decades seemingly immune to the consequences of national economic slumps, has been, at least at times, very much affected, as Exhibit 5–11, drawn some time ago from the quarterly journal of the Screen Actors Guild, demonstrates.)

GUILD AFFAIRS

Riding Out the Recession

BY ROBERT CAIN
SAG HOLLYWOOD DIRECTOR OF RESEARCH

By now it has become distressingly apparent that the entertainment industry is not, as many of us had hoped, recession-proof. Until the current recession began early last year, the conventional wisdom held that in times of economic distress Americans turn more often to filmed entertainment for relief from their troubles.

The statistics do not, unfortunately, support this comforting but questionable theory. Movie theater admissions in 1991 fell to their lowest level in almost two decades. Television advertising revenue, the engine that drives the network business, suffered a dramatic decline of 6.7 percent, the first drop since 1971. And more than 20 entertainment companies were forced into bankruptcy by withering business conditions. Screen Actors Guild members, for their part, faced the triple whammy of a shrinking employment base, falling salaries, and an expansion in membership which heightened the competition for work. All in all, it was a pretty tough year.

Total income under the four basic SAG contracts fell by 2.2 percent to $1.08 billion, the biggest year-to-year drop since the disastrous box-office year of 1971. Television, theatrical, and industrial earnings all declined, by 6.8%, 4.4%, and 12.6% respectively (*see chart below*). The one bright spot was commercial earnings, which rose 3.7% last year; although the number of job opportunities in commercials diminished, this trend was more than offset by the significant increases in session and use fees implemented with the new SAG contract in February 1991.

Fewer Jobs, Smaller Checks

Actors had to get by with fewer jobs, smaller residuals checks, and reduced salaries at every level. But the tough earnings climate did little to dissuade new members from joining the ranks, and the roster of dues-paying SAG members swelled by 3.2%. When coupled with the 2.2% contraction of the total income pie, this resulted in a 5.3% decline in the average member's earnings, from $12,596 in 1990 to an estimated $11,920 last year.

Actors at the top of the earnings scale were hit just as hard as those at the bottom — the number who earned over $100,000 fell last year by 5.2%, from 2,261 to 2,144. New York actors suffered perhaps the most, since the studios' production boycott of the Big Apple halted all television and film production until May. Female performers also experienced a tougher time than their male counterparts, particularly in commercials, as advertisers tend to revert to more conservative, male-dominated ad campaigns during times of economic uncertainty. All told, almost two-thirds of all SAG actors earned less in 1991 than they did in the previous year.

Fortunately, history has shown that the entertainment industry, and SAG in particular, are remarkably resilient. In the past decade SAG earnings have experienced two major setbacks: the 1982 recession, and the 1988 writers' strike. In the year following each slowdown, earnings vigorously rebounded, by 22.6 percent in 1983, and 17.7 percent in 1989. Several encouraging indicators point to the likelihood of a similar rebound in the next 12 to 18 months: the broadcast networks' combined ratings and shares are up substantially over last year; home video continues to boom; and the global appetite for American entertainment product shows no sign of diminishing.

(continued ⟶)

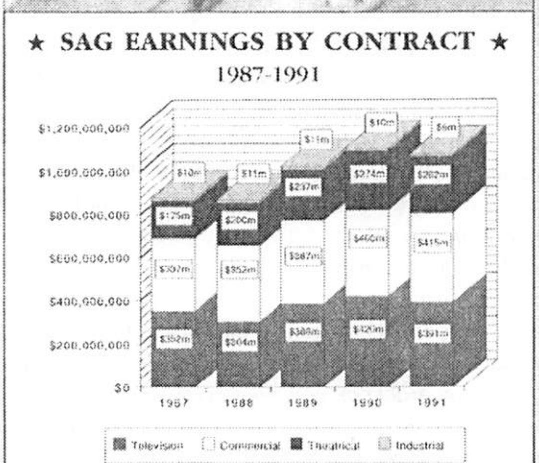

EXHIBIT 5–11

SOURCE: *Screen Actor*, Spring 1992, p. 12.

A Chill In Film & TV Residuals

A winter's worth of reruns barely keeps us warm

A year-end report reveals that SAG residuals from theatrical films, television films and television series totalled $190.4 million in 1991, a modest 5.5% increase from 1990 (data on commercial and industrial residuals were not yet available at press time). This represents a dramatic slowdown from the double-digit increases of recent years. Reruns of television series — on network, syndicated, cable, and foreign TV — accounted for half of the residuals earned; ancillary markets for theatrical films generated 40%; and reuse of TV movies provided the remaining 10% *(see chart below)*. The share of residuals generated by foreign sales continues to grow, now accounting for an estimated 20 to 25 percent of all film and TV residuals.

Residuals have become an increasingly essential component of SAG members' income. The $190 million in film and TV residuals accounted for almost one-third (29.2%) of all film and TV earnings in 1991, up from 26% just two years ago. The residual check, which was once merely a welcome supplement to acting pay, is now the only means for many actors to keep food on their tables. That is why the SAG contract negotiating committee rejected the broadcast networks' demands for an 80 percent roll-back of network rerun residuals.

