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THE COLLECTIVE BARGAINING RELATIONSHIP
Revised Chapter 13 of
Human Resource Management:
An Economic Approach

by

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Chapter 13: The Collective Bargaining Relationship

The previous chapter introduced the institutions of collective bargaining, discussed the influences which determined its growth and decline, and examined the types of compensation arrangements commonly found in union-management agreements. Still to be analyzed are contractual features dealing with areas other than compensation, the bargaining process, and the resolution of bargaining impasses. These topics are the subjects of this chapter.

I. Employee and Union Security.

Both employees and unions have a stake in maintaining their relationship with their employers. For employees, loss of the relationship, i.e., job loss, can impose significant costs, particularly in a context in which the value of continuing the relationship rises with seniority.[1] And for unions, loss of representation rights at an employer means a decline in membership (and related dues revenue), possible loss of bargaining strength at competing employers (if the representation rights are lost at a firm which continues to produce on a nonunion basis), and - eventually - a threat to the survival of the union as a viable institution. Not surprisingly, union-management contracts reflect these employee and union interests.

i. Job and Income Security.

The Bureau of National Affairs, Inc. (BNA) survey of union contracts - cited in the previous chapter - reports that contractual provisions aimed at increasing job and income security for employees generally increased in frequency from the mid 1960s to the mid 1980s and then held constant into the early 1990s. Thirteen percent of the contracts in the BNA sample provided for guaranteed minimum hours of work or guaranteed minimum levels of pay for eligible workers in 1992. Forty percent provided severance pay - a one-time bonus for those permanently laid off. And 14% had Supplemental Unemployment Benefit (SUB) plans which provide weekly payments to laid off workers beyond the unemployment insurance they receive from the state.[2]

Certain workers under union contracts are more insulated from layoffs than others. It was noted in the last chapter that the union political mechanism - under the median voter hypothesis - will be especially responsive to more senior employees. Not surprisingly, therefore, seniority plays a major role in determining the order of layoff and the degree of insulation from layoff. Generally, junior workers are the first to be let go when labor demand falls. The BNA survey found that seniority was an explicit criterion for layoffs in 88% of the contracts; the proportion was 96% in the cyclically-sensitive manufacturing sector.

Of those contracts making explicit reference to seniority as a layoff criterion, over half made it the sole factor determining the order of termination. Almost a third indicated that juniors would be laid off first unless a senior worker was unqualified for the available job. In cases where particular jobs were being eliminated, senior workers were often given the right to "bump" (replace) junior workers in other jobs of comparable or lower status.

However, a managerial concern to prevent wholesale disruption in the workforce is also reflected where bumping is allowed. Frequently, bumping rights are restricted to a subgroup of the workforce such as the plant, division, or job classification in which the senior worker is employed. In a large firm, with operations in many locations the absence of a limit on bumping rights could mean that a worker being laid off might bump some other employee in a plant thousands of miles away. Such wholesale bumping could be disruptive to operations and morale.

Half of the contracts specified that advance notice of layoffs should be given by management, either to employees or to the union. However, often the advance notice specified was a matter of only a few days.[3] In fact, for plant closings and mass layoffs, federal legislation passed in 1988 generally requires 60 days notice for plant closings and mass layoffs. Hence, the shorter notice periods found in the union agreements would apply only in cases when the layoffs did not meet federal standards for the 60-day requirement.

Box A summarizing advance notice law

The management community generally opposed mandatory long advance notice periods, arguing that firms might not be able to lay off quickly in the event of an unanticipated drop in labor demand. In such a case, the firm - it was argued - might find itself having to pay for unneeded workers on a temporary basis (until the notice period elapsed). Additionally, in the case of permanent plant shutdowns, managers sometimes feared that "too much" advance warning would lead to premature exit of employees, making remaining operations difficult, or that it would lead to adverse morale and productivity impacts.[4]

Congressional action on advance notice in 1988 illustrated the propensity for federal intervention when employees feel that the balance has not been appropriately struck.[5] That is, in cases where workers do not bargain for working conditions (the large majority of private sector workers) or where bargaining does not seem to produce an outcome seen as satisfactory by the electorate, legislation becomes the expression of employee "voice." Legislation in 1993 establishing mandatory (unpaid) "family leave" arrangements was another illustration of this tendency.

Box A

Requirements for Advance Notice of Layoff

In 1988, Congress passed the "Worker Adjustment and Retraining Notification Act" (WARN), often called the "plant closing bill." Generally, the law covers employers with 100 or more full-time workers and requires 60 days' advance notice of plant closing or "mass layoff" to the affected employees' union (if there is one) or to the individual employees themselves.

Section 2(a)(2) of WARN defines a plant closing as "the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss during any 30-day period of for 50 or more (full-time) employees..."

Section 2(a)(3) defines a mass layoff as an employment loss affecting either one third of the full-time employees at an employment site and at least 50 full-time employers or at least 500 full-time employees.

An employment loss is a permanent termination, a layoff exceeding 6 months, or a reduction in hours by more than 50% during each month of a 6 month period.

Exceptions are made in the act for temporary contracts of employment, strikes or lockouts, unforeseen business circumstances, natural disasters, or a need to keep the layoff secret in order to obtain new business or loans.

An employer which fails to give required notice is liable for back pay for up to the 60 day period. Thus, a plant closing or mass layoff with no notice would result in 60 days' back pay to the affected employees. A notice of 15 days would require 45 days' back pay.

Box B summarizing family leave law

Where layoffs are temporary, the issue of recall rights arises. In a recall, the employer brings back into employment workers who were previously laid off. Most contracts specify that recalls will be in reverse order of layoff, although they may also indicate that an employee will be recalled only if qualified for the new opening. Since layoffs are generally in reverse order of seniority, this contractual feature means that recalls are likely to be in seniority order. Thus, the more senior employee is likely to be recalled ahead of a junior employee.

During the concession bargaining era which began in the 1980s, it was not surprising that job and income security often was a topic of negotiations. Concession bargains were often concluded during periods when unemployment was relatively high and workers were fearful of job loss. In some cases, unions gave concessions to management explicitly in exchange for job or income security assurances. These assurances ranged from promises not to close a specified plant for a given period to more elaborate worker protections.

Perhaps the most far reaching of such programs were those established at General Motors and Ford which provided substantial

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Box B

Family Leave Legislation

One of the first actions of President Clinton after taking office was to sign the "Family and Medical Leave Act of 1993," a bill similar to one that had earlier been vetoed by President Bush. The Act's preamble - which illustrates the manner in which social concerns are eventually reflected in the legal process - states that:

"(1) The number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) It is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;

(3) The lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;

(4) There is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;

(5) Due to the nature of the roles of men and women in our society, the primary responsibility for caretaking often falls on women..."

(6) Employment standards that apply to one gender only have serious potential for encouraging employers to discriminate..."

Employees eligible for leave of up to 12 weeks under the act must have worked for one year (for at least 1250 hours) for a private employer with at least 50 employees or a "public agency." (Special provisions apply to federal and Congressional employees). Triggering events include birth or adoption of a child or need to care for a child, spouse, or parent. The leave is unpaid except that the employer must continue to pay for whatever health insurance plan (if any) that is offered. Upon returning from the leave, the employee is to be returned to an "equivalent position".

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income protection for workers with at least 15 years of seniority. Under these systems, the two auto companies have effectively committed themselves to transfer "core" workers to new vacancies and other locations and to provide retraining. The auto programs were negotiated after both union and management officials visited Japan and studied the "lifetime" employment systems used in larger firms in that country. (See box K of the previous chapter)

ii. Grievance Systems and Job Security.

Detailed analysis of employee grievance handling will be taken up in a later chapter. However, it is important to note that grievance mechanisms are connected with the job security issue. Workers may be severed from employment for one of two reasons. They may be laid off for "economic" reasons, e.g., when the firm experiences a drop in orders or decides to exit from a line of business. Or they may be terminated for misconduct or due to incompetence.

Box C on Beverly safety reinstatement

Grievance mechanisms can provide protection for workers in both kinds of cases. For example, suppose a contract specifies that senior workers who otherwise would be laid off may bump into other jobs <u>if</u> they are qualified. With such contract language, the

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Box C

Was It Insubordination?

As will be noted in the next chapter, refusal to carry out an order of a supervisor is usually viewed as insubordination, a serious offense on the job. The standard rule is that if an employee thinks an order is improper, he/she should carry out the order and file a grievance later. However, in the case of a nursing assistant who refused to carry out an order, an arbitrator saw the refusal as reasonable under the circumstances. He ordered the assistant - who had been discharged for insubordination - reinstated with back pay.

In the case in question, the employee was asked by his supervisor to lift a patient on to a bed at a nursing facility. Although the employee had some prior disciplinary problems on his record, he also had two prior work-related injuries to his back. On the day the incident occurred, the employee/grievant had assisted in lifting many patients earlier but began to complain that his back was beginning to hurt. He was asked to assist in an additional lift, explaining about his back, and locating other personnel to assist in additional lifting. However, he was first suspended and then - after an investigation by the employer - terminated.

Given all of the circumstances, the arbitrator found that the discharge was not for "just cause" under the union-management agreement.

Source: Decision of arbitrator William J. Berquist in "Beverly Enterprises and United Food and Commercial Workers Union, Local 653," 100 Lab. Arb. (BNA) 522, February 4, 1993.

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issue of defining qualifications can arise. Through the grievance mechanism, a worker may dispute a management finding that he or she was unqualified (and therefore had to be laid off).

Similarly, if a worker is terminated for misconduct, there may be a conflict over whether the alleged misconduct actually occurred, or whether - if it did occur - the misconduct was sufficient to merit a discharge under the terms of the agreement. Contracts commonly specify that there must be "just cause" for discipline, but do not provide a detailed definition of the phrase. Again, the grievance mechanism can be used by the adversely affected employee to protest, and possibly reverse, a management action. Virtually all union-management contracts provide for grievance systems, and almost all provide for an outside arbitrator to settle the matter at issue if the union and management cannot arrive at a mutually satisfactory solution.[6]

iii. Workrules and Job Security.

Union-management agreements may include "manning requirements" which stipulate the number of individuals, or the kinds of workers, required to perform certain tasks. From time to time, complaints about "featherbedding" have arisen in relations to such workrules. Egregious examples, e.g., union insistence on maintaining a railroad "fireman" long after steam-powered locomotives had disappeared, have been the subject of well-publicized disputes in the past. (At one time, the fireman stoked coal into the boiler of steam engines).

But because workrules involve safety issues and pace of work issues as well as employment maintenance, legislative attempts to regulate in this area have been largely unproductive. Courts have been reluctant to try and sort out who is needed on the job. Moreover, since unions - as agents of the employees - may emphasize job security demands relative to, say, pay demands, it is unclear that legal restriction on workrule demands is appropriate.[7]

For example, suppose a union insists on a workrule which has the effect of raising employment in a workplace by 5% above what the employer would otherwise specify. Such demands are typically made when employment is being cut, say because of automation. As a first approximation, such a demand is equivalent - from the cost perspective - to a 5% pay increase, again, relative to what the employer would pay given its preferred employment level. Presumably, if the union succeeds in obtaining the employment provision, it could have alternatively used its bargaining power to obtain the pay demand.

Box D on longshore container dispute

Box D

Jobs in Containers

One of the major technological advances in maritime freight was the development of the container, essentially a large box in which freight would be stored. Because the containers are of uniform dimension, they can be handled readily by mechanized means. However, containerization - and other advances - meant fewer jobs for dockworkers.

Still, there are jobs to be had in putting freight into containers and removing it ("stuffing" and "stripping"). In its master agreements for stevedoring along the Atlantic and Gulf Coast ports, the International Longshoremen's Association (ILA) sought to include contractual limitations regarding who would do the stuffing and stripping. Essentially, agreements in effect in the 1980s prevented non-ILA workers from stuffing and stripping containers within 50 miles of a port. These rules had been challenged at the NLRB and in the courts but as late as 1985, the Supreme Court had ruled that the contractual limitations were legitimate work preservation features. A key element in the Court's decision was the determination that the ILA was seeking to preserve work its members had done rather than take new work away from some other group. Such work preservation has been seen as allowed under the amended Wagner/Taft-Hartley Act.

Ultimately, however, the container rules ran afoul of another set of laws, those governing maritime trade. In 1987, the Federal Maritime Commission struck down the ILA's effort at work preservation as "facially discriminatory and burdensome" to shippers.

Source: "Longshoremen, Shippers Will Appeal Commission Ruling on Containerization," Daily Labor Report, August 6, 1987, pp. A11-A12; and earlier sources.

Of course, management also has preferences concerning the kinds of proposals it wishes to emphasize. The costs of entrenched workrules may increase over time, as technology and the demands of the product market depart farther and farther from the conditions prevailing when the workrules were first negotiated. A workrule which was equivalent to 5% of pay at one time may climb in cost to, say, 10%, at a later date. Management may press the union to re-examine the trade off in subsequent re-negotiations.

Thus, during the concession bargaining era that began in the 1980s, workrule relaxations were often included in negotiations. Management sought increased flexibility in job assignment. Sometimes this goal involved proposals to reduce the number of job classifications. With more workers in a given classification, management could more easily assign workers to diverse tasks.

From the union perspective, demands by management for workrule relaxations pose bargaining problems as well as issues of job security. If the union is successful in its pay bargaining, it will raise compensation for employees above the levels management would unilaterally determine. With various job classifications at a typical worksite, management might seek to recoup its bargaining losses by substituting lower wage classifications for higher wage occupations. Thus, relaxing workrules could lead to erosion of hard-won bargaining gains rather than increased productivity.

Box E on Hilite case on pay downgrade

In some cases, particularly where craft unions are involved, workrule relaxations may threaten the union's institutional survival. A major factor in union resistance to eliminating the railroad fireman, for example, was the fact that such job elimination would also have eliminated the craft union which represented the firemen. When the firemen's union merged with other railroad crafts into a larger union, the institutional hurdle was removed. There is evidence, in any case, that firemen-type restrictions are the exception and that taken as a whole unions have not hindered the introduction of new technology.[8]

Despite the publicity attendant to restrictive union workrules, it is important to note that some research has suggested that productivity is <u>higher</u> in the union sector than in the nonunion.[9] Since union wages also tend to be higher, this finding should not be a surprise. In simple classical theory, if firms are required to pay higher wages, they will follow practices which increase marginal productivity. That is, they will raise the capital-to-labor ratio so that the condition wage = marginal revenue product = marginal revenue times marginal productivity will hold. A rise in marginal productivity is likely to raise average productivity as well.

Box E

Pay Downgrade Not Allowed

A union charged that four employees had been improperly reclassified by their employer to a lower pay grade, even though their job duties had not materially changed. When the employees complained, the employer took the position that it had the inherent management right under the contract to classify employees and therefore the issue was not subject to the grievance/arbitration system. Since that assertion is itself a matter of contract interpretation, the case proceeded to arbitration.

The arbitrator rejected the employer's contention that the grievance was not subject to arbitration and then proceeded to sustain the grievance, i.e., to reject the downward reclassification, for three of the four grievants. (The one employee whose reclassification and pay cut was allowed on the grounds that his work assignment was in fact materially downgraded after he returned from a layoff.) Relevant to the arbitrator was the fact that the company had not proposed any wage cuts during the preceding negotiations. From the arbitrator's viewpoint, wage setting should have primarily taken place when the contract was negotiated.

Source: Decision of arbitrator A. Dale Allen, Jr. in "Hilite Industries and International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, Local 1007," 100 Lab. Arb. (BNA) 604, March 8, 1993.

