VIII

GOOD OF THE ORDER

EMPLOYERS, union negotiators, and employees as a group frequently penalize themselves by placing too narrow a definition on the purposes of collective bargaining. Reducing such a definition to written words helps to clarify and restrict the bargaining area, of course; but too often it obscures matters of mutual interest outside the contract. It tends to preclude steps toward co-operation which should be outside the actual processes of collective bargaining, but which should be both permitted and encouraged by the bargaining relationship.

Situations where collective bargaining is an obstacle to such co-operative action on the general "good of the order" are found in two widely different frameworks. One is the relationship between an employer and a powerful, conservative old-line union which has the character of the craft union. Such a union produces leadership which usually has little regard for the relations on the job, reflected in what we loosely call morale. The interest of such leaders is usually confined to the simple language of their agreement. The agreement is frequently less than a page in length, sometimes actually a verbal or unspoken acceptance, by the employer, of a typed list of "working rules" supplied by the business agent.

The other common framework is one in which the contract provisions and bargaining demands are detailed, elaborate, and varied. The written agreement tends to become so complicated that it actually hampers good working relations. It attempts to identify far too many items as subjects for ne-

gotiation and contract. It correspondingly tends to discourage any organized co-operation between employer and employees except through the agreement. Frequently this discouragement of co-operation is deliberate on the part of the union leadership. One local union may instruct its members to refuse to serve on a committee to solicit for the Community Chest, because the employer has issued the invitation. Another may decline to designate members of a joint safety committee, even as union representatives, because the contract does not require such appointments. The executive board of one union declined the employer's invitation to participate in negotiating a contract with a medical group, for protection of the employees.

The first of the attitudes described in the preceding paragraphs assumes that the interests of the employees are strictly limited to matters of wages, hours, and working conditions, narrowly defined; that these interests will be handled exclusively by the union; and that employees should be careful not to get tangled up in co-operative activities outside these limits.

The second attitude assumes that there are no limits to the contacts and relationships in which employees are interested; that "working conditions" covers an infinite variety and extent of subject matter; that the union should formally extend and assert its influence over this entire field; and that employees should enter into no co-operative activities with the employer except through the formal procedures of collective bargaining.

A third attitude should be mentioned here as a handicap to good employee relations. It is more fully discussed in other chapters but is also pertinent to this chapter. It is the defensive attitude of some employers against admitting any union representative to the consideration of any subject which may seem likely to expand the area of union influence or of collective bargaining. Even if the subject is obviously one of

mutual interest to employer and employees, such an employer will permit his technical attitude to handicap him in seeking the desired result. He will deprive himself of the best leadership among his own employees, in the campaign for co-operation, merely because that leadership has been recognized through selection as union officers or committeemen.

There is an unlimited field of interests and activities which can best be described and considered under "good of the order." It is futile and usually destructive to debate the question as to whether the particular subject is technically within the scope of collective bargaining, is legally within the definition of working conditions. The important need is for recognition of mutual interest in these subjects, and a willingness to co-operate in the most effective way, inside or outside the mechanical structure of collective bargaining.

Millions of employees are covered by union agreements which are built upon the foundation of this recognition of broad common interests. Following are two quotations, one labeled "General Purpose" and the other a clause under "Union Recognition." They are taken from two contracts which happen to apply to different companies in the same industry. One is traditional with several old and conservative AFL unions. The other is the original declaration of a relatively young CIO union.

GENERAL PURPOSE

The general purpose of this agreement is, in the mutual interest of the employer and employee, to provide for the operation of the plant (or plants) hereinafter mentioned under methods which will further, to the fullest extent possible, the safety, welfare, and health of the employees, economy of operation, quality and quantity of output, cleanliness of plant and protection of property. It is recognized by this Agreement to be the duty of the Company and the employees to co-operate fully, individually and collectively, for the advancement of said conditions.

UNION RECOGNITION

b) The Union agrees that it will co-operate with the company to further the economy of operation and to support the Company's efforts to assure a full day's work on the part of the employees whom it represents, and that it will actively combat absenteeism and other practices which curtail production, and will support the Company in its efforts to promote safety, establish goodwill between the Company and its employees. Each mill will entertain suggestions made by the Union for working out the above objectives.

At first glance it may seem that each of these clauses presents a pious but futile declaration of policy. There are obviously no specific sanctions which can be applied in the case of failure by either party to live in accordance with the creeds set forth. These are actually the most important commitments made by either party to either contract. But there is no procedure set up in either agreement to discipline an employee, or to penalize an employer or a union, for violation of these commitments. It is perfectly obvious that no such provision can be written intelligently. The technical futility of these clauses would be emphasized by any attempt to mechanize the procedures. We can readily see the absurdity of writing down on paper the specific acts or failures to act which would be evidence of violation.

The ultimate test of an enforceable clause is the ability of an impartial arbitrator to identify a specific violation of the clause. He must be able to determine the meaning of the words, in terms of positive acts or failures to act. He must be able to brand a particular act or failure to act as contrary to the positive commitment of the parties in their agreement.

