

# The Collective Bargaining Process Le processus des négociations collectives

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## Résumé de l'article

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Des groupes d'employés avec des objectifs différents doivent faire coïncider leurs opinions divergentes avant et pendant les négociations. La direction doit se soumettre au même effort de rapprochement, qui devient plus difficile lorsque l'unité de négociation comprend plusieurs secteurs d'employés.

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Différents mécanismes assurent la conversion des objectifs ou « inputs » des salariés et de l'employeur en « outputs ». Ceux-ci prennent la forme a) de relations interpersonnelles continues, b) de la structure des unités de négociations et des sources de la prise de décision, c) du processus des négociations, d) de la procédure en matière de griefs, des différents comités institués etc., et e) des différentes formes d'intervention de tiers, gouvernemental ou autre, qui s'expriment par les notions de conciliation, de médiation, d'arbitrage, etc. Nous discuterons brièvement ces différents points.

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Nous trouvons décevant le fait que le Rapport de l'Équipe spécialisée en relations du travail ait omis de discuter du phénomène des relations interpersonnelles. En ne tenant pas compte de cet aspect des relations patrons-ouvriers, l'Équipe spécialisée a trop insisté sur l'aliénation et la subordination de l'individu dans le monde du travail.

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Le rapport de l'Équipe spécialisée ne fait pas la distinction importante entre l'unité de négociation accréditée et l'unité négociant, puisqu'il semble s'être servi de l'expression « unité de négociation » pour englober ces deux réalités. Plusieurs commentaires sont de mise concernant les recommandations fait par l'Équipe spécialisée sur la structure de négociation.

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Le rapport de l'Équipe spécialisée s'est soucié des problèmes touchant la centralisation et la décentralisation des prises de décision, et effectua une mise en garde face à la situation où les participants à la négociation collective ne sont que de simples messagers des positions prises par des tiers. L'Équipe spécialisée recommande que les participants à la négociation d'un contrat aient le pouvoir de décision.

Le deuxième point important ici est le conflit qui existe entre le désir des syndicats d'avoir une force de négociation importante et les exigences de chaque secteur local représenté d'avoir leurs intérêts propres respectés et négociés effectivement.

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L'Équipe spécialisée a omis d'examiner ou de considérer l'interaction patrons-ouvriers qui se produit durant la négociation de contrats. Nous croyons que la partie analytique de son Rapport eut été beaucoup meilleure si elle avait examiné ce processus comme elle a analysé l'inflation.

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Nous sommes d'accord avec la recommandation du Rapport que les parties soient libres de faire la grève ou un « lock-out » une fois que la convention collective est expirée et que les soixante jours après l'avis au conciliateur sont écoulés.

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L'Équipe spécialisée reconnaît les nouveaux développements des formes de négociation collective et stipule que « les parties seraient bien avisées... de négocier régulièrement pendant toute la durée de la convention ». Cette forme nouvelle d'approche requiert que les parties s'engagent fortement à identifier les problèmes après une recherche conjointe, à trouver des solutions à mesure que les problèmes sont soulevés, à maintenir de bonnes communications à tous les niveaux, et à prendre l'initiative de toucher des secteurs qui ne sont pas encore reconnus comme faisant partie du processus de négociation collective « traditionnelle ». Le point crucial est de s'engager à identifier et à résoudre les problèmes communs ou mutuels.

# The Collective Bargaining Process

Alton W.J. Craig

*This paper attempts to highlight the parts of the Woods' Report dealing with the collective bargaining process. The author discusses how the goals (inputs) of labour and management are converted to outputs via the mechanisms of collective bargaining, and gives his personal opinions on the positions advanced in the Task Force Report.*

The Task Force Report<sup>1</sup> uses the terms "collective bargaining", "collective bargaining system", and "collective bargaining process" loosely and inter-changeably, but nowhere does it define *precisely* what is meant by the "collective bargaining process". For purposes, however, I de-

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The views contained in this paper, whether expressed or implied, are strictly those of the author and do not necessarily reflect official thinking in the Canada Department of Labour. I wish to express my appreciation for the critical comments and suggestions offered by my colleagues Dr. Garfield Clack, Messrs. Emam Khan, Robert Christ and Professor David Ross. However, I personally take full responsibility for whatever short-comings remain in the paper.

1. *Canadian Industrial Relations*, The Report of the Task Force on Labour Relations, Ottawa, the Queen's Printer, 1969. This document will be referred to throughout this paper as the Task Force Report.

fine it as the mechanisms through which the parties in a collective bargaining system convert their goals (or inputs) into the terms and conditions of employment (or outputs). I have indicated elsewhere<sup>2</sup> that the collective bargaining process involves three separate sets of bargaining. There is bargaining among the diverse goal-oriented groups and individuals within the union in order to reach a consensus on the demands that will be made. The management group goes through a similar exercise in order to reach a consensus on what it is prepared to offer. Walton and McKersie refer to these sets of bargaining as intra-organizational bargaining.<sup>3</sup> Finally, there is bargaining between labour and management in order to reach accommodation on their respective proposals.