There is no question that the networks had a tough year in 1991, but it is equally evident that SAG members suffered right along with them. A substantial cut in residual pay at this point would be excessively punitive, and would hurt actors far more than it would help the networks. SAG's Board and staff have always considered these residuals to be sacrosanct in the past, and will continue to do so in the future. ■

— Robert Cain

★ SAG 1991 FILM & TV RESIDUALS ★

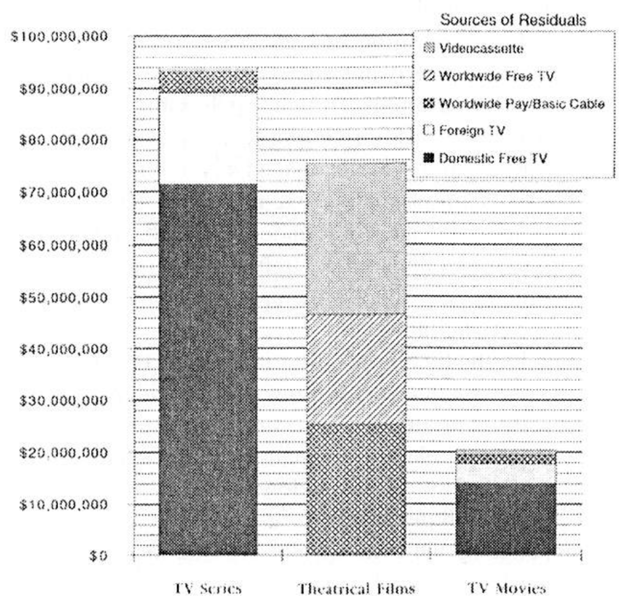

EXHIBIT 5–11 (continued)

SOURCE: *Screen Actor*, Spring 1992, p. 14.

Technological innovations—running a wide gamut from turbojet aircraft to computerized newspaper typesetting—have been the primary cause of many recent major bargaining stalemates and subsequent strikes. A few years ago, the Screen Actors Guild and the American Federation of Television and Radio Artists struck the entertainment industry for a share of the industry's profits on videocassettes and videodiscs, something that they could hardly have done a few years earlier when these new forms of technology were barely visible and anything but lucrative.

Another notable entertainment sector strike—this one by Broadway musicians in 2003, which caused 18 musicals to shut down for 4 days and an estimated $7 million in losses for the involved theaters—was in large measure caused by the great recent-year growth of synthesizers and other computerized sources of music. The Broadway producers claimed that such a development now made any future guarantees to the striking American Federation of Musicians of a minimum number of musicians in the orchestra pits (a traditional part of musician labor contracts for years) unjustified. The parties finally compromised: In the new contract the number of guaranteed positions was cut by about 25 percent (to 18 or 19, depending on the theater).

And the introduction of new Boeing jetliners that required only two-member cockpit crews and replaced planes requiring three-person crews has fostered much pilot unrest at many airlines in the past few years. Delta and Continental have had particularly sticky problems over such staffing, problems that as of the year 2008 remained unresolved and that threatened to explode into strike situations at any time.

The influence of other major variables can be illustrated. The *relative strengths of the two sides* can be decisive in particular negotiations as in the case of the management of New York City's Jacob K. Javits Convention Center and the several enormously powerful unions representing its employees. By the time of this writing, exhibitors at the center were used to being charged $50 (by the Teamsters) to retrieve a packing crate, $70 (by the Electrical Workers) to plug in a lamp, and a formidable $200 (by the Carpenters) to install a prefabricated booth that, absent union work rules, could have been assembled by the exhibitors themselves without tools. From its opening in 1986, the center had taken to union strike threats like a fish to land and its philosophy of peace at any cost had caused these and scores of other aberrations.

Likewise, America's 40 or so major waterfronts are all unionized. The International Longshoremen's Association (ILA) controls the movement of hundreds of billions of dollars worth of goods on the East and Gulf Coasts and the International Longshore and Warehouse Union (ILWU) does the same on the West Coast. Any interruption in the loading and unloading of ship cargoes by the 30,000 dockworkers involved could be ruinous to the employers, both because of rotting perishables at the piers and through a diversion of shipments to waterfronts that have not been struck. Consequently, strikes are rare, but just as understandably union incomes are high. With overtime, West Coast port workers now earn on the average almost $130,000. Foremen, who are also members of the ILWU, get an average stipend of just under $200,000, and their East and Gulf Coast counterparts lag behind these figures by only a little. High school diplomas are not required to hold the bulk of these jobs, but a willingness to support the union and to vote to go out on strike in the case of a negotiations impasse is very helpful.

Conversely, Xerox has held virtually all the power in *its* labor negotiations, above all because it has convinced its union—the Amalgamated Clothing and Textile Workers—of its sincerity in threatening to move significant copier production overseas because of 20 percent lower wage rates abroad. Not long ago, the union agreed to let the company use large numbers of part-time and temporary employees at a modest $8 per hour (well below scale) in an effort to keep the work in Rochester, New York, and the future will presumably see more such concessions.