We can recognize the impossible position of an arbitrator called upon to uphold or reverse the suspension of an employee on the charge that he had failed "to cooperate fully, individually . . . for the advancement" to the "fullest extent possible," of the "safety, welfare and health of the em-

ployees, economy of operation, quality and quantity of output, cleanliness of plant and protection of property." He would have equal difficulty in deciding that a union had specifically failed to "support the Company in its efforts to . . . establish goodwill between the Company and its employees." He would be baffled in reaching a decision that the company had failed to "entertain suggestions made by the Union for working out the above objectives."

Even if the clauses were not technically ineffective, even if their observance could be enforced by penalties, the commitments would then defeat their own purpose. Co-operation cannot be enforced by threat of penalty. Good will cannot be established by procedures for assessing fines against the Union or the Company. The spirit of the commitments would be destroyed by the suggestion of police power for their enforcement.

But in spite of the inability of either party to enforce the commitment of the other party, these clauses are far from futile. It has been said that these clauses actually express the most important commitments in the contract. This importance is partly related to the interpretation of the specific provisions in other sections of each of the agreements. These commitments provide the principal indicator of the true intent and purpose of the parties in any other statement in the contract. They supply measurements for the seriousness of questions which arise from day to day in the performance of the contract.

The action of an employee may be a direct violation of an established company house rule. It may be a proper cause for discharge or suspension by the terms of the agreement. And yet an arbitrator may find that the rule itself is contrary to the mutual intent and general purpose under the agreement; it may be a rule which actually interferes with safety or health, or with cleanliness of plant. The holiday work schedule announced by management may be challenged

under the clause dealing with holidays. The propriety of the announcement may be impossible to decide without measuring it against the "general purpose" clause. And open-minded consideration of that clause will usually enable the parties to decide for themselves whether the schedule is appropriate, without reference to an arbitrator. Discussion in the spirit of such a clause usually makes it easy to agree that a proposal either does or does not advance the basic objectives of safety, welfare, economy, co-operation, good will, and so forth.

Such clauses are far from futile, if only for the reason that they give purpose to the contract as a whole and furnish guides to the interpretation of its other clauses. But their main importance is much greater. It is found in their explicit and implicit recognition that there are purposes, attitudes, and active performances, basic in the relations between employer and employees, which cannot be regulated by the wording of a contract or the mechanics of collective bargaining. They cannot be thus regulated or decreed, but they can be acknowledged in such a way as to give life and goals and flavor to every page and paragraph of the technical agreement.

It is a commonplace statement that no collective bargaining contract is any better than the parties who sign it. This is obviously true, and obviously important in the approach to good relations between an employer and a union, between an employer and his employees. But its full meaning is lost if it is taken to measure merely the responsibility of the union, or the good faith of the employer. The value and effectiveness of the contract rest upon a great deal more than the ability and intention of the parties to live up to their written promises. They depend upon a great list of attitudes and intentions which are far beyond the reach of collective bargaining.

These broad "general purpose" and "recognition" clauses are fundamentally important because they recognize

the existence of these attitudes, intentions, and duties which are beyond the reach of collective bargaining machinery. One of them says in so many words that good will can be promoted but cannot be decreed or enforced. Another says in so many words that co-operation is the mutual duty of employer and employees, and that it is the general purpose of the agreement to advance that co-operation. Most emphatic is the implication that good will and co-operation are to be achieved through an unlimited series of activities, contacts, and relationships which are not even mentioned in the contract itself.

The acceptance of these implications, even more than the wording of such a clause in an agreement, conditions an employer to co-operate with a union in achieving the "good of the order." It prepares him to accept the co-operation of the union and its officers in advancing objectives which he would vigorously exclude from the area of collective bargaining. It enables him to see the union officers in the role of leaders, advisors, and spokesmen for the employees, and not solely as advocates trying to get a verdict against him on claims and charges made on behalf of the union members.

Correspondingly, it enables the officers of the union to rise above an attitude of militancy, to rid themselves of the fear complex and sense of insecurity, and to become constructive leaders. It enables them to move into those activities which involve a basic improvement in the prosperity of the enterprise including the employees, instead of limiting them to debates over readjustment of shares in the present prosperity. It challenges them to promote the basic security of jobs in the enterprise, instead of limiting them to insuring the claim of employees to jobs which may be in themselves insecure.

It is difficult for most employers to adjust themselves to co-operation with the unions in many of these fields of interest which are technically and practically beyond the range

of collective bargaining, but which are important elements in the "good of the order." They are reluctant to discuss with a union committee the plans for construction and equipment of a new washroom and locker room, for fear they may be subjecting themselves to collective bargaining demands that the union be consulted on all future construction, that eventually union approval may be required before any construction is undertaken. They are unwilling to discuss with union officers the method in which the corporation's annual report is to be made available to employees, for fear that this consultation may serve as a precedent for demands that the union committee be given a monthly statement of profits or costs or financial condition. They are allergic to discussing production standards, or costs, or quality requirements, because they do not want these questions projected into the next collective bargaining session.