However, some researchers claim that higher union productivity goes beyond the substitution of capital for labor. Econometric studies generally estimate production functions which standardize for capital (and other) inputs.[10] One argument is that unionized employees become more productive because they have a greater "voice" in their work environment.[11] Available empirical evidence on this point is mixed; some studies find union-related productivity improvements (i.e., improvements which go beyond the classical wage effect) while others find the opposite.[12]

The jury is still out on the union-productivity issue. Nevertheless, the popular impression that unionization is inevitably associated with lower productivity (compared with nonunion situations) is clearly incorrect. Moreover, according to some economic formulations (discussed in a later section of this chapter), union demands which restrict managerial freedom to set employment levels can be "efficient."

iv. Union Security.

As has already been emphasized, although a union represents employee interests, it also has its own institutional interests to protect. Sometimes, the line between union institutional interest and employee interest is hazy. Ninety-six percent of the contracts in the BNA sample included a "check-off" clause, for example, whereby union dues are automatically deducted from worker paychecks and remitted to the union.[13] Such clauses save the union the administrative expense of attempting to collect dues from each individual. And they help ensure that the union has an adequate financial base. It could be argued that such a clause benefits the union as an institution, by providing lower costs and financial security. But it could also be argued that the union will be a better representative of worker interests if it is adequately financed and has lower administrative costs.

<u>The Right to Work Issue, Free Riders, and Public Goods</u>.

Almost three fourths of the contracts in the BNA sample had either a "union shop" or a "modified union shop" clause. Under a union shop, all workers are said to be required to join the union as a condition of employment within a specified period (usually 30 days). In fact, even when such clauses are present, individuals who do not want to join can avoid doing so by offering to pay the equivalent of dues instead.[14] Modified union shops explicitly permit some exemptions, usually for religious objectors to union membership or for non-members who were employed when the clause first took effect.

Box F on Beck case and dues

Box F

Defining the Dues Obligation

Although union shop clauses are common in union agreements, the courts have not interpreted the Wagner/Taft-Hartley Act to permit requirement of union membership to retain a job. Rather, workers who do not want to become actual members must nevertheless pay for the union's representational service. That is, the membership obligation is interpreted as meeting a financial core obligation.

In a 1988 decision, the U.S. Supreme Court defined the financial obligation of a nonmember under a union shop agreement as the proportion of dues related to "collective bargaining" activities. Collective bargaining is understood to include actual bargaining, contract administration, and grievance adjustment. In conducting these activities, the union has a duty of fair representation to all workers in the unit, members and nonmembers. Activities such a lobbying are not included in the financial obligation. Unions must confine the financial assessments of nonmembers to collective bargaining costs.

The Court's decision figured in subsequent Presidential politics. After the decision, the Bush administration proposed that employers contracting with the federal government should be required to inform their employees of the ruling. The requirement, however, never went into effect; the Clinton administration killed it shortly after taking office.

Source: <u>Communications Workers of America v. Beck</u>, 108 S. Ct. 2641 (1988).

A small number of contracts contained "agency shop" clauses (4%) or "maintenance of membership" clauses (3%). The former does not require formal membership, but does require payment of a representation fee equivalent to dues and assessments.[15] The latter requires only that union members retain their membership during the life of the contract.

The issue of compulsory union membership (or financial support) has generally gone under the heading of the "right-to-work" (R-T-W) issue. Twenty-one states have R-T-W laws which ban clauses requiring membership or financial support.[16] Typically, when such issues come before a state legislature (or before voters in a state referendum), a tremendous amount of money and effort is devoted by both sides to the issue. Unions generally assume that the presence of R-T-W laws will lower unionization and bargaining strength in the state concerned. But there is some evidence that the laws simply reflect local attitudes which also cause the lower level of unionization.[17] And survey evidence suggests that workers in states with right-to-work laws are often unaware of the laws' significance.[18]

Box G on Idaho right to work campaign

During campaigns over R-T-W laws, unions use an argument which economists often term the "free rider" problem in connection with

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Box G

The Idaho Right-to-Work Campaign

In 1985, the Republican-controlled Idaho state legislature enacted a right-to-work law over the objections of the state's Democratic governor. Organized labor countered with an initiative designed to repeal the law the following year. The multi-million dollar campaign surrounding the initiative featured TV spots in favor of retaining the law by actor Charlton Heston, former president of the Screen Actors Guild and spots in favor of repeal by then-president of the Guild, actress Patty Duke. In the end, the initiative was defeated and the law remained on the books. However, unions in the state were able to obtain an opinion by the state's attorney general that the law did not apply to the public sector. The echoes of the pro and anti right-to-work campaign continued be heard in Idaho state politics into the early 1990s.

Source: Marty Trillhaase, "Senate Democrats Push Through 'Fair Share' Labor Bill," <u>Lewiston Morning Tribune</u>, January 23, 1991, p. 8A, and earlier press accounts.

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a "public good." Certain kinds of government services - such as provision of defense, or traffic regulation, or safe streets - are termed public goods (or "collective goods") by economists because the use of these services by any individual typically cannot be restricted to those who pay for them. Individuals do not have a private incentive to contribute to financing the costs of public goods, because they will receive the same amount of service, regardless of whether or not they contribute. But, of course, if no one contributes - if everyone is a free rider - the good will not be provided. Hence, there will be a tendency to under-supply public goods unless they are financed through compulsory taxation.[19]

Unions argue, in effect, that they provide a public good to those workers they represent by negotiating better wages, benefits, and conditions than would otherwise exist. Under the law, they must represent all workers, not just those who belong to the union or pay fees to support it.[20] Therefore, according to the union viewpoint, compulsory membership or fees (analogous to taxes for defense, etc.) are justified.

However, not all workers agree with this position. Some may feel that they are not well served by a particular union. Since there are conflicting interest groups within the workplace, e.g., skilled workers vs. unskilled, there may be groups which feel their preferences are not adequately reflected by the union. Or they may have a philosophical or religious objection to unions in general, or just to the union which happens to represent them. They may, for example, not agree with the political positions taken by the union or its leadership. Where there are no R-T-W laws, workers have the right under the Taft-Hartley Act to petition the NLRB for a "de-authorization poll" under which a majority vote can eliminate a union shop provision.[21]

A resolution of the conflict between "freedom of association" (or non-association) and the "free rider" viewpoints will not be attempted here, since there cannot be a clear answer. The issue is similar to that faced by the larger society in balancing majority vs. minority rights. Sometimes, society permits dissenters to opt out, e.g., "conscientious objectors" have been permitted various alternatives to military service during wartime periods of conscription. And sometimes, it does not, e.g., jail terms are meted out to those who refuse to pay taxes for government policies they do not support.

Apart from the grand philosophical questions, an interesting issue is how many workers may belong to unions which they would decline to join in the absence of a union security clause. There are no detailed data published on union representation vs. membership in states with and without right to work laws to analyze. But the Current Population Survey does provide some evidence.

In the public sector, unions typically have less legal authority than in the private sector to negotiate union security clauses. Governments have often been reluctant to adopt laws which might require their own employees to join or support private organizations.[22] Thus, in 1992, about 16% of public employees who were represented by unions were non-members. In contrast, in the private sector, where stronger authority for union security clauses exists, only 9% of union-represented workers were non-members.[23] It appears, therefore, that where union security clauses are more prevalent, notably higher proportions of workers become union members.[24]

Management and Union Security.

What is management's interest in union security? There has not been one answer to this question. Different managements have reacted differently, and the response has varied between periods. Some managements have felt that union security clauses give an advantage for the union, and have therefore viewed these provisions as simply another bargainable issue. If the union wants a union security clause, according to this approach, let it "pay" for the provision by sacrificing something else.

There has also been an argument made that management's interest may be served by a union security clause. With a guaranteed membership base, so this argument goes, the union will behave more "responsibly," particularly in regard to grievance handling. According to this view, an insecure union will tend to press all grievances, even those which it knows are frivolous and assuredly will be dismissed by an arbitrator. The union will not screen out frivolous grievances, fearing that to do so would anger the grievant and cause him/her to resign.[25] But weighed against this issue is the possible management perception that with fewer members, a union's bargaining strength may be weakened, ultimately benefiting the employer's side.

Much depends on the climate of industrial relations management is trying to achieve and its perception of union strength over the long haul. In the automobile industry, for example, union security clauses have been in effect for many years at the big-three companies.[26] The issue over whether such clauses should continue simply does not arise. In fact, since the mid 1970s, there has been an understanding between the union and the companies that management will not oppose unionization in new facilities.[27] General Motors' wholly-owned Saturn operation, for example, was arranged so that union representation was a virtual certainty.[28]

Where unions are less entrenched than in the automobile industry, however, management may see benefits in resisting demands for union security. The fact is, however, that major strikes over the union security issue have not occurred for many years. There is a tacit acceptance by both sides of the status quo.

v. Contract Duration and Related Features.

One of the strong demands of management immediately after World War II was that union-management contracts should be legally enforceable. Management wanted to be able to plan on uninterrupted production, i.e., no strikes, once a settlement was reached, for some agreed upon time period. With the Taft-Hartley Act of 1947, management got its wish.

Management was also anxious to extend the period of guaranteed labor peace and began to push for multiyear agreements. In that desire, too, management ultimately received what it wanted. For example, in the BNA sample, only 1% of contracts were of one year's duration; the vast majority were three-year agreements. Ninety-five percent of the contracts contained some form of no-strike pledge, and over 60% of these were "unconditional." The others permitted strikes only under limited circumstances.[29]

Economic pressures that became evident in the 1980s, in any case, have led to increased interest in moving away from the adversarial model and more toward "cooperation." In the BNA sample, pledges of cooperation of various types were found in 57% of survey contracts in 1992, up from 37% in 1983 and 25% in 1979. In some cases, these cooperation clauses involve the establishment of committees to resolve problems such as absenteeism.[30]

The grievance and arbitration mechanism, noted earlier, plays an important role in permitting long-duration contracts to exist. This mechanism provides a method of settling disputes arising from contract interpretation without resort to strikes and lockouts. Although most grievances arise from cases of individual employee discipline, any contractual matter may be covered by the grievance and arbitration system unless the parties have explicitly excluded it.

Also related to contract duration are clauses specifying future wage and benefit adjustments. These "deferred" adjustments can keep wages and benefits in line with pay in the external labor market, with general price inflation, or with whatever criteria the parties feel are relevant. In addition to fixed deferred adjustments, the contract may also have contingent adjustments, the most common being the cost-of-living escalator clauses discussed in an earlier chapter.

Finally, some contracts have re-opener clauses which permit re-negotiation of some feature prior to the contract's expiration date. Six percent of the BNA sample of contracts had such re-openers in 1992, most of them dealing with the wage component of the package. However, re-openers can be negotiated for any part of the contract and can be made contingent, e.g., conditional on a given increase in the Consumer Price Index or some other event.[31]

In effect, re-opener clauses represent a compromise on contract duration. It is agreed that most of the contract will remain in effect for its life. But some element of shorter duration is permitted. At the re-opener date - unless the entire contract is re-opened - there will be fewer issues about which to bargain. For example, wages might be re-negotiated while benefits, workrules, etc., continue unchanged. With fewer issues "on the table," the changes of an impasse and a strike are reduced. Use of reopeners seems to increase in periods of uncertainty.

A commonly cited management objective in pursuing long term contracts originally was - in fact - to lower the risk of strikes. Most strikes relate to the re-negotiation of a contract, so it may seem evident, at first blush, that with three-year contracts there will be only one third as many strikes as would occur with one year contracts. However, the issue is more complicated since the probability of a strike may vary with contract duration. If strikes are more likely after a three-year contract expires than after a one-year agreement, than the amount of striking activity may not be reduced.[32] Rather, strikes may simply be "scheduled" less frequently.

There is some evidence that long-term contracts primarily have bought management less frequent strike scheduling rather than few strikes or days lost to strikes. But from the management perspective, this outcome is nevertheless perceived as a good deal.

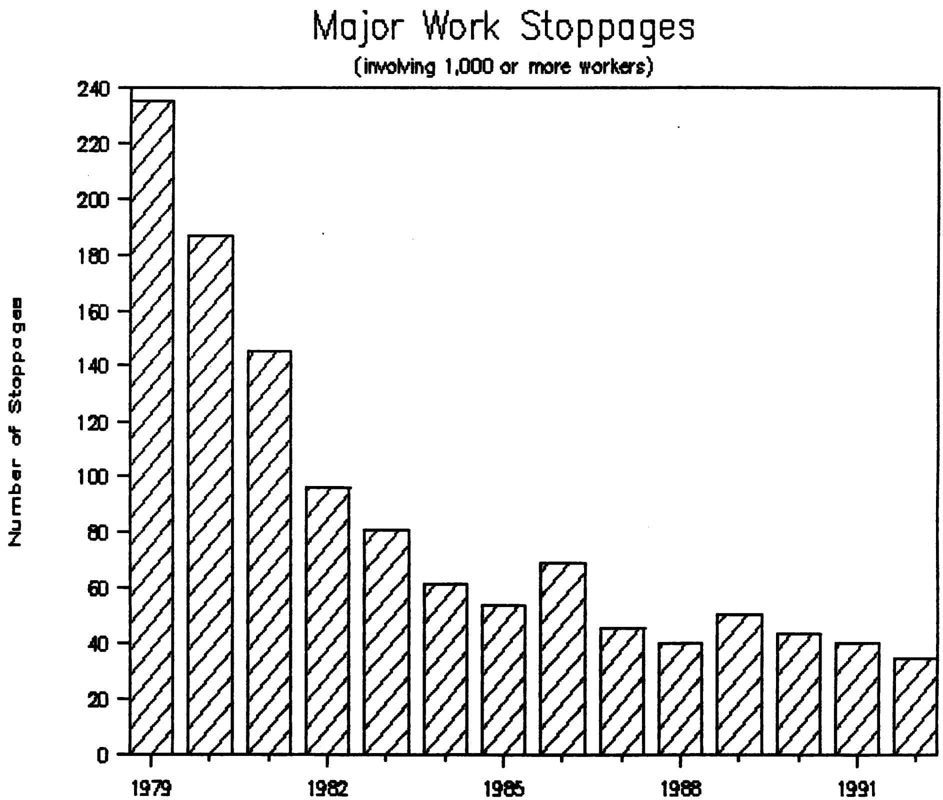
Strikes seem to have a heavy fixed cost attached, so that management would prefer one long strike every three years in preference to three short ones in each of three years.[33] Of course, there is no necessity that a strike occur whenever a negotiation takes place. Usually, new contracts are negotiated without a strike. What is at issue is the <u>risk</u> of a strike.

As Figure 1 shows, the frequency of strikes declined markedly during the 1980s and into the early 1990s, although some very bitter strikes occurred during that period. That would suggest that strike risk has fallen. Yet contract duration did not drop on average. Management may feel - based on some prominent examples in the 1980s - that if a real emergency arose, the existing contract could be interrupted. And it may also be that the hassle and disruption of a full-scale negotiation on an annual basis is too costly a price to pay for the greater flexibility a short-duration contract could provide.

vi. Explicit Contract Duration and <u>De Facto</u> Contract Duration.

In theory, the entire union-management contract, with all its many features, dies on its expiration date.[34] Yet it is common to find that the successor contract contains much the same language as the expired agreement. Wages and benefits are most frequently changed when new contracts are negotiated. But other aspects of the contract may simply roll over from agreement to agreement.

Figure 1



Source: U.S. Bureau of Labor Statistics

Box H on contract duration in petroleum

This feature of contractual language continuation suggests that the union-management relationship should generally be viewed as ongoing, i.e., of no definite duration. Much of the contract has a longer <u>de facto</u> duration than the explicit expiration date found in the contract implies. For example, the job and income guarantees in the automobile industry (described above) would have little meaning if they were thought by the parties to end every three years. What would it mean to guarantee a worker a long period of job/income security if that guarantee regularly lapsed? Thus, automobile company management and union officials have a tacit understanding that while the job/income security program may be revised from time to time, its basic structure will outlive the duration of any one agreement.