### Intra-Organizational Bargaining

First, let me deal the intra-organizational forms of bargaining. The Task Force *Report* quite correctly points out<sup>4</sup> that groups of employees with diverse goals must work out a multitude of trade-offs among themselves before and during negotiations. The problem of internal union trade-off will become all the more acute if the *Report's* suggestion<sup>5</sup> on union mergers should become a reality. The diversity of goals to be reconciled would be much greater. Difficulties have been experienced in Canada where a number of unions bargain jointly in one negotiating unit. For example, some of the craft unions in the pulp and paper industry in Eastern Canada split from the joint union group several years ago because they felt that wage differentials for the skilled groups were not being maintained.

The Task Force *Report* should have also indicated that the management has a series of trade-offs to make both before and during negotiations — trade-offs which are more difficult to make when a number of employers comprise the negotiating unit. The construction industry offers a prime example of difficulties in this area.

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2. Alton W. J. CRAIG, *A Framework for Understanding Industrial Relations Behaviour* (A paper presented to the M.B.A. students at McMaster University, December 1965), p. 9.

3. See WALTON and MCKERSIE, *A Behavioural Theory of Labour Negotiations*, McGraw-Hill, 1965.

4. Task Force *Report*, para. 295.

5. *Ibid.*, para. 335.

## Bargaining Between Labour and Management

I have indicated elsewhere<sup>6</sup> that there are various mechanisms for converting the goals or inputs of labour and management into outputs. These take the form of (a) day-to-day interpersonal relationships, (b) the structure of negotiating units and the locus of decision making, (c) the negotiation process, (d) the grievance procedure, continuous committees, etc. and (e) various forms of government or third party intervention such as conciliation, mediation, arbitration, etc. I should like now to discuss each of these briefly.

### Interpersonal Relationships

A serious omission in the *Task Force Report* is a discussion of the day-to-day interpersonal relationships at the shop level. As numerous studies show, custom and informal practices on the "shop floor" are important sources of goal fulfillment for workers and supervisors. Gouldner and others<sup>7</sup> show that formal contract provisions are often adapted by both workers and supervisors in order to accommodate the day-to-day needs of each other. By making concessions to workers on certain occasions, supervisors can expect more from them when the situation demands more than what is considered "normal". By receiving concessions, workers are often willing to offer more than normal efforts when required to do so. By ignoring this aspect of the employment relationships, the *Task Force Report*, in my view, has placed far too much emphasis on alienation and subordination of the individual in the work force.<sup>8</sup>

### The Structure of Negotiating Units

Moving beyond the interpersonal to the inter-organization relationship, we reach the structure of negotiating units through which the parties negotiate the terms and conditions of a collective agreement. We must be careful here not to confuse the *certified* bargaining unit with the *negotiating* unit. In some cases they may be co-terminous, but in other

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6. Alton W. J. CRAIG, *A Model for the Analysis of Industrial Relations Systems*, (A paper presented at the annual meeting of The Canadian Political Science Association, June 7, 1967).

7. For good Canadian study on this subject, see Mr. Flood, *The Local Union Management Relationship — A Case Study*, M.A. Thesis, McGill University, 1964.

8. *Task Force Report*, paras. 300-306.

cases a number of certified bargaining units may constitute the negotiating or decision-making unit. The Task Force *Report* does not appear to make this important distinction since it seems to use the term "bargaining unit" to include both types.

The *Report* makes several recommendations regarding the bargaining structure. It recommends that "where, *on a voluntary basis*, parties to different units can settle upon a special common unit for particular purposes, . . . the Canada Labour Relations Board have discretion to confirm the unit in a certificate . . ." <sup>9</sup> (Emphasis mine). I fail to see the rationale behind such a recommendation. If the parties agree on a voluntary basis to a negotiating unit for particular purposes, this is tantamount to voluntary recognition and provides flexibility for the parties to accommodate major problems of mutual concern.

It is unclear whether the suggested certificate would be issued on the joint request of both parties, on the initiative of the Board or both. If there is a rationale for this recommendation, I would be very much interested in learning what it is. I would also be interested in learning how the above recommendation fits logically into the *Report's* next recommendation that the federal legislation "be amended clearly to accommodate voluntary recognition." <sup>10</sup>

In principle, however, I believe a serious case can be made against certification for specific purposes. Let's assume a certificate is issued for a pension plan or an "industrial conversion" plan, what happens after those plans are worked out to the satisfaction of both parties? Should the same unit wish to negotiate a vacation plan, would a new certificate be needed? It seems to me that implementation of this recommendation would introduce rigidities into labour-management relations.