These attitudes and fears are both logical and justifiable. The fears cannot be eliminated quickly, nor can the co-operative relationship suggested in these paragraphs be established suddenly. It actually exists in thousands of establishments at the time the first collective bargaining agreement is reached. It can be greatly expedited in others by the constructive acknowledgment of the need for it, reflected in the two contract clauses quoted above. It demands the mutual realization that the union leadership has a duty to represent employees in matters which are outside the terms of the contract and outside the scope of the grievance procedure. It demands a willingness on the part of the employer to recognize the union as his employees, rather than as a grotesque institution or an outside agency; and to recognize the union officers as spokesmen for his employees in their whole range of interests, and as spokesmen to and leaders of the employees in the same wide field.

This progressive recognition by the employer must not exclude or obscure the realization that the union as an entity

has certain proper interests of its own. Mention has already been made of the fact that the leadership of the union cannot be expected to function in the promotion of co-operation and goodwill, as long as it must function in the defense of the organization itself. It is to the interest of the employer to co-operate with the union in hastening the day when the union as an entity can realize that its institutional or political existence is not in danger of attack or sabotage by the employer. A realistic analysis of this need has been made in an important publication of the Yale University Press, *Mutual Survival.*[2]

If the other conditions of daily life in the industrial or business establishment are right, the assurance of the necessary security for the union can be provided more easily as well as more safely. If there has been friendly and intimate co-operation with employee groups on the general "good of the order" before the days of union organization, there is a high probability that organization and initial collective bargaining relations will be smooth. But if the first collective bargaining is carried on in an atmosphere of mutual distrust and suspicion, with a demonstration of union aggressiveness and employer defensiveness, there is a pressing need for attention to the areas that are outside the scope of collective bargaining. In such a setting there is a challenge to employer initiative to enlist the organized co-operation of his employees, through the organization that they have chosen.

The major reason for creating organized co-operative relations in this field is not the hope of excluding border-line questions from the bargaining conference. That reason in itself might justify the effort, but is likely to endanger the success of the effort. The major reason is the simple fact that these activities for the "good of the order" must be accomplished for their own sake. Their accomplishment re-

[2] E. Wight Bakke, *Mutual Survival—The Goal of Unions and Management.* New Haven, 1946.

quires co-operation by employees, individually and collectively. It is natural to invite this collective co-operation through the collective agency which the employees have created or selected. It is usually safe to do so, certainly safer than to attempt to by-pass their union organization or to duplicate it with a variety of other committees or associations suggested by the employer.

These are the essential conditions which must precede real progress in this field: The right of the union to speak for employees must be taken for granted. The good faith of the union officers and committeemen, and the correctness of their statement of employee attitudes, must be frankly assumed. The exclusive right of the union to be the channel for all dealings within the scope of collective bargaining must be acknowledged as a matter of course. The mutuality of interest in a variety of subjects outside the field of collective bargaining must be recognized. The employer's recognition of this mutuality of interest must be demonstrated by his willingness to discuss various subjects with the same organization spokesmen who represent his employees within the field of collective bargaining.

On these assumptions, rapid progress can be made in the development of co-operation for the "good of the order" along many roads, all of which lead to understanding in industry. One plant may have such problems as better mass transportation, parking facilities, winter shelter for parked cars, a convenient location for a service station. Another may have the problem of a recreation program initiated by employees but needing company support. One may have an unsatisfactory relationship with a hospital or medical association for the care of employees in cases of illness or non-industrial accident. Another may need understanding and group co-operation in an effective program for periodical physical examinations. There may be a community need for a playground or swimming pool which will serve chiefly the

children of employees in the plant, a need for better support of a community fund or a community musical program. There may be problems of better vocational training programs in the public schools, and particularly vocational training for adults which will fit them for better jobs in the industrial plant.

More often than we realize it, there is a need for employee co-operation, specifically for union co-operation, in the proper reception of outsiders who are permitted or invited to visit the plant. Closely related is the occasional need for co-operation in planning and conducting an open house, or a special visiting day, a program which will make the people of the community, and particularly the families of the employees, acquainted with the facilities and activities of the enterprise.

All too often there is a lack of interest and activity on the part of employees when their own interests are indirectly threatened by some public or official attitude, some proposed legislative measure which will seriously injure the enterprise as a whole, and curtail its ability to provide jobs. In such a case, management has always found that the lack of employee interest is directly traceable to the lack of understanding of the threat, and that this understanding cannot be accomplished under high pressure. Such understanding is the fruit of long and continuous sharing of information, and such sharing can be effectively achieved only through a long process of frankness and co-operation.

The "good of the order" includes an endless list of subjects of mutual interest, some large, some small. It includes facilities, activities, information, adjustments, the hundreds of things which give comfort and satisfaction and self-respect to employees. It includes the measures and steps which give stability and prosperity to the enterprise, and consequent security to its employees.

As long as management tries to do everything single-

handed, it drives the union to the search for activities which will emphasize the importance of the union, and consequently give a degree of self-importance to the employees who are the union. As soon as management seeks and accepts the organized co-operation and advice of the employees, particularly through the union which is their organization, it has emphasized its respect for the employees and the union; it has given to both of them a constructive opportunity to be important; and it has created the machinery for achieving the "good of the order" through co-operative planning and action, where collective bargaining cannot be constructively employed.