

LABOR CENTER REPORTER

INSTITUTE OF INDUSTRIAL
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JAN 29 1988

UNIVERSITY OF CALIFORNIA
BERKELEY

Number 221)
December 1987

LABOR AND THE MERGER/ACQUISITION PROCESS

[by Bruce Poyer]

Confronted with a corporate take-over at Lucky Stores and a leveraged buy-out at Safeway, Bay Area Teamster officials last year appointed a task force to determine how local unions in Joint Council 7 could best protect the jobs and working conditions of their members. The task force focused on three approaches: what should the local unions ask the legislature to do; what could they negotiate in collective bargaining agreements to protect members and jobs; and what could they accomplish by litigating specific issues? Teamster leaders realized that vast changes are occurring in economic philosophy and corporate structure, with inevitable and enormous impact on jobs. Chuck Mack (Secretary-Treasurer of Joint Council 7) and Harry Polland (Economist for Joint Council 7) therefore organized a "Seminar in Business Economics and Corporate Finance for Labor," which was held in four sessions last spring, in cooperation with the Labor Center at U.C. Berkeley. The seminars did not provide specific and certain answers to the concerns of the Joint Council's task force, but did define and sharpen the issues involved in the following respects:

The Economic Context -- Data reported by *The New York Times* indicate that the value of mergers and acquisitions reached an all-time high of \$82.6 billion in 1982, and then continued to set new records in every year since: \$122.2 billion in 1984; \$179.6 billion in 1985; and \$190 billion in 1986. The number of take-overs valued at \$1 billion or more quintupled between 1983 and 1986, and 75 of the 100 largest mergers in the nation's history occurred since 1981 (NYT, June 21, 1987).

The hostile take-over raid has been the engine driving this activity, relying on easy credit arrangements and payments of enormous fees to attorneys and risk arbitragers, some of whom have gone to jail for fraud, while others have reported incomes from fees as high as \$86 million in a single year. In the corporate restructuring which has resulted from hostile raids, from defenses against them, and from leveraged buyouts in response to them, thousands of jobs have been eliminated, and thousands more have been dislocated and downgraded. Fourteen thousand jobs were lost in the sale of Gemco by Lucky Stores to Dayton-Hudson, in the hostile take-over of Lucky attempted by Asher Edleman in 1986-87. Some of these jobs were later restored on a non-union basis, with inferior wages and conditions.

Seminar speakers from the Graduate School of Business Administration at U.C. Berkeley sought to justify take-over and merger activity on economic grounds. In the broad view of Professor Robert Harris, "... we are going through a revolution today, with these take-overs, and leveraged buyouts, and mergers, and plant closings, and off-shore production, and imports." To Harris, the revolution results from the development of the global economy, which by the mid-1970s put an end to the long post-World War II period of domestic stability (and collective bargaining gains) based on international dominance by our economy. Now we must compete, and in the process re-evaluate, not just unions, but institutions like collective bargaining. There is no turning back to what used to be.

According to Professor Stephen Kealhofer, the traditional economic rationale for mergers and acquisitions includes (1) greater economy of scale; (2) more efficient operation; (3) better deployment of the firm's resources; or (4) removal or discipline of inefficient managers. There may also be a significant incentive to reduce tax liabilities. Take-overs and mergers may have short term social costs, but the raiders or the bidders have their own economic resources at stake, and are motivated by self-interest to find better long-term uses of the assets of the targeted firms. Restructuring will finally lead in this scenario to more income and more jobs for everyone concerned.

BERKELEY, CA 94720
(415) 642-0323

UNIVERSITY OF CALIFORNIA, BERKELEY
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According to Professor Ehud Ronn, it is the expected rate of return which motivates all corporate investment decisions. A decision to merge or take over or divest, or to relocate production facilities, or to import components will be made if the risk-adjusted rate of return projected from that activity is high enough. An expected rate of return of 15.3% is now required to motivate such decisions, according to Professor Ronn's analysis. Labor has little impact on management's decisions based on the expected rate of return, except by making wage concessions (which increase cash flow), or by sharing risk (through an ESOP, for example), or by reducing other expected costs (permitting outsourcing, for example).

The Economic-Political Context -- Seminar speakers from the Institute of Industrial Relations at U.C. Berkeley took exception to the traditional economic analysis. Professor Clair Brown described the 15.3% profit expectation as a product of social norms, which have been highly structured by the Reagan Administration, which put labor under siege with its PATCO actions. But what labor can do on the shop floor and in collective bargaining is limited, she warned, by the rate of unemployment, the rate of inflation, the budget deficit, and the world trade deficit -- all of which are determined primarily by government policies.

"A discounted rate of return of 15.3% is astonishing and outrageous," according to Professor Brown. "It is not a mandate from heaven; it is heavily influenced by the current social norm and regulations, and these can be influenced and changed. 15.3% is unheard of anywhere else in the world. The rate of return in Japan is in the 3% range; in Germany it is in the 5% range, historically. It is one of our major problems that the expected rate in the U.S. has been in the range of 12% to 20%. That means we are under-investing. And that's not labor's fault, it's capital's fault."

There is no such thing as a "natural free market," Brown explained. The government must always regulate the economy -- for example, by protecting private property, passing tax laws, and establishing the money and banking systems. The government and society make the basic rules for participating in the economy. Current tax and other regulations make it profitable to merge or raid or leverage or pay greenmail, and encourage these paper operations and the "get-rich-quick" philosophy which motivates them. In the 1960s, the Justice Department found that almost all horizontal and vertical mergers were in restraint of free trade, and blocked them. Since 1980, the Reagan Administration has blocked almost nothing. The change in rules we are experiencing is "re-regulation," not "de-regulation," and it favors capital's interest at the expense of labor's.

The Labor Context -- George Strauss, who was then Director of the Institute of Industrial Relations at U.C. Berkeley, urged that anything affecting the company's profitability is now the business of the union, which must demand continuous information on what is going on, as a contractual right. The banks hedge their loans to the company with contract provisions about the use of profits and assets; the unions can make similar arrangements, particularly when concessions are involved. Unions should tighten job security provisions, which can be privileged claims against company assets even in bankruptcy cases. Unions should demand joint labor-management committees for many purposes, including quality of work life programs; not all of them just manipulate the workers. Finally, there must be more careful consideration of profit sharing and stock ownership (often possible in concession situations), participation on company Boards of Directors, and the final option of taking over and running the company. Above all, it is not possible any longer to wait and react to what management does; T. Boone Pickens will already be on the scene.

Harry Polland added that in labor's relations with management we have to expand our horizons and broaden our definition of the relationship; it involves more than processing a grievance, or winning an arbitration, or negotiating a new contract. The basic nature of the collective bargaining process itself has changed. Polland also took issue with those who believe we shouldn't regulate excessive take-over activity. American industry has to learn to balance basic human values with all its competition and incentive theory. Worker morale is very low in this country, and it takes high morale to get high productivity. Labor must learn to speak up on these matters because the workers we represent want to participate in the survival and the success of the enterprise.

by Bruce Poyer

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