The Task Force *Report* also favours "the general principle of freedom for the bargaining structure to find its own form subject to the exercise of influence by the state where the public interest is high. <sup>11</sup> Personally, I favour the first part of this recommendation since the parties are best able to determine the level of negotiating units which are most functional to their needs. On an informal basis this already exists in a number of industries, including some under federal jurisdiction such as East Coast

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9. *Ibid*, para. 453.

10. *Ibid*, para. 454.

11. *Ibid*, para. 550.

longshoring and some under provincial jurisdiction such as meat packing, pulp and paper, steel and auto.

From a power point of view, however, the units that are functional to the needs of management may not be the same as those that are functional to the needs of the union. In an integrated multi-plant company, the union and company could be indifferent to the level of the negotiating unit from a power point of view since the closure of one plant could shut down the whole company. However, in terms of consistency and administrative simplicity of basic policies as among plants, it may be functional to both parties to have a multi-plant negotiating unit. However, in a company characterized by autonomous plants where the closure of one does not affect the others — such as in meat packing — it is functional to the union's bargaining power to have a company-wide negotiating unit.

The second part of the recommendation quoted above, which refers to the exercise of influence by the state where the public interest is high, gives me cause for concern. Nowhere does the Report define what constitutes high public interest. If this matter is put into the hands of the Labour Relations Board, what criteria would the Board use to define high public interest? Assuming the Board could develop some kind of criteria, what kinds of negotiating units should it certify in such cases? The *Report* offers no guidance in this respect, and I assume that it is because of the inability of the authors — or anyone else — to specify appropriate criteria and the form of the negotiating unit.

The *Report* quite correctly points out that « present legislation, especially in the provincial jurisdiction, tends to balkanize collective bargaining, often to the advantage of a particular party of interest . . . »<sup>12</sup> The *Report* gives a very good discussion of the problems created by the divided jurisdiction between the federal and provincial levels of government<sup>13</sup>. A good example is negotiations in the « big three » in the meat packing industry which have operated on a national negotiating unit basis ever since World War II. Having studied collective bargaining in that industry for the years 1940 to 1958 as my doctoral dissertation, I am very much aware of the problems created by divided jurisdiction. As long as the parties are able to negotiate national company-wide settlements without the need for conciliation, there is no problem. However, if

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12. *Ibid*, para.

13. *Ibid*, paras 754-756.

direct bargaining between the parties fails to bring about agreement, then the conciliation stage presents serious obstacles. That the parties in the meat packing industry are wedded to national company-wide bargaining and are trying to make it work in spite of divided jurisdictions is evident from the fact that in 1966 a team from the union and Canada Packers jointly visited the various provincial capitals in order to obtain their consent to have conciliation proceedings under the Ontario Legislation satisfy the requirements of the other provinces. In effect, the parties in meat packing have been using the Ontario conciliation proceedings as the effective proceedings for their national bargaining ever since 1947, and have given only *pro forma* adherence to the conciliation requirements in the other provinces. As a result of this practice, the major recommendation in my study of that industry was that it should be brought under federal jurisdiction for collective bargaining purposes.

The Report's<sup>14</sup> suggestion that Section 92 (10) of the BNA Act might be used to bring more industries under federal jurisdiction is not as easily done as the Report suggests. A custom has grown up over the years that this procedure is followed only with the consent of the provinces. The second suggestion of federal-provincial inter-delegation of powers is also fraught with difficulties. Co-operation in this respect depends very largely on the personalities of the political and administrative personnel involved at any one moment. The influence of personalities as a major factor came out quite clearly in my study. Some have gone along with co-operative arrangements while others have opposed them. In a paper presented to CIRRI last year, Harry Waisglass and I suggested that in the present constitutional review this subject be seriously considered as a constitutional matter. I personally still hold to this view, for I believe that it is only through constitutional change that this problem can be satisfactorily resolved.

The Task Force *Report* suggests that in restructuring bargaining units, « the Canada Labour Relations Board has power to join existing units in one certificate, to order joint bargaining where more than two unions or two employers are involved, and to take other steps it considers appropriate to bring the legal determination of units into line with a *natural* determination of the bargaining structure »<sup>15</sup>. (Emphasis mine).

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14. *Ibid*, para. 755.

15. *Ibid*, para. 551.

What does the *Report* mean by « natural » units ? What constitutes a « natural » determination of the bargaining structure ? I submit that the effective bargaining or negotiating unit structure varies with time and circumstances, the issues involved, and the experience and power position of the parties. Nowhere in its *Report* has the Task Force attempted to answer these questions or indicated that it has seriously studied the implications of its recommendation.

