I

WHAT IS COLLECTIVE BARGAINING?

In two recent opinion surveys both the expert directors and the sponsors were shocked by the discovery that most people do not know the meaning of the words "collective bargaining." More than five people out of six have no idea what the term means. One person out of six or seven has some idea, but frequently an incorrect idea.

There has been no lack of publicity on the subject, to account for this general lack of knowledge. The right to "bargain collectively" appeared in federal law in 1933, in the short-lived National Industrial Recovery Act. For more than a decade, the term "collective bargaining" has been prominent in the news. It has been the subject of weeks and months of debate in Congressional committees and on the floor of the Senate and the House of Representatives. It has appeared in briefs and has been heard in arguments before federal courts, probably in every judicial district in the United States.

Collective bargaining has furnished the subject matter for thousands of pages of printed material in hundreds of books, magazine articles, and pamphlets. The words have been used in presenting facts, alleged facts, and emotional appeals, through the medium of display advertising in newspapers with combined circulation figures running into the tens of millions.

The written and oral references to collective bargaining came from such varied sponsors that no group of people in the community should have been beyond their reach. If the speeches and publications had all been sponsored by such an organization as the American Federation of Labor, it would

not be surprising if they had failed to reach the great mass of farmers, unorganized workers, business men, and housewives. Similarly, if the National Association of Manufacturers had been the only agency talking about collective bargaining, it would not be surprising if the great majority of workers had not been listening to the discussions.

The flood of books, pamphlets, advertisements, and radio talks dealing with collective bargaining have been sponsored by so many different agencies that the combination of all of them should have reached every identifiable group. The discussion of collective bargaining has been carried on by spokesmen and writers for the National Association of Manufacturers and the American Federation of Labor, the Chamber of Commerce of the United States, and the Congress of Industrial Organizations. It has been conducted by college professors, ministers, politicians, employers, judges, union organizers, and just plain people.

And yet the great majority of the adult population in the United States has no idea what collective bargaining is, not even a mistaken idea. If this seems incredible, we need only to compare it with the situation relating to the Marshall Plan. Months after Mr. Secretary Marshall made his proposal—after sixteen nations of Western Europe met for weeks to lay the framework for the Plan, and received front-page publicity in American newspapers day after day; after Congressional and other governmental committees had spent months in study of the Plan, and after Generalissimo Stalin and Agriculturalist Wallace had bitterly denounced it—after all these, a public opinion survey found that only a small minority of the American adult population had any idea whatever as to the meaning or nature of the Marshall Plan.

It happens that collective bargaining has become one of the most important features of our economic way of life. For most Americans, it has a bearing on the practical problems

of living roughly comparable to some of the essential implements in our political life, for example, universal suffrage, the taxing power of Congress, and the judicial powers of the Supreme Court. Whether we live in the city or on the farm, whether we work for wages or own grocery stores, we cannot live through a single day without experiencing some of the effects of this process called collective bargaining. Most of us have never engaged in collective bargaining, either directly or through representatives. Extremely few of us have ever read even one of the federal or state laws relating to collective bargaining, or examined a labor agreement arrived at by collective bargaining. In spite of all this, and in spite of the fact that more than eighty percent of us have no idea what the words mean, we are living in the age of collective bargaining. Our lives are influenced by it in somewhat the same way that they were influenced, twenty years ago, by the speculative excesses of the New Era.

A group covered by one of the opinion surveys mentioned above, demonstrated that their lack of understanding of the term collective bargaining should not be interpreted as a lack of intelligence, or as a lack of general understanding. To a carefully selected and corresponding sample of the same population group, in the same locations, the following questions were presented:

Do you think the unions around here are trying to do what their members want, or not?

Do you think the unions are getting along well with the people who run the industries around here, or is there quite a lot of trouble?

If they are getting along well together, who do you think deserves the credit—the unions, the people who run the industries, or both?

If there is a lot of trouble, who do you think is to blame for it—the unions, the people who run the industries, or both?

There was no lack of understanding of these questions. There was almost no uncertainty. There was a positive and intelligent expression of opinion on each of the questions, and the opinion was usually reconcilable with the known facts. The understanding, the definiteness of opinion, and the general intelligence of the opinion were consistent throughout all classes of the population—old and young, men and women, union and non-union, high and low in education and in economic status.

These questions deal with the principal elements in the practice of collective bargaining. The contrasting experience between the lack of understanding of collective bargaining and the almost universal understanding of what might be described as union relations should be a lesson for those who surrender themselves to what Stuart Chase has called "the tyranny of words." If we hope to understand each other, and if we hope to have most people in the community understand us, we must use words which have a definite and widely accepted meaning. If we hope to talk to the taxi driver and the city councilman, the minister and the owner of the picture show, the janitor and the insurance salesman, it is a little bit silly to expect them to study our words so that they can understand us. It is our job to get acquainted with the words which these people know and understand, and to express our thoughts to them in their words.

