COMMENT ON "WHAT COLLECTIVE BARGAINING PROMISES AND WHAT IT DOES"

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There can be no disagreement with Professor Jensen's position that a belief in freedom is at the heart of our commitment to collective bargaining. These comments are a footnote to what he says about institutional accommodation and freedom in associations. My point is that acceptable "institutional accommodation" is achieved only when the institutions themselves do, in fact, offer choices to individuals and thus give freedom its essential meaning.

But, in fact, there seems to be an opposite tendency, a growing disposition on the part of unions and collective bargaining institutions to withdraw from workers freedoms which were once considered essential to the effective operation of those institutions. Too much "freedom" for individual union members, it is said, becomes inconsistent with the public interest in industrial stability. Union leaders assert that the union automatically protects the interests of the members, and that "too much" freedom is not even in the members' interest.

This view has no support in the history of the National Labor Relations Act. The act established freedom of choice for <u>individual</u> workers as the keystone of federal labor relations policy:

> Section 7. Employees shall have the right to self organization, to form, to join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

This was enlarged in the Taft-Hartley revision of Section 7 which added: "and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment."

Some limitations on individual freedom of choice were acknowledged as necessary at the outset. Exclusive representation is an example; the union chosen in a secret ballot by a majority of those who voted was to be the representative not only of that majority, but equally of those who voted against the union and those who did not vote at all. No one who lived through the thirties can remember having any doubts about the validity of this relatively new notion. The existence of employer anti-unionism on an overwhelming scale was persuasive and overrode the objections of those people who asserted at the time that it was an unreasonable denial of free choice.

Similarly, the primary justification for the closed or union shop was employer anti-unionism. The very survival of a union, expecially in manufacturing, depended upon its ability to negotiate a form of compulsory unionism as part of its contractual relationship. In the absence of such provision, the employer could peck away at the union's strength, hire anti-union employees, and frighten or bribe enough others to convert a union majority into a minority.

In this friendly and sympathetic audience, may I suggest that this line of argument no longer has the same validity? In most organized industries, the employer is not anti-union. What therefore began as a weapon of the union against an anti-union employer has become a weapon wielded by the <u>employer</u> on the union's behalf against the employees who are unwilling to become members of, or pay dues to, the union. Many union leaders, among them the late John P. Burke, president of the Pulp, Sulphite and Paper Mill Workers, regretted the

necessity of the union shop on the ground that it destroys the essential qualities of unionism by changing the relationship between leaders and led. Meanwhile, the official justification of compulsory unionism has switched to the "free rider" argument, a position of quite a different order.

It is important to remember that anti-unionism is not entirely a thing of the past--textiles comes quickly to mind. Here some form of compulsory unionism is still necessary. You will be happy to know there is an answer to this problem, too, one that I call the Pharaoh Plan. It would permit unions to negotiate a union shop during the first seven years of a contractual relationship, after which all forms of compulsory unionism would be automatically cancelled. In almost every case, seven years is a long enough period for union and employer to learn to get along together, after which the union can revert to its normal role of bringing members into the union by persuasion, precept, and good behavior. Unions would not suffer serious consequences except that it might become difficult to raise per capita tax and dues.

I do not mean to ignore Professor Jensen's comment on compulsory unionism, but his parallel with seniority seems to be strained. For the most part, seniority is a bulwark of freedom, not a restriction on it.

As noted above, exclusive representation and forms of compulsory unionism were built into the industrial relations system at the beginning of our present era. By themselves, they might not have had deleterious effects. But since the thirties, public and private policy have carried us to the point where employee freedom of choice has been seriously eroded by union and employer, by decision of the NLRB, and by decisions of the courts. The collective effect is awesome.

First, the union shop now flourishes in large sections of American industry where employers are no longer actively attempting to eliminate unions from their plants. The historical justification is absent, and union officers are relieved of the necessity of persuading employees that it is to their interest to maintain union membership. Second, all affiliated unions are prohibited by the AFL-CIO no-raid policy from seeking to represent dissatisfied employees in an NLRB election if the employees are already represented by another affiliated union. Unions, like employers, abhor competition.

Third, decisions of the National Labor Relations Board prevent any changes of representation or decertification of unions already certified in plants which have become part of multiplant or multi-employer bargaining units. Employees in a large steel company or a basic auto company, dissatisfied with their union, cannot get an election, even if there were a union willing to petition on their behalf. The union would have an impossible task of getting the necessary showing of interest from all the plants in dozens of states across the land.