In a period when the nature of the union-management agreement comes into question, however, long neglected contractual features may become issues. During the concession bargaining era which began in the 1980s, management commonly pressed the union side to alter traditional workrules to make them less "restrictive," and to reduce the number of job classifications (so that workers could more easily be transferred from task to task). Given the decline in union membership and bargaining strength, management effectively

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Box H

Contract Duration in Petroleum

For many years, the contracts between the Oil, Chemical and Atomic Workers union and the major petroleum refiners were of two year's duration rather than the three years generally found in many other major manufacturing contracts. One factor seemed to be inflation - the petroleum industry strongly resisted having a cost-of-living escalator clause in the contract which would have adjusted wages automatically with inflation as measured by the Consumer Price Index (CPI). The industry apparently preferred to negotiate more frequently rather than guarantee wage adjustments geared to inflation.

Several factors may have accounted for this resistance but among them was that the health of the industry is heavily influenced by world oil prices which do not necessarily fluctuate in accordance with other prices in the CPI. In addition, the potential costs of bearing the risk of a strike may have been seen as less important to petroleum refiners than other employers since the highly automated refineries can be run during strikes by management personnel. Despite this background, however, in 1990, the industry negotiated a three-year agreement without an escalator and again in 1993.

At the time of the 1990 negotiations, escalation had been dropped from some other manufacturing contracts, a fact which may have influenced the union to accept three years in petroleum. Oil prices were not especially high, a situation which changed quickly with the invasion of Kuwait by Iraq and the subsequent Gulf War. At least one company - Arco - gave employees unexpected 5% Christmas bonuses in 1990, perhaps reflecting the crisis-related jump in prices. At the time of the 1993 negotiations, inflation was low and did not seem likely to accelerate markedly in the future, thus making it easier for the union to accept a repeat of the three-year pattern.

Source: "Amoco Offer Accepted by OCAW Negotiators Seen Setting Pattern for Other Oil Accords," Daily Labor Report, February 5, 1990, pp. A3-A5; and other related sources.

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questioned the status quo; it was less sure that there had to be an indefinite, ongoing relationship.

Perhaps, as occurred in some cases, striking workers might be replaced and the firm could revert to nonunion status. Even if achieving nonunion status was not an immediate (or realistic) goal, management pressed issues of flexibility in the use of human resources which - in another era - it might have left untouched. Doubts about union strength, awakened by union concessions at other firms, led to a greater management willingness to determine by experiment what the relative bargaining power of the parties really was.

II. Analysis of Union-Management Bargaining.

There is a long history of debate among economists concerning how to model union-management wage bargaining.[35] Perhaps the greatest failing in this literature is a concentration on union objectives and a corresponding neglect of management goals and the union-management <u>interaction</u> in bargaining. But it is not reasonable, when two parties are bargaining, and when both have the power to inflict costs on the other, to ignore the joint process by which outcomes are determined.

Economists have also been sidetracked in their analysis by the temptation to use the simple theory of the firm and apply it to unions. It is true that both a firm and a union face a demand curve. The firm faces a downward sloping demand for its product which represents a trade off between a high price and a high volume of sales. And the union faces a downward sloping demand for labor schedule which represents a trade off between a high wage and a high volume of employment. But there the simple analogy stops.

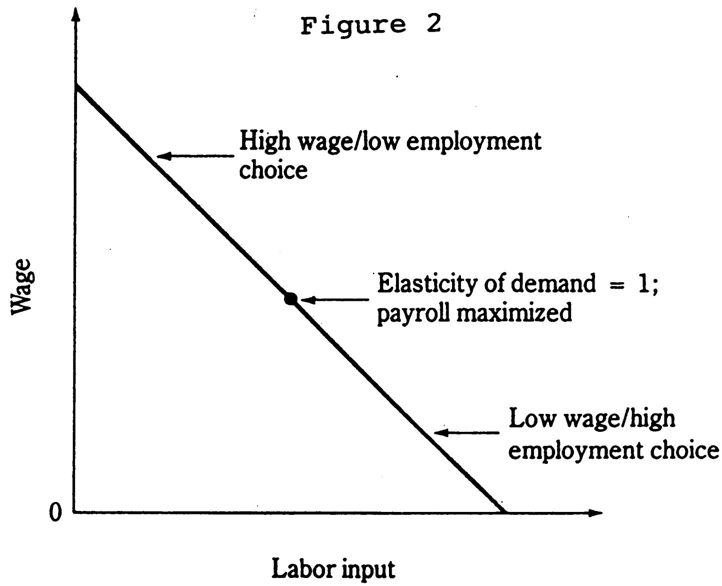
i. The Elusive Search for Maximizing.

In the theory of the firm, it is profit maximization which permits the firm to select the optimum trade off between price and quantity on the product demand schedule. Given a cost function, the principle that the price/quantity trade off occurs where marginal revenue = marginal cost provides an analytic solution. Unfortunately, in the union case, there is not an obvious value index (such as profit) to maximize.

If unions wanted only to maximize wage rates, they would set the wage so high that practically no one would be employed, i.e., they would travel - if they could - to the top of the demand curve, as shown on Figure 2. Similarly, if they desired only to maximize employment, they would push wages down to the point where the employer would have difficulty hiring and retaining workers. Finally, if they maximized the total payroll, i.e., wage times labor input, they would operate at a point where the absolute value of the elasticity of labor demand = 1.[36] Such a point happens to

Figure 2

Demand for Labor Schedule



occur half way down a linear demand curve of the type shown on Figure 2, and thus appears to be a compromise "solution," i.e., a compromise between wage rate maximizing and employment maximizing.

But there is no reason to believe that any of these choices, taken alone, are actually union objectives. In the abstract, unions would certainly like to have higher wages, if nothing else had to be sacrificed to obtain them. It is commonly assumed that they would also like more employment (and members), again if no sacrifice were entailed. However, the real world provides no such simple alternatives. Nor is there any reason to believe that in the real world, maximizing the payroll (wage times employment) is in any sense an optimum choice for the union.

Faced with this dilemma, some economists have proposed models in which the union (or the union's leaders) have a utility function which treats both high wages and high employment as Good Things. The utility function generates an indifference map, just as in consumer theory, and the union "picks" the point on the demand curve at which the highest indifference curve is attained. Such an approach provides a "solution" to the trade off dilemma in theory, but not an especially satisfying one.

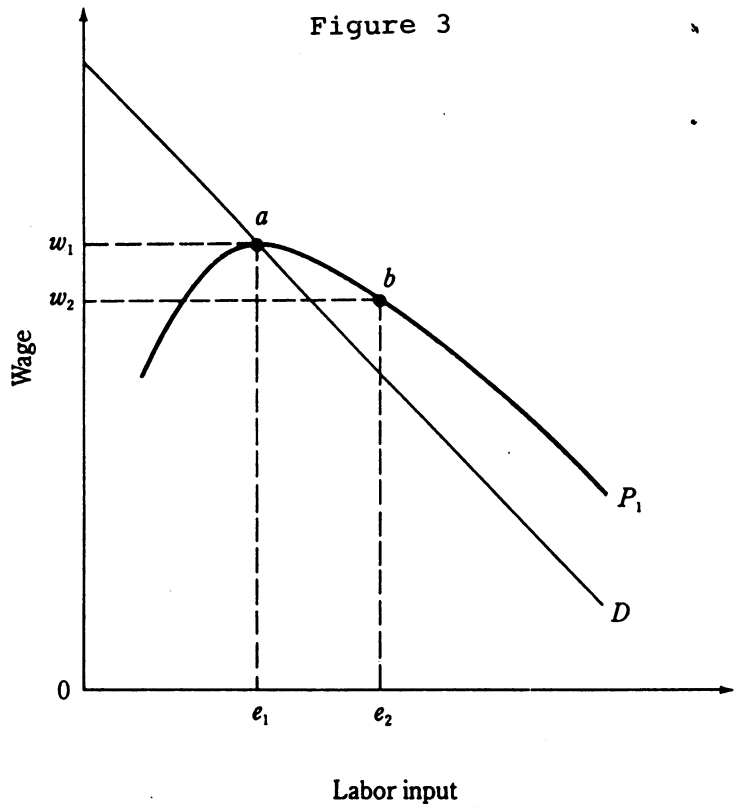
Given the assumptions made so far, i.e., a union which wants both high wages and high employment, and which readily perceives the trade off to be made, the notion of picking the optimum combination on the demand curve raises an analytical problem. Under those assumptions, a point on the demand curve is inherently inefficient (non-optimum) from the union's perspective. Figure 3 shows why.

On Figure 3, the firm's demand for labor appears as line D. Suppose that the union obtains the wage-employment combination (w_1, e_1) consistent with point "a" on demand curve D. It can be shown that there probably is a better point, involving a somewhat lower wage and a somewhat higher employment level, which is <u>off</u> the demand curve and which the firm will not resist. Clearly, if there is a point which is better than "a" from the union's perspective, and if the firm will not resist a move from "a" to that point, the union should make the move.

Traveling through point "a" is the firm's isoprofit line P_1, the line which traces all combinations of wage and employment which would yield the same dollar profit as at "a".[37] The firm will therefore be indifferent between operating at point "a" and operating at any other point on P_1. The line bends downward to the left of point "a", since a lower wage is required to compensate it for decreased employment and output. It bends down to the right of point "a" because the increased employment to the right, while adding some output, is subject to declining marginal productivity and must be compensated by lower wages. Thus, "a" is the highest point on P_1.

Figure 3

An Efficient Union Contract



Effectively, once the union has won point "a", the relevant menu for it is not along the demand curve D, but along P_1. To operate at any point other than "a", however, the union must negotiate a contract which specifies both wage and employment, not just the wage. (If the union fails to specify the employment level along with the wage, the firm will stay on its demand curve D, by definition). It can be shown that the union generally will prefer to operate to the right of "a" at a point such as "b", with a somewhat lower wage w_2 and a somewhat higher employment level e_2.

The reader should be able to see why the union will not want to operate to the right of point "a". Points to the right on P_1 involve lower wage levels and lower employment, clearly not a desirable move from the union's perspective. Hence, the choice for the union will be either to stay at "a" or move leftwards to a point such as "b". Generally, when a constraint is relaxed in economics (such as the constraint of staying on D), welfare is increased by taking advantage of the loosened constraint and adjusting behavior accordingly. So a point such as "b" is likely to be chosen.[38]

This analysis is useful, not because it gives a realistic view of union bargaining, but because it shows the major shortcoming of models which depend on precise union perceptions of economic circumstances and trade offs. If unions behaved according to such a model, the standard contract they negotiated would of necessity specify the employment level. But except for some reactive workrules, typically triggered by threatened employment cuts, union contracts generally leave the employment specification to the employer. Hence, it must be assumed that unions do not perceive the bargaining situation to be as depicted on either Figure 2 or the more sophisticated Figure 3.[39]

ii. Union Perceptions.

Implicit in the notion of a union picking an optimum point on the demand curve - or off it - is the assumption that the union <u>perceives</u> the downward slope of the demand curve and or the isoprofit curve, or that it needs to have such a perception in order to bargain successfully. But the existence of a downward sloping demand curve for labor, while perhaps obvious to economists, is not necessarily obvious to union officials nor to union members. And, at least for a time, a union which did not perceive the trade off between wages and employment could operate satisfactorily in a bargaining relationship.

<u>The Position vs. the Slope of Labor Demand</u>.

There are various reasons why union perception of a downward sloping demand for labor or isoprofit curve (the wage-employment trade off) would be attenuated. First, swings in the number of workers demanded by employers are dominated by aggregate business cycles and orders received by the firm. Put another way, the position of the labor demand curve relative to the origin, rather than its slope, is what unions and their members mainly see. Wage changes occur periodically, but do not necessarily correlate negatively with employment changes. Indeed, it is commonly the case that wages and employment rise simultaneously.

Managerial Discretion.

Second, although economists tend to view the relationship between wages and employment in mechanistic terms (that is, following from a model), unions will see any connection as related to discretionary management decisions. Wage increases create incentives for management actions. When such actions are taken, unions will tend to see the problem as one of adverse (even heartless!) management decisions rather than as a direct product of wage increases.

There are two reasons why the demand for labor schedule is downward sloped. One is that wage increases push up costs of production. If these costs are passed on to consumers, they will reduce sales volume. If they cannot be passed to consumers (due to competitive product market conditions), they will squeeze profits and tend to induce reduced production and employment. The other reason is the possibility of substitution. If wages rise, there will be a tendency to substitute capital for labor, outside subcontractors for internal production, or lower wage labor (perhaps at a nonunion plant) for union labor.

Box I on Deaconess subcontracting case

Raising prices, reducing production, purchasing labor-saving equipment, using alternative facilities, and hiring subcontractors are management decisions. They do not happen mechanically, even if economists and managers view them as inevitable or unavoidable. Unions will tend to see declines in orders as obvious grounds for layoffs. Their response will be to bargain for severance pay, SUB plans, and the other job and income security devices discussed above. When substitutions are threatened, unions may push for controls on the introduction of new technology, workrule restrictions limiting labor-saving possibilities, and limitations on management's right to subcontract or transfer work.

Thus, wage objectives of unions will not necessarily be directly checked by employment declines. Management efforts to substitute away from high union wages may simply confirm the impression by union leaders and members that the employer will act deviously if not checked by union pressure. Apart from its importance to an understanding of the bargaining process, the difference in perceptions between management, employees, and union

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Box I

Allowable Subcontracting

Union contracts may contain language restricting the right of the employer to contract out work. Such clauses are designed to protect the job security of employees. But the exact constraints imposed by such anti-subcontracting clauses are not always clear. Sometimes arbitration is needed to interpret their application.

For example, a hospital employer had a contract which allowed the employer to subcontract, "provided that such outside contracting shall not erode the regularly assigned work" of union-represented workers. In this case, the employees involved were maintenance and construction workers. A new manager felt that the unit was top-heavy with highly paid skilled workers whose time was being misallocated to the detriment of routine maintenance. Thus, a decision was made to hire to helpers rather than replace one skilled "maintenance engineer" who was retiring.

After the retirement, another maintenance engineer's duties were changed and his former duties were contracted out. The union grieved both the change of duties and the decision to hire the two helpers rather than another maintenance engineer to replace the retiree. However, among the circumstances surrounding the case was the fact that no layoffs were to occur under the employer's proposed reorganization. The arbitrator thus decided that there had not been an erosion of work in the unit and denied the grievance.

Source: Decision of arbitrator Jack H. Calhoun in "Deaconess Medical Center and Spokane Medical Engineers Association", 100 Lab. Arb. (BNA) 676, February 2, 1993.

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officials is critical to an appreciation of much employer-employee and employer-union tension.

Management will see adverse personnel actions taken in response to shifts in demand or relative costs as normal reactions to the market. Employees - and their union agents - will often see them as the results of discretionary management decisions. The worker who experiences the adverse personnel action is likely to blame it on a supervisor or other managerial official who made the decision, or perhaps on a vague "them" in the firm's higher management who determine such matters. Even when union officials believe that forces outside the firm are causing management's response, they may have a very difficult time conveying these beliefs to the employees they represent.

Dominance of the Short Run Perspective.

A third reason why union perceptions of a wage-employment trade off will be limited is that there is often not a substantial trade off to be had in the short run. As shown in an earlier chapter, labor costs as a percentage of sales are frequently low. Absent substitution possibilities, even if a wage increase is passed entirely to consumers, its impact on prices (and, therefore, on sales volume) may be modest. For example, in a firm in which labor costs are 25% of sales, a 4% wage increase which is fully passed along into prices will translate into only a 1% price increase. Of course, there may be more substantial implications in the long run than in the short. But, as will be argued below, the collective bargaining process tends to focus on the short term.

Historical Evolution.

