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LABOR relations policy, as distinct from labor policy,[1] in the Philippines is expressed in Section 1 of the Industrial Peace Act.[2] This "Declaration of Policy" places great emphasis on industrial peace, which is to be achieved by eliminating the causes of industrial unrest by encouraging and protecting the right to self-organization for the purpose of collective bargaining. While the final decision regarding the actual terms and conditions of work are left to the private parties of interest, the State undertakes to assist them in this task by providing a conciliation service "to aid and encourage employers and representatives of their employees in reaching and maintaining agreements..." by means of conciliation and mediation. And finally certain rules to be followed in negotiating and administering agreements are prescribed in the law.[3]

[1] Labor policy covers a much broader area than labor relations. The latter is confined to the policy regarding the institutional relationship between employers and unions or labor organizations. The former includes not only labor relations but also such labor standards as minimum wages, woman and child labor regulations, factory acts and other segments of social standards.

[2] R. A. 875, "An Act to Promote Industrial Peace and for Other Purposes."

[3] *Ibid.* Sec. 1, a-d. Quoted in full below.

This law which was enacted in 1953 has been hailed by workers and organized labor and its friends as a great and historic achievement. It is popularly called the "Magna Carta of Labor" and throughout the Philippines it is given at least the status assigned in the Anglo-Saxon world to its prototype of seven centuries ago. It is therefore appropriate to ask what precisely it did introduce into the life of the country to justify this acclaim. Equally important is the need to examine the policy in operation to learn to what extent the Act is achieving its purpose and to determine the causes of any failure to live up to reasonable expectations.

I

To bring the matter into proper historical perspective it is necessary to compare the Industrial Peace Act and the prior legislation which was governing in labor relations. The statement of policy of the present law reads as follows:

Section 1. Declaration of Policy.—It is the policy of this Act:

(a) To eliminate the causes of industrial unrest by encouraging and protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining and for the promotion of their moral, social, and economic well-being.

(b) To promote sound stable industrial peace and the advancement of the general welfare, health and safety and the best interests of employers and employees by the settlement of issues respecting terms and conditions of employment through the process of collective bargaining between employers and representatives of their employees.

(c) To advance the settlement of issues between employers and employees through collective bargaining by making available full and adequate governmental facilities for conciliation and mediation to aid and encourage employers and representatives of their employees in reaching and maintaining agreements concerning terms and conditions of employment and making all reasonable efforts to settle their differences by mutual agreement, and

(d) To avoid or minimize differences which arise between the parties to collective bargaining by prescribing certain rules to be followed in the negotiation and administration of collective bargaining agreements and by requiring the inclusion in any such agreement of provisions for adequate notice of many proposed changes in the terms of such agreements, for the final adjustment of grievances or ques-

tions regarding the application or interpretation of such agreements and other provisions designed to prevent the subsequent arising of such controversies.

Policy is not entirely covered by this statement. The final element is provided in Section 10 which reads as follows:

Section 10. Labor Disputes in Industries Indispensable to the National Interest.—When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order forbidding the employees to strike or the employer to lockout the employees, pending an investigation by the Court, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment.

These two sections of the Industrial Peace Act provide the framework of policy in labor relations in the Philippines. They have much in common with the provisions of policy prior to 1953 but there are differences which are so important that they must be regarded as fundamental. To understand this it is not necessary to go back beyond 1936 and the Act which set up the Court of Industrial Relations. Public policy was contained in the following quotation:

Strikes and Lockouts.—The Court shall take cognizance for purposes of prevention, arbitration, decision and settlement, of any industrial dispute causing or likely to cause a strike or lockout, arising from differences as regards wages, or compensation, hours of labor or employment, between employers and employees, and such industrial dispute is submitted to the Court by the Secretary of Labor, or by any or both of the parties to the controversy and certified by the Secretary of Labor as existing and proper to be dealt with by the Court for the sake of public interest. In all such cases the Secretary of Labor or the party or parties submitting the dispute, shall clearly and specifically state in writing the questions to be decided. Upon submission of such controversy or question by the Secretary of Labor, his intervention therein as authorized by law, shall cease.[4]

The policy in effect from 1936 to 1953 placed the major emphasis on the prevention of strikes and lockouts. It also

[4] Commonwealth Act 103, 1936, "An Act to Afford Protection to Labor..." Reference to disputes between tenants and landlords have been omitted since the present concern is with industrial, not agrarian relations.

established an agency of the state, the Court of Industrial Relations, as a body with power, failing other means, to (a) determine the solution and (b) order acceptance. In other words, the ultimate solution to labor conflicts was compulsory arbitration by a special court established to carry out this function.

