WORKING PAPER SERIES - 136

COLLECTIVE BARGAINING - ~~II~~ 2

by

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DRAFT: 7 August 1987

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CHAPTER 9:

Collective Bargaining - II

Draft chapter of "Human Resource Management: An Economic Approach"

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Chapter 9: Collective Bargaining - II

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Chapter 9: Collective Bargaining - II

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. 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. 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 1986. Forty-one percent provided severance pay for those permanently laid off. And 16% had Supplemental Unemployment Benefit (SUB) plans which provide weekly payments to laid off workers beyond the unemployment insurance they receive from the state.[1]

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 89% of the contracts; the proportion was 98% 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. About 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.

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.[2] Here, again, a management interest is reflected.

If long advance notice periods are specified, management may not be able to lay off quickly in the event of an unanticipated drop in labor demand. The firm might therefore find itself having to pay for unneeded workers on a temporary basis (until the notice period elapsed). In the case of permanent plant shutdowns, managers sometimes fear that "too much" advance warning will lead to premature exit of employees, making remaining operations difficult, or that it will lead to adverse morale and productivity impacts.[9] Thus, the advance notice provisions, like others in union-management contracts, represent a compromise position between employee and employer desires.

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 of the 1980s, it was not surprising that job and income security often was a topic of negotiations. Unemployment was typically high, especially in industries and occupations in which unions are concentrated. Workers were naturally fearful of losing their jobs and being unable to find new employment, given the loose labor market conditions which prevailed. In some cases, unions gave concessions to management 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 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.

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.

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

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.[4]

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.[8]

For example, suppose a union insists on a workrule which has the effect of raising employment in a workplace by 5%. As a first approximation, such a demand is equivalent -- from the cost perspective -- to a 5% pay increase. Presumably, if the union succeeds in obtaining the employment provision, it could have alternatively used its bargaining power to obtain the pay demand.

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 of 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.

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.[6]

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. 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.

However, some researchers claim that higher union productivity goes beyond the substitution of capital for labor.[7] They have argued that unionized employees become more productive because they have a greater "voice" in their work environment. 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. The jury is still out on this issue. Nevertheless, the popular impression that unionization is inevitably associated with lower productivity (compared with nonunion situations) is clearly incorrect.

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 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.[8] 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.

The Right to Work Issue, Free Riders, and Public Goods.

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 must join the union as a condition of employment within a specified period (usually 30 days).[9] Modified union shops permit some exemptions, usually for religious objectors to union membership or for non-members who were employed when the clause first took effect.

A small number of contracts contained "agency shop" clauses (5%) or "maintenance of membership" clauses (4%). The former does not require formal membership, but does require payment of a representation fee equivalent to dues and assessments.[10] 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" issue. Twenty-one states have right-to-work laws which ban clauses requiring membership or financial support.[11] 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.

During such campaigns, unions use an argument which economists often term the "free rider" problem in connection with 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.[12]

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.[13] 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.[14] 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.[15]

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. Thus, in 1986, about 17% 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.[16] It appears, therefore, that where union security clauses are more prevalent, notably higher proportions of workers become union members.[17]

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 seen 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, let it can "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 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. 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.[18] 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.[19] General Motors' new Saturn operation, for example, has been arranged so that union representation is a virtual certainty.[20]

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 3% of contracts were of only one year's duration; the vast majority were three-year agreements. Ninety-four 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.[21]

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. Fourteen percent of the BNA sample of contracts had such re-openers, 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.[22]

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.

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.[23] 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.[24] 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.

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.[25] 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.

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 of 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 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.[26] Perhaps the greatest failing in this literature is a concentration on union objectives and a corresponding neglect of management goals and the union-management interaction 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.

