GRIEVANCE PROCEDURES AND THE DEMOCRATIZATION OF AMERICAN LIFE

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No institution in the nation's history has struggled so long and so valiantly for the democratization of American life as the organized labor movement. Decade after decade, trade unionists have fought for human rights and dignity against almost insuperable forces of wealth, privilege, and partisan government, including the country's courts, soldiery, and police. They have battled against povery of means, mind, and spirit in the teeth of bayonets, massacre, assault, injunctions, imprisonment, dismissal from jobs, blacklisting, and legislative and judicial defeat of vital measures.

Five decades before Emma Lazarus wrote her famous sonnet, Seth Luther, the keenest labor leader in New England, signaled a warning in 1834 which the Republic has never heeded, but has never quite forgotten: "You cannot raise one part of the community above the other, unless you stand on the bodies of the poor." He went on to express the hopes of workers, then and now, when he declared:

> ...we wish to obtain a mental freedom, as well as political liberty; we wish to be raised from the thraldom of ignorance; we wish to open the prison doors to those who are bound in prison; not for murder, robbery, arson, or manslaughter, but for the far greater crime in the eyes of the world, than either, "POVERTY."

Seth Luther predicted for the poor, "so long neglected...":

> You shall receive support and protection from the government, from the people; you shall be instructed, educated, and fitted to stand up in the great congregation of this great nation, and put in your claim to equal rights, and your claim shall be heard and allowed.[1]

Across the years, the annals of the National Trades' Union, the National Labor Union, the Knights of Labor, the AFL, and the CIO attest to the enduring dedication of labor unions to the democratization of American life. The AFL-CIO has continued that tradition. If history must record the brazen censure of A. Philip Randolph by the Executive Council of the AFL-CIO in October 1961, it must also record, among scores of acts by George Meany which kept the faith, the threat, eighteen months earlier, to recruit nonunion electricians in order to smash a ban on black members by a local union in Washington, D.C.; the announcement in July 1964 and again in April 1965 of the AFL-CIO's intention to seek full complicance with the equal employment section of the Civil Rights Act of July 2, 1964 through the use of boycotts and strikes against recalcitrant employers; and the extraordinary steps taken in November 1975 to force the Massachusetts State Labor Council to reverse an anti-busing resolution which it had adopted.[2] History must record, as well, the steady vigilance of the AFL-CIO in the halls of Congress to insure the protection and improvement of programs which succor the nation at large, not merely members of the labor movement, and range from legislation in behalf of sugar workers, occupational safety and health, airline and maritime employment, mass transit, and registration of farm labor contractors, to ameliorative measures in aid of public works, housing, energy,

the environment, national health care through social insurance and prepaid medical service, elementary and secondary education, older Americans, consumers, and the National Foundation on the Arts and Humanities.[3]

The persistence of the labor movement in advancing the democratization of American life by asserting the fundamental right of workers to improve their fortunes and redress their grievances has always gathered its strength from the Declaration of Independence, the Revolutionary War, and the Constitution of the United States. Between 1827 and 1836, journeymen bricklayers, cordwainers, hatters, bookbinders, weavers, and other craftsmen in Boston, Philadelphia, Baltimore, Louisville, Pittsburgh, and Cincinnati appealed to the Declaration of Independence as their shield against exploitation. The famous Boston Ten-Hour Circular of May 8, 1835, which inspired the ten-hour movement in Philadelphia, asserted: "We claim by the blood of our fathers, shed on our battle-fields in the War of the Revolution, the rights of American Freemen, and no earthly power shall resist our righteous claims with impunity."[4] The first issue of the National Laborer, edited by Thomas Hogan, the leader of Philadelphia's labor movement in the 1830s, asserted that the new weekly newspaper would "take for its guide, the Declaration of Independence and...strenuously maintain the claims of the poor and oppressed, to equal rights and equal privileges."[5]

