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Collective Bargaining in Perspective

Bernard Kleiman

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This paper, prepared pursuant to the invitation of the editorial staff of the Duquesne Law Review is in response to an article by Mr. R. Heath Larry entitled: Inflation, Labor and the Law.¹ As the title of Mr. Larry's article suggests, it is a broad-ranging presentation, touching upon many facets of labor law, legislative history and socio-economic policy. Notwithstanding the interesting and informative excursions into other areas, Mr. Larry's primary topic is the American system of determining wages, hours and working conditions through collective bargaining. The result of his efforts is a very critical assessment of the collective bargaining system.

Collective bargaining is a complex, unstructured, ever-changing process which defies characterization. Because of its amorphous nature, collective bargaining is perceived differently depending upon one's vantage point. This gives rise to disparate assessments of its function and efficacy. Hence, Mr. Larry has undertaken a formidable and perilous task. How can one fairly assess something that is so elusive? How can such an undertaking be meaningful when the reader or critic is very likely to have a totally different perception of the process? Obviously, it becomes a matter of perspective.

Mr. Larry and I have very different labor relations orientations. He is a management spokesman; I am a labor attorney. It will, therefore, come as no surprise that I will disagree with most of Mr. Larry's premises and conclusions.

We have, on the other hand, for a number of years shared the common experience of participating in labor negotiations between the American steel industry and the United Steelworkers of America. This has been a constructive, innovative and productive collective bargaining relationship.² By reason of our mutual exposure to

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² ABA Labor Relations Section, Proceedings 66 (1973).
this bargaining relationship, Mr. Larry and I share certain perceptions. First, there is the obvious fact that we have a similar view of the form and function of collective bargaining. Secondly, we know that the process can work well in a given industry over a long period of time.

Because of these areas of concurrence, I was somewhat surprised to find that the major thrust of Mr. Larry's article is that the prevailing collective bargaining system should be revamped. Though Mr. Larry ultimately concludes that this is not the time to press for an overhaul of collective bargaining, he clearly does not endorse the system.

This paper will examine Mr. Larry's criticisms of the collective bargaining process and analyze his proposals for change.

I. THE PROPOSAL TO EXPAND THE NATIONAL EMERGENCY PROVISIONS OF THE TAFT-HARTLEY ACT TO CONTEMPLATE "ECONOMIC" EMERGENCIES

Sections 206-210 of the Labor-Management Relations Act were enacted in 1947.3 They provide for a mandatory 80 day cooling-off period and other procedures in connection with any strike or threatened strike which "affects an entire industry or a substantial part thereof . . . and . . . if permitted to occur or to continue, will imperil the national health or safety . . . ."4

Mr. Larry suggests that either Congress or the courts should now act to expand the language or interpretation of these provisions to encompass "economic emergencies."5 This would mean that whenever an "economic emergency" is alleged, the President and Attorney General of the United States would be entitled and perhaps obliged to attempt to enjoin a strike which is in progress or, worse, one which is merely threatened.6 One can envision the possibility that under such a system the executive and judicial branches of government would become active participants in support of management and in opposition to workers in numerous labor disputes.

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5. Larry, supra note 1, at 214.
The extent of such governmental intrusion would, of course, depend upon what the President and the judiciary would deem to be an "economic emergency." After first insisting that national security is now threatened on an economic front, Mr. Larry responds to the issue of how much economic distress must exist before the national health and safety is imperiled as follows:

Recent trends in international and domestic economic events may now call for a different approach, because our national "security" is threatened in ways which were only dimly perceived, if at all, during the forties and fifties. . . .

. . . The contest still goes on. The principal socialist economy still boasts that it will bury us. . . . [I]t still clings to its stated mission of outdoing and destroying our "capitalist bourgeois economy," by winning . . . on the field of contest over economic and social progress.

National survival, however, is no less at stake than during an armed conflict. . . . [T]his kind of contest will be continuous, rather than intermittent, as were 'traditional' forms of battle. Thus, a sound economy, with minimal inflation, has become an ultimate necessity from the standpoint of national security.7

If I understand Mr. Larry correctly, he is asserting that the United States is presently under an unremitting state of economic siege, that the survival of our nation, or at least our economic and political system, is imperiled and that the "national health or safety" is now dependent upon "minimal inflation." From this, I conclude that under Mr. Larry's proposal a strike or threatened strike would be enjoinable whenever the nation is experiencing greater than "minimal inflation" or there is a determination that a strike might cause such a condition.