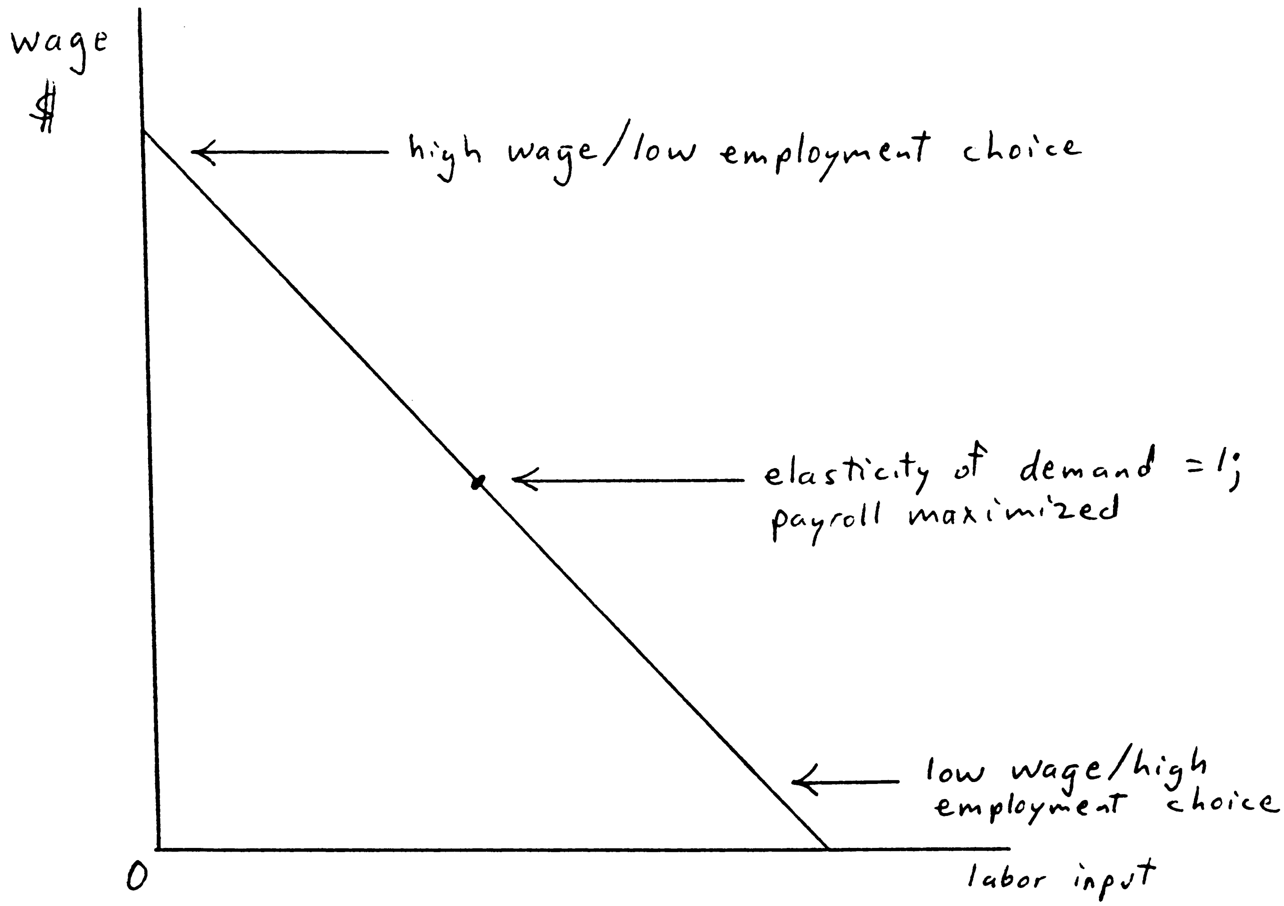
In the theory of the firm, it is profit maximization which permits the firm to select the optimum trade off between price and quantity on the product demand schedule. Given a cost function, the principle that the price/quantity trade off occurs where marginal revenue = marginal cost provides an analytic solution. Unfortunately, in the union case, there is not an obvious value index (such as profits) 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 1. 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.[27] Such a point happens to occur half way down a linear demand curve of the type shown on Figure 1, 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,

Figure 1

Demand for Labor Schedule



unions would certainly like to have higher wages, if nothing else had to be sacrificed to obtain them. 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 it provides little insight into the actual collective bargaining process. To understand that process, it is necessary to abandon the search for simple maximizing behavior and to look instead at the strategic behavior entailed.

ii. Union Perceptions.

Implicit in the notion of a union picking an optimum point on the demand curve is the assumption that the union perceives the downward slope of the 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.

The Position vs. the Slope of Labor Demand.

There are various reasons why union perception of a downward sloping demand for labor (a 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.