And a 20-week work stoppage by the United Food and Commercial Workers in 2004 against 852 Southern California supermarkets resulted in a crushing defeat for the union. The three giant companies involved—Safeway, Kroger, and Albertsons—had all in recent years been among *Fortune* magazine's top 50 in both earnings and profits. All three suffered during the lengthy walkout (collectively losing some $2 billion in sales as many customers honored union picket lines). But the huge reserves of these employers (as well, allegedly, as their willingness to resort to Boulwaristic tactics, as previously described) gave them a definite advantage over the union, which incurred relatively greater losses of $8 million each week. For many workers the dispute meant, as one journalist put it, "weeks of misery. No longer able to afford child care, many . . . left their children alone when they served their four hours on the picket line for $25 a day."[14] All the missed paychecks were combining with mounting worries about being unable to pay mortgage and utility bills to motivate many strikers to demand from their union a settlement on almost any terms. The workers more or less got their wish. The new contract granted no raises and established a "two-tier" system that would not only bring in new hires at significantly reduced wage levels but also give them much less attractive health and pension benefits.

Some negotiations have not been easily resolved because of *political problems within the union.* In baseball, the Major League Umpires Association was, for example, torn in 1999 by a rift between member umpires who supported the supremely self-confident union chief Richie Phillips and those who did not. Phillips, who had successfully led his members through three strikes and a lockout in the previous two decades, stumbled in 1999. He persuaded his constituents to resign en masse as a pressure tactic in that year's contract negotiations, but the strategy backfired. The employers (the two leagues) permanently accepted the resignations of one-third of the 68 umpires, while most of the others returned to work, and while Phillips is now a former union leader, the umpires are today anything but united, with residual bitterness between the men in blue who fully supported the Phillips resignation strategy and those who had reservations about it.

The latter year also saw the chances of a New York City subway and bus strike greatly increased because of a bitter internal battle between the Transport Workers Union president and a militant faction that wrongly convinced many of the members that a strike would not be illegal. Only a last-minute settlement averted what would, at the height of the Christmas shopping season, have been a major problem for some 7 million New Yorkers.

In 2004 many observers blamed a deep division among the members of the Air Line Pilots Association for ALPA's temporary lack of cooperation in its bargaining with US Airways. One faction believed that although the ailing corporation was trying to avoid its second Chapter 11 bankruptcy filing in 2 years, its chances of successfully going through this procedure a second time were slim. It thus urged the granting of more pilot economic concessions so that the new bankruptcy would be unnecessary. The other faction argued that the pilots had given up enough compensation in 2002 and that even no job was preferable to an unjustifiably low-paying one. Neither union side really won: The airline subsequently did enter bankruptcy for the second time, with concessions from the pilots and its other unions, and at this writing was seeking a new set of wage and benefit cuts.

And in the closing days of 2005, with no last-minute settlement to rescue them this time, New York's subway and bus riders were forced primarily by continuing Transport Workers Union political cleavages to endure a 3-day strike (again, at the peak of the Christmas shopping season). Union President Roger Toussaint, first elected in the aftermath of the 1999 unpleasantness, was now sufficiently pressured by the militants that he was politically unable to grant any meaningful concessions to the management. The strike, illegal under New York's state Taylor Law, resulted in several days in jail for Toussaint, millions of dollars in fines for the union, and (a full year later) a final and binding ruling by an appointed arbitration panel that called for the union and management to accept, in a 37-month contract running retroactively from December 16, 2005, to January 15, 2009, essentially the same terms to which the chief negotiators had agreed in late 2005 but—under pressure from the union militants—a tiny majority of the 33,000 union members had rejected in a January 2006 referendum.

A *failure to accurately assess the other side's strengths* can sometimes explain things. That the Teamsters extracted huge concessions from United Parcel Service of America in their 15-day 1997 strike that cost UPS an estimated $600 million in lost revenue has been widely credited to three miscalculations by the management. For one, UPS thought that ongoing governmental investigations into the campaign financing of Teamster President Ronald Carey would diminish his effectiveness in the bargaining: They did not, although they ultimately led to his resignation as IBT leader. For another, the management believed that the unsavory reputation of the Teamsters as a hoodlum-infested and possibly mob-controlled organization would guarantee an absence of public support for the union. However, the public, perhaps because it saw the UPS-driver strikers as integral and welcome members of the community, instead roundly backed the strikers. And, for a third, UPS seemed to underestimate the willingness of the 185,000 Teamster members actually to participate in a work stoppage. (A union spokesperson later commented that the company "tried to define the fight as whether UPS employees would be loyal to UPS or loyal to the union.") There was no hesitation at all on the part of the unionists either to go out or to stay out.[15]

(Since that traumatic experience, the last thing that UPS has wanted has been another strike; and, despite harsh rhetoric on both sides during the next two sets of contract negotiations, this has been fully appreciated by the union. In 2002 the Teamsters came away with a very beneficial 6-year agreement for their then-230,000 UPS employees, some of whom are shown celebrating in Exhibit 5–12. And, in a subsequent 5-year contract that will not expire until 2013, the still-growing unionized workforce—now numbering just under 240,000 IBT members—extracted further concrete gains, featured by a $4.35 per hour wage increase, the lowering of employee health care premium costs, and the implementation of overtime pay for work exceeding 8 hours daily or 40 hours weekly.)