Within the group which claims to know what collective bargaining means, about fifteen percent of the adult population, there is still a substantial amount of misunderstanding and ignorance. We may disregard any discussion of the man who thinks it is the effort of a collector to arrange for installment payments on his unpaid doctor bill, or the man who thinks it is the business of buying collections of antiques for a museum. Our serious attention can go directly to the intelligent adults who think that collective bargaining is the relationship between employers and employees, or that

it is a gradual replacement for the American system of management and profits. Their very closeness to the activities of collective bargaining has led many of these intelligent adults to believe that collective bargaining blanks out all other phases of employee relations.

These pages are not likely to be read by anyone who does not already have his own idea of the meaning of collective bargaining. The words will be used in these pages without apology, in spite of the fact that most adult Americans do not attach any meaning to them. But the words are used with the full consciousness that they do not have a specific meaning, even among those of us who use them as the jargon of our alleged profession.

In these early pages, an attempt is made to set up a mutually acceptable outline of content and meaning for the phrase collective bargaining, so that the term can be used as a symbol through the pages which follow.

In all the pages following, a more earnest attempt is made to point out that the phrase collective bargaining can never contain a meaning as broad and as important as some of us have attributed to it, and that it can never serve as a symbol of the basic relationships in which American industry and business must function.

In the sense in which the phrase is used in this volume, collective bargaining means, first of all, a process in which there is a delegation of authority to negotiate, on behalf of a larger number of persons than are actively engaged in the negotiations. If three high-school boys select one of their number to try to make a deal with the teacher, so that the three of them can leave school early on Friday afternoon to attend the football game, the selected spokesman is carrying on collective bargaining. It is collective because he has been delegated to speak for two other boys as well as for himself. It is bargaining because he must have some arguments, reasons, or considerations, sufficiently good to convince the

teacher that he should grant the requested permission to leave early.

Collective bargaining should be collective in ways other than the mere selection of one or more spokesmen as the agent or agents of two or more principals. It should be collective in the sense that the requests which he makes represent the agreed and collective desires of the group for which he speaks. In the case of the three boys mentioned above, it is necessary that they have generally agreed on several points:

First, they want to go to the game.
Second, they cannot go to the game unless they can catch the three-o'clock chartered bus.
Third, they cannot catch the three-o'clock chartered bus unless they are permitted to leave school earlier than that.
Fourth, they have agreed to arrange their personal affairs so that all three of them can go directly from school to the bus.
Fifth, they have calculated that fifteen minutes is the time necessary to go from the school building to the bus station; therefore they are agreed that two-forty-five is the time at which they wish to leave the classroom.
Sixth, they are jointly willing to agree to spend an extra forty-five minutes in the laboratory on Monday afternoon to make up for the early dismissal on Friday.

Thus the spokesman for the three is properly delegated to represent the group. He is properly informed and instructed as to the common desire of the group. He is properly instructed and authorized as to what the group will offer in return for the granting of their joint request.

This is a pure and simple form of collective bargaining. It rarely exists in real life, either in the high school classroom or in the furniture factory, the department store, or the steel mill. The goal of early dismissal for the three boys might have been sought and accomplished in several other

ways. It may be helpful to discuss some of these ways and try to decide whether they are entitled to be described as collective bargaining.

A student from another high school, who had arranged for some of the boys in his class to be excused early, might have come over to talk to the three boys in our high school. He might have volunteered to go and talk to the teacher, to ask him to excuse our three boys because the teacher at High School No. 2 had made a similar arrangement.

The operator of the chartered bus might have tried to sell tickets to the three boys and found himself blocked by the fact that their class schedule would prevent them from leaving early enough to catch the bus. He might have then gone to the teacher to ask for early dismissal for the three boys. His argument would probably include the fact that the boys from High School No. 2 were being dismissed early, that he had arranged the special chartered trip on the assumption that he could fill his bus, and that he had saved three seats for these three boys.

Another possibility would be that the owner of the chartered bus might go directly to the teacher and negotiate the early dismissal, then go to the three boys and say, in effect: "Look, I fixed it so you can get out of class at two-forty-five so you can go on the special bus to the game on Friday afternoon. Here are your bus tickets. That will be one dollar each."

Obviously, any one of these methods, or any one of several other methods, might accomplish the identical result: three boys excused from class at two-forty-five, catching the chartered bus at three o'clock, seeing the football game, and paying one dollar each for the transportation. But just as obviously, the first method is the only pure and simple example of what we mean by collective bargaining. And yet, a very large proportion, possibly a majority, of the union-

management negotiations in American industry before the passing of the Wagner Act were conducted in a manner closely resembling the last example.