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 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.[28]

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 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.[29]

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.[30] 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.[31] 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 don't they 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. 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.[32] 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.[33] Such situations can even 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. There 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. Less than 1,400 contracts in the private sector specified the terms and conditions of roughly half of the private union-represented workforce in 1986. In contrast, the BLS estimated that there were over 177,000 union-management contracts in effect in the late 1970s (some of which were in the public sector).[34] So what happens under the relatively few 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. On an annual basis from 1980 to 1986, the ratio of workers involved in work stoppages to workers included in new union-management settlements ranged from 15-31%, for larger situations covering 1,000 or more employees. Some of the workers involved in stoppages may not have been participating in contract negotiation disputes. But most of them were. Thus, even in the 1980s -- when strike activity was much reduced -- a worker involved in a major contract negotiation had well over a 1 in 10 chance of participating in a labor dispute.[35] The odds, in fact, were probably significantly higher.

The negotiated outcomes in small bargaining units are reached with much lower strike probabilities than those for major contracts. 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.

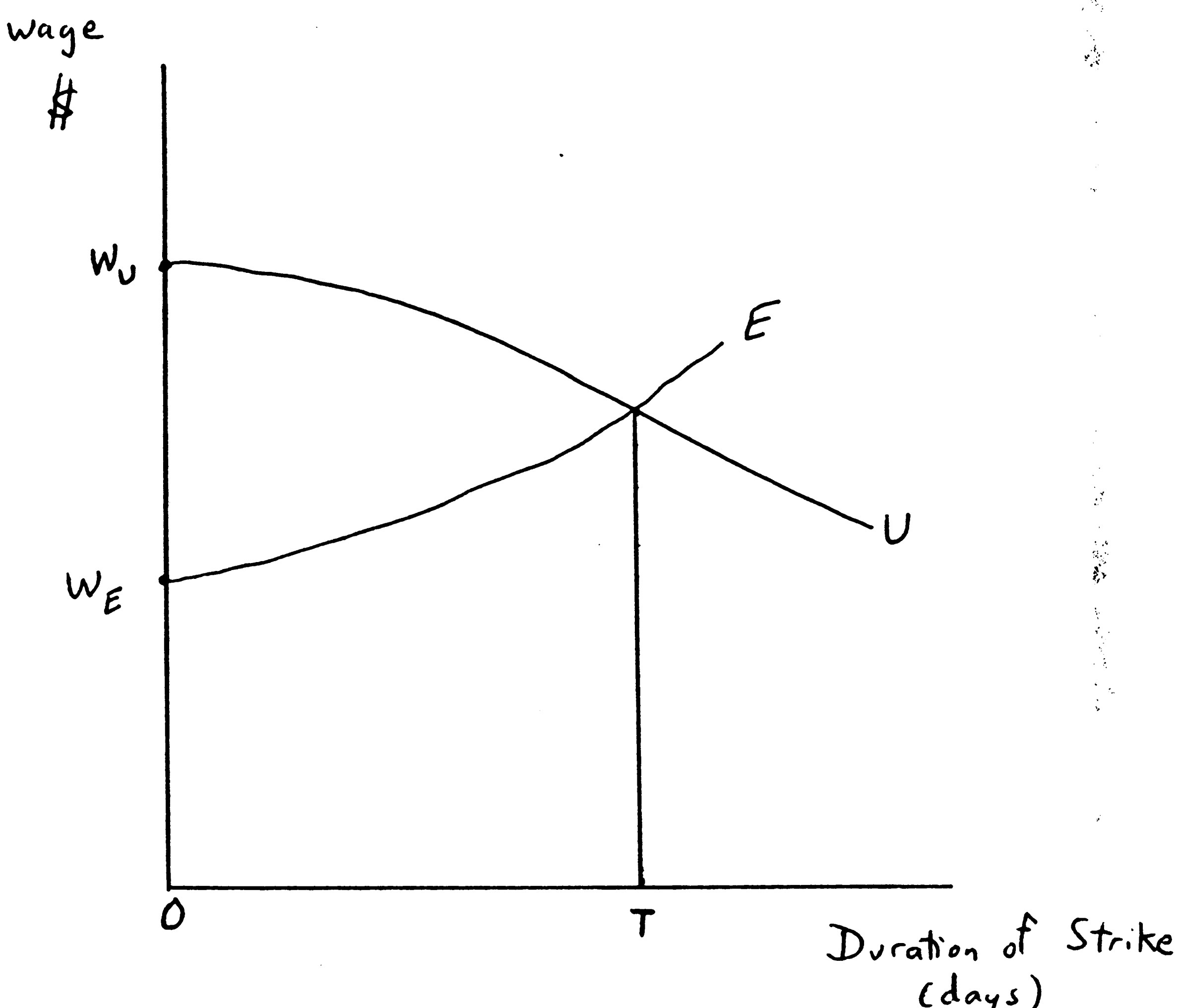
Analysis of Strike Activity.