The implications of such a theory are profound and disturbing, for it is totally alien to our current system of collective bargaining.

A. Our National Labor Law Policy Was Developed to Eliminate the Sort of Judicial and Governmental Interference That this Proposal Would Evoke.

It is evident that the effect of Mr. Larry's "economic emergency"

7. Larry, supra note 1, at 214-15 (footnotes omitted).
theory would be to bring the federal government and the federal courts into many collective bargaining situations. Under the banner of fighting "inflation," the force and the resources of government would be mobilized in support of management. Government would be actively opposing the legitimate interests of workers. Under the national emergency provisions of the Taft-Hartley Act such governmental intervention would serve a two-fold purpose—(1) to enjoin or prevent a strike and (2) to limit the size of the wage and benefit package obtained by the workers.

Mr. Larry concedes that this is the thrust of his proposal:

The nation can no longer continue to absorb the impact of major settlements which embody a significant inflationary bias. Nor can it continue to absorb the impact of strikes which enforce inflationary demands and which interrupt the operations of a major segment of our interrelated economy for any period of time . . . .

[T]he shape of our law does not now point the way to viable solutions for this problem. Possibly this is because we have previously conceived of national emergencies in quite a different context.8

There is a fundamental reason why our law does not accomplish what Mr. Larry seeks. During the 1930's Congress acted to rescue workers from governmental and judicial suppression. For many it will be an old refrain, but when collective bargaining is under assault, it is always helpful to review the circumstances that led to the enactment of the Norris-LaGuardia Act9 and the Wagner Act.10

Let us look back to the situation in which the labor movement found itself just prior to the turn of the century. We find writers who believed that all strikes were illegal, and that workers who acted together to improve their condition had as their purpose to inspire "if not actual fear, at least solicitude or apprehension in the mind of the bravest man, and in the timid actual fear and indescribable dread."11 And throughout the writings ran the strong thread of political philosophy that employees, massed together, should not be per-

8. Id. at 213-14.
11. COGLEY, STRIKES, LOCKOUTS AND LABOR ORGANIZATIONS 223 (1894), From the definitions given, all strikes are illegal. The wit of man could not devise a
mitted to persuade an employer to do that which he would have refused if dealing with his employees one to one. That philosophy, of course, became translated into the common law, where combinations of workers to quit their employ, for whatever reason, were treated as criminal conspiracies.

In the same year that these principles were being enunciated, they were being applied in what is perhaps the most famous strike in history. In May, 1894, the Pullman Company cut its employees' wages by twenty percent. The American Railway Union, which represented the Pullman employees, struck Pullman. The strike soon spread throughout the railway system. The Attorney General of the United States swiftly sought and obtained an injunction barring all strike conduct. Criminal contempt proceedings followed, and Eugene V. Debs was sentenced to prison for six months. Despite Debs' resistance, the strike was lost.

As indicated by Frankfurter and Greene in their remarkable treatise which led to the enactment of the Norris-LaGuardia Act, the legal one. Because compulsion is the leading idea of a strike. Men seek to compel by force of numbers, employers or employees to do that which they well know could not be done by single individuals. It is apparent to any sane mind that there is something in the mere assembling together in large numbers, that inspires if not actual fear, at least solicitude or apprehension in the mind of the bravest man, and in the timid actual fear and indescribable dread. The purpose invariably is to produce this very result. It is intended to have an effect on the mind, and when the mind is affected as the strikers desire, extort some concession that they know they could not otherwise obtain. It is idle to talk about strikers being actuated by inoffensive purposes in organizing a strike. They know and fully intend all the evil consequences that result from simultaneously and by preconcert quitting the service of their masters. They know and fully intend that by quitting in a body in the midst of the busiest time, that their masters will be left without sufficient employees to carry on business, and that hope that the certainty of financial loss resulting from their action, will compel the employer, by putting him in mental duress, to agree to something that he would not agree to if left free to exercise his right of volition.