The passage of time did not diminish the inspiration which the Declaration of Independence, the Revolutionary War, and the Constitution exerted upon later American labor movements. The statement of principles adopted by the National Labor Union at its Chicago convention in 1867 began: "We hold these truths to be self evident...," and went on to laud "the principles of freedom and

equality upon which our democratic republican institutions are founded...."[6] At the meeting of the General Assembly of the Knights of Labor at Richmond in October 1886, Terence V. Powderly answered the question, "Why have you such an organization as the Knights of Labor?", by stating: "We are Knights of Labor because we believe that the Declaration of Independence means something more than mere words and beautiful sentences."[7] The second convention of the AFL in 1887 cautioned workers "to more effectively guard their constitutional and economic rights" against inroads by executive authorities. The convention in 1913 denounced attacks upon free speech, "guaranteed by the Constitution and essential to all freedom...," which suppressed "public discussion of grievances" by workers. It declared:

> The toilers of America have been aroused to this invasion of freedom because they, better than all others, have been aware of this entering wedge to freedom's undoing....They demand liberty for themselves and liberty for all.[8]

Long before 1913, however, trade unionists recognized the threat to their freedom which industry itself engendered. They had read in the columns of The National Trades' Union for March 19, 1836:

> We object to corporations, especially to factories...because they give to a few individuals an improper control over many of their fellow beings. The great evil of society...is that man works man, in like manner as he works his horse or his oxen.

The article derided the description by John Quincy Adams of cotton mills as "the palaces of the poor," and anticipated Simone Weil's celebrated discovery a century later about "the daily experience

of brutal constraint" in the factory where she worked briefly. The article of 1836 continued:

> A large factory is little better than a large prison. We recollect well the first time we went through one of these "palaces." The illusion was complete.

It then developed the concept which has become the chief element of present-day psychological theories concerning the origin of unions:

> We have long been convinced that it is unfavorable to any man's character to have a large number of his fellow beings under his control, whether they be his slaves or his "hired servants." If they must work for him, he gradually loses sight of their character as human beings, and comes to look upon them in very much the same light he does on a steam engine or a spinning Jenny. Their rights, their duties, their feelings, their health, their happiness, even their lives are soon sunk in the amount of profit to be derived from their labor.[9]

Because trade unionists had asserted across the years their right to redress wrongs, and because they had acted upon long conviction hardened by experience and political tradition, the labor movement stood prepared before the turn of the ninteenth century to strive for the institution of grievance procedures in shop, mill, plant, factory, railroad district, and mine pit. By stressing the need to establish regular arrangements for the redress of grievances as the structure of industry grew more complex and the distance between workers and management widened, organized workers made their foremost contribution to the democratization of American life. Unique in the world, the ordered but still varied

and adaptive grievance procedures of this country have never received the close attention which their importance to industry and their influence upon the very character of work should have commanded long ago from the labor movement itself, management, arbitrators, and the scholarly community dedicated to the study of history, industrial psychology and sociology, political science, law, and collective bargaining.

The history of grievance procedures has been so little explored that an elaborate treatise on collective bargaining, published in 1960, stated that before World War II "the arbitration process as a method for settling grievances arising under labor-management agreements was relatively unknown." Acknowledging the lack of reliable studies on the use of arbitration during that period, the study estimated that less than 8 to 10 percent of all agreements during the early 1930s provided for arbitration as the final step of the grievance procedure. It cited the comparable proportion in 1944 as 73 percent, as 83 percent five years later, as 89 percent in 1952, and as 90 to 95 percent at the end of the 1950s.[10] The trend of these figures would lend credence to the widely held belief that between 1942 and 1944 the National War Labor Board spurred the great advance of grievance procedures in American industry, with arbitration as the final step in the interpretation of the terms of the collective agreement.[11] An examination of the evolution of grievance procedures, however, indicates that the board applied principles and procedures which trade unions and employers had already developed between 1880 and 1900. Indeed, labor and management employed them with such sensible flexibility that the arbitration of primary issues of interests, and not alone secondary issues of rights, found acceptance.