Strikes have always been a puzzle to economists.[36] 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.

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.[37] Figure 2 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, the employer

Figure 2



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 2.[38] 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 (OT days).

<u>The Information Exchange</u>.

Hicks' model is useful, primarily 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. 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?

But since strikes are costly, both sides also have an ultimate incentive to avoid miscommunications. When one party has put its 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.[39]

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?[40] 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.[41] 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.[42]

However, strikes seem to have longstanding statistical relationships with economic variables. For example, they seem to be exacerbated by inflation and to be cooled by recession. In addition, there is some evidence that the stock market can predict the likelihood of a strike.[43] 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 one of an 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.[44]

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 than 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.

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.[45]

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.[46] 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.[47] 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).[48] Pursuant to the Taft-Hartley 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.[49]

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.[50] That alternative is interest arbitration.

Interest and Rights Arbitration.

Arbitration comes in two varieties: "rights" and "interest."[51] 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.[52] 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.[53]

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 it may 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.

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 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 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.[54] 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.[55] In framing their positions, unions and managements can estimate what the arbitrator will think reasonable, and position themselves accordingly.

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. 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.[56]

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.[57] 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.[38]

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. However, 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.

Concession bargaining 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 led to increased import competition and to loss of export markets. 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, even in recovery.

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.

In a sense, therefore, the long run arrived for collective bargaining in the 1980s. But in another sense, it arrived earlier, although -- at first -- largely unseen. During the 1960s and 1970s, a puzzle emerged regarding union membership.

Table 1

Private Union and Nonunion Annualized Pay Trends
(percent)

	1976-79	1980	1981	1982	1983	1984	1985	1986
Wages & Salaries								
Union	8.2	10.9	9.6	6.5	4.6	3.4	3.1	2.0
Nonunion	7.3	8.0	8.5	6.1	5.2	4.5	4.6	3.5
Total Compensation								
Union	n.a.	11.1	10.7	7.2	5.8	4.3	2.6	2.1
Nonunion	n.a.	8.9	9.4	6.0	5.7	5.2	4.6	3.6

Source: Current Wage Developments, various issues.

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. 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. A substantial fraction of the erosion was left unexplained.

Moreover, explanations based on changing workforce characteristics are not really satisfactory. Why should unions not have expanded into new industries as they 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.[59] 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.[60]

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.[61]

ii. Union Reactions to the Adverse Climate of the 1980s.

Unions did begin to react to the perceived management offensive 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 previous evidenced. 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, 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. 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.

These efforts, 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, 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 suggests 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.[62] Significantly, the proportions are higher than average for young people and women, groups which have not been heavily represented by unions. But unions have not developed a strategy for recruiting these people in the face of a hostile organizing environment.

IV. Summary and Implications for Management: Chapters 8 & 9.

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. 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 15% of private wage and salary workers organized (as of 1986), 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.

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. Bills were repeatedly introduced to limit the right of employers to close plants. At the state level, some limits on plant closing were adopted. Federal legislation in the 1980s gave laid off workers limited rights to continue their employment-related health benefits.[63] In short, a swing in the political climate could produce a host of new legislative restrictions on management.

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.

A climate of union bashing could easily produce a backlash which would adversely affect management's long term interests. The productivity estimates of the 1980s showed little evidence that efficiency has been markedly improved by union weakness or corporate reorganizations. Thus, management has not been able to demonstrate that its human resource policies have -- at the aggregate level -- laid a basis for a substantial improvement in real incomes.

Unions in the 1960s and 1970s often ignored the long run implications of their individual decisions, and had to live with the consequences in the 1980s. With the benefits of hindsight, unions have identified some of their problems, but in a period when it is difficult for them to make substantial changes. Are there no lessons to be learned by management from the experience of its union counterparts?