_Id._ 223-24.

12. _Id._

13. This development has been summarized thusly:

It being manifest that the purpose of employees in quitting work simultaneously was to compel the master to do something against his will, it is not astonishing that the common law treated the mere conspiracy or combination to quit as a criminal conspiracy. In criminal offenses, the law looks only at the intent with which an act is done. The intent in striking being wrongful, it must be admitted that the common law rule was not much out of the way, for an offense was committed as soon as an intent was formed, and that intent was shown as soon as a conspiracy was entered into.

_Id._ at 227.

14. The foregoing material was extracted from F. Frankfurter & N. Greene, _The Labor Injunction_ 17-19 (1930).
strike was not lost because of the employer's economic predominance, but because judicial power had prevailed. In Debs' own words, "'the ranks were broken, and the strike was broken up . . . not by the Army, and not by any other power, but simply and solely by the action of the United States Courts in restraining us from discharging our duties as officers and representatives of the employees . . . .'")

The labor injunction became an increasingly popular weapon.\textsuperscript{16} Judges were already accustomed to its use in solving labor disputes involving railroads in receivership, and the injunction seemed to them an appropriate method of quieting the "emergencies" born of the increasingly organized efforts of labor.\textsuperscript{17} In fact, the labor injunction became so popular that in many cases injunctions were issued without any proof of improper or illegal conduct.\textsuperscript{18} The mere act of going on strike was often sufficient to trigger judicial intervention, under an apparent view that labor's economic coercive activity was often enjoinable in itself.\textsuperscript{19} Rather than seeking to ascertain that unlawful conduct accompanied the activity sought to be enjoined, courts guided themselves on their own notions of what was best for the country.\textsuperscript{20} This judicial approach to labor injunctions left labor leaders with the disability of not knowing what coercive economic activity could legitimately be engaged in.\textsuperscript{21}

Other courts, sufficiently mindful of their limitations, did not intervene into labor disputes until they had made a finding that the union had engaged in unlawful conduct. Unfortunately, however, in many instances their concept of illegality was distorted. As a result, strikes were enjoined because the interests of "society," or "com-

\textsuperscript{15} Id. at 17.
\textsuperscript{16} Thus, with hardly a dissenting voice and sustained by the authority of time-worn maxims, the injunction asserted itself vigorously in the growing conflict of industrial forces in America at the opening of the present century. Even the judge who had doubts silenced them by the reflection that "Every just order or rule known to equity courts was born of some emergency, to meet some new conditions, and was, therefore, in its time, without a precedent." A device of modest beginnings, the injunction assumed new and vast significance in a national economy in which effective organization and collective action had attained progressive mastery.

\textsuperscript{17} Id. at 23-24.
\textsuperscript{18} C. Gregory, Labor and the Law 102-03 (2d rev. ed. 1958).
\textsuperscript{19} Id.
\textsuperscript{20} Id.
\textsuperscript{21} Id.
merce," or "consumers," or the "public" required that the union's economic pressure be abated.22

Mr. Larry's "economic emergency" theory would reinvest the executive branch of government and the courts with the power to determine that a strike was injuring the economic interests of "society," or "commerce," or "consumers," or the "public" and, on this basis, to enjoin such a strike for at least 80 days and take the other steps provided for under the national emergency provisions of the Taft-Hartley Act.23 Although collective bargaining is certainly viewed with much less disfavor today than in 1894 or 1930, can there be any doubt that Mr. Larry's approach would result in a great deal of disruption of the collective bargaining process?

Moreover, the implications of this concept extend beyond the narrow interests of labor unions. If collective bargaining can be suppressed, why should we assume that other economic endeavors are not also vulnerable? If it is a fact, as Mr. Larry suggests, that we are locked in an economic struggle for national survival, would it not be appropriate under his "economic emergency" theory for the government to impinge upon the economic decisions of corporations as well? Could not the government, in the interests of controlling inflation, use the injunction to influence the price a business could pay or charge, to force a business to operate more efficiently, or to affect the supply of goods?