During the 1860s and 1870s, the term, arbitration, most often meant collective bargaining: the settlement of issues, not by recourse to strikes, but rather through peaceful negotiations between representatives of management and labor. By the 1880s, the term embodied the concept of an impartial umpire. Trade unionists accepted the concept and viewed the arbitration of primary issues of interests as a means of gaining recognition for unions by employers. Thus, Robert D. Layton, a member of the International Typographical Union and Grand Secretary of the Knights of Labor, stated before the Senate Committee upon the Relations between Labor and Capital on February 7, 1883:

> I would prefer an arbitration of this kind: that a certain number of employés should meet an equal number of employers; they to select an umpire, whose decision should be final. Then let the men make their demands, and let the employers produce their books....But we hold that we cannot have arbitration on any fair basis without having organization combined with it....[12]

By the turn of the century, the distinction between interests and rights arbitration became clear. A special report of the United States Industrial Commission of 1898-1901 defined arbitration as "...the authoritative decision of questions at issue by some impartial authority. It is obvious that arbitration may be resorted to with regard to disputes involving the general terms of the labor contract as well as with regard to disputes concerning its interpretations."[13]

An analysis of the texts of collective bargaining agreements available to the United States Industrial Commission of 1898-1901 attests to the variety, ingenuity, and flexibility of the local,

district, and national arbitral systems then in operation. These systems provided not only for the arbitration of grievances concerning rights under existing agreements, but also for the arbitral resolution of disputes concerning interests under existing agreements. Interests arbitration occurred more often in areas of work which required frequent readjustments of wage rates due to style or product changes. The use of arbitral procedures for the settlement of conflicts arising over the terms of new contracts also occurred, but less commonly.

The Glass Bottle Blowers' Association and the National Green Glass Vial and Bottle Manufacturers' Association did not use an outside arbitrator, but relied upon the annual bargaining committee to settle by majority vote all issues of interests and rights. The United Brotherhood of Carpenters and Joiners usually employed the same procedure to the same purpose, while the Bricklayers' and Mason's International Union strongly recommended this form of arbitration to all locals in its constitution of 1893.[14]

Seven local, district, and national arbitral systems also operated only through internal procedures, but established a series of committees--in addition to or in place of the annual bargaining committee--which served at different levels of appeal to settle issues involving both interests and rights: the United Mine Workers in Illinois and in the block coal region of Indiana, the Iron Moulders' Union and the Stove Founders' National Defense League, the Iron Moulders' Union and the National Founders' Association, the International Association of Machinists and the National Metal Trades Association, the American Flint Glass Workers' Union, and the Journeymen Plumbers' Association of St. Louis and the Master Plumbers' Association under a five-year contract.[15]

Only three of thirty unions which permitted the intervention of outside arbitrators limited their scope to issues concerning the interpretation of contract terms or violation of rules: the National Union of Brewery Workmen; the Enterprise Association of Steam, Hot Water, and Other Pipe Fitters, together with the Progress Association of similar craftsmen, and the Master Steam and Hot Water Fitters' Association of New York City.[16]

Twenty-seven local, district, and national arbitral systems turned to outside umpires as the final step in the settlement of issues concerning both interests and rights. They did so more often when grievances involved the terms of existing contracts than when they spoke to the wages, hours, and working conditions of future labor.[17] These systems rang all the changes.

The collective agreement of the Window Glass Cutters' League of North America for the Eastern District provided for the eventual settlement of controversies concerning "wages, rules, or usages" through a referee selected by union and management representatives. If they failed to agree upon a referee, each representative wrote "two names of disinterested parties not in any way connected with the glass business on slips of paper and all names put into a bag, and the first name drawn out..." became the referee.[18]

The national agreement of 1901 between the International Typographical Union and the American Newspaper Publishers' Association created a national board of arbitration consisting of the president of the ITU and the commissioner of the ANPA, or their proxies. If they failed to reach agreement, they selected a third member for each dispute who acted as chairman of the board. The finding of the majority of the board was final and binding. The ten precise rules which governed the national board in adjusting these differences were written into the agreement.[19]

The contract between the Bricklayers' and Masons' International Union and the Mason Builders' Association of Boston not only provided for third-party arbitration, but had done so since the 1880s.[20]