Union officers and staff prefer multiplant agreements. They are a rallying point for allegations of bargaining strength, which may or may not be well founded. More important, multiplant agreements are attractive because they are a means of locking workers into bargaining units from which there is no escape.

Another line of NLRB decisions prevents skilled tradesmen in manufacturing plants from getting separate units, either in new organizing or in severance from existing industrial units. An undesirable compression of skill differential in wage rates is taking place at the same time that industrial unions and the NLRB

cut off any avenues of recourse. The experience of skilled workers in autos is devastating evidence. Dissatisfied with UAW representation, they tried to get separate representation through independent unions which had notable success in organizing, especially in the Detroit area. Threatened with the possible loss of these workers, the UAW amended its constitution to give skilled workers an apparent veto over agreements. Later, the NLRB refused to conduct elections for the skilled workers because of an inadequate showing of interest on a company-wide basis. Adding insult to injury, board staff expressed the view that the skilled workers were adequately represented.

The skilled workers then found that the were not protected by the constitution. At Ford Motor Company they rejected an agreement overwhelmingly, only to see the agreement signed on the basis of the production workers' acceptance of it. With the threat of a rival union removed by the NLRB, the UAW Executive Board decided that the convention had not given the skilled workers a "veto," and the UAW Public Review Board upheld the UAW Executive Board's decision. There is no avenue of relief.

Another NLRB withdrawal of free choice is the increased period of time in which contracts are treated as a bar to representation challenge by employees who want to change unions or decertify a union. The law established a one-year bar to permit the parties to accommodate to each other. The board lengthened the period from one to two years and later to three. The parties--union and employer--have persuaded the board the three-year contract bar is an aid to industrial stability. It is also an effective means of making change of representation difficult.

All of these changes reflect the common interest of the vice-president for industrial relations and the officer of the union. In the light of the problems with which the National Labor Relations Act

was supposed to deal, is it not significant that the spokesmen for both sides agree so completely on the changes? All the changes reflect the understandable desire of company and union representatives to avoid complications that arise from giving employees freedom of choice. I could add personal testimony about the frustration of finding the already difficult process of arriving at an agreement complicated by rival union petitions, decertification petitions, or those damned troublemakers who somehow failed to understand how skillfully and conscientiously I represented them, and how much better my judgment was than theirs. So I am not being critical of labor or management for trying to minimize their problems. But why should the rest of society look with equanimity on the withdrawal of free choice from employees? It is being accomplished through the joint action of the presumed adversaries at the bargaining table. It is difficult in such circumstances to share Professor Jensen's belief in the efficacy of pluralism or countervailing power.

The courts have meanwhile made their own contribution to withdrawal of free choice in their treatment of union fines. Historically, unions have disciplined members through expulsion and fines, but only recently has the Supreme Court sanctioned the collection of union fines through the courts. In industrial unions expulsion lost its terror when the Taft-Hartley Act made it illegal for an employer to discharge employees under a union shop for anything except failure to pay customary dues and initiation fees. Thus, had the UAW merely expelled the workers who went through a picket line at Allis-Chalmers, the offenders would have greeted the action with joy, being free from the obligation to pay dues. The issues are too complex for discussion here, but everyone agrees that the possibility that a fine will be imposed and collected in the courts has a chilling effect on opposition of all kinds inside the unions.

By way of summing up, consider the plight of the man or woman who goes to work in a bargaining unit job at the U.S. Steel Corporation. The personnel director tells him that as a condition of employment he must join the United Steelworkers of America. As long as he is employed by the company, he will pay whatever dues have been set at the USA convention and will have seen them climb to their present level of twice his hourly rate. If he becomes dissatisfied with USA representation, he can form an opposition, but the chances of success in replacing the USA or decertifying it will depend upon his being able to muster a petition signed by 30 percent of all the employees in the entire corporation! No one could possibly take on this task except, conceivably, another well-heeled union. But this action is forbidden by the AFL-CIO Constitution. If, in his frustration, he goes through a picket line or does one of a number of other things the union does not like, the employee can be fined and taken to court if he refuses to pay.

This is not intended as a catalogue of horrors. The developments I have discussed have essential places in labor relations history, except for the NLRB multiplant and craft unit rulings. What is important is the collective effect of all these restrictions, which must concern Professor Jensen and all of us who hope for the best in industrial relations.