B. Governmental Intervention in Steel Has Not Contributed to Strike-Free Settlements.

In January, 1961, the United States Department of Labor published a study entitled Collective Bargaining in the Basic Steel Industry (popularly known as the "Livernash Study")24 which was

22. This phenomenon was described as follows:
   The judicial policy in essence was one of selective suppression of organized labor's activities whenever they trenched too heavily upon the interests of any other segment of society. Commercial interests must not be injured by disruption of the interstate flow of goods; consumers and unorganized laborers must not be injured by wage standardization; employers and the public at large must not be injured by expansion of labor disputes through secondary boycotts. Save for the bargaining strike and accompanying picketing, very little indulgence was given to the claims of organized labor to an institutional role in the nation's economy.

24. The Project Director of the study was E. Robert Livernash, then a Professor of Business Administration at Harvard University. U.S. Dep't of Labor, Collective Bargaining in
commissioned by the Eisenhower Administration. Among the many items explored in the Livernash Study was the record of governmental intervention in steel negotiations. It should be noted that until after the momentous 1959 steel strike, labor relations in the steel industry were exceeding turbulent— in the ten negotiations after 1945 there were five major strikes, ranging in duration from 26 to 116 days.

During this same period there was a high level of governmental intervention in steel negotiations. The Livernash Study asserts that of the 16 different years in which steel negotiations have been undertaken, the only years [during which intervention did not occur] are [in the negotiation of] the original U.S. Steel-SWOC agreement of 1937 and the negotiations of 1947, 1953, 1954, and 1955.

Such intervention took many forms, including arbitration by the War Labor Board during World War II, mediation, fact finding, seizure of the steel mills, and a national emergency injunction under the Taft-Hartley Act.

The Livernash Study undertook an evaluation of each of these mechanisms and also explored an alternative concept which it called an “arsenal of weapons.” With respect to the “arsenal of weapons” approach, the Livernash Study concluded that its use would have a damaging impact on the possibility of peaceful settlements, because of a feared abuse of executive discretion resulting in a misuse of power and favoritism.

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25. There have been no industry wide strikes in basic steel since the 1959 strike.
27. Id. at 205.
28. Id. at 199-200.
29. Id. at 200-02.
30. Id. at 202-03.
31. Id. at 204.
32. Id.
33. Id. at 207-27.
34. There is a general fear that it would vest in the Executive department that kind of discretion in the exercise of power which permits of misuse . . . . [E]xperience with charges and countercharges of misuse of power and favoritism by Government in past steel negotiations would make it appear that this is not a fear that can be lightly discarded. Moreover, even if there is no objective basis for the fears and charges, the experience in steel further demonstrates that the attitudes created by this type of controversy are real and have an extremely harmful impact on the possibility of a peaceful settlement.

Id. at 226.
Based upon its assessment of the numerous instances of governmental intervention up to and including the 1959 steel strike, the Livernash Study concluded that if any type of intervention had been effective, it was high-level, last-minute, informal mediation. The report was critical of other forms of intervention. Recommendations have not been effective. They are not mandatory in any sense, and inevitably the question of whether a given recommendation should be accepted gives rise to new conflict. Moreover, formal intervention has not been helpful—each side refuses to weaken its position in anticipation of it, and each perceives the other as being favored by it. The result is added conflict. The Livernash Study concluded that “[m]inor modifications in the mechanism for handling national emergency disputes hold little promise . . . .”

Our experience in the steel industry subsequent to the Livernash Study is entirely consistent with the conclusion that collective bargaining is most effective when the parties are left alone. In contrast to the period covered by the Livernash Report which is replete with governmental involvement and strikes, since 1959 there has been a great deal less governmental intervention and not a single industry-wide strike.

One can only speculate whether a lower government profile has actually contributed to strike-free settlements. It is quite clear, however, that in an industry which had been plagued by strikes, the
private parties have been able to conclude six consecutive negotiations (1962, 1963, 1965, 1968, 1971 and 1974) without a strike and without significant governmental involvement.