Similarly, a 191-day 1998–1999 lockout that involved the National Basketball Association and its players' union, and cost the league almost $1 billion in revenues and the players roughly $500 million in salaries, stemmed to a large extent from the NBA's underestimation of the union's solidarity. Mindful of the lack of togetherness of the players in the previous negotiations, the owners simply couldn't believe, before it actually happened, that the union members would in a concerted way be willing to

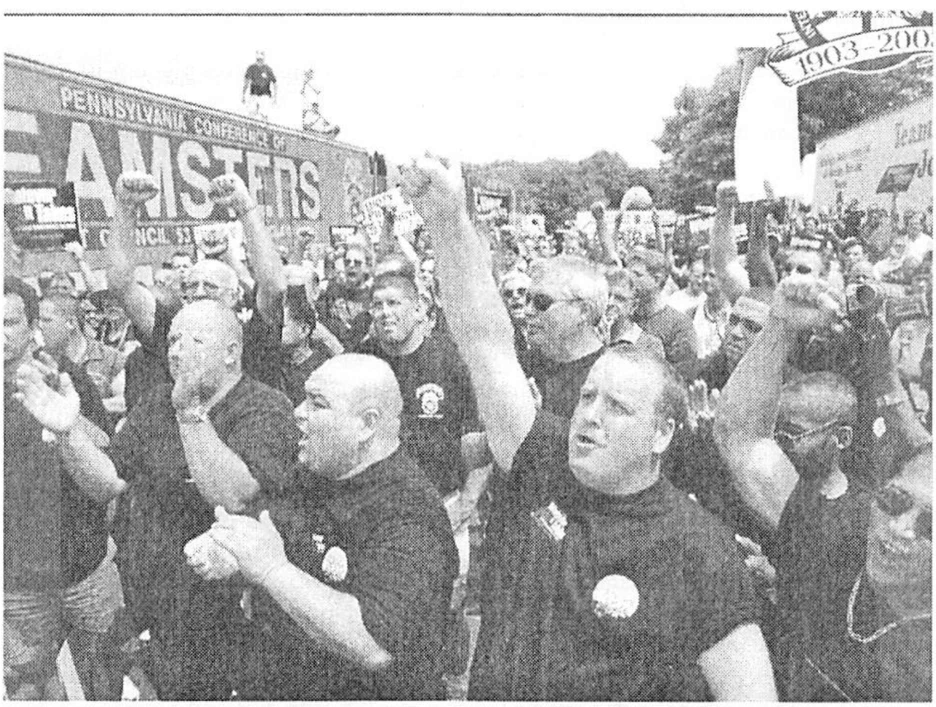

EXHIBIT 5–12

SOURCE: *Teamster*, September–October 2003, p. 31.

walk away from all that money. They had anticipated that any work stoppage, if forthcoming at all, would be brief.

Nor, in the fall of 2007, did the employing Alliance of Motion Picture and Television Producers accurately assess how deeply the 12,000 members of the Writers Guild felt over the issue of compensation for writer work distributed digitally for viewing on computers, iPods, and mobile phones. The writers had been simmering with hindsight regret for years after peacefully negotiating with the major studios what they would later view as overly modest residual compensation scales, first in the late 1980s regarding videocassettes and in more recent times for work distributed through the still-infant DVD system and through the equally nascent cable television industry. Their own bargainers at the times, current members realized, had not remotely appreciated the multi-billion dollar revenue potentials that the new structures contained.

They were determined not to make the same mistake yet again. Decades earlier, a powerful studio mogul had disdainfully referred to his writers as "schmucks with typewriters." And despite the long passage of time since then, the fact that every writer of whom the mogul was thinking had presumably long since left the field, and the virtual extinction of the typewriter itself as a tool of the trade, the remark still stung (and was not infrequently quoted by) movie and television writers, who felt that it symbolized an attitude on the other side of the bargaining table even in 2007. Specifically convinced this time that the producers thought that they were both too diverse in income (with half of the 12,000 members in a typical year getting no money at all from their chosen profession, most of the 6,000 others averaging around $125,000, and a relatively few top-of-the-craft people garnering income in the low seven figures) and insufficiently motivated to wage a successful strike, the Guild members concluded that militant action now was an absolute necessity.

Accordingly, they elected a scrappy group of leaders, gave them authority to call a strike (by a huge majority in a mail-in referendum in which more than 90 percent of the members voted), and with considerable cohesiveness went out on the first industrywide strike in almost two decades. This stoppage, which lasted for more than three months, resulted in only relatively modest overall gains for the writers; but it allowed them to gain a major psychological victory: In the third year of the new contract, they would get 2 percent of the revenue instead of their traditional fixed fee for the streaming of their work on the Internet—an important precedent setter on their most vital single demand.

Unions have also shown inadequacies in the assessment area. Believing that the McDonnell Douglas Corporation would do almost anything to avoid a strike some years ago, the Machinists Union put 32 *new* demands on the table in the very last pre-deadline hours. The management, feeling that all this was unreasonable, granted none of the 32 demands; and the 6,400 involved unionists, to the surprise of many of them, had no option but to strike.

And a 3-week New York City strike that in 2007 pitted Broadway stagehands against Broadway producers and theater owners was in large part caused by a belief on the part of the striking stagehands that the producers and theater owners were mutually suspicious employers who could not stay united in the face of a work stoppage. The two management parties surprised all observers by maintaining solidarity until the end and, aided by a $20 million fund designed to cover most of their fixed costs, successfully negotiated a strike-ending 5-year agreement that granted them considerable flexibility in the future assignment of the stagehands.