Finally, it is important to note a fourth reason why union perceptions of the economics of the wage-employment trade off may be limited. This reason is more historical and institutional than intrinsic in the collective bargaining process. It is that American management, from the period immediately after World War II until the 1980s, has not been anxious to deal with unions on matters closely related to management decision making and - more generally - to the economics of the enterprise.

Unions arose in the 1930s, an era characterized by public hostility towards business and calls for restrictions on, and regulation of, managerial discretion. In addition, some of the major unions in the 1930s and 1940s had communists and other radicals in their leadership. Employers found themselves facing such challenges as sit-ins and occupations of plants by workers. The management community feared an overly close involvement of unions in the enterprise. If unions had to be tolerated, management felt, their energies should be channeled away from notions of enterprise control and towards the "terms or conditions of employment" described in the Wagner Act.[40]

Although courts never accepted as narrow a definition of the "scope of bargaining" as management would have liked in interpreting the Wagner/Taft-Hartley framework, they did accept the basic notion that management had inherent rights to run the enterprise. Generally, the courts and the NLRB have viewed anything dealing directly with wages, fringe benefits, hours of work, employee safety and health, layoffs, promotions, and grievances, to be "mandatory" subjects of bargaining. Employers had to negotiate in "good faith" on such subjects, although they did not have to agree to any particular demand. Failure to do so was an unfair labor practice.[41]

But employers were not interpreted by courts to be obligated to bargain about the pricing of products, marketing strategy, financial arrangements, or other similar matters which were closely related to the overall direction of the enterprise. Of course, decisions in these areas could easily affect employees indirectly. "Excessively" high prices or poor marketing might reduce sales, for example, thus causing layoffs. But the courts' notion of the appropriate roles for unions and managements meant that such issues were not to be mandatory subjects of bargaining.[42] For better or worse, these policies were to be made by management unilaterally.

Unions seemed to accept these limitation on their functions by the 1950s. Within that prescribed role, there was little need to become familiar with managerial issues or the economic environment in which the firm operated. The union role was simply to make demands on management for improved wages, benefits, and working conditions. Obviously, different unions reacted differently to the narrow view of their function, and some exhibited more economic sophistication than others.[43] But, since unions were by and large not supposed to be concerned with broad managerial decision making, it should not be surprising that concepts such as the long run elasticity of labor demand were not normally in their tool kits.

iii. Management's Role in Bargained Outcomes.

If unions do not perceive the wage-employment trade off, why do they not bargain their way up the demand curve and into oblivion? Higher wages are better than lower wages, and if no employment is perceived to be sacrificed by obtaining higher wages, what would prevent unions from picking such high levels of wages that virtually no union members remain employed? The answer is simple. Management acts to prevents such a result.

Collective bargaining is a two-sided process. Management will resist union demands which cut into profits. Other things equal, higher wages will cut into profits.[44] Hence, management will resist demands for higher wages (or, generally, demands to increase labor costs). This point is both obvious and fundamental.

In collective bargaining, both sides have the potential to inflict costs on one another. A union-led strike, if successful, will halt immediate production, sales, and profits. If the strike continues for an extended period, it may cause permanent loss of previously-cultivated customer relationships. Management must weigh such costs in deciding whether to accept or reject union demands, and in making counteroffers.

But even successful strikes are costly to union members. Paychecks stop arriving, health benefits are discontinued, and bills pile up. Generally, workers on strike are ineligible for unemployment insurance or benefits such as food stamps.[45] And strikes may not be successful. Employers have a longstanding legal right to attempt to operate in the face of a strike and to hire replacements. Where the employer is able to operate with replacements, the strikers may be permanently out of a job.[46] Such situations can destroy the union as an institution. Even nominally successful strikes from the union viewpoint can have untoward consequences; the enterprise may be so economically injured that employment prospects are permanently reduced.

Both parties to a collective bargaining negotiation must take the possibility of a strike very seriously and frame their positions accordingly. The potential costs of error can be great. It "pays" for management to make some concessions to avoid strike costs. That is why economic studies, as noted in the last chapter, repeatedly find a union-induced wage premium.

But, on the other hand, unions cannot expect the moon. And they usually do not receive it. Pushing excessive demands will trigger management resistance and possibly lead to heavy costs on union members. Union officials who lead a costly strike, and fail to reach their objectives, will not experience gratitude from their members. Their political futures may be at risk in such situations, even if the membership was initially enthusiastic and militant about striking. The outcome of collective bargaining negotiations represents a complex balancing of considerations of costs and risks by both sides.

There is a problem, however, inherent in a bargaining process based on potential mutual damage infliction. The decisions made will tend to focus much more on short term strategic bargaining considerations (strike cost minimization) rather than long run economics. It is quite possible that the bargaining process, over a long period of time, could produce a sequence of settlements which cumulatively had unfortunate consequences for both union and management. Markets and employment opportunities might be lost in the long run. Yet, both parties might have been "happy" with the outcome of each negotiated settlement, taken by itself, even if they are unhappy with the eventual consequences.

iv. Strikes.

Textbooks on union-management relations commonly point out that most contracts are renegotiated without a strike. And this fact might seem to contradict the importance of strategic, strike cost considerations in determining bargained outcomes. However, a relatively small number of contracts covers a large fraction of the unionized workforce. In 1992, 1,186 contracts covering 1,000 or more workers in the private sector specified the terms and conditions of roughly half of the private union-represented workforce. The total number of contracts in existence in 1992 is unknown. However, the BLS estimated that there were over 177,000 union-management contracts of all sizes in effect in the late 1970s (some of which were in the public sector).[47] So what happens under the relatively few big agreements containing half of those private workers represented by unions is especially relevant to judging the negotiations process.

Strikes in Major Situations.

It is true that even for the larger contracts, most disputes are settled without strikes. However, strike probabilities are not negligible. During 1989-92, the ratio of workers involved in work stoppages to workers included in new union-management settlements averaged about one eighth for larger situations covering 1,000 or more employees.[48] This estimate includes public as well as private workers. Some of the workers involved in stoppages may not have been participating in contract negotiation disputes. But most of them were. Thus, even in a period of relatively reduced strike activity, a worker involved in a major contract negotiation had roughly a 1 in 8 chance of participating in a labor dispute.[49]

The negotiated outcomes in small bargaining units are reached with much lower strike probabilities than those for major contracts.[50] However, within industries, the outcomes of the major contracts are often imitated, or partly imitated, in small units. Thus, in effect, the parties to small contracts have devised a way of holding down their own strike costs; they let someone else (the parties to larger agreements) do their striking for them.[51]

Box J on Caterpillar and dispute tactics

<u>Analysis of Strike Activity</u>.

Strikes have always been a puzzle to economists.[52] In principle, if both parties could foresee the outcome of a strike, it should not occur. The parties could simply accept the terms of settlement they foresee without undergoing the costs of the strike, and thus both be better off. Thus, according to this view, strikes must be the result of imperfect foresight, i.e., mistakes.

Box J

Strike and Nonstrike Tactics at Caterpillar

In a contract dispute in 1991 at Caterpillar, a major producer of tractors and other machinery, the United Auto Workers union seemed reluctant to call a full-scale walkout. It initially called a strike at a few plants which Caterpillar management countered with a lockout. Use of a lockout permitted locked out workers to claim unemployment insurance benefits, a situation disadvantageous from the management viewpoint. Still, after the dispute had dragged on for over 4 months, the company succeeded in prodding the union to call off the strike after a management threat to replace the workforce permanently.

Thereafter the dispute continued on the job. The company did not rush to call back the strikers when the strike officially ended, prompting a lawsuit by the union. Both sides filed unfair labor practice charges against one another of various types. Union members picketed a dealer selling Caterpillar products. Slowdowns of production were reported. The company implemented its own "final offer" unilaterally which - among other things - cut retiree health insurance benefits. Union members wore T-shirts with anti-company slogans at work. The company initially attempted to forbid the practice but then relented pending NLRB action. Both sides attempted to mold public perceptions of the dispute as it was reflected in the media.

Source: Peter T. Kilborn, "Caterpillar's Trump Card," New York Times, April 16, 1992, pp. A1, A12; and related sources.

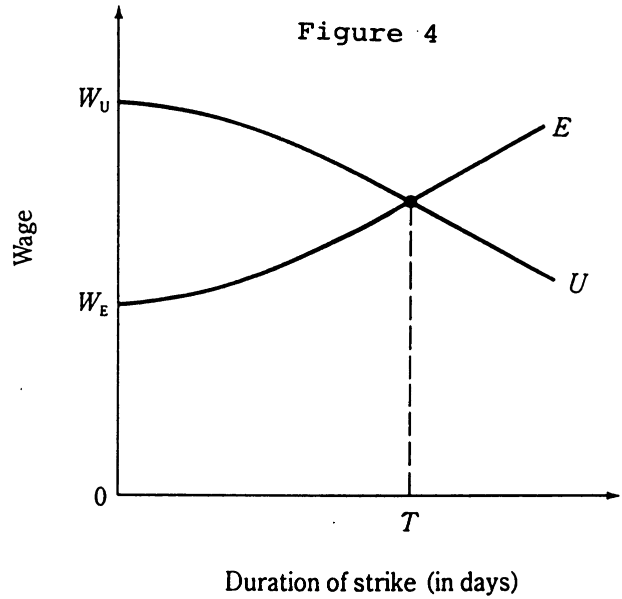
The notion of imperfect foresight has been used to model strike duration. For example, in the 1930s, John R. Hicks - a British economist - proposed that once union and management had entered into a strike, both sides would gradually become more informed about the other's capacity to resist.[53] Figure 4 illustrates the Hicksian theory.

Let W_E be the employer's final, pre-strike wage offer and W_U be the union's final, pre-strike wage demand. Since $W_E > W_U$, a strike begins on day 0. As the strike wears on and profit losses mount, the employer gradually becomes more willing to offer more along the schedule E. The employer "discovers" that union militancy was greater than had been initially estimated. And the union - learning that the employer was more intransigent than it had guessed - becomes willing to demand less. It travels along line U of Figure 4 as income losses to its members accumulate.[54] The intersection point of the two lines comes at the date (day = T) at which the strike is terminated (settled), and determines the strike's duration (0T days).

If either side can lessen the costs of the strike to it, its curve will become flatter and it will be able to endure a longer dispute with reduced concessions to the other side. For example, if management is able to maintain production by hiring replacements, or if it has successfully arranged a mutual assistance pact (discussed in the previous chapter) with other

Hicksian Strike Model

Figure 4



firms, the costs of the strike to it will be reduced and it will not ultimately move far from its pre-strike wage offer W_E.

Unions, too, may use strategies which reduce the costs of a dispute to them. In some cases, they may not engage in a conventional strike at all. They might, for example, stay on the job and engage in "work-to-rule" tactics. Under work-to-rule, employees follow all of the employer's regulations so strictly that production is hindered. Another possibility is to call a series of very short work stoppages, say, for a few hours each, which disrupt production. Or workers might refuse overtime assignments, or call in sick, or just work less efficiently than usual. The idea is to keep workers on the employer's payroll, thus limiting the cost of the dispute to them and to the union.

Such union tactics - if successful - flatten the U curve on Figure 4 and push the eventual settlement towards W_U. During the 1980s, as unions looked for alternative tactics to meet what they perceived was a more aggressive management stance, there was much discussion of these semi-strike approaches.[55] However, the employer may react with a lockout which nullifies semi-strike strategies.

<u>The Information Exchange</u>.

Hicks' model is useful because it highlights the information exchange that occurs during strikes and during bargaining. In a negotiation, where both sides have the ability to inflict costs on the other, there is an incentive to bluff, i.e., to make the opposition believe that your willingness to inflict and bear costs is higher than it actually is. This incentive complicates the negotiations process since overt statements (written and oral demands and offers) cannot necessarily be taken at face value.

Box K on USAir strike of 1992 and "testing"

How can management be sure that the union's declared "final" position is truly final? How can the union be sure that management's "last" offer may not in fact be more flexible than management declares it to be? In principle, the union could try and infer management's true position from the firm's financial condition. There is evidence that the more volatile the rate of return on the firm's stock, the greater is the probability of a strike. This finding suggests that as financial information becomes more clouded, the union is more likely to resort to a strike to obtain a sense of management's actual negotiating position.[56]

But since strikes are costly, both sides also have an ultimate incentive to avoid miscommunications. When one party has put its

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Box K

Testing, Testing

In the early 1990s, the airline industry suffered from recession and price wars, as major carriers operated in bankruptcy or simply went out of business. Does that environment favor union or management? Ordinarily, the answer would be "management." But a carrier on the edge of a financial abyss may be reluctant to face a strike, which could tip it over. On the other hand, a union negotiating with such a carrier might be reluctant to push it over the abyss inadvertently and risk the jobs of its members.

Such an environment can produce the atmosphere of a high-stakes poker game in which both sides test and probe each other to see what advantage can be obtained. In 1992, there was a 4-day strike of the Machinists union against USAir, a money-losing carrier at the time. The strike might have endangered an investment USAir was seeking from British Airways and loss of customer confidence, weakening the hand of management. Nonetheless, as the strike ended, one union official noted that "there was a lot of relief".

Source: Jesus Sanchez, "USAir, Machinists OK Pact," Los Angeles Times, October 9, 1992, pp. D1, D12.

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final offer on the table, it needs to have credibility behind that offer so that the other side will not miscalculate. A miscalculation could result in an expensive blunder for both sides, if a "needless" strike results.

The pressure for miscalculation avoidance becomes particularly severe as the contract expiration date approaches. Once that date is reached, an impasse is likely to lead to a strike. That is why labor disputes are often settled just before the strike deadline. Midnight settlements are not unusual, as anyone who has followed newspaper accounts of prominent negotiations will know.[57]

If the deadline passes, and the strike does occur, the Hick's model suggests that communications continue, even if formal bargaining is broken off. Both sides can observe the other's strike behavior. Is management able to maintain production, as it initially claimed it could, despite the strike? If not, the union's hand is strengthened. Is the union having trouble keeping its members from crossing the picket line and returning to work?[58] If so, management's hand is strengthened. Strikes, in short, are a form of information exchange, although a costly one.

Limits of Hicks-Type Analysis.

Although the "mistake theory" of strikes provides some useful insights, it unfortunately also has implications which do not accord with empirical evidence.[59] If strikes are merely mistakes, they should occur at random. In particular, they should not exhibit patterns of correlation with other economic variables. As in the theory of rational expectations in financial markets, the parties involved should quickly learn any correlation patterns and adjust their behavior accordingly, thus eliminating the statistical association.[60]

However, strikes seem to have longstanding statistical relationships with economic variables. For example, they seem to be exacerbated by inflation and boom conditions and to be cooled by recession.[61] In addition, there is some evidence that the stock market can predict the likelihood of a strike.[62] Since stock market transactors presumably have less information than the actual parties to the negotiation, it must be assumed that the parties can make an even better estimate. So why do relations between strikes and economic variables persist, once they are understood?

The empirical evidence will not be so puzzling if it is recalled that the union-management relationship is an ongoing one of indefinite duration. Unlike a potential buyer and seller haggling over the price of a used car, the parties to collective bargaining are tied together "permanently." If the potential buyer and seller in a used car transaction cannot reach a settlement, they simply part company. In sharp contrast, if a union and management reach an impasse over this year's settlement, they must be concerned with what their behavior might imply for future settlements that will have eventually to be negotiated.[63]

For example, if management asserts that it has made a final offer, but then quickly backs down and offers more when threatened with a strike, the union will learn that management is prone to bluff. In backing down and enhancing its offer, management may avert a strike in the current negotiations. But it may actually raise the probability of future strikes by having "taught" the union that management assertions of firmness are not credible. The union may assume in the future that any such assertions are likely to be bluffs and can be safely ignored.