The Livernash Study was commissioned by a Republican administration during the gargantuan 1959 strike because of "[p]ublic apprehension over the frequency, length, and effects of strikes in the basic steel industry. . . ." It was, therefore, a possibility that the report would recommend limitations upon the right to strike. This did not occur. On the contrary, the Livernash Report rejected restraints and asserted that strikes were a vital element in effective collective bargaining. In fact, Archibald Cox and Derek Bok assert that the strike is the "motive power that makes collective bargaining operate,"—a view widely held by scholars and practitioners alike.

Interestingly enough, Mr. Larry acknowledges in his paper that the union must be potent if collective bargaining is to be effective. In his discussion of the Experimental Negotiating Agreement which the United Steelworkers of America and the steel industry have

40. Id. at v.

41. The report stated:
   Free collective bargaining necessitates the right to strike. The cost of strikes must be kept in perspective. The freedom to strike is in our society the major deterrent to strikes. Any effective alternative involves drastic legislative modification of free bargaining and is far from having no economic costs. National defense, as previously stated, presents a special problem for which partial operation should be most seriously considered. Fundamentally, it should be recognized that the pressures upon the parties to settle are substantially irresistible when a strike reaches the critical stage.


pioneered, he includes the following insightful acknowledgment of the necessity that mutual power and mutual detriment be incorporated in any effective collective bargaining system:

Each party . . . knew the pains of returning to earlier patterns; each knew that the other could force that return if the negotiations were not sufficiently meaningful. . . . In exchange for certain precommitments, the parties substituted the right to arbitration for the right to resort to strike or lockout. . . .

The agreement involved real risks to the interests of both parties, and it was this fact they relied upon to prod them into reaching agreement by collective bargaining on their own. The right to force arbitration presents different risks from the right to force a strike or lockout, but, nevertheless, very real risks. . . . I can personally testify that the last three nights were just as sleepless as if the parties had been racing a deadline for a strike or lockout. 4

One might ask why, if the right to strike is such a vital factor, did the union agree to substitute interest arbitration for the right to strike in the Experimental Negotiating Agreement (ENA). Mr. Larry has provided part of the answer to this question. Let me elaborate. The union did not forfeit its right to strike as would occur under Mr. Larry's "economic emergency" theory whenever a court should choose to issue an injunction. Rather, the union temporarily traded one economic weapon (the right to strike) for another (interest arbitration).

In the circumstances which exist in the steel industry it is the union's judgment that interest arbitration is at least as potent as the strike threat. The union does not hold this view with respect to the other thousands of employers with whom it bargains; hence, the ENA has not been offered to those employers. It may well be that the union will conclude at some future time that in the steel industry the strike would be a more meaningful weapon than interest arbitration. In such event, the union is free in subsequent negotiations to reject the ENA and to revert to the strike weapon.

44. Larry, supra note 1, at 219 (footnote omitted). According to a knowledgeable observer of the steel scene, a former chief executive of Republic Steel Corporation, Charles M. White, expressed similar sentiments in a much more colorful and succinct fashion: "If they think we're wrong, they strike us. See? That's the way things should work. It's a hell of a good way." G. McMANUS, THE INSIDE STORY OF STEEL WAGES AND PRICES 1959-1967, at 18 (1967).
It is quite obvious, I believe, and has been acknowledged by steel industry spokesmen, that the ENA and its many special benefits\(^4\) for steelworkers could not have been attained in the absence of a meaningful strike threat.\(^4\) By the same token, the imminent availability of the strike weapon is, as Mr. Larry concedes, a further inducement for the industry to make the ENA work. In a sense, then, the ENA combines the latent pressures of the right to strike with the active pressures of interest arbitration.

D. Collective Bargaining Is Not the Cause of the Nation's Economic Ills.

Mr. Larry has presented an excellent summary of the reasons for our current economic plight.\(^7\) He lists (1) the delayed impact of governmental deficits incurred during the Vietnam conflict, (2) the cumulative effect of many years during which exchange rates were misaligned, (3) the result of long-term distortions in American consuming patterns, (4) the world-wide energy problem, and (5) the grain transactions. It is significant that he does not include wage costs on his list.

Mr. Larry's thesis is not that wage costs are fueling inflation but that the efforts of unions to cope with inflation are having a "ratchet" effect.\(^4\) In other words, he suggests that if workers are fortunate enough to keep pace with inflation—an endeavor which has not succeeded in recent years\(^4\)—the resulting increases in wage costs impose further pressures on the economy, if only by slowing the rate at which inflation decelerates.