Speculation about the policy in those years, and that which replaced it in 1953, must take into account both of the important elements which are inevitably present in labor relations under any circumstances. These are: (1) the public objectives in policy and (2) the objectives, interests, and aspirations of the parties to the dispute. Perhaps the major question in labor relations is the problem of reconciling these two sets of needs. The important difference between the old policy and the present is in regard to the method by which this resolution is to take place. Under one (the earlier) the ultimate authority is an arm of government, the Court of Industrial Relations; under the other (the present) the ultimate authority is private, the parties themselves.

Much of the controversy about the relative merits of compulsory arbitration and free collective bargaining is concerned with which of these two approaches to industrial peace serves better to reconcile the problem of the public and private objectives. The theory of compulsory arbitration assumes that private interest, in the event of failure to agree privately, must give way to the public interest in continuous production and apparent industrial peace.[5] But the theory in free collective bargaining assumes that the solution reached by agreement of the parties of interest is not only the best for the parties but also represents the closest possible approximation to the public interest and therefore produces the optimum level of accommodation of public and private welfare. It is in a sense an extension of the liberal economic doctrine that leaves to individuals the decisions about price in commodity or service or capital markets.

[5] The appearance of industrial peace may be misleading if it is the product of imposed solutions.

II

There is however an element in the labor market which differentiates it from all other markets and gives it a character which perhaps renders the term "market" inadequate as a description of the process of exchange that takes place. Labor sells its labor power to the employer, but in the nature of things this labor power must be delivered personally by the laborer. The worker must be physically present. But even more important the work of several or very many individuals and groups of individuals must be coordinated in any given operation or series of related operations. That is, there must be some joint purpose in the work done. The receiving of an income is enough to encourage a person to undertake work, but not enough to justify anyone employing him. The joint purpose is derived from other sources than the laborer's interest in income. In enterprise economies this purpose is usually the making of a profit, although some industries may be the result of a positive political decision to serve certain social ends which would not be served, or served as well, if left to private initiative and hence private profit. The important point is that there is a collective purpose in economic activity whch is completely divorced from the personal goals of the workman who sells his labor. Furthermore, the achievement of these collective objectives must be through coordination, and this in turn means the exercise of authority.

We can therefore identify two basic elements of conflict in labor relations. The first is over the division of the product or the size of the wage. This is perhaps the most vital issue and is certainly the one which most people think about when they turn their attention to labor relations. Its dilemma arises from the fact that the employee's income is the employer's cost; and it is in the interest of the employee and the employer, ceteris paribus, to work toward diametrically opposite goals.

The second conflict area concerns the managerial function of coordination. So far, man has not been able to solve this problem of joint action without the exercise of authority. It

is highly improbable that he ever shall, although the manner in which authority is exercised may vary over a wide range from extreme "authoritarianism" to a high degree of leadership by consent or at least by consultation. Whatever the degree of severity or amelioration, the employee must be prepared to accept authority as a necessity of coordinated effort.

III

There is an implicit abstraction in this analysis which should now be eliminated. Reference has been made to the employee and the employer as if the former were an isolated and independent individual concerned only with his own interests. But this is highly unreal. The employee may in fact be interested in the problems of the employer. Much more important, he is linked in a network of relationships with those around him. It is in this respect that industrial sociology has recognized the societal nature of the work place.[6] And it is in this context of social relations that the labor and management relationship must be examined if reality is to be approximated. For each person lives a large part of his day at work in association with others, and these associations go far beyond the formalities of organization charts and established lines of responsibility and authority. They include a vast complex of relationships, unwritten laws, prejudices, likes and dislikes, notions about work loads and standards, concepts of fairness, attitudes toward supervision, and so on. Partly they are determined by the general pattern of social values and relationships of society, and partly they reflect the mutual experience of the members of the work force on the job. And it is from the interplay of these mutually determined influences that notions about such matters as seniority rights, "reasonable" discipline, rights to transfer, job protection, and even income standards merge.