In an ongoing relationship, therefore, both sides must paradoxically exhibit a degree of rigidity in each negotiation in order to reduce the stream of future strike costs. One form of rigidity is to establish a consistent pattern of behavior keyed to important and credible variables. Suppose, for example, that the union wishes to establish it is concerned with protecting the real wage from price inflation. And suppose further that management wishes to establish that it will not grant large wage increases when the outlook for profits is uncertain. If both sides "stick to their guns," a procyclical pattern of strike activity is likely to emerge.

At the top of the business cycle, management may start to see indications of the future economic downturn, thus making the profit outlook insecure. On the other hand, inflation pressures on real wages may simultaneously push the union to demand large wage increases. Both parties may understand each other's position. They may even see clearly that a strike is coming and be able to make a rough forecast of the likely post-strike settlement. But both know that to give in without putting up a fight would undermine their future credibility and lead eventually to a higher stream of strike costs.[64]

Public Policies to Reduce Strikes.

In response to a strike wave immediately after World War II, Congress sought to reduce strike activity through various devices incorporated into the Taft-Hartley Act of 1947. First, a procedure - to be initiated by the President - was established for enjoining "national emergency disputes" during an 80-day "cooling off" period. During that time, a "fact-finding" panel is to explore the issues of the impasse and make a public report. And towards the end of the period, union members are asked to vote in an election conducted by the National Labor Relations Board (NLRB) to determine whether or not they will accept management's "last" offer. Various Presidents actively used these procedures. But by the late 1970s, their use had waned, mainly because few (if any) strikes by that time had the potential to create a true national emergency.

Presidential interventions blocking strikes have become confined to the railroad industry, a sector falling under a separate piece of legislation, the Railway Labor Act.[65]

Second, Congress required that union-management contracts would continue in force indefinitely unless one party notified the other 60 days in advance that it wished to renegotiate a new contract upon expiration of the old.[66] Since most contracts contain some form of no-strike provision, this requirement would effectively prevent strikes unless advance notice was given. It appears this requirement was imposed because Congress observed that settlements are often reached at the last minute.

Congress naively assumed that the parties somehow were not giving themselves enough time to negotiate and that strikes were occurring because bargaining time had run out. In fact, the previous analysis of bargaining above makes it clear why last minute settlements are to be expected.[67] The contract deadline represents a point where bluffs are called and more accurate communication is encouraged.

The third major action taken by Congress in 1947 was the creation of the Federal Mediation and Conciliation Service (FMCS).[68] By law, private parties subject to the Taft-Hartley Act must notify the FMCS of an impending contract expiration 30 days after they have notified each other that they wish to renegotiate the agreement - assuming they have not settled the matter within that period. (Over 58,000 notices were received by FMCS in fiscal year 1992, a relatively quiet year). Pursuant to the Act, FMCS mediators offer their services to collective bargaining parties engaged in negotiations. The mediators have no powers to impose a settlement. Their job is instead to facilitate an agreement, if the parties wish to permit their participation.

Inherent in the bargaining process are the twin requirements that a satisfactory settlement permits the parties 1) to maintain credibility and 2) to save face. These goals can be as important as the money value of the agreement, because they will condition the nature of the ongoing union-management relationship. Thus, FMCS mediators (or private parties who are also sometimes used as mediators) may be called upon to help craft artful compromises which achieve these two goals.[69]

Suppose, for example, that the union initially swore it would never accept a two-tier wage plan and management swore it would not settle without one. Suppose further that a strike has resulted over this issue and the union now feels that it would be best to accept some version of a two-tier plan. Yet it is stuck with its pre-strike pledge never to accept one. A mediator might be able to suggest an arrangement which gives management a lower wage for new hires, but permits the union to insist that it did not agree to a two-tier wage plan.

Perhaps the mediator can suggest to both sides that a new job classification be created for "learners" or "trainees" at a lower wage. New entrants to the firm's workforce would be classified as learners or trainees initially. Thus, there would not be two separate tiers of wages, but rather a single set of wages with learners or trainees at the bottom. Such a compromise would have much the same effect as a two-tier plan. But both sides could then say that the settlement was within their stated objectives.

Mediators must also be mindful of the union's political processes and the pressures those processes place on union leaders. A mediator may be able to interpret the settlement publicly in a way which permits union officials to argue convincingly to their members that the compromise was "the best that could be achieved" and therefore should be ratified. Although sometimes described as mere go-betweens in a negotiation, successful mediators in fact must exhibit great skill and sensitivity.

v. Strike Alternatives.

The strike threat is the engine which powers contemporary collective bargaining. But as will be discussed more fully below, strikes can also be a distraction to the parties from the economic environment. In a situation where strike costs and their avoidance are dominant, longer run concerns such as market share, competitiveness, and resulting employment prospects will not receive the critical attention they deserve.

The neglect of long run consequences which can affect bargaining is especially paradoxical for unions. Union members are much more likely to have long tenures of employment with their employers than nonunion workers. Because of these long tenures, the stakeholder component of the employment relationship is particularly important for unionized workers. People who have been on the job for a long time are typically more tied to their jobs than newcomers. Hence, for union members more than other workers, the long run should be of great concern.

Top managers at a unionized firm whose economic prospects look dim may be able to move to other well paying positions. Thus, the managers may have less of a stake in the future of the enterprise than its union workers. In a strike threat powered bargaining system, unions cannot necessarily rely on management to protect the enterprise from "excessive" bargaining demands in the long run. Thus, long run economic consequences should be high on the union's own agenda.

Given this situation, the question naturally arises as to whether substitutes for the strike can be found. There really is only one alternative which has been used and it is quite rare in the private sector.[70] That alternative is interest arbitration.

Interest and Rights Arbitration.

Arbitration comes in two varieties: "rights" and "interest."[71] In both cases, the arbitrator (unlike a mediator) is charged with making a binding settlement of the dispute. Rights arbitration is used to settle disputes over the interpretation of an existing (current) contract - most often in cases of employee grievances - and is by far the most common form of arbitration used in the U.S. This type of arbitration will be discussed in the next chapter. The concern at this point is about interest arbitration, the settlement of a dispute aimed at establishing a new contract.

In principal, interest arbitration can be imposed by government and strikes can be forbidden. Such a policy is known as "compulsory arbitration." No current federal statute imposes compulsory arbitration on private sector collective bargaining parties, although there have been instances of ad hoc federal use of the technique in the past.[72] But there has never been much sentiment in Congress to establish a labor-relations system (such as exists in Australia) where compulsory arbitration is the norm.

Privately-established interest arbitration can be used to settle private sector disputes without government compulsion. The parties to a negotiation can agree voluntarily to hire their own arbitrators and to be bound by the resulting decision. That is, they can agree that the arbitrator will settle the dispute and that there will be no strikes or lockouts to overturn the arbitration award. Yet, the use of voluntary binding interest arbitration by private parties is extremely rare. FMCS data suggest that only about 1-2% of the arbitrations known to that agency fall into the interest category.[73]

The Rarity of Private Interest Arbitration.

Congress has generally refrained from imposing compulsory arbitration on private parties, partly out of a desire to avoid government intervention generally, and partly because of a fear that such imposition might actually complicate negotiations. For many years, standard dogma in labor relations circles suggested that compulsory arbitration would kill private bargaining, if imposed. Arbitrators would simply "split the difference" between the offers of labor and management, according to this view. Thus, both sides would have strong incentives to take extreme positions in order to pull the arbitrator in their respective directions.

Box L on the steel arbitration

Since the parties would take extreme positions, there would be no hope that they would reach a settlement on their own. Arbitration would thus have a "chilling effect" on bargaining. Serious bargaining would not occur, since both parties would in

Box L

A Fuzzy Line Between Rights and Interests

The standard distinction between rights and interest arbitration is that the former interprets the contract whereas the latter creates a new contract. But sometimes the line between the two is unclear. When union and management representatives face a difficult and contentious issue, they may reach a "settlement" which in fact leaves the issue open for later interpretation by an arbitrator. Is the arbitrator in that case simply interpreting the contract? Or is he or she in fact settling an open dispute?

Such an issue arose in 1983 after contracts in the basic steel industry were reopened for concession bargaining which cut wages. In a typical union agreement, a variety of benefits - such as vacation pay and pensions - are tied to the wage. However, the concession settlement did not explicitly cut benefits in line with wages. Subsequently, arbitrator Benjamin Aaron was asked to determine whether the wage cuts should be inferred to reduce benefits traditionally tied to wages. He ruled that benefits should be cut.

Should we say that the arbitrator was simply interpreting the contract? Or was the arbitrator, in this case, settling an issue the parties had deferred for later arbitration?

Source: "Arbitrator Upholds Steel Industry Position on Benefit Reduction Under Current Pacts," Daily Labor Report, December 7, 1983, p. A6.

effect be talking to the arbitrator who would later enter the picture, and not to each other. Moreover once established, compulsory arbitration would also have a "narcotic effect" since the parties would come to depend on it in all disputes.

There are good reasons to believe, however, that this still widely accepted negative view of arbitration is unrealistic. First, voluntary binding arbitration is something the parties would chose to use (or not use). Given this choice, there is no reason why arbitration should become a "narcotic" or why - if it did - there should be public concern about the private choice of a method of dispute settlement.

Second, researchers have developed evidence that arbitrators in interest cases do not simply split the difference between the labor and management positions.[74] Rather, arbitrators have their own notions and standards of what a reasonable settlement should be, based on such factors as inflation, the "going" rate of wage adjustments, etc.[75] In framing their positions, unions and managements can estimate what the arbitrator will think reasonable, and position themselves accordingly. Interest arbitration should be viewed as a three-party process with union, management, <u>and</u> arbitrator as active participants.[76]

Thus, the union will ask for somewhat more than what might be considered reasonable, but not so much more that it would lose credibility with the arbitrator. And management might offer something less than the estimate, but again, within a credible range. The arbitrator comes out somewhere in the middle - not because of a split-the-difference approach - but because the parties have arrayed themselves around the likely decision. There is no guarantee that the result will be positions which are reasonably close to one another. But on the other hand, it cannot be presumed that extreme positions are inherent in arbitration.

Obviously, arbitrators do not make decisions in a vacuum, completely unmindful of union and management proposals. They are aware of the parties' offers and take them into account.[77] But the fact that arbitrators do have their own norms of settlements acts as a brake on the tendency for the parties to take extreme positions. Thus, the feared chilling effect on bargaining need not arise, even when the parties know that they will probably use an arbitrator if the dispute cannot be privately settled.[78] Generally, if there is more uncertainty about the results of interest arbitration than there is about the outcome of negotiations, the parties will be inclined to settle via negotiations.[79]

Box M on postal arbitration settlement

Box M

Interest Arbitration in the Postal Service

Under the Postal Reorganization Act of 1970, the Post Office Department was transformed into a quasi-independent government-owned corporation, the U.S. Postal Service. The change was made after a postal strike which led President Nixon to call on the military to deliver the mail in New York City. As a result of this experience, postal workers were given bargaining rights and put under the general jurisdiction of the NLRB. However, the right to strike was not granted; impasses over new contracts which could not be resolved by postal management and unions were left to a system of compulsory interest arbitration.

In 1991, when new contracts were to be negotiated, two unions - the Mail Handlers and the Rural Letter Carriers - settled without use of arbitration. But the two other major unions, the American Postal Workers Union and the National Association of Letter Carriers, did not settle and their contracts were fixed by an arbitration panel. The new contracts provided a series of wage increases, a cost-of-living escalator, and a lump-sum payment spread out over a four-year period.

Source: "Developments in Industrial Relations," Monthly Labor Review, vol. 114 (September 1991), pp. 30-31.

In any case, should the chilling effect remain a concern, private parties can, in principle, develop solutions. For example, a variant of conventional interest arbitration - known as "final offer" arbitration - is sometimes used in the public sector (and occasionally in the private) to settle disputes. Under final offer arbitration, the arbitrator must pick the offer of <u>either</u> union or management, and cannot concoct a compromise. Proponents of this form of arbitration argue that the arbitrator will pick the most "reasonable" offer of the two. Therefore, both parties will have an incentive to take "reasonable" (rather than extreme) positions; they may even end up settling the dispute without using the arbitration mechanism.[80] Final offer arbitration has been used in professional baseball to settle individual disputes between star players and team owners.[81]

Private Sector Interest Arbitration in the Future?

The current rarity of interest arbitration in the private sector does not mean that it could not be more frequently used in the future. It is paradoxical that unions and management universally accept rights arbitration as the normal way to settle one class of disputes, but generally ignore - or deride - interest arbitration as a technique to settle another class. Historically, the sharp distinction between interests and rights was not always made. Unions and employers in the 1920s sometimes had stand-by "umpires" who they called upon to help them resolve problems, regardless of type.

In a period when fundamental assumptions about collective bargaining are being questioned, increased voluntary interest arbitration should be reconsidered as an alternative to strikes. Of course, it would be just as important for arbitrators in such situations to consider the long-term economic consequences of their decisions as for unions and managements to do so in conventional bargaining. Limited evidence suggests that unions are somewhat less willing than managers to use arbitrators with an economics background. They are more likely to prefer legal backgrounds, presumably because lawyers are perceived to be more equity minded.[82] However, as will be discussed below, union views began to change under the influence of unfavorable economic developments beginning in the 1980s. In any case, more widespread use of interest arbitration potentially represents a more cooperative form of labor-management relations than has been the norm.

III. The Long Run Arrives for Collective Bargaining.

The concession bargaining which began in the 1980s was attributed to various causes. Deregulation in transportation and communications opened up the possibility of new, nonunion competition. Substantial appreciation of the U.S. dollar in the early 1980s relative to other currencies led to increased import competition and to loss of export markets. And generally, the potential for exchange rate fluctuations adds to uncertainty in product markets and, thus, in labor markets.[83] The political and legal environment for unions under the Reagan administration became more difficult. A severe recession occurred in the early 1980s and thereafter the economy remained soft for several years, even in recovery. Recovery by the end of the decade was quickly followed by another recession and a period of sluggish economic performance.

However, surrounding these factors was a history of a steady increase in union wages relative to nonunion wages in the 1970s, and - indeed - during much of the period after the Korean War. Until 1976, with the introduction of the Employment Cost Index (ECI), these trends could not be measured directly and had to be estimated. But, Table 1 - based on the ECI - clearly illustrates the relative wage creep of the union-to-nonunion wage ratio until 1982-83, when concession bargaining reversed the trend. The concessions seemed to represent a transfer back to firm stockholders of previous union wage gains.[84] Only in the early 1990s does the pattern of the 1980s reverse, as wages in the nonunion sector reacted faster than those of the union sector (which are set under long-duration contracts).

In a sense, therefore, the long run arrived for collective bargaining in the 1980s and has not ended. But in another sense, it arrived earlier, although - at first - largely unseen. During

Table 1

Private Union and Nonunion Annualized Pay Trends
(Percent Change in Pay)

	1976-79	1980	1981	1982	1983	1984	1985	1986	1987
Wages & Salaries									
Union	8.2	11.0	9.5	6.6	4.5	3.5	3.1	2.0	2.7
Nonunion	7.3	8.2	8.5	6.0	5.3	4.5	4.6	3.4	3.7

	1988	1989	1990	1991	1992
Wages & Salaries					
Union	2.2	3.1	3.4	3.6	3.1
Nonunion	4.5	4.5	4.2	3.7	2.5

Source: "Employment Cost Index," Compensation and Working Conditions, vol. 45 (March 1993), pp. 50-118.

the 1960s and 1970s, a puzzle emerged regarding union membership. Not only was it declining in the private sector relative to the overall workforce, but it was declining <u>faster</u> than could be explained by simple statistical analysis of employment patterns. The obvious explanation, that the slippage reflected a change in industrial mix away from industries in which unions had traditionally been strong, did not account for all of the slippage.[85] A substantial fraction of the erosion was left unexplained. The unexplained erosion continued throughout the 1980s.