On the basis of this same logic a meager wage increase which recovers but a fraction of the erosive value of inflation would also have an upward ratcheting effect and would thus presumably be objectionable, though less so than a settlement which paces inflation.

The "ratchet" theory might make some sense if wage costs had been a principal cause of the inflation, if all other segments of the

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\(^4\) One of the special benefits for steelworkers is a right to strike which had not, as a practical matter, previously existed. Under the ENA the employees of a given plant can, subject to certain procedural requirements, strike their plant in furtherance of their local issue negotiations. This innovation has been very effective.

\(^7\) ABA LABOR RELATIONS SECTION, PROCEEDINGS 63-65 (1973).

\(^1\) Larry, supra note 1, at 216.

\(^4\) Id.

\(^9\) See text accompanying notes 50-55 infra.
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Economy were required to assume a proportionate share of the responsibility for battling inflation, and if wage earners could afford to make the necessary sacrifice. It is clear, however, that none of these conditions are operative.

Looking first at workers' earnings we see that during the period from 1961 through 1967 the economy was relatively quiescent. The average annual increase in the consumer price index (CPI) during this period was 1.8%. Then, in 1968 we began to experience the first signs of inflation when the CPI increased 4.6%. This continued during 1969 (6.2% increase), 1970 (5.2% increase) and the first half of 1971 (2.2% increase, an annual rate of 4.4%). On August 15, 1971 a three month wage freeze was invoked, and this was followed by the various "phases" of the Nixon control program. As a consequence, the curve of inflation flattened considerably during the latter half of 1971 (1.3% increase, an annual rate of 2.6%) and during 1972 (3.7% increase). Then in 1973 and 1974 inflation soared with annual CPI increases of 9.4% and 12.2% (approximately) respectively.

Hence, the current inflation extends from the beginning of 1968 to date and can be charted as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Average Annual Rate of Inflation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968 to mid-1971</td>
<td>5.2%</td>
</tr>
<tr>
<td>Mid-1971 through 1972</td>
<td>3.3%</td>
</tr>
<tr>
<td>1973 and 1974</td>
<td>10.8%</td>
</tr>
</tbody>
</table>

We turn now to the wage picture. The following chart reflects the "real net spendable weekly earnings" of non-agricultural produc-

50. This percentage and those which follow were taken from or computed on the basis of Consumer Price Index figures set forth in BNA LAB. REL. REP., EXPEDITER LRX 164-74b (1975).
tion or non-supervisory employees and the increases in the consumer price index for the years since 1968.\(^3\)

<table>
<thead>
<tr>
<th>Year (Annual Unless Otherwise Stated)</th>
<th>Real Spendable Net Earnings (1967 Dollars)</th>
<th>Percentage Increase/(Decrease) in Real Spendable Net Earnings</th>
<th>Percentage Increase in Consumer Price Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>91.44</td>
<td>(0.4%)</td>
<td>4.6%</td>
</tr>
<tr>
<td>1969</td>
<td>91.07</td>
<td>(1.2%)</td>
<td>6.2%</td>
</tr>
<tr>
<td>1970</td>
<td>89.95</td>
<td>3.1%</td>
<td>5.2%</td>
</tr>
<tr>
<td>1971 (July)</td>
<td>92.72</td>
<td>0.7%</td>
<td>2.2% (half year)</td>
</tr>
<tr>
<td>1971 (Dec.)</td>
<td>93.41</td>
<td>3.2%</td>
<td>1.3% (half year)</td>
</tr>
<tr>
<td>1972</td>
<td>96.40</td>
<td>(1.4%)</td>
<td>3.7%</td>
</tr>
<tr>
<td>1973</td>
<td>95.08</td>
<td>(6.3%)</td>
<td>9.4%</td>
</tr>
<tr>
<td>1974 (Dec.)</td>
<td>89.12</td>
<td>12.2%</td>
<td></td>
</tr>
</tbody>
</table>