Employers and managers are required, as part of their function, to make decisions about the use of personnel. Their compulsion is the need to be constantly seeking to keep costs to a minimum. In the dynamics of business life they come

[6] See: Wilbert E. Moore, *Industrial Relations and the Social Order.*

under a number of influences which dictate change. These include changes in both the demand and the supply aspects. Changes in customer tastes, the appearance of new technologies of production and the like require that decisions must be taken which affect the position of employed personnel. Transfer, promotions, layoffs, new hirings, changes in the functions ascribed to specific jobs, the disappearance of some kinds of jobs and the emergence of others, regrouping of functions—all these activities are to be expected as part of the functions of business management.

It follows that any static conception of labor relations is both misleading and dangerous because it assumes that once the "correct" relationship has been established no further change will be needed. But there is no *correct* relationship, or at least it is a continuously changing one. What is acceptable to the parties today becomes increasingly less so as time passes simply because influencing elements are changing. Conclusions drawn from a set of data become invalid as the data change. But we have seen that the data are the economic influences on management which are subject to fairly frequent changes. Moreover, as the Philippine economy becomes more industrialized and complex, the variety and amplitude of required adjustment is certain to increase. And the second aspect of the data compelling change is on the labor force side. Individuals grow older, persons retire, there is labor turnover, new recruits enter the work force, new skills are required, promotions take place, concepts and values and attitude alter, and institutions are reshaped.

IV

These are the reasons that render a static or even a contractual notion of the industrial relationship inadequate. They also help to explain why the theory behind the Industrial Peace Act is sounder than one based on authoritative settlement of the terms and conditions of work. The great virtue of free collective bargaining is that it represents a workable compromise between the need for change and the need for stability. The methods by which change is achieved are the negotiations

between labor and management. The more familiar type of negotiation is that which is directed toward the writing of a union contract. These are the negotiations which receive much publicity. But perhaps equally important are the less well known meetings which take place from time to time during the life of a union agreement.

Meetings, whose purpose is agreement writing, represent a form of "legislating." That is, the employer and the union, through joint discussions and bargaining, attempt to reach agreement on the principal matters involved in the personnel policy of the employer. Wages, hours, vacations, holidays, seniority rights, principles regarding discipline, the administrative arrangements regarding layoff and promotion, the impact on employees of technologcal changes and a host of similar matters provide the raw material for "contract negotiation" meetings. And the "legislating" authorities, the management and the union, are either the parties of interest or their direct representatives.

It is specially important, therefore, that the negotiators do truly represent the interests of those for whom they speak. But as we have seen, the union represents perhaps a considerable number of employees each of whom has his own objectives and goals. It is part of the union function to achieve, out of this confusion, some sort of common policy for the represented workers. This function is political and it is worked out in the continuous interaction between and among union officers of different levels and rank and file members. Under such circumstances a sound union policy is, in the nature of things, a compromise of the conflicting aspirations and attitudes of individuals and groups within the membership. Indeed collective bargaining may be likened to a two-way system of communication between the employer and his managers on the one hand and the work force on the other. And in the process an accommodation is worked out. But such accommodation is never exactly as any of the parties and individuals of interest would like it because each has had to give up more or less in the interests of the overall settlement. And so the similarity with civil government is again observable.

The act of writing the agreement does not end the matter. All that the written document does is to establish the agreed segments of the personnel policy. It is true that these are usually the fundamentals, but they can never be complete. A union agreement may, for example, state that management may discipline for just cause, but it can never spell out in detail all the requirements necessary to establish the standards of either just cause or proper disciplinary action. Therefore, the application of the agreed policy will present difficulties. A given administrative act of management may be questioned on the assumption that it is inconsistent with the agreement. Additional machinery is needed, and usually provided, for discussion of these "grievance" problems. Furthermore, situations will arise of importance to the parties which while not necessarily covered by the agreement, require joint consultation. The same or additional machinery will be required.