When the law-makers of the nation adopted the so-called Magna Charta for American Labor, the National Labor Relations Act, they seem to have reflected a naïve concept of collective bargaining. They concentrated their attention on the protection of the right of employees to organize and to have representatives of their own choosing. Both the law itself, and the obviously distorted practices which grew up in its administration, did an excellent job of protecting this right against any interference by employers. Both the law and its enforcers failed and neglected to protect this right against interference by other persons. This failure and neglect are excusable in the light of the actual provisions of the law. But in the process of seeing that this right to be represented was protected against any interference by the employer, there were scores of systematic practices and hundreds of discretionary acts which definitely assisted other parties to interfere with the free choice of representatives. The witch hunt for employer influence or domination in an obviously independent union is one example of the systematic practices. Probably half the employers who went through the inquisition of unfair-labor-practice charges can give examples of local activities through which the enforcement agents assisted a would-be union spokesman to override the real desires of employees in the choice of a bargaining agent. Local and international unions, both CIO and AFL, have built a voluminous record of evidence in the files of the National Labor Relations Board, and of the federal courts, alleging such acts of discrimination, resulting in the inability of certain groups of employees to exercise their free choice as to representation.

The first essential of collective bargaining was, therefore, not universally achieved by means of law. Probably millions

of employees who are covered by union agreements today, were not represented, at least in the first instance, by a union or a spokesman selected by their free choice.

On the second essential of pure collective bargaining, the structure erected on the foundation of federal law is even more faulty. The writers of the law evidently believed that after a group of employees had selected a representative, the group would instruct that representative to present demands, requests, and commitments which expressed the will of the group as evidenced by a majority vote or the equivalent. The fact that this did not prove to be the case is no ground for indictment of the unions which represented the employees, either as to their good faith or good judgment.

Both as a result of the workings of the Wagner Act and as a result of the natural development of the union movement, most unions are not isolated and independent local organizations. The Wagner Act set up a difficult barrier against the certification of an independent local union. The long experience of the labor movement had already demonstrated that such an independent local union was usually an ineffective agent for its members, or a detriment to a larger group of workers in related occupations. Even without employer influence, it was likely to be poorly informed as to the programs and needs of other workers.

Recognizing that most unions are affiliated with other unions, usually constituting an international union, it is obvious that all the affiliated locals within the international have certain common interests. These common interests are such that they do not permit the unlimited exercise of local option or local autonomy. The general advantage of the members of the international union as a whole could be disastrously undermined by the divergent desires of several of the locals. A lack of consistency on certain issues, as between the various locals, could be an effective weapon for retarding or weakening the entire union. This applies not only to the

interest and welfare of the individual members of the union, but to the important issues involved in the political survival of the organization.

A certain group of the employees of the General Gadget Company may have selected an international union of the craft type to represent them. They may have made this selection freely and deliberately, because they are convinced that this union represents a grouping of workers whose skills and occupations are similar to their own. They have organized a local and received a charter from the international, or they have joined a local already in existence, whose members work for several other gadget companies.

These employees of General Gadget Company may have thought and talked for a long time about the wages, hours, and working conditions which they wanted. After their absorption into the international union, or into the large local union, they may attempt to tell the business agent what they want from their employer. In a great many cases, it becomes the duty of the business agent to explain to them that they are badly mistaken about what they want. If they want a minimum rate of $1.25 per hour, when the standard rate for the rest of the local is $1.35 or $1.15, they must change their minds on what they want. The demand on the employer is going to be for the standard rate, not for some rate which represents the half-baked judgment of the newly affiliated group.

Similar adjustments may have to be made between the desires of the local group and the standards of the large local or the international, on such subjects as paid holidays, paid vacations, sick leave, standard hours, night shift differential, union security, ratio of apprentices, and an infinite number of other issues. It is the exception, rather than the rule, when the representatives chosen by any group of employees for purposes of collective bargaining are able and willing to carry to the particular employer a set of demands

which represents the desires of his own employees, either completely or primarily.

In spite of all the adjustments, modifications, and delusions which are inherent in its practice, collective bargaining in theory is "the process of a freely chosen spokesman presenting to an employer the freely determined desires of his own employees. It includes the necessary authority to make certain commitments on behalf of those employees, in return for the granting of their expressed desires. It includes an equally important and equally logical authority to indicate and execute certain sanctions on behalf of the employees, if their requests are not substantially granted; in other words the authority to say that they will not work without this or that set of terms."

In a later chapter there is a discussion of the subject matter which can be included within the scope of collective bargaining. Regardless of the subject, collective bargaining in its pure form possesses the characteristics described above.