These figures establish several points. First, there is a remarkable correlation between increased inflation and reduced real earnings. When the consumer price index moves up rapidly, real earnings drop abruptly. When the consumer price index increases slowly, real earnings will remain relatively constant or will increase moderately. Secondly, real earnings are considerably lower today than they were in 1968 or at any time subsequent to 1968.\(^4\) Indeed, at the end of 1974 real earnings were 7.5% lower than in 1972. Thirdly, the level of real earnings is so low that wage earners simply cannot be expected to absorb inflation. In the interests of subsistence, they should, at a minimum, be entitled to keep pace with inflation, and though this is not the appropriate forum for a discussion of incomes policy, continued social and economic progress dictates that wage earners receive an increasing share of the total national income.

In view of these statistics it is clear that wage costs did not cause inflation. On the contrary, wages have been seriously eroded by inflation. If it were otherwise valid, the “ratchet” theory simply cannot be justified when we are dealing with wage earners whose average spendable income is less than $90.00 per week and who are currently falling behind at a rate in excess of 6% annually.

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54. In fact, if we trace real spendable net earnings back to the years prior to those listed on the foregoing chart, we find that such earnings are lower today than during any year since 1964.
Collective bargaining always has been and probably always will be attacked as a vehicle of economic dislocation. Because of such agitation during the 1950's the Livernash group addressed this question in its study of collective bargaining in the steel industry.\textsuperscript{55} The Livernash report stated that "the economic terms of steel settlements [will be studied] to assess their impact upon wages and prices in the economy."\textsuperscript{56}

The findings with respect to this question were as follows:

(1) That if steel were hypothetically removed from the post-war collective bargaining environment wage and other settlement terms in the economy would not have been modified to any great extent;

(2) That increases in employment costs would not have had a significant impact different from that which actually took place;

(3) That price increases in steel, no matter what the reason, have not had any significant impact on general price levels.\textsuperscript{57}

Aside from its assertion that collective bargaining settlements in steel were of little overall significance, the Livernash Study also concluded that the "economic impact of strikes on the economy are usually seriously exaggerated."\textsuperscript{58} With specific reference to strikes in the steel industry, the report found that their "actual adverse economic effects . . . have usually been overestimated" and that they have had "little measurable impact."\textsuperscript{59}

As shown above, it would be a gross mistake to tinker with collective bargaining even if it were one of the many causes of our current

\textsuperscript{55} Livernash Study, supra note 24.
\textsuperscript{56} Id. at 13.
\textsuperscript{57} Id. at 14-15. The study went on to conclude:

In summary: (1) Collective bargaining settlements in steel have not been a predominant independent influence in establishing or modifying wage trends in the economy; (2) the wage and price effects of steel settlements, and industry decisions with respect to price policy, when realistically interpreted, have had a minimal independent effect upon the price level in the economy; (3) the increasingly stringent compulsions of competition provide important protection for steel users; and (4) a major problem confronting the parties in collective bargaining is to adjust to the increasingly competitive environment in a manner best suited to protect their mutual longer-term interests.

Id. at 14-15.
\textsuperscript{58} Id. at 48.
\textsuperscript{59} Id. at 9. These conclusions are shared by Charles Gregory who has asserted that "while all strikes unquestionably cause economic loss and are wasteful, most of them do not have any perceptible effect on the general community." C. Gregory, Labor and the Law 501-02 (2d rev. ed. 1958).
inflation. In view of the fact that it demonstrably is not, and considering the wage losses suffered by workers in recent years, these specious efforts to tie inflation to collective bargaining should cease.

There are a multitude of programs that should be pursued instead of increasing the pressure upon wage earners. For example, waste and inefficiency should be attacked at all levels of government and business; loose management practices should be remedied; the pricing policies and profit picture of American business should be scrutinized; business and government should resolve, finally, to pursue energy, natural resource and defense policies which serve the public interest; our national transportation crisis should be addressed—and solved; and, at long last, our tax laws should be completely reformed to the end that favors and loopholes will be eliminated and the burdens of society will be distributed in a just and equitable way.