Hostility between different unions may, of course, also cause problems, as in much of the past decade when the three biggest postal unions (the Postal Workers, the Letter Carriers, and the Mail Handlers) were for a while barely on speaking terms. (Subsequently, the Postal Workers and the Letter Carriers got together to agree on something: the irresponsibility of the Mail Handlers in prior negotiations for accepting a U.S. Postal Service offer providing lump-sum bonuses in lieu of wage increases and authorizing lower wages for new workers.) This situation has made the achievement of labor peace quite elusive for the Postal Service as it has sought to negotiate contracts that would be fair to all parties.

Similarly, the Machinists in 2002 were under extra pressure to negotiate a lucrative contract for their members at United Airlines because they feared that should they not do so a small but aggressive rival union—the Aircraft Mechanics Fraternal Association—would successfully recruit these Machinist United Airlines employees. The resulting contract was liberal by any standard, costing an estimated $2 billion over the next 3 years and lifting UAL bargaining unit pay to the top of the industry.

Heterogeneity among managements in an industrywide bargaining situation may also play a large role in complicating negotiations. Major league baseball, where collective bargaining work stoppages—as noted in Chapter 1, there had as of this writing been eight of them out of nine contract negotiations—are almost as much of a tradition as the seventh inning stretch, is a classic example.

Even if the baseball owners did not have such a divergency of financial situations, bargaining cohesiveness among them could probably never have been achieved. By and large, the 30 franchises have always been headed by strong-willed individualists liberally endowed with egos, and personal animosities have abounded. But the differences in financial well-being have greatly accentuated the problem; and, while always present, these have actually been growing even since the 234-day strike of 1994–1995. Some teams—the Los Angeles Dodgers, New York Mets, Atlanta Braves, Boston Red Sox, and New York Yankees prominently among them—are extremely wealthy and can ride out any work stoppage with impunity. Others, although not necessarily poverty-stricken, are highly leveraged because of new ballpark construction and invariably have a pile of bills to pay: The San Francisco Giants, with an annual debt service of $17 million, fall into this category. At the extreme ragged edge are the threadbare Detroit Tigers and Tampa Bay Rays, for whom a strike or lockout could be the death-blow. The Pittsburgh Pirates and Milwaukee Brewers are not exactly rolling in wealth, either. Negotiating a contract that would be acceptable to a majority of these mutually suspicious owners has been anything but easy for the owners' chief negotiator. This is in enormous contrast to the union side, where unity has generally existed. And it is probably this factor more than any other that has accounted for the gigantic income strides that the players have made in recent decades: The average salary since 1966 has risen from a now-unbelievably low $19,000 to just under $2.7 million (in 2008), and the minimum salary—a meager $6,000 in the former year—is currently a far more impressive $380,000.[16]

The three-and-a-half-month 1995 hockey lockout was in large measure also greatly influenced by a wide financial gulf existing between rich and poor ownerships. Such big-market teams as the New York Rangers, Toronto Maple Leafs, and Detroit Red Wings—all enormously profitable—had no real objection to sharing some of their increasing wealth with their players (at least if the alternative was a work stoppage and thus no revenues for a while). Small-market teams—such as the now defunct Hartford Whalers (who had lost $26 million in the previous 2 years) and the Winnipeg franchises—felt that taking a hard line toward the players' union was their only recourse. Blaming the richer teams for having escalated player salaries to the point at which they could no longer afford them, the small marketers ultimately prevailed, but ownership enmities continue to this day.

The *personalities* of labor and management representatives often have a major bearing on the outcome. The painful concessions that nine striking unions granted the late British press baron Robert Maxwell in 1991 to end a 5-month strike at the *New York Daily News* stemmed from a consensus among these unions that Maxwell's proffered purchase of the sick paper was the *News*'s only alternative to extinction. But the concessions could also be in good measure explained by the sheer force of the personality of the swaggering, egocentric Maxwell: "He can charm the birds out of the trees," one of Maxwell's labor antagonists later said (although the labor leader added "and then shoot them").

In like vein, what was believed to be the longest strike in U.S. history was settled in 1992, when Park-Ohio Industries, Inc., announced its intentions of naming Edward Crawford—a man very much respected by the striking United Automobile Workers for his integrity and industrial relations competencies—as its new chairman and chief executive officer. (The announcement ended a labor dispute that had, rather amazingly, lasted 9 years and the union shortly thereafter told the media that the *Guinness Book of World Records* was in fact looking into the situation as a precondition of awarding the parties' inclusion in that publication.)

A major reason why the International Association of Machinists (IAM) settled peacefully with Boeing in mid-1999 was that IAM officials were concerned that a disruptive strike just as the company had finally succeeded in meeting its ambitious production goals could cost the well-liked company CEO Philip M. Condit his job and force the union to deal with a much more hard-line management replacement. Condit, showing why he was held in such high esteem by the Machinists, made it doubly easy for the union to avoid striking by engineering an offer that was seen as so liberal by some Boeing investors that they were apprehensive, but analysts generally agreed that the new pact was not unjustified given the Seattle-based company's situation at the time.