Moreover, explanations based on changing workforce characteristics are not really satisfactory. Why should unions not have expanded into new industries as these industries arose? Is there something, for example, intrinsically different about workers in, say, high-tech electronics, that makes them immune from unionization? Even the blue collar workers in the new industries? Clearly, there must be some other factor accounting for the puzzle.

i. Changes in Management Strategy.

With the benefit of hindsight, researchers began to unravel the mystery in the late 1970s and early 1980s. In essence, they found evidence of the emergence of a new, nonunion model of human resource management which had developed slowly in the 1960s and flowered in the 1970s.[86] Management had been shell shocked by the growth of unionization in the 1930s and 1940s, and had tended to take a passive role in the workplace, responding to union demands (if unionized), and union examples (if not). As noted earlier, for example, innovations in fringe benefits were largely the product of union pressure in the 1950s. By the 1960s, however, management began to become more proactive.

Basically, proactive, nonunion management followed one of two models. It could innovate in the human resource area and create an environment in which workers saw little benefit in joining unions. That route involved substantial attention to employee communications, potential grievances, the quality of supervision, and - in some cases - mechanisms for employee involvement in workplace decision making. And, of course, the approach also involved paying relatively high wages and benefits.[87]

An alternative route was to take an overtly hostile approach to union organizing, even if illegal unfair labor practices might be entailed. In principle, for example, firing union sympathizers because of their sympathies is unlawful. However, the legal penalty - which might not be invoked until after prolonged litigation - is simply reinstatement of the discharged worker with back pay. A few firings, although entailing some cost, might be sufficient to end an organizing campaign. If not, resistance can continue even after the NLRB has certified the union as representing a work group. It may be possible, for example, to avoid concluding an initial contract with the union, eventually undermining its status.[88]

Whatever route of resistance management took, it appears that the rising union/nonunion wage premium intensified management's efforts to stay nonunion or become nonunion.[89] While that premium might have attracted the interest of nonunion workers in unionizing, the concession bargaining which began in the 1980s seemed to have the reverse effect. Survey evidence suggests that nonunion workers - perhaps becoming more doubtful about what unions could do for them - turned less favorable toward the idea of unionization during the concession bargaining era.[90] They may have seen unions as harbingers of trouble rather than as protectors of pay and security.

ii. Union Reactions to the Adverse Climate.

Unions did begin to react to the perceived management offensive beginning in the 1980s. Concession bargaining to save jobs was one reaction. Although the median voter/union member might have had difficulty appreciating the wage-employment trade off when the issue was merely a small shift along the labor demand curve, the matter became much clearer when closing an entire plant or a mass layoff was threatened. Detailed perception is not needed in such cases. The question becomes whether the employer's demand curve for labor will exist, not what its slope may be. Threatened by a plant closing or mass layoff, the median union "voter" could no longer count on rules such as layoffs by reverse order of seniority to protect his/her job and the value of his/her stake in remaining with the employer.

Generally, however, unions began to become interested in economic and managerial issues previously considered "off limits." There was a far greater degree of self criticism in evidence in union officialdom - especially at the national level - than had ever been previously exhibited.[91] And the upshot was more willingness to try new ideas.

In the collective bargaining area, unions experimented with employee ownership, with representation on corporate boards, with team production approaches, with profit sharing,[92] and with "corporate campaigns." This last approach involved pressuring employers through devices other than strikes, since strikes were often seen as potentially very costly and likely to create job loss. (See box J). Such devices have included removal of union funds from banks in a close business relationship to the offending employer, innovative public relations, consumer boycotts, pressure on shareholders, etc.[93]

Box N on Justice for Janitors and Apple

Box N

Justice for Janitors and Apple

Janitors are often employed by maintenance companies who service office and other buildings. Officially, therefore, the janitor is employed by the maintenance contractor, not the owner of the building being cleaned. As part of its efforts at alternative organizing techniques, the Service Employees International Union (SEIU) has targeted building owners and their occupants rather than the official employers of the janitors. This effort has been labeled the "Justice for Janitors" campaign.

One such example occurred in 1991-92 at Apple Computer, a company with an image of innovation and progressive work practices in California's "Silicon Valley." Boycotts were threatened and hunger strikes were staged by the SEIU. Eventually, the maintenance company Apple employed agreed to recognize the union. A related campaign produced a similar result at Hewlett-Packard.

Source: "Apple Computer's Janitorial Contractor Agrees to Recognize, Bargain With SEIU," Daily Labor Report, March 4, 1992, pp. A17-A18; and related sources.

Moreover, union officials - at least at the national level - seem to have become more sophisticated about the economic forces that confront the firms with which they bargain. They have become participants in efforts aimed at heading off, or channeling, hostile takeovers. And they have taken more positive stances toward quality of working life innovations than were typical in the 1970s.

For example, unions have participated in quality circle programs under various names. Under these arrangements, workers and supervisors meet in groups aimed at increasing productivity and maintaining quality standards. Team production methods - sometimes termed the "team concept" - have also been used in some union situations. Under the team concept, the number of detailed job classifications is reduced and workers are given wider responsibility over production. Moves in these directions have not been uniform, nor have the results always been successful. Where such moves have occurred, union officials have sometimes found themselves charged with selling out to management interests.[94]

Such developments, and the pressures that sparked them, have been the subject of numerous Labor Day feature articles in the popular press. Analogies have been made to "turning around a battleship" to express the difficulty of changing entrenched patterns of thinking and behavior in the union movement. But the challenge is even more difficult than that analogy suggests, since with the membership losses in the 1980s and 1990s, the union battleship was plainly taking on water at the same time it was endeavoring to change direction.

As of this writing, therefore, the most that can be said is that the efforts at change have yet to produce evidence of a reversal of past trends. Survey data from the late 1970s suggested that about one third of private-sector nonunion workers would vote for union representation in an election, if they had the opportunity to do so.[95] Significantly, at the time the proportions were higher than average for young people and women, groups which have not been heavily represented by unions. There is evidence that attitudes became less favorable to unions in the 1980s. But although economists have tried to break this shift into "demand" and "supply" categories for union "services",[96] the influences are difficult to disentangle. Employees who might consider unionization are likely to be less favorable in a period when unions seem weak; they wonder what a weak union would do for them and may be fearful of employer retaliation.

IV. Summary and Implications for Management.

The union sector of the labor force operates differently in many important respects from the nonunion sector. Substantial government regulation is imposed on the union sector and a climate of legalism pervades union-management relations. Union workers typically earn higher wages and benefits than their nonunion counterparts. A heavy reliance on seniority in determining layoffs, recalls, and other workplace conditions is common in collective bargaining contracts. Emphasis on the welfare of more senior workers is explained partly by the median voter model of the union's political decision making process.

Outcomes of collective bargaining and trends in union membership can be importantly influenced by the political/legal and the economic climates. Unions faced a variety of adverse forces from both sources in the 1980s and 1990s. The result was a strengthened management hand, a rash of concession bargaining, union membership declines. In turn, these developments triggered an unprecedented soul searching within the union movement whose consequences are as yet uncertain.

For management, the shrinkage of the union sector, and the evident weakening of union bargaining positions poses an ironic challenge. An aging workforce - such as the U.S. will feature for the balance of this century - is one which will be progressively concerned about job security. The presence of unions in the past has reduced the demand for government regulation in the workplace - extensive though it is - on the grounds that the employer-employee relationship can be determined by collective bargaining. With one eighth of private wage and salary workers organized (as of the early 1990s), however, that view is no longer reasonable. If employees become sufficiently concerned about their job prospects, they may well turn to the political system and the courts for redress.[97] Indeed, it is already happening.

Political moods can vary considerably. The 1980s was a period of government deregulation, at least at the federal level. But even so, Congress moved to protect older workers from mandatory retirement. Advance notification of plant closings and mass layoffs was required. At the state level, some limits on plant closing were also adopted. Federal legislation in the 1980s gave laid off workers limited rights to continue their employment-related health benefits.[98] In short, a swing in the political climate could produce a host of new legislative restrictions on management. The arrival of the Clinton administration in 1993 brought with it mandatory family leave and the prospect of some form of mandated employer-provided health insurance.

There have been signs of discomfort by political leaders and in public discussion over various management practices. American business has been accused of following short-sighted policies which have eroded U.S. international competitiveness. Waves of mergers and acquisitions have been criticized as disruptive. Legislative inquiries into financial scandals have been held.

During the 1980s, other influences were also disquieting. While there was some acceleration of productivity growth, it did not seem to produce as much real wage improvement as might have been expected. Income inequality seemed to be on the rise. The electorate in the 1992 presidential election - marked by a three-way race - seemed fluid and uncertain. In this environment, a sense that something is wrong with the employment relationship, something which cannot be handled privately, could produce tighter public policy regulation of that relationship.

Unions in the 1960s and 1970s often ignored the long run implications of their individual decisions, and are still living with those consequences in the 1990s. With the benefits of hindsight, unions have identified some of their problems, but in a period when it has become difficult for them to make substantial changes. Are there no lessons to be learned by management from the experience of its union counterparts?

EXERCISE FOR THE STUDENT

Find reference to a major strike situation and develop a chronology of what occurred. What were the initial offers and demands of both sides? Why do you think the strike occurred? What role, if any, did mediation play in reaching a settlement? If the employer was a private company with a publicly-traded stock, how did the market react as negotiations - and then the strike - occurred? What was the market reaction to the settlement?

QUESTIONS AND KEY CONCEPTS

1) What factors might make union members especially concerned about job security?

2) How does the grievance mechanism in union contracts protect job security?

3) What should be the management position with regard to union security clauses?

4) Are strikes the result of "mistakes"?

5) What steps might be taken by public policy to reduce the incidence of strikes?

6) What changes in union and management strategies developed in the 1980s and 1990s?

7) What issues are raised by the federal requirement that employers provide 60 days advance notice of plant closings and mass layoffs? By the requirement that employers provide family leave?

Key concepts:

advance notice of plant closings and mass layoffs, agency shop, bumping rights, chilling effect, concession bargaining, 80-day cooling off period, family leave, Federal Mediation and Conciliation Service, featherbedding, final offer arbitration, free rider problem, Hicks' strike model, interest arbitration, layoffs by reverse order of seniority, mediation, multiyear contracts, no-strike clause, Railway Labor Act, right-to-work laws, rights arbitration, scope of bargaining, Supplemental Unemployment Benefits, Taft-Hartley Act, two-tier pay plan, union shop, work-to-rule tactics, workrules.

FOOTNOTES

1. Union workers typically have longer tenures on the job than nonunion workers, thus giving them a special stake in continued employment. See John T. Addison and Alberto C. Castro, "The Importance of Lifetime Jobs: Differences Between Union and Nonunion Workers," Industrial and Labor Relations Review, vol. 40 (April 1987), pp. 393-405.

2. Bureau of National Affairs, Basic Patterns in Union Contracts, thirteenth edition (Washington: BNA, 1992), pp. 41-44.

3. Bureau of National Affairs, Basic Patterns, op. cit., pp. 67-70.

4. Groups representing management, however, tended to urge voluntary advance notice to ease the transition for the laid off employees. See National Association of Manufacturers, When a Plant Closes: A Guide for Employers (Washington: NAM, 1983), pp. 12-13.

5. The advance notice provisions were originally incorporated into a foreign trade bill vetoed by President Reagan, largely because of their inclusion. The trade bill was then passed without the advance notice provisions and signed into law. A separate bill carrying the advance notice provisions was passed and sent to the President who permitted it to become law without signing it, thus avoiding a second veto of a popular bill in the 1988 election year.

6. Bureau of National Affairs, Basic Patterns, op. cit., pp. 33-39.

7. The Taft-Hartley Act has an "anti-featherbedding" provision which has proved to be of no consequence in practical application.

8. The Brotherhood of Locomotive Firemen and Engineers became part of the newly-formed United Transportation Union in 1969, thus ending the institutional pressure to preserve the fireman position that stemmed from having a separate union for firemen. On the more general issue, see Jeffrey H. Keefe, "Do Unions Hinder Technological Change" in Lawrence Mishel and Paula B. Voos, Unions and Economic Competitiveness (Armonk, N.Y.: M.E. Sharpe, 1992), pp. 109-141.

9. According to Eberts and Stone, the paradox that employers complain about union workrule restrictions while some econometric evidence suggestions higher union productivity may be due to "efficient" bargaining of the type discussed later in this chapter. They argue that workrule restrictions are necessary to achieve optimal bargains, i.e., bargains which undo the distortion imposed by the union wage effect on the employer's selection of employment. See Randall W. Eberts and Joe A. Stone, "Unionization and Cost of Production: Compensation, Productivity, and Factor-Use Effects," Journal of Labor Economics, vol. 9 (April 1991), pp. 171-185.

However, the only empirical evidence they present relates to public schools, a rather narrow example for generalization.

10. Richard B. Freeman and James L. Medoff, What Do Unions Do? (New York: Basic Books, 1984), Chapter 11; Steven G. Allen, "Human Resource Practices and Union-Management Productivity Differences," working paper for presentation at the Academy of Management meetings of August 1988, Department of Economics, North Carolina State University, July 1988; John T. Addison and John B. Chilton, "Can We Identify Union Productivity Effects?," Industrial Relations, vol. 32 (Winter 1993), pp. 124-132.

11. However, there is also evidence that having more voice produces an increased level of dissatisfaction. See John S. Heywood, "Race Discrimination and Union Voice," Industrial Relations, vol. 31 (Fall 1992), pp. 500-508.

12. For an example of a study finding a negative impact, see Merwin W. Mitchell and Joe A. Stone, "Union Effects on Productivity: Evidence from Western U.S. Sawmills," Industrial and Labor Relations Review, vol. 46 (October 1992), pp. 135-145.

13. Bureau of National Affairs, Basic Patterns, op. cit., pp. 99-103. All data cited in this section are taken from this reference.

14. Thus, there is little practical difference between the union shop and the agency shop discussed below in the text.

15. Some versions of agency shops permit payment of the equivalent of dues and assessments to a private charity rather than to the union. Agency shop clauses are more commonly found in the public than the private sector because they represent a compromise on the "freedom of association" issue discussed below in the text.

16. The Taft-Hartley Act, Section 14(b), specifically gives states the right to enact such laws. Periodic efforts by unions to persuade Congress to repeal Section 14(b) have been unsuccessful. President Clinton, as governor of Arkansas, presided over a state with a right-to-work law. To assuage organized labor during the 1992 presidential election campaign, he promised that if a bill repealing Section 14(b) was put on his desk as President, he would sign it. However, the probability that such a bill would ever reach his desk is extremely small.

17. However, even if the presence of the laws reflect local tastes, the laws themselves - controlling for those tastes - may increase free ridership and diminish the probability of forming collective bargaining units. Some evidence on this point in the public sector can be found in Casey Ichniowski and Jeffrey S. Zax, "Right-to-Work Laws, Free Riders, and Unionization in the Local Public Sector," Journal of Labor Economics, vol. 9 (July 1991), pp. 255-275.

18. Henry S. Farber, "Right-to-Work Laws and the Extent of Unionization," Journal of Labor Economics, vol. 2 (July 1984), pp. 319-352. There is some evidence that R-T-W laws lower the union wage advantage. See Sandra Christensen and Dennis Maki, "The Wage Effect of Compulsory Union Membership," Industrial and Labor Relations Review, vol. 36 (January 1983), pp. 230-238. This is consistent with the general tendency for the wage of union members to be a few dollars higher than the wage of union-represented workers (members and non-members combined) in Current Population Survey data. On surveys of workers in right-to-work states, see Gary N. Chaison and Dileep G. Dhavale, "The Choice Between Union Membership and Free-Rider Status," Journal of Labor Research, vol. 13 (Fall 1992), pp. 355-369, especially p. 359.

