

Minimizing Production Loss from Critical Industrial Disputes

By FRANK ELKOURI

A BASIC TENET of American industrial policy today is that employees may legally face their employer in concert to induce him to pay higher wages and improve working conditions. Long ago we discarded the view that concerted employee action is tantamount to criminal conspiracy. Indeed, our legislation reflects a firm policy of fostering collective bargaining as the instrument for securing democracy in the industrial plant. During our time at least, unionism and collective bargaining will continue to be instrumental in determining what rules shall govern employment within the plant and what share of industrial production labor and capital respectively shall receive.

This accepted, we must further recognize that there can be no equality at the bargaining table unless employees have some effective method of demonstrating their collective strength, and, by the same token, the relative strength of their employer. In this connection, the strike or the strike threat constitutes the primary means of vitalizing collective bargaining. Indeed, mutual respect between labor and management, an essential for permanent industrial peace, often has been achieved only after the parties have suffered the wounds of a contest of endurance. This is the case for the strike.

But what about the public? Must it always tolerate the strike as a necessary evil? Is the loss of production and services which necessarily accompanies all strikes, as the term "strike" has heretofore been understood, always justified by the need for the strike as an integral part of the collective bargaining process? Not always.

Those who disagree are reminded that unions have grown so large and our economy so intermeshed in this age of specialization that one strike can paralyze a large part of the nation. Witness, for example, the effect upon the public of strikes in the coal, steel, and transportation industries. Moreover, only too fresh in our memory is the inconvenience caused many of us by the American Airlines strike and the serious concern shared by all over work stoppages in Atomic Energy plants.

On the local level, strikes such as those

by dairy and public utility workers cause severe public hardship and inconvenience.

Our problem, then, is what to do about these critical industrial disputes—disputes which may imperil the public health, safety, and even the national defense? Let us briefly consider some of the more frequently advanced alternatives.

It must be emphasized at the outset, however, that we possess no panacea or magic formula for our problem. Moreover, each available alternative requires some group within our society to give up something it holds sacred. Then, too, any effective solution necessitates more interference, in varying degrees, by "big government," which some persons might fear more than the evil we seek to escape. The people, speaking through their Congress and legislatures, are free to choose.

Existing Legislative Machinery

Naturally one choice is continued use of existing legislative machinery.

Both the Railway Labor Act, which covers the nation's railroads and airlines, and the so-called Taft-Hartley Act, which covers all other industries affecting interstate commerce, rely primarily upon mediation and fact finding.

Mediation and conciliation, which terms are commonly used interchangeably, constitute the first step of the machinery of governmental dispute-settlement. The mediator, a neutral, does not make a decision. Rather, he aims to persuade the parties, by proposals and arguments, to come to voluntary agreement. Obviously, mediation may continue even after any more forceful device is invoked.

Under both Acts mediation may be followed by freezing the *status quo* and using fact finding. Fact finding involves a public report by an impartial board as to the facts of the dispute. The parties are not legally compelled to accept the board's findings, but public pressure may strongly motivate them to do so, especially where the board actually makes recommendations.

Under the Taft-Hartley Act the President may seek an injunction which will prevent a work-stoppage for a total of 80 days. Nothing prevents a work-stoppage at the end of the 80-day period, however, and

experience under the Act indicates that the injunction has simply provided a "warm up" period for the strike that usually has followed the injunction period. Thus, too often the injunction has not prevented but has merely postponed the stoppage problem. At best, Taft-Hartley injunction and fact-finding machinery have scored a success rating of no more than 33⅓%.

When the emergency provisions of the Railway Labor Act are invoked, the parties must maintain the *status quo* without a work stoppage for 60 days, during which time an emergency board investigates the dispute and makes recommendations. While this machinery appears to have been more effective than that of the Taft-Hartley Act, probably because Railway Labor Act boards have power to make recommendations whereas fact-finding boards of inquiry under Taft-Hartley do not, strikes on the railroads and airlines have not been eliminated.

Restricted Industry-wide Bargaining

Among the proposals considered by the 80th Congress, which enacted the Taft-Hartley Act, was a provision that the National Labor Relations Board not certify the same union to represent employees of competing employers, except for small plants located within fifty miles of each other. Different locals of the same national union would have been permitted to bargain with competing employers, but only if the bargaining and other concerted activities of such locals not be subject, directly or indirectly, to common control or approval. Each new session of Congress encounters similar proposals.

This is the "preventive" approach, designed to prevent strikes, such as those in the coal and steel industries, wherein members of powerful nation-wide unions too often have brought the overpowering effects of the work-stoppage to bear as much upon the public and the government as upon their employers.

While the dispersal of bargaining authority would generally prevent serious threat from strikes to the national welfare and security, it would provide the public little protection from local critical work stoppages.

Compulsory Arbitration

Probably the most frequently mentioned alternative is compulsory arbitration. Under this process work-stoppages are prohibited and an impartial arbitration board is appointed by the government to hear the dispute and make an award which must be accepted by the parties.