FOOTNOTES

1. Bureau of National Affairs, Basic Patterns in Union Contracts, eleventh edition (Washington: BNA, 1986), pp. 41-42.

2. Bureau of National Affairs, Basic Patterns, op. cit., pp. 68-70.

3. Groups representing management, however, tend to urge 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. Lack of long advance notice periods as a general practice has been cited by advocates of legislative limits on plant closings at the state and federal levels.

4. Bureau of National Affairs, Basic Patterns, op. cit., pp. 33-40.

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

6. The Brotherhood of Locomotive Firemen and Engineers became part of the newly-formed United Transportation Union in 1969.

7. Richard B. Freeman and James L. Medoff, What Do Unions Do? (New York: Basic Books, 1984), Chapter 11.

8. Bureau of National Affairs, Basic Patterns, op. cit., pp. 100-104. All data cited in this section are taken from this reference.

9. In fact, workers who offer to pay dues and assessments, but refuse to become union members, are legally entitled to remain on the job. Unions who expel members cannot require the employer to discharge workers, as long as the workers are willing to pay dues and assessments. Thus, there is little practical difference between the union shop and the agency shop discussed below in the text.

10. 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.

11. 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.

12. 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. 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.

13. 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.

14. The Taft-Hartley Act created a mechanism whereby workers could eliminate union security clauses. On receipt of an appropriate employee petition, the NLRB will conduct a "de-authorization poll." If a majority votes against retaining the clause, it is removed from the contract. Initially, the Act also required that union security clauses could not be placed into a contract without a similar "authorization poll." However, because most of these polls approved the negotiated clause, and because the NLRB was swamped with work holding the elections, the authorization polls were eliminated by Congress in 1951. Only the de-authorization polls remain.

15. There are complex legal rules under which a worker forced to pay fees to a union need not pay for political activities.

16. The data are from Employment and Earnings, vol. 34 (January 1987), p. 220. 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.

17. The issue is more complex than can be discussed here. States with right to work laws often have anti-union climates which discourage union organizing. The private sector ratio of non-members to represented workers may be influenced by the tendency of union-represented workers to be located in states without right to work laws. In addition, the attitudes of public and private workers may not be identical.

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

19. 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 a joint GM-Toyota 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.

20. 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.

21. Bureau of National Affairs, Basic Patterns, op. cit., pp. 1-3, 93-99.

22. Re-openers have been based on the outcome of pending litigation or the passage or repeal of some federal legislation.

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

24. 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; 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.

25. 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.

26. 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.

27. Let W = the wage per employee and E = the number of employees. Then the payroll P = WE. To maximize P, 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.

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

29. 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.

30. 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.

31. 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.

32. Some states have exceptions to this rule. 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.

33. "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.

34. U.S. Bureau of Labor Statistics, <u>Directory of National Unions and Employee Associations, 1979</u>, bulletin 2079 (Washington: GPO, 1980), pp. 73-75; Joan Borum, James Conley, and Edward Wasilewski, "Collective Bargaining in 1987: Local Regional Issues to Set Tone," <u>Monthly Labor Review</u>, vol. 110 (January 1987), p. 33.

35. 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.

36. 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.

37. 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 J. Flanagan, Robert S. Smith, and Ronald G. Ehrenberg, Labor Economics and Labor Relations (Glenview, Ill.: Scott, Foresman & Co., 1984), pp. 478-481.

38. 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.

39. 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.

40. 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.

41. 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

42. 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.

43. 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.

44. 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.

45. The Railway Labor Act has provisions similar to Taft-Hartley covering railroads and airlines. In the railroad case, Presidential intervention to obtain injunctions continues to be used, because of the economic disruption that interruption of railroad deliveries can cause.

46. 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.

47. 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.

48. 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.

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

50. 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!)

51. 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.

52. 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.

53. 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 appear in the annual reports of the FMCS.

54. 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.

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

56. The steel industry and the United Steelworkers union established a system of voluntary binding interest arbitration in the 1970s. But, the parties always managed to reach a private settlement without invoking the arbitration process.

57. Final offer arbitration has been used in professional sports to settle disputes between individual players and their team owners.

58. 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 sealed positions and only if the parties could not privately arrive at a settlement. Having submitted their sealed offers, the parties 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.

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

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

61. 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.

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

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