19. Public (non-commercial) radio and TV broadcasting stations face this dilemma. Anyone can receive their signal. Whether an individual does or does not receive the signal has no effect on the cost of sending it. Nor can such receipt be detected. Hence, there is a temptation to watch or listen, but not pay. Such broadcasters often engage in public appeals and gimmicks (auctions, prizes, etc.) to induce free riders to contribute to the station's upkeep.

20. For example, a union may not legally negotiate a contract providing a pay raise only for its members. But apart from the legal restriction, such a contract might not be wise policy for the union. If the union raised the pay of only union members, the employer would have an incentive to substitute nonunion workers for union members.

21. De-authorization polls are sometimes used as indirect de-certification elections. The latter completely end the union's status as the exclusive bargaining representative. However, the NLRB generally will not hold such elections while a union-management contract is in effect. It will hold a de-authorization poll at any time (contract or not) and a union which loses such a poll is on notice that its status with the workers it represents is extremely fragile. In the original Taft-Hartley Act, there was also a requirement that before a union shop could be put into effect, a majority vote in a union shop authorization poll had to be obtained. However, this requirement swamped the NLRB with work and in most cases workers voted in favor of the union shop. Congress eliminated the authorization poll requirement in 1951, but retained the de-authorization poll.

22. One study finds that senior workers are more likely to become union members in the public sector than junior workers. This finding fits well with the notion that unions focus more on the needs of senior workers. See John M. Jermier, Cynthia Fryer Cohen, and Jeannie Gaines, "Paying Dues to the Union: A Study of Blue-Collar Workers in a Right-to-Work Environment," Journal of Labor Research, vol. 9 (Spring 1988), pp. 167-181.

23. The data are from Employment and Earnings, vol. 40 (January 1993), p. 239. It might be noted that states with right to work laws banning union security clauses tend to be those with low unionization rates. That is, most union-represented workers are not located in these states.

24. The issue is more complex than can be discussed here since the attitudes of public and private workers may not be identical.

25. In the next chapter, there is discussion of the "duty of fair representation" imposed by law on unions. Under this duty, unions must fairly represent all in the bargaining unit and can be sued if they do not. Most often, such suits are filed by grievants who are dissatisfied by the union's handling of their case or by a refusal of the union to take the case to arbitration. As a result, unions sometimes feel under legal pressure to pursue grievances they realize have little merit.

26. Of course, such clauses do not operate in states with right to work laws where the companies have facilities.

27. General Motors experimented with a "southern strategy" in the in the mid 1970s under which management resisted unionization at new facilities in the south. However, because GM's plants are highly interdependent, the United Auto Workers (UAW) has considerable bargaining clout. After frictions over the southern strategy, the company agreed to remain neutral in future organizing campaigns. The issue arose again at the joint GM-Toyota (NUMMI) venture in northern California which was to operate at a previously closed GM plant. GM management initially indicated that the joint venture was a different company and suggested that former workers might not be rehired. Eventually, an understanding was reached whereby most of the former workers were rehired, thus ensuring UAW representation.

28. GM and the UAW agreed that GM workers from other facilities would be the first hired at Saturn. Since these workers would be UAW members, the arrangement virtually guarantees UAW representation at Saturn. The Saturn arrangement was challenged by the National Right to Work Committee, an employer group which has sponsored right to work legislation. However, the NLRB found that the arrangement passed legal muster.

29. Bureau of National Affairs, Basic Patterns, op. cit., pp. 1-5, 93-98.

30. Bureau of National Affairs, Basic Patterns, op. cit., pp. 84-85.

31. Re-openers have sometimes been based on the outcome of pending litigation or the passage or repeal of some federal legislation. For example, some contracts contain language reopening the health

insurance component if a new system of nationally-regulated health care is established which requires changes in the contract plan.

32. Strikes might be more likely after a long period because potential disagreements have had a longer time to accumulate.

33. See Sanford M. Jacoby and Daniel J.B. Mitchell, "Does Implicit Contracting Explain Explicit Contracting?" in Barbara D. Dennis, ed., Proceedings of the Thirty-Fifth Annual Meeting, Industrial Relations Research Association, December 28-30, 1982 (Madison, Wisc.: IRRA, 1983), pp. 319-328; David Card, "Longitudinal Analysis of Strike Activity," working paper no. 2263, National Bureau of Economic Research, May 1987; Sanford M. Jacoby and Daniel J.B. Mitchell, "Employer Preferences for Long-Term Union Contracts," Journal of Labor Research, vol. 5 (Summer 1984), pp. 215-228.

34. Sometimes, as a legal matter, certain contractual obligations live on after the expiration date. This issue sometimes arises in connection with the employer's obligation to arbitrate grievances, particularly those which arose before the expiration date.

35. The following analysis owes much to Arthur M. Ross, Trade Union Wage Policy (Berkeley: University of California Press, 1948). Themes developed below were originally discussed in Daniel J.B. Mitchell, "Union Wage Policies: The Ross-Dunlop Debate Reopened," Industrial Relations, vol. 11 (February 1972), 46-61; and Daniel J.B. Mitchell, Unions, Wages, and Inflation (Washington: Brookings Institution, 1980), pp. 64-77.

36. Let W = the wage per employee and E = the number of employees. Then the payroll equal WE. To maximize payroll, we can differentiate by E and set the result equal to zero. Thus, $[(dW/dL)L] + W = 0$ and, therefore $-(W/L)(dL/dW) = 1$. The left hand side of this equation is the elasticity of labor demand. Hence, the payroll is maximized when the absolute value of the elasticity of demand = 1.

37. The isoprofit line shown on Figure 3 is one of a family of such lines, with lower lines representing more profits. Higher profits are consistent with lower lines, since lower lines represent lower wage costs given any arbitrary level of employment.

38. The analysis in this section follows that presented various works including Thomas J. Kniesner and Arthur H. Goldsmith, "A Survey of Alternative Models of the U.S. Labor Market," Journal of Economic Literature, vol. 25 (September 1987), p. 1267; and Barry T. Hirsch and John T. Addison, The Economic Analysis of Unions: New Approaches and Evidence (Boston: Allen & Unwin, 1986). pp. 14-18. However, use of union indifference curves has been omitted, since collective indifference curves are questionable concepts.

39. Walter J. Wessels, "Do Unions Contract for Added Employment?," Industrial and labor Relations Review, vol. 45 (October 1991), pp. 181-193, finds little evidence of employment-based efficient contracting.

40. The Wagner Act defines as "labor dispute" as a controversy over the terms or conditions of employment in Section 2(9).

41. The legal concept of good faith bargaining is a complex matter which we will not consider further in this volume. However, the reader can readily see that a judgment of whether bargaining has occurred in good faith can have a strong subjective element. Thus, the concept is one of the areas in which legalism has crept into the collective bargaining system.

42. Management can "voluntarily" discuss such matters with unions. But unions may not strike to force management to hold such discussions nor to accede to demands which might be made over such voluntary subjects. As in the case of the previous footnote, the reader will see that the distinction between mandatory and voluntary subjects of bargaining, and the determination of what issues have triggered a strike, are legally complex matters.

43. Not surprisingly, unions in industries dominated by small firms and relatively unsophisticated employers were more likely to demonstrate economic expertise in their industries' problems. Unions, in effect, stepped into a void left by management. Often cited in this regard were unions in apparel, coal mining, and longshoring.

44. Although some of the union/nonunion wage premium may come from higher productivity of union workers, there is evidence that unions do cut into profits, especially those associated with "quasi-rents" flowing from intangible capital assets such as R&D and advertising. See Brian E. Becker and Craig A. Olson, "Unions and Firm Profits," Industrial Relations, vol. 31 (Fall 1992), pp. 395-415.

45. Two states - New York and Rhode Island - permit unemployment insurance payments to strikers after a waiting period. In addition, in some states, if a labor dispute is determined to be an employer lockout rather than a strike, workers may receive unemployment insurance.

46. "Economic strikers," i.e., workers involved in a simple dispute involving contract negotiations, are not legally entitled to their jobs once replaced. Rather they simply have the right to fill any vacancies which may later arise. Of course, if the firm has successfully replaced its striking workforce, there may be no vacancies.

47. U.S. Bureau of Labor Statistics, Directory of National Unions and Employee Associations, 1979, bulletin 2079 (Washington: GPO, 1980), pp. 73-75; Lisa M. Williamson, "Collective Bargaining in 1993: Job Are the Issue," Monthly Labor Review, vol. 116 (January 1993), p. 4; Employment and Earnings, vol. 40 (January 1993), p. 239.

48. Data on strikes and new union settlements were drawn from various issues of Compensation and Working Conditions. Included are state and local, private, and postal settlements. Other federal settlements are not included.

49. Because of limited information on the causes of strikes reported by BLS, it is not possible to segregate strikes due to negotiations from other strikes. However, prior to the 1980s, when BLS collected and published more detailed strike information, most of the workers involved in large strikes were in fact participating in contract negotiation disputes. A study of private contracts involving 1,000 or more workers in the 1970s found a strike probability of about 13%. See Cynthia L. Gramm, "New Measures of the Propensity to Strike During Contract Negotiations, 1971-1980," Industrial and Labor Relations Review, vol. 40 (April 1987), pp. 406-417.

50. In general, small strikes - involving less than 1,000 workers - involve different behavioral responses than large strikes. See Jack W. Skeels, Paul McGrath, and Gangadha Arshanapalli, "The Importance of Strike Size in Strike Research," Industrial and Labor Relations Review, vol. 41 (July 1988), pp. 582-591.

51. One study found, for example, that strike propensities were lower when settlements follow traditional patterns. See Martin J. Mauro, "Strikes as a Result of Imperfect Information," Industrial and Labor Relations Review, vol. 35 (July 1982), pp. 522-538.

52. A review of the economic literature through the late 1970s appears in Michael Shalev, "Trade Unionism and Economic Analysis" The Case of Industrial Conflict," Journal of Labor Research, vol. 1 (Spring 1980), pp. 133-173.

53. John R. Hicks, The Theory of Wages, 2nd edition (New York: St. Martin's Press, 1966), pp. 136-57. Further discussion of this theory can be found in Robert S. Smith and Ronald G. Ehrenberg, Labor Economics and Labor Relations (New York: HarperCollins, 1991), pp. 461-463.

54. An empirical estimate of union concession schedules appears in Henry S. Farber, "Bargaining Theory, Wage Outcomes, and the Occurrence of Strikes: An Econometric Analysis," American Economic Review, vol. 68 (June 1978), pp. 262-271.

55. Industrial Union Department, AFL-CIO, The Inside Game: Winning with Workplace Strategies (Washington: IUD, AFL-CIO, 1986).

56. Joseph S. Tracy, "An Investigation into the Determinants of U.S. Strike Activity," American Economic Review, vol. 76 (June 1986), pp. 423-436.

57. There is no requirement that a union go on strike if negotiations extend past the contract expiration date. Sometimes, if there is a sense that a settlement will be reached shortly, the union may continue to work without a contract. There are also strategic considerations which may lead the union to delay a strike until a more propitious time, say, when the firm will have more orders (and would thus lose more business if a strike occurs). However, the expiration date is a critical point; failure to strike absent strong momentum to reach a settlement might communicate union weakness to management.

58. Picketing is a common union strike tactic. It is subject to a variety of legal restrictions and doctrines which -- for the sake of brevity -- are not reviewed in this text.

59. This statement should not be interpreted as indicating that imperfect information plays no role in explaining strikes. There is evidence that it is a partial explanation. See Jean-Michel Cousineau and Robert Lacroix, "Imperfect Information and Strikes: An Analysis of Canadian Experience, 1967-82," Industrial and Labor Relations Review, vol. 39 (April 1986), pp. 377-387

60. Suppose unions initially fail to observe that in recessions, management's hand in bargaining is strengthened. They might futilely strike against management proposals during recessions. This hypothetical blindness on the union side would make strikes countercyclical. Over time, however, they would see that such resistance does not produce the desired results and would become more willing to acquiesce. Thus, any association between recession and strikes should disappear. Strikes would occur at random in booms and busts. As noted in the text, however, strike activity is associated with the business cycle and is, in fact, procyclical.

61. Albert Rees, "Industrial Conflict and Business Fluctuations," Journal of Political Economy, vol. 60 (October 1952), pp. 371-382, was the first to note the procyclical nature of strikes. Later researchers have incorporated inflation into the model and argue that inflation developments partly explain the cyclical motion of strikes. See Cynthia L. Gramm, Wallace E. Hendricks, and Lawrence M. Kahn, "Inflation Uncertainty and Strike Activity," Industrial Relations, vol. 27 (Winter 1988), pp. 114-129; Bruce E. Kaufman, "Bargaining Theory, Inflation, and Cyclical Strike Activity in Manufacturing," Industrial and Labor Relations Review, vol. 34 (April 1981), pp. 333-355; Bruce E. Kaufman, "The Determinants of Strikes in the United States," Industrial and Labor Relations

Review, vol. 35 (July 1982), pp. 473-490. Inflation may systematically erode the real wage of workers in some cases and increase the propensity for labor disputes. See Daniel J.B. Mitchell, "A Note on Strike Propensities and Wage Developments," Industrial Relations, vol. 20 (Winter 1981), pp. 123-127.

62. Brian E. Becker and Craig A. Olson, "The Impact of Strikes on Shareholder Equity," Industrial and Labor Relations Review, vol 39 (April 1986), pp. 425-438. References to earlier articles on the subject appear in this paper.

63. The impact of the ongoing union-management relationship on strike activity is emphasized in Melvin W. Reder and George R. Neumann, "Conflict and Contract: The Case of Strikes," Journal of Political Economy, vol. 88 (October 1980), pp. 867-886.

64. It has been observed that having a strike in a previous negotiation cuts down the probability of having one subsequently. This observation is consistent with the ongoing learning model described in the text. See John F. Schnell and Cynthia L. Gramm, "Learning by Striking: Estimates of the Teetotaler Effect," Journal of Labor Economics, vol. 5 (April 1987), pp. 221-241.

65. The Railway Labor Act also covers the airline industry. Neither railroads, nor airlines, are covered by the Wagner/Taft-Hartley framework as a result.

66. In 1974, amendments to the Wagner/Taft-Hartley framework brought private health care institutions under NLRB jurisdiction. Special features designed to reduce strikes in the health care sector were incorporated which will not be discussed in the text. Among them was a 90 day advance notice period, rather than the 60 days required in other industries.

67. The result of the Congressional requirement is simply that 60 days before the contract's expiration, a letter will be sent by one side to the other requesting that a new contract be negotiated.

68. A mediation service existed in the U.S. Department of Labor prior to the 1947 Act. Congress feared political involvement of the executive branch in private negotiations, and hence created the FMCS as an independent agency outside of a cabinet department.

69. State governments may also have mediation services available to collective bargaining negotiators.

70. We will not discuss here the so-called non-stoppage strike. In one version of a non-stoppage strike, workers remain on the job, but receive no pay. And management gives away its profits to charity. Thus, public inconvenience is avoided while an approximation of strike costs is visited on the parties. There have been a handful of such experiments. But the device seems

impractical because the negotiation of the cost formula is so difficult. (If the parties could negotiate the formula, presumably they should be able to negotiate the settlement!)

71. The terminology is said to be of Scandinavian origin. See Frank Elkouri and Edna Asper Elkouri, How Arbitration Works, third edition (Washington: BNA, 1973), p. 47.

72. Compulsory arbitration is used in some cases in the public sector. For example, workers at the U.S. Postal Service are covered by such a system. Some state laws require arbitration of interest disputes involving government employees.

73. The FMCS does not supply arbitrators but rather runs a referral service for private arbitrators. Data on the type of arbitration conducted as a result of these referrals appeared in the annual reports of the FMCS through 1989.