V

An important psychological factor requires emphasis. It has been noted that in the bargaining process even the union demands must be a compromise acceptable to all factions represented by the union, and the ultimate agreement will reflect the impact of the management interest as well. Once the agreement is signed, the interests have been codified into temporary rights; but there are possibilities of some flexibility through interpretation and application. And it is perhaps not exaggerating to suggest that the process may be more important, psychologically, than the results. The fact that men have a union, that they may attend union meetings, that they have a right to influence union policy in the negotiation, that they can challenge managerial actions and get a bearing through their union, all these facts mean that men are given security against arbitrary or capricious actions by their bosses. Greater certainty and established procedure tend to drain off psychological tensions and potential aggressiveness.

This important factor is often overlooked by those who are distressed by the appearance of disputes that break out into work stoppages. But it should be noted that work stop-

pages are not confined to communities which allow free collective bargaining. Compulsory settlement of unresolved disputes has not put an end to strikes in Australia, nor will it ever do so in any country which preserves free institutions. Authoritarian countries have "solved" the strike problem by the simple process of outlawing them and backing this up by the agencies of the police state. The price in industrial discontent must be enormous.

VI

All of this suggests that there are important social values to be sought through the process of collective bargaining other than those usually recognized, such as the material results and the right to free democratic institutions. The release of psychological tensions, the formulation of group values, the sense of consent to the terms of "government" in the work place, emotional security derived from the availability of the grievance procedure as an appeal device may be more productive of industrial harmony than the actual terms of settlement. Perhaps it is not without significance that the Industrial Peace Act places as its primary object "To eliminate the causes of industrial unrest."

The above analysis gives much more meaning to collective bargaining than the notion that it is merely a process of writing a contract over certain economic issues between an employer and his employees. It indicates how inadequate the contract conception is to describe a process essentially political which brings about a more or less continuous series of accommodations in a structure of social relations of the work force to keep it in close conformity with the economic and social dynamic compulsions which bear up on the employer and the employees. Collective bargaining provides bilateral machinery of adjustment and therefore, broadens the base of interest upon which decisions are made. But even this bilateralism is an oversimplification because it obscures the fact that within the union ranks there are many diverse interests and influences which, through the operations of the union itself, become crystallized into acceptable objectives for the membership as a whole.

The Declaration of Policy quoted above gives ample recognition to this dynamic process by: (1) recognizing the institutional facts of unions and management, (2) leaving to the parties the determination of the terms of agreement, (3) providing assistance to the parties to reach an amicable settlement, (4) removing the element of compulsion, (5) placing emphasis on industrial peace through the reduction of industrial unrest, (6) establishing collective bargaining as the principal instrument of public policy to achieve industrial peace.

VII

The specialized agencies of the state in the labor relations field are the Court of Industrial Relations and the Registration Division and Conciliation Service of the Labor Department. Before examining the role of each of these, it is well to note that success in the implementation of the present policy depends upon newly defined rights to develop unions and engage in collective bargaining. But the mere multiplication of unions and collective agreement is not alone an adequate test of policy. If the kind of institutions that emerge are such that in their operation they fail to provide for the assumption of responsibilities and the exercise of rights imposed by the logic of an adaptive society, the policy is failing in its purpose. Only if it meets the test of acceptable acommodation of the parties of interest through time can it be said to meet the basic social problems of industrialism.

To test this thesis in application in the Philippines, two paths must be followed. The first leads to the state agencies and the effectiveness with which they are functioning. The second leads to the private institutions themselves and the manner in which they are serving the interests of the parties they represent in relation to public policy. For it should be recognized that failure by either one or the other could largely frustrate the intentions of public policy. And it will be shown that in fact the achievement of the goals of policy are being hampered by certain aspects of the operation of both public and private agencies.