By and large, labor and management alike agree that, while thousands of industrial disputes are voluntarily arbitrated by the parties each year, arbitration should not be made compulsory by law. In brief, it is said that some parties will make only a pretense at collective bargaining if they know that arbitration is assured at the end of the road; moreover, that forced obedience generates further conflict.

Such opposition notwithstanding, growing public concern over work-stoppages which cause severe hardship or danger to the general public is evidenced by the fact that some states have enacted compulsory arbitration statutes for their public utilities. These statutes would be greatly implemented and reinforced were the Taft-Hartley Act amended to permit simultaneous application of such state legislation to employers covered by the federal act, or should Congress itself enact compulsory arbitration legislation.

Plant Seizure

We will recall that from time to time the government has "seized" industrial plants to prevent or end critical production stoppages. When a plant is seized its workers become employees of the government. As such, they have the right to bargain collectively through unions but are not free to strike. The Supreme Court has held that the anti-injunction provisions of the Clayton and Norris-LaGuardia Acts do not prevent issuance of injunctions in favor of the government in disputes with its own employees; violation of such injunctions is costly business, as John L. Lewis and several officials of the railroad brotherhoods probably will testify.

Since 1861 the government has seized industrial properties on over eighty different occasions. Generally, but by no means always, seizure has been based upon statutory authority, which often exists in time of war. Indeed, we learned recently that the government may not invoke this effective device except when it acts pursuant to statutory authority—in the celebrated "Steel Seizure" case of 1952 the Supreme Court declared that the President has no power, either as Commander-in-Chief of the Armed Forces or under the aggregate of his constitutional powers, to seize private property to prevent a production stoppage. Significantly, also, the Supreme Court has held that when the federal government does seize a private plant, the Constitution

requires compensation to the owners for operating losses, and the Court further indicated that compensation must be paid, if claimed, for taking the property.

In 1952 the State of Virginia enacted legislation authorizing governmental seizure of any public utility (to which federal legislation does not apply) furnishing water, light, heat, gas, electric power, transportation or communication, whenever there is threat of substantial interruption of the services of the utility. The State retains control of the plant and maintains the *status quo*, insofar as wages and other terms and conditions of employment are concerned, until the parties settle the dispute. The State retains 15 percent of the plant's net income as compensation for its services. The utility is entitled to just compensation for the use of its properties up to 85 percent of the net income during the seizure period. The freezing of wages and the employer's loss of 15 percent of income, it is thought, will spur the parties to agreement. It will be interesting to observe experience under the Virginia Act as a possible pattern for other states.

The Nonstoppage Strike

Something new is being discussed in industrial relations circles—the nonstoppage strike. The theory here is that the strike is a contest of endurance and that such a contest may possibly be invoked without ceasing production.

A recent publication in the Yale University Labor and Management Center Series treats of the nonstoppage strike. That book, *Social Responsibility and Strikes*, by Neil W. Chamberlain (Harper & Brothers), outlines a plan meriting serious consideration.

Under the plan a nonstoppage strike would be initiated when collective bargaining has reached a stalemate and a work-stoppage would normally occur. While the parties may do this voluntarily in any case, Mr. Chamberlain suggests that it be assured by statute in cases where severe pub-

lic hardship would result from a work stoppage.

During the nonstoppage strike the employees remain on their jobs, unless as individuals they choose to resign their employment, and management continues normal production. Although production continues, however, each party must receive less during the nonstoppage strike than it does when there is no dispute. That is, each party subjects itself to some loss in order to impose a loss on its opponent, which results in a contest of economic power similar to that of the stoppage strike.

Continued production of goods and services protects the interest of the public. It also serves the interests of the company, which will avoid the threat of permanent loss of markets to rivals, as well as the interests of the employees, who must keep eating when not working.

Any assimilated contest of economic power honestly reflecting the true strength of each party can be achieved only if the loss to each party is relatively equal; that is, the same relative bargaining power incident to an actual work stoppage must be preserved.

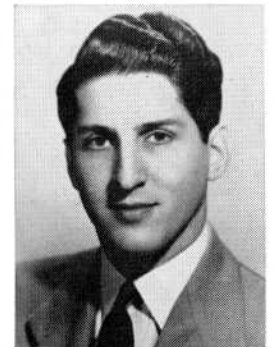
A possibility, for instance, is (1) to reduce wages by one-half, and (2) to reduce the company's return to include only the variable expenses, such as labor costs, which would not exist during a work stoppage, plus one-half of the fixed costs, such as rent and taxes, which would continue even during a work-stoppage. Again, management might be compensated at some percentage of normal profits—just so the sacrifice to each party is relatively equal, all things considered. Excess receipts would be paid into the public treasury. Thus each party would bring its power to bear upon the other to force an ultimate break in the negotiations deadlock—the contest of endurance would continue until the parties settle their dispute.