II. THE PROPOSAL TO HINDER COLLECTIVE BARGAINING BY STRIPPING UNIONS OF THEIR "MONOPOLY POWER"

Though Mr. Larry's principal thrust is devoted to his "economic emergency" proposal, he touches on several other ideas. One of these is to eliminate the "monopoly power" of unions. He does not define "monopoly power," but there is some indication in his paper that the term relates to the size of unions and to their right to organize and bargain on broader than a single plant basis.

If this is what Mr. Larry is suggesting, there are so many objections that an adequate response would exceed the scope of this presentation. Moreover, to the extent that Mr. Larry has simply mentioned the subject and made no effort to develop it, we would be speculating until we know the full dimensions of his thinking. However, pending such elaboration, I offer the following assorted reactions.

Shibboleths such as "monopoly power" are most unfortunate. Their effect is to ignite the passions without illuminating the issues. Every observer or practitioner of labor relations has probably formulated his or her own empirical judgment concerning the question of union strength and collective bargaining. For example, Archibald Cox and Derek Bok have argued that, since our national labor policy rests on the conviction that wages should generally be set through the collective bargaining process, collective bargaining "accepts—indeed . . . presupposes—the existence of strong labor
unions, [and] their existence and continuance are facts on which any solution of national emergency strikes must be predicated."

The value of such empirical judgments on a question such as union power is admittedly questionable. However, it is my firm conviction that the realities of the collective bargaining process support the Cox-Bok conclusion that strong unions are an implicit part of the process. I feel that the process improves in direct relationship to union strength.

An example of this is found in Mr. Larry's paper. In connection with his ultimate conclusion that reforms must come from within the collective bargaining system, he points to the development of the Experimental Negotiating Agreement (ENA) by the United Steelworkers of America and the steel industry and observes that the ENA was challenged in the courts. Mr. Larry might also have mentioned that the challenge was launched by union members who were making a determined effort to turn the ENA to their political advantage.

Could a weak union have pioneered an ENA concept? The answer is obvious. The ENA is a product of the strength of the United Steelworkers of America. It was the union's strength and persistence in collective bargaining that ultimately brought the steel industry to the point where it would bargain in a fair and constructive fashion. And, it was because of the union's strength that its leadership could take a step that was bold and certain to engender some political reaction. The simple truth is that strength produces responsibil-


At the present time our national labor policy is predicated on the belief that the price of labor should be fixed by collective bargaining save in those periods when wage stabilization measures are required to combat inflationary pressures. The employees, acting as a group through their union leaders, negotiate with their employer (or a number of employers) in an effort to arrive at the terms on which the employees will sell and the employer will buy the workers' services. The process resembles any negotiation in most respects but it differs critically in others. Three characteristics of collective bargaining seem especially important.

The first is that collective bargaining accepts — indeed it presupposes — the existence of strong labor unions. Strong unions not only perform useful functions in modern society; they also aid the men who are workers to realize legitimate human aspirations. But regardless of the desirability of strong unions, their existence and continuance are facts on which any solution of national emergency strikes must be predicated.


ity and performance, while weakness results in chaos and disorder.

Finally, there is an interesting inconsistency between Mr. Larry's position on union power and another of his reform measures. In footnote 9 of his paper he suggests that it is inconsistent with good faith bargaining for unions to let their members ratify contracts negotiated by the union. When the issue arises in this context, Mr. Larry becomes an advocate of union power.

III. Conclusion

Mention is made in Mr. Larry's paper of other schemes which would impair the collective bargaining process. These include (1) fiscal, monetary and employment policies which would increase unemployment and act "as an economic brake upon employees' aspirations and union power,"62 (2) denial of welfare benefits to strikers, and (3) stricter judicial attitudes toward picketing and strike conduct.

Among those segments of the business community which continue to resist unionism, these schemes apparently have considerable popularity. They bespeak an attitude which is entirely antagonistic to collective bargaining and which, I trust, is not widely held.

I am confident that Mr. Larry does not embrace these concepts. His record is not consistent with their philosophy. He is and always has been a skilled practitioner of the process of collective bargaining. Though he has expressed some misgivings about the current shape of the process, and has advocated some changes with which I vigorously disagree, I am satisfied that our differences fall within the permissible limits of perspective and that the prospects for continued success in steel bargaining are encouraging.

62. Larry, supra note 1, at 212.