At Verizon, on the other hand, settlement of a strike in mid-2000 was delayed for several days after the bulk of the telecommunications giant's unionists had agreed to terms because of what was believed to be a personal grudge match between the chief Communications Workers of America negotiator in the middle Atlantic states and leaders of a second union simultaneously bargaining with Verizon, the International Brotherhood of Electrical Workers. The fiery CWA negotiator, who had earlier publicly mocked a prior IBEW-bargained telephone contract as a "piece of trash," seemed to many observers to be motivated more by a desire to carve out a name for himself than by anything else.

And Yale University's sorry record of labor relations in its dealings with its clerical, maintenance, and dining hall employees (there have been nine strikes there over the past 40 years, the most of any American university) has been explained by some Yale insiders as having been caused mainly by one person. John Wilhelm, national president of the Hotel Employees and Restaurant Employees and ironically a Yale graduate himself, "obviously believes"—in the words of Yale's Director of Communications—"that confrontation rather than cooperation is the best way to settle contract disputes."[17] The leader of all nine strikes, Wilhelm was in 2003 charged in an opinion piece in the student-published *Yale Daily News* with enjoying his widely publicized showdowns with his distinguished alma mater because these could bring him closer to his goal of succeeding John Sweeney as AFL-CIO's president. (Wilhelm strongly disagreed, disowning such a career goal and blaming the frequency of strikes instead on Yale's bargaining approach and its arrogance.)[18]

The personalities of managers have been known to trigger problems, too.

Although a bitter, long-lasting 1989 strike against the now-vanished Eastern Airlines that was waged by all three of its major unions (the Pilots, the Machinists, and the Flight Attendants) had many causes, the enmity that the strikers had for Francisco A. Lorenzo, the intense and demanding chairman of Eastern's parent Texas Air Corporation, was a dominant factor. Lorenzo, who had been able to slash his air fares considerably only by draining resources from the airline and taking a hard line on labor costs was, in the opinion of the Air Line Pilots, "the embodiment of evil." The leader of Eastern's Machinists went so far as to call the entire strike "a Frank Lorenzo strike." And picket lines across the country vilified the chief executive as a "corporate buccaneer," carried placards with a bull's-eye over Lorenzo's face, and chanted, "Eastern, yes! Lorenzo, no!" Lorenzo retaliated by blaming the union leaders for all of Eastern's considerable financial problems and the personal feuding for months made meaningful negotiations impossible.

In the airlines industry, also, years of labor–management mistrust at American Airlines that culminated in hundreds of American pilots calling in sick in early 1999 (forcing hundreds of flights to be cancelled and hundreds of thousands of passengers to be inconvenienced) certainly had some large connection to former American CEO Robert L. Crandall, a hard-lining and combative executive whose unquestioned strengths did not extend to labor relations. Long after his departure, the personal animosity that many pilots held toward him seemed to have been rather unfairly transferred to his successor.

But that successor, Donald J. Carty, generated one very large bargaining problem of his own, in 2003. With American then on the verge of bankruptcy, he painstakingly procured last-minute voluntary concessions from all three of his major unions—representing the pilots, flight attendants, and ground workers—that cut $1.8 billion (or about 20 percent) from total payroll costs. He postponed, however, filing a required regulatory financial report that revealed the existence of a lucrative executive retention bonus plan and a $41 million executive pension trust until the union ratification voting on the pay concessions was ending. News of this double standard for executives leaked out, triggered by a *Wall Street Journal* disclosure, and although the bonuses were swiftly rescinded and Carty profusely apologized, a withdrawal of the concessions was avoided only when Carty—having now lost his credibility—resigned.

And the longest strike in the history of Hershey Foods—a 6-week affair in mid-2002—could, in large measure, be attributed to the hostility that the Chocolate Workers Union had built up for Hershey's tough new CEO, the first outsider ever to head what had historically been one of the most benevolently paternalistic companies in America, Rick Lenny. Lenny in his first year at the helm had rather abruptly eliminated hundreds of Hershey jobs, in the process abolishing such signature company activities as cocoa processing. In the contract negotiations preceding the work stoppage, he had sought to double the employees' share of health-care premiums and had also adamantly refused to make any new wage increases retroactive to the November 2001 expiration date of the old contract.

Lenny's standing with his small-town workforce also gained nothing from the fact that although the confectioner's employees averaged a modest $18 hourly, he drew a salary of $605,769 and a bonus of $900,000 in his first year and also garnered a restricted stock award of $3.2 million and just under $500,000 in stock options. Although his decision to hire several personal bodyguards was also greeted with some derision, under the circumstances it probably made sense. Barely five years later, at the age of 55, he announced his retirement as CEO—a decision that was influenced by his frustration with the trust controlling the company and by growing competition from such rivals as Mars Inc. but conceivably also stemmed from the lasting ill will toward him generated by his earlier actions. (Exhibit 5–13 depicts union activities during the 2002 strike. The Chocolate Workers are an affiliate of the Bakery Workers Union.)

Nor has the perceived controversial personality necessarily been just on one side of the bargaining table. It was widely believed that personal rancor between both of the hard-driving principals in the 2004–2005 hockey bargaining—National Hockey League Commissioner Gary Bettman and NHL Players' Association Executive Director Bob Goodenow—prevented any meaningful give and take until it was too late.