Proponents do not pretend that the plan

Continued page 32

ABOUT THE AUTHOR

Dr. Frank Elkouri, '43ba, '47Law, received his S. J. D. from Michigan in 1950, and returned to the University as Associate Professor of Law in 1952. Meanwhile, after serving in the Field Artillery during World War II, he had had extensive experience in labor matters. He was Enforcement Attorney with the Tenth Regional Wage Stabilization Board and at various times served as referee with the National Railway Mediation Board. In 1952 his book, How Arbitration Works, was published by the Bureau of National Affairs, Washington, D. C. The Quarterly is glad to publish this article by so competent an authority.



tion, must become aware of the desirability of initiating a foreign language program. They must be convinced of the importance of language training and of the many benefits that their children may derive from it. Often the school principal or the superintendent can take the initiative in bringing the advisability of establishing such a program to the attention of the parents in the community. Parent-Teacher Organizations are often instrumental in the initiation of foreign language study in the elementary grades where everything favors its introduction. Efforts should be made to ascertain just how much interest exists among the parents, teachers, and school officials in the introduction of the study of the foreign languages into the school curricula. Many of the programs now under way began by sending out questionnaires to all of the parents of elementary grade pupils in that community, in an effort to learn their attitude toward such a proposed program. The number of parents favoring such a program of language study, when approached through questionnaires and forum discussions, represents a surprising majority in the cases where this type of contact has been made. Once the language program is under serious consideration, every effort should be made to bring it to the attention of the entire community. The complete and enthusiastic support of the parents, teachers, and the school administrators is a "must". A language program, like any other program of its type, succeeds only if it is undertaken voluntarily and with the whole-hearted support of the community. To gain this support, the many values to be derived from foreign language study must be pointed out and clearly emphasized. Once the active support of the community is gained, the officials in charge can proceed to schedule the foreign language chosen for instruction as part of the curriculum for the period in which it is to be introduced, and the necessary arrangements for its introduction can be completed.

Many of the values to be derived from the study of foreign languages, like those gained from the study of history or literature, cannot be accurately measured. It is quite evident that the benefits to be derived from language study are in direct proportion to the amount of time and effort spent in the study. We are aware that the study of a second language contributes to the general learning process of the child, although the impossibility of determining the exact amount of this contribution is apparent. Language study does provide a new experience and the child quickly gains confidence in himself through his sense of accomplishment in acquiring the language

skills of another people. He acquires a new and much keener interest in other peoples, in their history and their customs, and he is quick to detect the various ways in which our cultures differ. In this sense the study of a foreign language serves to widen the child's horizon; and having thus become acquainted with the language and the customs of other peoples, he ceases to consider them strange and entirely different from himself. This is the first step in the use of language as the key to better international understanding: becoming closer to our world neighbors and actually getting to know them. This growing interest in other peoples which is gained through language study reveals itself in a desire to learn more about them, and generally leads to an increased interest in related fields such as the history of that country, its geography and the social conditions that prevail there.

Foreign language study instills in the elementary grade pupil a new respect for foreign children and for children of other national backgrounds who live in his own community. He learns to appreciate these children through the study of their language and to accept them as equal members of his community. On the other hand, the children of foreign descent, upon studying the language of their parents, acquire a new pride in their background and in their native tongue. The feeling of mutual respect that is achieved leaves little room for the discriminatory attitudes so prevalent in many of the bilingual areas of the United States.

Other values to be derived from foreign language study become more apparent at a later stage in the child's development. The study of a foreign language, in offering the child another medium of self-expression and communication, aids in the enlargement and the enrichment of his vocabulary. It is also generally conceded that the study of a foreign language aids in the learning of one's own language, resulting in a greater appreciation of the expressive power and the beauty of one's own tongue. However, these benefits will become more and more apparent as the child progresses through elementary school and on into more advanced areas of learning.

The main purpose here has been to present some of the facts concerning foreign language training in the elementary schools as it now exists, as well as to point out many of the values that have been derived from the introduction of foreign language study at this stage. That the study of foreign languages in the elementary grades is a realized possibility is apparent. It has succeeded wherever it has been undertaken with careful planning and a sincere belief in its potentialities. Our task is to make each

community aware of the promise that such programs hold for the future, and of the unlimited benefits to be derived from language study. Once this is achieved, the teaching of foreign languages in our public elementary schools will take its place alongside the instruction in other fields of learning that we consider indispensable to a well-rounded education.

Minimizing Production Loss . . .

Continued from page 19

is without weaknesses—there is no perfect substitute for the work-stoppage. In any given situation the plan might give relative advantage to one party or the other, just as the stoppage strike does for that matter, but it is believed possible to devise a formula under which, while one party might gain a relative advantage in one case or another, neither employer nor employees would gain such advantage in all cases. All things considered, proponents of the plan deem its weaknesses minimal in light of the hope it promises.

Voluntary Organizations . . .

Continued from page 30

On the contrary, the existence of the Hillel Foundation and of the other organizations today and everyday all over the United States is a complete denial of Marx's beliefs and a re-affirmation of the American ideal that men can improve their surroundings by voluntary association instead of by coercion, revolution, and bloodshed.

Compliments of
**DE COURSEY MILK
 COMPANY**
 N.E. 23rd & Kelley
 Oklahoma City

JAMESON & SAYRE
 HOME BUILDERS
 Complete Remodeling Service
 Phone 30 125 S. Crawford
 You'll Like Living in Norman