VIII

The role of government agencies under the Industrial Peace Act are vastly different from their role prior to 1953. The Court of Industrial Relations especially has had its functions redirected and redefined. Formerly its function was to prevent strikes and lockouts and it was given very broad powers to effect its purpose. These ranged from conciliation to compulsory arbitration. But under the new legislation its role is to guarantee certain rights established in law, not to settle dispute.[7]

Of course, incidentally it usually does settle disputes because in all cases before the Court more than one party is involved. But the real bargaining issues and their settlement have been transferred to the parties of interest. The Court's responsibility is to ensure that the parties of interest are in fact free to act without the handicaps of certain practices which the legislators have rejected as improper or "unfair." In this sense, the Court has become a referee of the game which is actually played by the parties. Formerly the Court was concerned with the merits of the case for change in the economic relationship. After 1953 it had no concern with such issues except in the few cases certified to it by the President. Its principal concern is with behavior and not ends, with the observance of the law, not with collective bargaining results.

The Court is concerned with two responsibilities of the parties of interest. The first is the positive duty to bargain collectively[8] under certain circumstances, and the second is the duty to refrain from committing certain unfair labor practices.[9]

IX

Collective bargaining becomes a right of a union if it is legitimate and is the representative of a group of employees. ". . . it shall be the duty of an employer and the representa-

[7] The reference here is to its principal function. For the moment, the responsibility for arbitrating negotiation disputes under Section 10 is not under consideration.

[8] R. A. 875 Sec. 13

[9] *Ibid.* Sec. 4

tive of his employees to bargain collectively in accordance with the provisions of this Act."[10] "Representative includes a legitimate labor organization or any officer or agent of such organization, whether or not employed by the employer or employees whom he represents."[11] It would thus appear that a registered, that is legitimate, union has rights to bargaining even though it has given no proof of majority status. Admittedly, opinions differ on this point. Some persons believe that the words "in accordance with the provisions of this Act" imply that a union has no *rights* to collective bargaining unless it is recognized voluntarily or has been certified as being the exclusive collective bargaining representative.[12] If this is so, the employer could refuse to bargain except with a union that has been certified. But others recognize that there is an obligation to bargain collectively with a union if it so requests unless the employer honestly believes it does not represent a majority of the employees in the bargaining unit.[13] Whatever be the meaning of the law, there is no doubt that the unions are assuming that mere legitimacy itself confers bargaining rights. This is reflected in the relatively small number of certified unions in relation to the number registered.[14]

The Court of Industrial Relations becomes involved in these recognition issues in two ways. Firstly, it may receive a complaint that a company is guilty of an unfair labor practice because it is refusing to bargain collectively or because it has violated some one of the clauses of Section 4a. Secondly, it becomes involved if there is an application by a union to be recognized as the exclusive bargaining representative. But it should be noted that these two issues are quite different in character. A charge of unfair labor practice is a complaint that

[10] *Ibid.* Sec 13
[11] *Ibid.* Sec. 2 h
[12] *Ibid.* Sec. 12
[13] The writer was told by an official of the Court of Industrial Relations that an employer refusing to bargain with a union would need to demonstrate good faith in the refusal. The Court would accept certification application by the employer as such demonstration.
[14] While the figures for certified unions in the country are difficult to obtain it appears that there are several registered unions for each one that has been certified as being the exclusive bargaining representative.

the respondent has violated the law. A request for certification is an application to be granted a certain status provided by law to any applicant who can show that certain minimal conditions have been met. The first is an adversary action; the second is a request for an administrative operation.

The difficulty is that certification has the appearance of being an adversary action because the employer or another union may be hostile to the application of the original union. But we should not be misled into the fallacy that this establishes a right to oppose, except on the grounds that the applying union fails to meet one or more of the legal requirements. All else is irrelevant and should be excluded. Collective bargaining is in fact public policy. It is a right granted in law to employees. When an application is filed, certain administrative decisions must be made by the Court.[15] These are (1) that the union is qualified as a legitimate organization to be a representative within the meaning of the Act; (2) that the proposed bargaining unit is appropriate for collective bargaining purposes or, if this be rejected by the Court, what unit in the determination of the Court is; and (3) that the applicant union or some contesting legitimate union has majority support.