The three-year contract between the Carpenters' Executive Council of the United Brotherhood of Carpenters and Joiners in Chicago and the Association of Master Carpenters provided for a joint arbitration board of union and management representatives in equal numbers. These representatives had to be actively engaged in the trade and could hold neither elective nor appointive municipal, county, state, or national office. The joint arbitration board selected an umpire annually. He could not be an employer, an employee, or "an incumbent of a political office." All grievances had to be submitted in writing first to the presidents of the two organizations. If they could not agree, the issue went before the joint arbitration board. If the board failed to reach a decision, the case went before the umpire. Failure to appear before the board "to answer charges of violation of the agreement or the working rules, or to appear as a witness..." incurred fines and, if prolonged, eventual suspension. Members of either organization found guilty by the board or the arbitrator of any violation of the agreement or rules could be subjected to fines ranging from $10 to $200. Failure to pay such fines resulted in suspension.[21]

Under the closed shop contract between the United Box Makers and the manufacturers of Chicago, the employers agreed "to negotiate concerning any matter of dispute with the representative of the union." If no settlement were reached, each party appointed one member of an arbitration committee and these two members selected

a third member whose decision was final. Following a strike of almost every shop in Chicago, this procedure resulted in a wage advance of nearly 50 percent.[22] In several cities, disputes over hours of labor for members of the Hotel and Restaurant Employees International Alliance were successfully arbitrated under provisions in local contracts.[23]

The Boot and Shoe Workers' Union required all employers, in return for the use of its label, "to hire only union labor and to submit all questions as to wages and conditions of labor to arbitration." The contract provided that such unresolved issues had to be submitted to state boards of arbitration where they existed. In the absence of such state boards, the contract called for a board of arbitration comprised of one representative of the union and the employer who chose the third member. The Metal Polishers, Buffers, Platers, and Brass Workers' International Union of North America also required the use of state boards of arbitration where available and recourse to three-member boards only in states without boards of arbitration.[24]

This survey of grievance and arbitral procedures which sought to humanize the workplace at the turn of the nineteenth century confirms the observations of the Hewitt House Committee of 1878-1879, the Blair Senate Committee of 1883-1885, and the Industrial Commission of 1898-1901 that the success of arbitration as a method for the solution of industrial disputes depended upon the acceptance by employers of vigorous unions and collective bargaining. Indeed, the effectiveness of the various systems of arbitration under survey reflected the ability of trade unions, mostly craft in nature, to survive in strength for the first time in American history after a severe depression. The substance of the official congressional observations might also explain the rarity of grievance arbitration

between 1920 and 1942 when the National War Labor Board began to cause its countenance to shine upon its less than path-breaking procedure.

In contemplating 1984, the prophetic counsel extended by the final report of the Commission on Industrial Relations of 1912-1915 should again be heard:

> It has been pointed out with great force and logic that the struggle of labor for organization is not merely an attempt to secure an increased measure of the material comforts of life, but is a part of the age-long struggle for liberty; that this struggle is sharpened by the pinch of hunger and the exhaustion of body and mind by long hours and improper working conditions; but that even if men were well fed they would still struggle to be free.[25]

Notes

1. Seth Luther, An Address on the Origin and Progress of Avarice (Boston: the Author, 1834), p. 42.

2. The New York Times, February 16, 1960, p. 1; October 14, 1961, p. 10; July 14, 1964, p. 18; April 14, 1965, p. 29; November 20, 1975, p. 27.

3. AFL-CIO, Labor Looks at the 93rd Congress (Washington, D.C.: AFL-CIO, 1975).

4. John R. Commons and Associates, A Documentary History of American Industrial Society, vol. VI (Cleveland: Arthur H. Clark, 1910-1911), p. 98.

5. National Laborer, I, no. 1 (March 26, 1836):4, col. 6.

6. John R. Commons and Associates, A Documentary History of American Industrial Society, vol. IX, pp. 176, 179.

7. Proceedings of the General Assembly, Held at Richmond, Virginia, October 4-20, 1886, p. 9.

8. American Federation of Labor, History, Encyclopedia Reference Book (Washington, D.C.: the Federation, 1919), pp. 184, 234.