But personalities can also go a long way toward explaining the presence of entirely *amicable* labor-management relations. Sharply at variance with the constant unrest in baseball and the bitter and long-lasting work stoppages in recent years in both basketball and hockey, the National Football League had, when its last contract expired in 2007, recorded a full two decades of labor peace. Contractually contained deadlines that required both parties to negotiate long before current contracts had run their course was often offered as one reason for this state of affairs. So, too, had been the league's lavish television contracts—currently yielding a staggering $17.6 billion over 8 years, with 63 percent of the monies going to the players: If the games are not played, no one gets anything.

But foremost among the explanations for the unparalleled labor peace would appear to be a relationship of both mutual professional respect and solid personal friendship forged between Gene Upshaw, the popular and politically secure longtime head of the players' union, and football's powerful commissioner until recently, Paul Tagliabue. They made it look easy.

Some Concluding Thoughts

The preceding examples are only a few of the many that could have been chosen to illustrate each category of variable. In any given contract negotiation, one factor might be of major importance—or of no significance at all. The degree of importance of each also, of course, changes over time. And, clearly, many (or none) of these variables can be at play at one time on the bargainers.

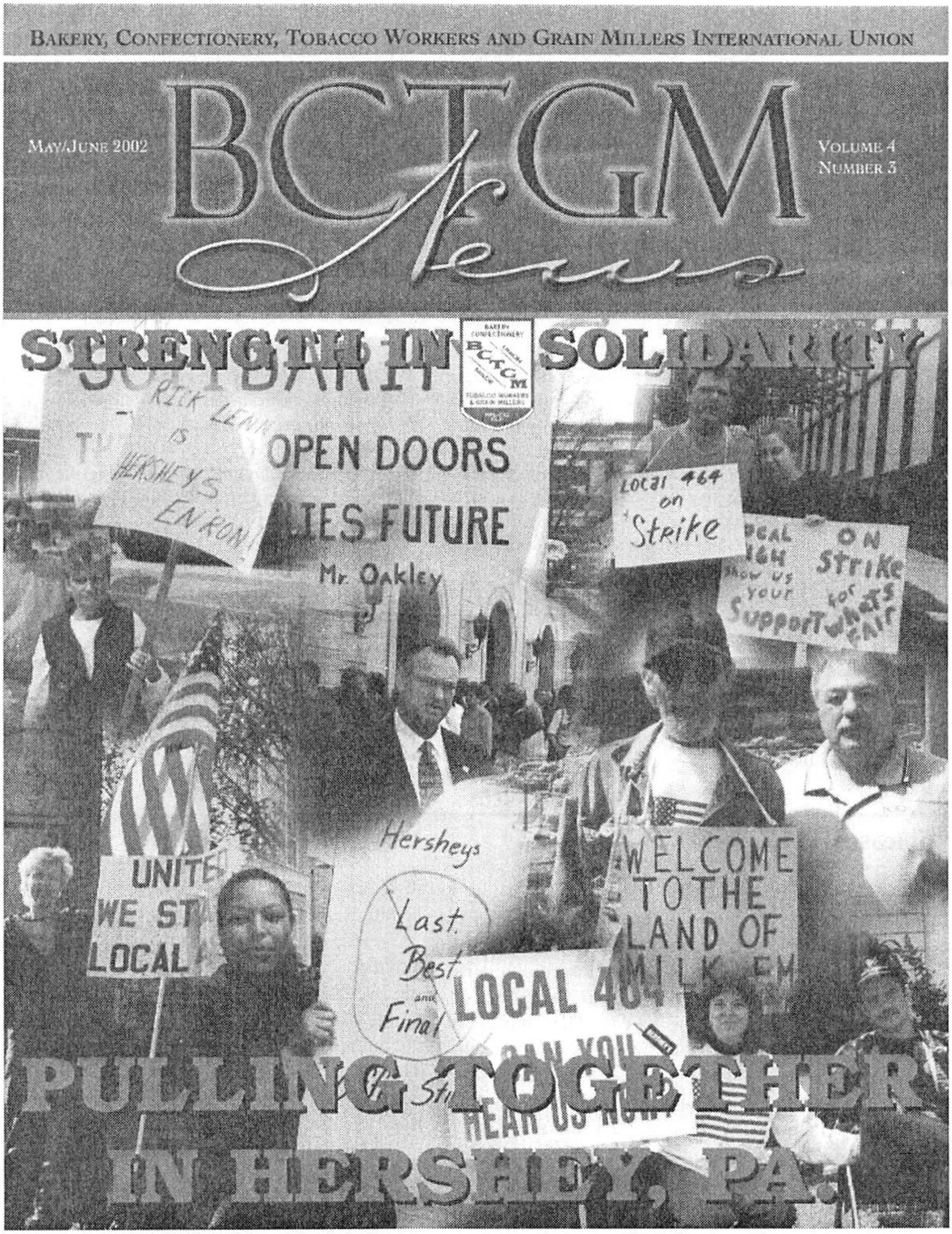

EXHIBIT 5–13

Source: Used with permission of BCTGM International Union, *BCTGM News*, May–June 2002, front cover.

Contract negotiation is, in short, no more susceptible to sweeping statements than are the unions and managements that participate in the process.