These decisions are essentially administrative ones. A union is eligible to apply for certification or to contest a certification if it is legitimate; the unit is appropriate by definition of the Court itself since the law provides no standards; and the majority may, according to the law, be determined either by investigation or by a vote in a secret ballot. There is nothing for the parties to prove. The responsibility should be on the Court to determine the results in terms of clearly defined public policy. There is no legal case to win or lose. The simple question is whether or not a union shall be certified, and the party to be satisfied is the Court itself. That is, it must determine which union has been chosen by the employees to represent them, and the standards are the simple standards of the majority principle.

[15] R. A. 875 Sec. 13

X

If we revert to the other type of issue that comes before the Court, viz., the unfair labor practice case, we are confronted with a charge of violation of the law. It is therefore to be expected that greater emphasis would be placed on proof by court procedure. Yet the legislators apparently foresaw this as a time-consuming process which would have the effect of weakening the complainant. By actual sample count, the ratio of complaints laid under Section 4 by unions to those laid by management is close to 100 to 1. It follows that Section 4 is in practice used to protect labor much more than the employer. Therefore, delays in Court must work to the disadvantage of the unions. But the legislators gave to the Court a rather free hand to allow a member of the Court "or a Hearing Examiner or any other person. . . to intervene in the said proceedings and to present testimony. In any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that the Court and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure. . ." [16]

Three features of this section of the Act are particularly important in the present analysis. (1) The Court is instructed to ascertain the facts *speedily;* (2) it is authorized to *use procedures* from which courts of law and equity are ordinarily restrained because of rules of evidence; (3) it gives the *positive duty* to use all reasonable means to get the facts. Surely this section conveys the clear intention of the legislators that the Court is to conduct an investigation by its own direction and by whatever reasonable means may seem necessary to get the facts quickly.

There is sound reasoning in this because of the unstable nature of unions in the early stages of their development, especially in a general context in which there has been a marked shift in social policy in favor of independent unionism, such as

[16] *Ibid.* Sec 5 a

that which occurred in the Philippines in 1953. The Industrial Peace Act clearly established membership in labor organizations as a right. "Employees shall have the right to self-organizations of their own choosing..."[17] Protection to the exercise of this right is set out in Section 4 of the Act. And the need for this kind of legislation is related to the shift in social policy which was implicit and practically explicit in the Industrial Peace Act. For even though that policy was directed toward the goal of industrial peace, the chosen instrument is collective bargaining; and this requires the presence of unions with power to bargain.

Prior to the introduction of this policy, employees could form unions, but they had much less legal protection, and because of compulsory arbitration, were not dependent on their economic power. When the state transferred the ultimate decision-making to the unions and employers it also recognized formally that the exercise of power is an important ingredient in labor relations; and it gave positive support to unionism by making it protected right, and to union activity by making collective bargaining an obligation.

It was to be expected that there would be considerable resistance to this shift in power, especially from employers. As a matter of historical fact there has been. The majority of industrial disputes in the country are concerned with issues of union recognition by employers. The Conciliation Service spends a disproportionate amount of its time attempting to induce reluctant employers to accept the idea of unionism. At the present time, the Service is dealing with first-contract cases and renewal cases in a ratio of six to one. The conciliators themselves state that recognition and unfair labor practices are much more prevalent in the former than in the latter. It is perhaps not an exaggeration to suggest that at the present stage of development in labor relations in the Philippines the major problems relate to this matter of the acceptance of the process of collective bargaining and therefore to the power problem.

[17] *Ibid.* Sec. 3

XI

Viewed in this light, the policy of leaving the settlement of issues to the parties takes on a new perspective, as does the function of the Court. The function of the Court is not to deal in settlements of bargaining issues. It is to guarantee the observance of law to the specific end that successful collective bargaining shall be able to operate. In this sense, the Court is the true custodian of emerging collective bargaining. If it meets its responsibilities with dispatch as intended in the law, the problems of unfair labor practice, of recognition and the duty to bargain collectively will be solved without too much difficulty. Only then can constructive bargaining prevail. If on the other hand there are long delays and expensive procedures in either unfair labor practice or representation cases, unionism will develop slowly, and in specific instances may be destroyed. Furthermore, unionism which does not get the protection it has a right to expect will be tempted to turn to other devices.