9. The National Trades' Union, II, no. 37 (March 19, 1836):1, col. 6; Simone Weil, Seventy Letters (London: Oxford University Press, 1965), pp. 21-22.

10. Sumner H. Slichter, James J. Healy, and E. Robert Livernash, The Impact of Collective Bargaining on Management (Washington, D.C.: Brookings Institution, 1960), p. 739.

11. United States Department of Labor, Bureau of Labor Statistics, Bulletin No. 1009, Problems and Policies of Dispute Settlement and Wage Stabilization during World War II (Washington, D.C.: GPO, 1951), pp. 100-101.

12. U. S. Senate, Committee on Education and Labor, Report of the Committee of the Senate upon the Relations between Labor and Capital, and Testimony Taken by the Committee, vol. I (Washington, D.C.: GPO, 1885), p. 23.

13. U. S. Industrial Commission, Labor Organizations, Labor Disputes, and Arbitration, vol. XVII (Washington, D.C.: GPO, 1901), p. lxxvii.

14. Ibid., pp. 363, 375, 385.

15. Ibid., pp. 333-35, 348, 351, 355, 362, 390-91.

16. Ibid., pp. 391-92, 410.

17. Ibid., p. 57, the United Hatters of North America; p. 332, the United Mine Workers, Indiana; pp. 364-65, the Window Glass Cutters' League of North America; pp. 366-68, the International Typographical Union and the American Newspaper Publishers' Association; p. 370, the International Longshoremen's Association and the Dock Managers' Association, Great Lakes ore and coal; p. 372, the ILA and the Lake Carriers' Association, Great Lakes grain; pp. 372-73, the ILA and the Lumber Carriers' Association of the Great Lakes; pp. 376-78, the Bricklayers' and Masons' International Union and the Mason Builders' Association of Boston, a permanent agreement which dated back to the 1880s; p. 383, the Bricklayers' and Masons' International Union and the Chicago Building Contractors' Council; pp. 386-89, the United Brotherhood of Carpenters and Joiners and the Association of Master Carpenters in Chicago under a three-year contract; p. 393, the Journeymen Marble Cutters' Association and the Marble Industry Employers' Association in New York City and Vicinity; pp. 394-95, the Amalgamated Sheet Metal Workers' Protective and Benevolent Association of New York and Vicinity and the Employers' Association of Roofers and Sheet Metal Workers of Greater New York and Adjacent Cities; p. 405, the Journeymen Bakers and Confectioners' International

Union; p. 406, the International Brotherhood of Blacksmiths; p. 409, the Boot and Shoe Workers' Union, concentrated in Massachusetts; p. 412, the Amalgamated Meat Cutters and Butcher Workmen and the Armour Company, the S. and S. Company, and Jacob Dold; p. 412, the Journeymen Tailors' Union of America; p. 415, the National Brotherhood of Electrical Workers; p. 416, the Hotel and Restaurant Employees International Alliance; p. 417, the United Brotherhood of Leather Workers on Horse Goods; p. 417, the Metal Polishers, Buffers, Platers, and Brass Workers' International Union of North America; p. 418, the Brotherhood of Stationary Firemen; p. 418, the National Alliance of Theatrical Stage Employees; p. 419, the Stove Mounters' International Union; p. 419, the Amalgamated Association of Street Railway Employees; p. 421, the Woodworkers' International Union; and p. 422, the United Boxmakers of Chicago. For the Chicago Journeymen Lathers' Independent Union, see National Labor Relations Board, Written Trade Agreements in Collective Bargaining (Washington, D.C.: GPO, 1940), p. 270.

18. U. S. Industrial Commission, op. cit., p. 365.
19. Ibid., p. 367.
20. Ibid., pp. 376-78.
21. Ibid., p. 386.
22. Ibid., p. 422.
23. Ibid., p. 416.
24. Ibid., pp. 409, 417.
25. Final Report of the Commission on Industrial Relations (Washington, D.C.: GPO, 1916), p. 62.