The foregoing *has* indicated, however, that the negotiation of the labor contract in the contemporary economy is a complex and difficult job. The negotiators are required to possess a working knowledge of trade union principles, operations, economics, psychology, statistics, and labor law. They must have the research ability to gather the data necessary for effective negotiations. Negotiators must be shrewd judges of human nature. Often, effective speaking ability is an additional prerequisite. Indeed, the position of the negotiator of the modern contract demands the best efforts of people possessing superior ability. Today's collective bargaining sessions have no place for the uninformed, the inept, or the unskilled.

Discussion Questions

1. Assume that a large, nationwide company is negotiating a contract at the present time. What economic, political, legal, and social factors might be likely to exert some influence on these negotiations?
2. It has been argued by a union research director that "a fact is as welcome at a collective bargaining table as a skunk at a cocktail party." Do you agree?
3. Evaluate the statement that "in the absence of a strike deadline, there can be no true collective bargaining."
4. What might explain the frequently heard management observation that "highly democratic unions are extremely difficult to negotiate with?"
5. How do you account for the fact that the joint study approach still remains confined to a relative handful of industries?
6. From the viewpoint of society, is there anything to be said in favor of strikes?
7. Of all the personal attributes that this chapter has indicated are important for labor relations negotiators to have, which single one do you consider to be the most important, and why?
8. "Successful labor contract bargaining should no longer be viewed as an 'art.' It is far more appropriate today to refer to it as a 'science.'" Discuss.
9. "No manager who is prone to either ulcers or accepting verbal statements at face value belongs at the labor-relations bargaining table." Discuss, after explaining what this means.
10. "From the viewpoint of management, there is a great deal to be said for the policy of Boulwarism." Do you agree or disagree with this statement?
11. "From the viewpoint of the national interest, work stoppages in baseball, our national pastime, should be made illegal." Comment fully.

Minicases

1. Trying to Strike a Balance

In order to bargain for the health and safety of employees, the Oil, Chemical and Atomic Workers Union demanded that several employers disclose the generic names of chemical substances used or produced, as well as the medical records of employees. The employers refused, claiming that disclosure would both invade the privacy of employees and compromise trade secrets. With some limitations, the NLRB in 1982 held that the employers did not bargain in good faith when they refused to divulge such information.* While upholding the union's request, the board asserted that few matters could be of greater concern to employees "than exposure to working conditions potentially threatening their health, well-being or their very lives."

However, the board also ruled that the employers could conceal individual employee identities before turning over the medical records and also that the managements did not have to disclose the generic names of chemicals that constituted proprietary trade secrets. Thus, the NLRB attempted to strike a balance between conflicting interests: the employer's desire to protect both worker privacy and trade secrets and the union's need for material information about potentially life-threatening work conditions.

How do you feel about this NLRB decision? ■

**Minnesota Mining & Manufacturing Co.*, 261 NLRB 27 (1982).

Notes

1. John T. Dunlop and James J. Healy, *Collective Bargaining*, rev. ed. (Homewood, IL: Richard D. Irwin, 1955), p. 53.
2. *The New York Times*, August 25, 1994, p. B9.
3. These union demands, needless to say, constituted only the opening union position. As the next section of this chapter will show, there are reasons for such hyperbole. The parties ultimately settled for an estimated $3.5 billion increase.
4. *Business Week*, February 17, 1997, p. 38.
5. *The New York Times*, November 29, 2005, p. A22.
6. *The Economist*, July 13, 2002, pp. 28–29.
7. Carl M. Stevens, *Strategy and Collective Bargaining Negotiation* (New York: McGraw-Hill, 1963), pp. 105–6.
8. Ibid., p. 100.
9. William E. Simkin, *Mediation and the Dynamics of Collective Bargaining* (Washington, DC: Bureau of National Affairs, 1971), p. 357.
10. Walter E. Baer, *Labor Arbitration Guide* (Homewood, IL: Dow Jones-Irwin, 1974), p. 94.
11. In France, however, the 10 percent figure definitely understates the strength of unionism there: Under the laws of that land, the outcome of negotiations between employers and unions automatically applies to *all* firms in the same industry. On this basis, virtually all employees in France are *covered* by collective bargaining, even if relatively few of them are actual unionists.
12. *Wall Street Journal*, March 15, 2005, p. A2.
13. Ford, which had lost $12.6 billion the previous year, and was widely understood to be the sickest of the Big Three, got a few further concessions in this area: *All* new "entry level" employees would, for example, receive a starting wage rate of $14.20, gradually rising to $15.34; in return, Ford promised to limit the percentage of its workforce classified as "entry level" to 20 percent and also gave the union guarantees that no Ford assembly plant in the United States would be closed during the four years of the contract, a commitment that went somewhat beyond what GM and Chrysler had been promised.
14. *The New York Times*, February 28, 2004, p. A8.
15. See *Wall Street Journal*, August 21, 1997, p. A16, for an excellent elaboration of all three points.
16. On the other hand, the industry as a whole hasn't done badly either, at least lately: Overall revenues were $1.2 billion in 1992; fifteen years later they rose to a new annual record of approximately $5.5 billion.
17. *The New York Times*, September 4, 2003, p. A21.
18. Ibid.

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