This does not in any way imply that court decisions are unfair or unjust. The damage to unions and collective bargaining comes in this case from the time lags. At the present stage, time is on the side of the employer who is opposed to recognition. The Court has the responsibility of affording quick protection by producing speedy decisions. Otherwise, recognition will remain a "bargainable" issue and the Conciliation Service will be called on to try to gain it for the union from the unwilling employer. The only other alternative is the strike.

XII

The evidence in the files of the Court show that in too many cases the elapsed time is excessive, and this applies to both the unfair labor practice cases and those dealing with exclusive representation. In a study of a 50-case sample of unfair labor practices, it was found that only three were disposed of within one month of filing, and it was not until the eighth month that half of the cases had been disposed of. Six-

teen carried over into the second year, one of these into the third. The record for representation cases is similar, though better. A sample study showed 8% being processed in one month, 50% within five months, 85% within the first year. But again a number dragged on into the second year, and one into the third.

Further analysis was undertaken to try to determine causes of the delays. By isolating the various steps in the process as a case moved through the Court it was possible to determine at least where the greatest delays were occuring. Fifteen different tabulations were made and analyzed. While it is not necessary to present either the tables or the complete analysis, showing some of the data will be a help in understanding the nature of the problem.

A study of the time elapsed from the date of filing a case until the date of the prosecutor's summons to the complainant in unfair labor practice cases shows that approximately 50% of the notices were sent during the first week after filing, 75% within the first month, 13% within the second month, but some actually were not sent out until the tenth month. And it is to be noted that this is a step in which the judicial and investigating officers of the Court, the judges, hearing examiners, and prosecutors are not involved.

Cases in the prosecutor stage were processed over a time range of from one day to over two years. 54% were handled within a month, 27% in the second month, but 19% required more than two months' time.

During the period when the judge is reviewing the prosecutor's findings, the time elapsed is short. The bulk of the cases were handled within five days, a few required up to a month and only one of 28 recorded in the sample went beyond a month.

Much time is consumed in the hearing stage when both parties are present. The average number of hearings per case is eight. But contrary to popular belief, there is not a great number of applications for reconsideration of the findings of an

individual judge, nor from the Court *en banc* to the Supreme Court. Not more than 10% are appealed from an individual judge, and less than 4% go to the Supreme Court. Applications for postponement seem to be related to conflicts among the professional obligations of counsel who appear in labor cases.

We may summarize as follows. A considerable number of cases are processed through the court in relatively short time. This is more true of representation cases than of unfair labor practice cases. But the number of either variety which proceed through the Court in what might be considered a reasonable time is quite small. For the bulk of the cases, the time required is such that the description "excessive" is not out of place. Excessive is taken to mean beyond the length which might actually do some damage to the prospects for collective bargaining. Finally, for some cases the time involved is very long indeed.

All of these points can be substantiated by examining the records. And these files also reveal the principal time consumers. (1) There are unexplained delays in administration when a case should be moving quickly to the next step. (2) Much time is consumed in the number of steps in the process, particularly in unfair labor practice cases. For example, the exparte hearing of the prosecutors produces findings which seem to be reversed in later stages in nearly 50% of the cases. The value of this stage is therefore open to question; yet it is a heavy time consumer. (3) The influence of counsel, as reflected in the long drawn out hearings, the larger number of postponements and the great volume of hearings themselves seems to be one of the principal causes of delay. (4) The work load of the individual judges is a factor, as is the appeal privilege.

XIII

There is no simple solution to the problem but the direction is clear. If the intention in the public policy is to be followed, procedures in the Court must be speeded up to guarantee quick decisions in the two major areas of its res-

ponsibility, viz., unfair labor practice and representation cases. Probably the principal way to do this would be to emphasize the role of the Court as an administrative body, and for Court personnel to control, direct and conduct investigations in cases before them as a means of guaranteeing that public policy shall be supported. It is submitted, as indicated earlier, that not only is the authority present but also the responsibility to proceed in this fashion is contained within the law.