74. Max H. Bazerman and Henry S. Farber, "Arbitrator Decision Making: When are Final Offers Important?," Industrial and Labor Relations Review, vol. 39 (October 1985), pp. 76-89.

75. Elkouri and Elkouri, How Arbitration Works, op. cit., pp. 745-796.

76. David E. Bloom and Christopher L. Cavanagh, "Negotiation Behavior Under Arbitration," working paper no. 2211, National Bureau of Economic Research, April 1987.

77. Max H. Bazerman and Henry S. Farber, "Arbitration Decision Making: When Are Final Offers Important?," Industrial and Labor Relations Review, vol. 39 (October 1985), pp. 76-89.

78. The steel industry and the United Steelworkers union established a system of voluntary binding interest arbitration in the 1970s which lasted until the concession bargaining era beginning in the early 1980s. While the system was in force, the parties always managed to reach a private settlement without invoking the arbitration process.

79. On this point, see the discussion in David E. Bloom, "Is Arbitration Really Compatible with Bargaining," Industrial Relations, vol. 20 (Fall 1981), pp. 233-244. Risk aversion by both parties is assumed.

80. There have been suggestions for "closed offer" arbitration in which, prior to negotiations, the parties would submit sealed contract proposals to an arbitrator who would not disclose either side's position. The arbitrator would make a decision only on the basis of the s[illegible]d positions and only if the parties could not privately arr[illegible] a settlement. Having submitted their sealed offers, the p[illegible]s would then bargain normally since their offers

and counteroffers would not influence the arbitrator. There would be no incentives to take extreme positions in the negotiations since the negotiations and the arbitration process are kept wholly separate. Whether it would actually be possible to keep the arbitrator ignorant of bargaining developments - as the idea requires - is unclear. One possibility would be for the arbitrator to prepare an award prior to negotiations, based on the sealed offers.

81. See B. Jay Coleman, Kenneth M. Jennings, and Frank S. McLaughlin, "Convergence or Divergence in Final-Offer Arbitration in Professional Baseball," Industrial Relations, vol. 32 (Spring 1993), pp. 238-247; David J. Faurot and Stephen McAllister, "Salary Arbitration and Pre-Arbitration Negotiation in Major League Baseball," Industrial and Labor Relations Review, vol. 45 (July 1992), pp. 697-710.

82. David E. Bloom and Christopher L. Cavanagh, "An Analysis of the Selection of Arbitrators," American Economic Review, vol. 76 (June 1986), pp. 408-422.

83. Issues related to international competition will be discussed in a later chapter.

84. Brian E. Becker, "Concession Bargaining: The Impact on Shareholders' Equity," Industrial and Labor Relations Review, vol. 40, (January 1987), PP. 268-279.

85. William T. Dickens and Jonathan S. Leonard, "Accounting for the Decline in Union Membership, 1950-1980," Industrial and Labor Relations Review, vol. 38 (April 1985), pp. 323-334.

86. Thomas A. Kochan, Harry C. Katz, and Robert B. McKersie, The Transformation of American Industrial Relations (New York: Basic Books, 1986).

87. Fred K. Foulkes, Personnel Policies in Large Nonunion Companies (Englewood Cliffs, N.J.: Prentice-Hall, 1980).

88. Paul Weiler, "Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA," Harvard Law Review, vol. 96 (June 1983), pp. 1769-1827; Paul Weiler, "Striking a New Balance: Freedom of Contract and the Prospects for Union Representation," Harvard Law Review, vol. 98 (December 1984), pp. 351-420; U.S. General Accounting Office, Concerns Regarding Impact of Employee Charges Against Employers for Unfair Labor Practices, GAO/HRD-82-80 (Washington: GAO, 1982); William N. Cooke, "The Failure to Negotiate First Contracts: Determinants and Policy Implications," Industrial and Labor Relations Review, vol. 38 (January 1985), pp. 163-178.

89. Richard B. Freeman, "The Effect of the Union Wage Differential on Management Opposition and Union Organizing Success," working paper no. 1748, National Bureau of Economic Research, October 1985.

90. Henry S. Farber, "The Decline of Unionization in the United States: What Can Be Learned from Recent Experience," working paper no. 2267, National Bureau of Economic Research, May 1987.

91. Perhaps the most tangible evidence of this change in attitude was a special report published by the AFL-CIO and widely circulated to its constituent unions. See American Federation of Labor - Congress of Industrial Organizations, The Changing Situation of Workers and Their Unions (Washington: AFL-CIO, 1985).

92. There is some evidence that when unions accept profit sharing, the stock market reacts positively. Whether this is because of incentive effects the market attributes to profit sharing or because the union is absorbing some of the risks of the business cycle, or simply because accepting profit sharing is seen as a signal of greater cooperation is unclear. See Gary W. Flowkowski and Kuldeep Shastri, "Stock-Price Response to Profit Sharing in Unionized Settings," Journal of Labor Research, vol. 13 (Fall 1992), pp. 407-420.

93. Charles R. Perry, Union Corporate Campaigns (Philadelphia: Industrial Relations Unit, Wharton School, University of Pennsylvania, 1987).

94. For critical comments on quality of working life approaches spawned by changes in union policy, see Mike Parker and Jane Slaughter, Choosing Sides: Unions and the Team Concept (Boston: South End Press, 1988); Mike Parker, Inside the Circle: A Union Guide to QWL (Boston: South End Press, 1985); Eric Mann, Taking on General Motors: A Case Study of the UAW Campaign to Keep GM Van Nuys Open (Los Angeles: UCLA Institute of Industrial Relations, 1987).

95. Richard B. Freeman and James L. Medoff, What Do Unions Do?, op. cit., p. 29.

96. Henry S. Farber and Alan Krueger, "The Demand and Supply of Employee Representation," working paper, Industrial Relations Section, Princeton University, August 1992.

97. Richard S. Belous, Union Membership Trends: The Implications for Economic Policy and Labor Legislation, report no. 86-107 E (Washington: Congressional Research Service, 1986).

98. Former employees are required to pay for the benefits if they want to continue them, but they pay at the employer's group rate.

Appendix

BARGAINING GAME

Below is a short bargaining game which can be played in class. Read the directions and assumptions below. About 2 hours is needed. It is best if enough teams are created so that there is more than one negotiation going on.

Note: The game can be easily varied. For example, different negotiating groups can be given different strike costs. Strike costs can be assigned secretly to different teams. Time limits for negotiating can be changed.

Directions:

The International Union of Amalgamated Employees (IUAE) is negotiating a new contract with the Transdynamic Manufacturing Corporation (TMC). You will have two hours to negotiate a new agreement. The previous agreement expires after one hour and the IUAE has a firm policy of "no contract/no work." Hence, if a contract is not signed by the one-hour deadline, a strike will definitely ensue and will last until an agreement is reached. Although most union contracts run from 2 to 3 years in duration, we will simplify the game by constraining the new contract to run for one year only.

The class will be divided into three types of teams. There will be a management team representing TMC. And there will be two types of union teams representing the IUAE. Workers at TMC who are represented by the IUAE fall into two classifications: Skilled and Assembly.[1] Skilled workers represent only 20% of the payroll covered by the IUAE contract. However, the union has had a history of attempts by skilled workers to break away from the industrial unit and form their own separate union. In order to persuade skilled workers that the IUAE is adequately protecting their interests, skilled workers have been given a veto power over any demands the union proposes. Thus, before the union can make a proposal, both the Skilled and the Assembly teams must agree.

To simplify the game, we will assume that there are only 3 issues to be negotiated.

1) The new wage rate for Skilled Workers. Currently the wage is $20/hour.

2) The new wage rate for Assembly Workers. Currently the wage is $16/hour.

3) A union demand for a Union Shop clause in the contract.

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[1]In the real world, a larger number of classifications (perhaps 20 or more) might exist.

(Both the skilled and assembly groups have already agreed on this demand.) Currently, the contract contains a modified agency shop clause whereby workers do not have to join the union but if they don't join, they must pay an amount equal of dues to a charity selected from a list agreed upon by union and management.

The following background information is available concerning the three issues.

a) Wage increases in the industry in which TMC is primarily operating have been averaging about 4% this year. However, this is only an average and there is room for deviation. Unlike some of its competitors, TMC has been losing its market share in its major industry. Rumors abound of potential shutdowns of high-cost TMC plants.

b) Skilled workers believe that they should have a larger percentage increase than assembly workers. In the past few years, across-the-board cents-per-hour increases have been granted to all employees, thus narrowing the percentage gap. Assembly workers feel that the $4 per hour gap is sufficient and resist proposals to widen the differential. The management feels that dissatisfaction of skilled workers over the $4 wage gap is hindering morale and productivity. It realizes that a widening of the gap may upset assembly workers, but feels that the skilled worker attitudes are more important. On balance, therefore, TMC would like to see an increase in the $4 differential.

c) Union security clauses in TMC's primary industry have been a subject of labor-management strife for a long period. For many years, the industry - including TMC - was willing to concede no union security clause whatsoever. Most firms in the industry now have at least maintenance of membership and some have agency or union shops. TMC's historical position is that it does not want to force anyone to have to join the union. Because of the skilled-assembly worker tensions in the IUAE, a number of the skilled workers do not belong to the IUAE and could become the nucleus of a breakaway skilled worker effort. TMC management tends to think that the company might benefit from such a fracturing of the IUAE unit. Hence, it is anxious not to concede a union shop which would force all skilled workers to become IUAE members.

d) The price inflation rate for next year has been projected to run somewhere in the 3-5% range by many forecasters.

e) Last year, TMC workers on average received a 2.5% increase but prices went up by 5.5%. The union has argued in public statements that workers are entitled to a 3% catchup factor for the loss of purchasing power which this discrepancy caused, plus the general 4% wage increase that other firms in the industry have granted on average this year. However, the union has not yet made a 7% wage demand which this argument implies. TMC management has not made public any suggested wage settlement, but has referred to its precarious financial position and argued that it cannot be bound by average settlements of more prosperous firms. On one occasion, the TMC president alluded to the concessions made by many unions during the past few years.

Rules of the Negotiations

1) Prior to the negotiations, labor and management teams may not meet. But skilled and assembly teams should agree on a position. Management teams should meet among themselves to discuss strategy prior to the negotiations.

2) At the beginning of the game, each team has 100 points.

3) At the one-hour deadline (D), if no settlement is reached, point losses are assessed due to strike costs. The loss is one point per minute with a minimum loss of 6 points if a strike begins. In other words, if the contract is settled at D + 3 minutes, all teams in the negotiation lose 5 points. At D + 15 minutes, the loss is 15 points, at D + 30 minutes, 30 points, etc. If the contract is not settled by noon, the company goes out of business and the workers are laid off permanently. Hence, if no settlement is reached, all 100 points (or whatever points the three teams have) are lost.

4) For each 0.1% the union obtains from the company above the going 4% wage increase, two points will be awarded to the two union teams and subtracted from the management team. For example, a settlement of 5.5% would give 30 points each to both union teams (skilled and assembly) and subtract 30 points from the management team.

5) For each 0.1% the wage settlement comes out below the going 4%, the union teams both lose 2 points each and the management team gains 2 points.

6) Note: You may be giving different wage increases to the two groups of workers. Rules (4) and (5) require you to calculate the average percentage increase. You know that skilled workers account for 20% of payroll and assembly workers account for 80%. Hence, if you give the skilled workers 6% and the assembly workers 2%, the average increase is:

$$(.20 \times 6\%) + (.80 \times 2\%) = 1.2 + 1.6 = 3.8\%$$

Since 3.8% is 0.2% below 4%, the management team gains 4 points and the two union teams lose 4 points each. Please round all percentages to the nearest 1/10 of a percent. (Example: 4.64% = 4.6%).

7) Skilled workers wish a larger percentage increase than assembly workers. For each 0.1% the skilled increase exceeds the unskilled increase, the skilled team gains 2 points. For each 0.1% the skilled increase falls below the assembly increase, the skilled team loses 2 points. Hence, if skilled workers get 4.3% and unskilled workers get 3.5%, the point gain to the skilled team is 16 points. If the percentages were reversed, the skilled team would lose 16 points.

8) Assembly workers do not want the current $4/hour wage gap between skilled and assembly wages to widen. For each cent per hour the gap widens, the assembly team loses two tenths of a point. Thus, if the gap widens by 16¢ (which is what will happen if skilled and assembly workers each receive a 4% increase), the assembly team will lose 16 x .20 = 3.2 points. Assembly workers don't care if the differential declines below $4. Declines do not change their point totals.

9) Since management would like the $4 differential to widen, each cent per hour that it does widen gives management two tenths of a point but no more than 5 points. Each cent that it narrows costs management two tenths of a point.

10) If management concedes a full union shop, it must forfeit 10 points. Both labor teams each receive 10 points if they win a union shop. If the parties negotiate a "modified union shop" as a compromise (perhaps a provision whereby current employees don't have to join but - in this case - continue their charity payments, while future hires do have to join), management forfeits 5 points and each union team gains 5 points.

Note that the object is to get the highest number of points compared to <u>all</u> teams playing the game, not just relative to the other teams in your negotiation. First prize goes to the team with the highest number of points. Tied for second will be the top management team, the top skilled-union team, and the top assembly-union team. Thus, even if you don't do well relative to your bargaining partners, you may still win second place relative to other teams in your classification. Keep in mind the following principles:

1) All other things equal, the union wants a big wage increase; management wants a small one.

2) All other things equal, skilled workers and management want to tilt the wage package toward skilled wage increases.

3) All other things equal, assembly workers want to prevent the wage gap between them and the skilled workers from rising.

4) All other things equal, the union wants strong union security; management wants weak union security.

5) All other things equal, both union and management teams want to avoid a strike.

6) In negotiations, all other things are not equal. That is, items can be traded. In addition, strikes are not ruled out if you think your opponent (fearing loss of the game) might concede something to you.

Example of a Settlement

Strike 10 minutes
New skilled wage $20.90 (a 4.5% wage increase)
New assembly wage $16.64 (a 4.0% wage increase)
Modified union shop obtained by union

Management Worksheet

	Points
Start	100
Minus strike costs (10 minutes x 1 point but no less than 5 points if strike occurs)	- 10
Settlement results (plus or minus) 4% - actual percent cost x 20 points	- 2
Differential Results (plus or minus) (Actual cents differential - 400¢ x 0.20 points; upper limit of +5 points)	+ 5.0
Union Security Results -10 points if full union shop; -5 points if modified union shop	- 5
Total points	+ 88.0

A) New skilled wage rate: $20.90
B) New assembly wage rate: $16.64
C) Cents differential: $4.26 (A - B)
D) Percent increase in skilled wage: 4.5%
E) Percent increase in assembly wage: 4%
F) Percent differential: 0.5% (D - E)
G) Percent increase in average wage: (.20 x D) + (.80 x E) = 4.1%

Skilled Union Worksheet

	Points
Start	100
Minus strike cost (10 Minutes x 1 point but no less than 5 points if strike occurs)	- 10
Settlement results (plus or minus) Actual Percent costs - 4% x 20 points	+ 2
Differential Results (plus or minus) Skilled percent increase - Assembly percent increase x 20 points	+ 10
Union Security Results + 10 points if full union shop + 5 points if modified shop	+ 5
Total points	+107

Assembly Union Worksheet

Start	100
Minus strike costs (10 minutes x 1 point but no less than 5 points if strike occurs)	- 10
Settlement Results (plus or minus) Actual percent cost - 4% x 20 points	+ 2
Minus Differential Results 400¢ - actual cents differential x .20 points but never more than zero	- 5.2
Union Security Results +10 points if full union shop + 5 points if modified union shop	+ 5
Total points	+ 91

After you have played the game, consider the impact of the one hour deadline. Did it help bring about a settlement? There is a conflict built into the relationship between the skilled and assembly union teams? How was it resolved? There is a potential alliance possible between management and skilled workers. Did either of those teams take account of that potential? How?