Improvement along these lines would be aided by other changes. A reduction in the number of unions by amalgamations would reduce much of the excessive contesting of bargaining rights; additional union and management training in collective bargaining; the replacement of the present preponderant control of unions by the legal profession with rank and file leaders; all of these are required if collective bargaining is to prosper. The present article must leave these matters untouched, but certain changes in legislation would help to speed the process and make the Court more effective. We turn to a brief consideration of these aspects now.

XIV

One of the more obvious difficulties concerns the rights of *representation* and of *exclusive representation.* The law appears to establish that legitimacy, which is acquired by registration, grants to a union the right to "act as the representative of its members for the purpose of collective bargaining..."[18] and to "be certified as the exclusive representative of the employees in a collective bargaining unit..."[19] It is suggested that Section 24a should be either repealed or amended to establish that no employer has any obligation to bargain collectively with a union which has not established its majority position in a *unit* appropriate for collective bargaining. At the present time unions are using this clause to insist on their rights to represent their members. Employers are confronted with a nagging problem of multiple unionism, and small splinter unions emerge to take advantage of this provision. The pro-

[18] *Ibid.* Sec. 24 a
[19] *Ibid.* Sec 24 b

vision itself is in contradiction with the spirit of Section 25b which provides for *exclusive* bargaining representation rights. As long as the Act contains this right to represent its members, multiple-unionism will thrive. The sooner it is withdrawn the better for unions, management and collective bargaining. The objective should be clearly-defined bargaining units with settled representation.

XV

Somewhat along the same lines is the provision that "... any individual employee or group of employees shall have the right at any time to present grievances to their employer."[20] This proviso follows the description in the text of the right of a labor organization to be the exclusive bargaining agent for the workers in a unit. In all probability it was inserted in the law to guarantee that a union could not come between workmen and their immediate superiors. At present it is also being used by uncertified unions to try to subvert the position of the union which has won the *exclusive* bargaining rights. Repeal is strongly indicated. This would leave on the bargaining table the determination of the right of an employee to take a grievance to management. The important thing is to eliminate the instability of the present arrangement.

XVI

A final point on the law concerns registration. At present a union can become registered if it meets certain limited requirements.[21] The Registrar appears to have no discretion. Thus any kind of union, provided it presents the required documents, seems to have a right to registration. Yet registration confers legitimacy and legitimacy carries the rights described earlier as provided in Section 24. There is some evidence that improper unions such as company dominated ones are using registration as a protection against more genuine unions.

Two reforms are indicated. The one, already mentioned, would reduce the value of legitimacy by denying any bar-

[20] *Ibid.* Sec. 12 a
[21] *Ibid.* Sec. 23 b and c

gaining rights and shifting the emphasis to the exclusive bargaining rights and the majority principle. The second is more difficult. It involves a more thorough investigation of the applicants for registration to ensure that they do in fact conform to the contents of the documents they have provided. This step is often advocated, particularly by unions who request that the Registration Division should not register unions claimed to be company dominated. Perhaps the simplest workable solution is along the former lines of reducing the value of legitimacy rather than trying to control registration itself.

The Declaration of Policy in the Industrial Peace Act is a statement of faith in the capacity of collective bargaining to resolve the problem of balancing public interest in production and industrial harmony with the private objectives of employers and employees. But success presupposes that bargaining shall take place in a climate of acceptance by both labor and management. At present much of the effort of unions, management and public agencies is directed toward establishing collective bargaining rather than toward the substantive issues of the agreement. As long as this situation continues both the private and public objectives will be thwarted. Improvement must take place on a broad front including reform within the union movement, management and union training, some redirection of the efforts of conciliators and so on. But of vital importance are certain amendments to the law, and especially a pronounced shift in the Court of Industrial Relations toward an investigating and administrative approach, and a declining emphasis on the fatal time-consuming process of litigation.