### The Locus of Decision Making

Let me now turn to another important aspect of the collective bargaining process, namely the locus of decision making. The Task Force *Report* rightly shows concern with problems connected with the centralization and decentralization of decision making. It asserts that « an important consequence of centralization is absentee decision making . . . »<sup>16</sup> This sweeping assertion is questionable, for there are many instances such as meat packing, and west coast longshoring in Canada where those who are affected by the decision take part in the decision-making process. In both west coast longshoring and meat packing, for example, delegations from the various locals involved take an active part in the centralized collective bargaining process.

The *Report* goes on to warn that « considerable care must be taken to guard against the situation in which participants to the collective bargaining process are mere message bearers and position staters for persons removed from the places where agreements are implemented »<sup>17</sup>. This warning has very serious implications.

I submit that there are two basic issues at stake in the two quotations above. One is that those who take part in the collective bargaining process should be endowed with authority to make commitments on behalf of those whom they represent. The Task Force *Report* quite correctly recommends that participants in contract negotiations have authority to make these commitments. This means that fairly senior persons from management and unions should take part in the negotiating process.

The second major issue involves a trade-off between the union's desire to have effective bargaining power and the rank-and-file demand

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16. *Ibid*, para. 553.

17. *Ibid*



for effective representation of their special interests. The Task Force *Report* fails to recognize the implications of these trade-offs and to point out the options available for their reconciliation. Arnold Weber<sup>18</sup>, in an excellent article on the structure of collective bargaining in the United States, suggests a number of alternatives. First, steps may be taken to decentralize large negotiating units into smaller, independent units. For unions, this strategy generally means a sharp reduction of their bargaining power. Weber points out that where this development has taken place in the U.S., it has been a result of union weakness rather than a desire to accommodate local needs.

Another alternative involves a change in union structure to accommodate the needs of particular groups. This may take the form of special groups, such as craft workers, being on the negotiating committee. Or it may take the form of giving veto power to such groups as has occurred in the auto industry. In Canada, this has been achieved in many cases by having different occupational groups represented in contract negotiations.

A further alternative is to strengthen bargaining procedures by having local union representatives on the central negotiating committee. In this way unions' power and membership needs are reconciled. Another alternative is to permit the consideration of different issues at different levels in the bargaining structure. In the 1965 U.S. steel negotiations there were three-tier negotiations, differentiated between industry-wide, company, and plant issues. Such a procedure allows for an interplay among the important issues at all levels, and for union participation at all levels.

These alternative procedures give promise for rank and file participation in the collective bargaining process, with the simultaneous result that local issues can be resolved and union power maintained to deal with major company or industry issues.

### **The Negotiating Process**

Let me now turn very briefly to the negotiating process. In spite of the fact that there is a vast amount of literature on the interaction between labour and management during contract negotiations, the Task Force

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18. Arnold R. WEBER, « Stability and Change in the Structure of Collective Bargaining », in *Challenges to Collective Bargaining*, Lloyd ULMAN, Ed., Prentice Hall, 1967, pp. 13-36.

*Report* has failed to give any meaningful consideration to this interaction process. For example, the « games » which labour and management play in negotiations were almost totally ignored in the *Report*. In glossing over these processes, the Task Force has failed to examine a highly significant issue, particularly when there is so little public understanding of the process.

Personally, I feel that the analytical part of the Task Force *Report* would have been much better if it had discussed the negotiating process as thoroughly as it discussed inflation.

### **The Schedule and Duration of Negotiations**

The Task Force *Report* notes the adverse effects of delays in the collective bargaining process, particularly those which occur after an agreement has expired<sup>19</sup>. With the increasing complexities of the issues involved in collective bargaining today, I believe the recommendation that the parties be free to strike or lock-out at the expiration of the collective agreement subject to the 60 days' notice to the conciliation service, is a good one. Confronted with the possibility of a strike on the expiration of an agreement, the parties might have a greater incentive to work hard to achieve an agreement before the contract expires. This recommendation coupled with that which would impose a conciliation officer on the parties before a strike or lock-out is permitted<sup>20</sup>, could facilitate earlier settlements, particularly if the conciliation officer is backed up with good objective and impartial research support which could be made available to both parties. I will not deal further with the recommendations on conciliation.

### **The Grievance Procedure**

The Task Force *Report* is quite right in pointing out that « beneficial effects might result from encouraging greater decision making by shop stewards and foremen in the grievance procedure »<sup>21</sup>. Beneficial results might also be achieved by having on-the-spot arbitration decisions to accelerate the handling of grievances. Either or both of these procedures could expedite the handling of grievances and prevent them from accu-

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19. Task Force *Report*, para. 556.

20. *Ibid*, para. 570.

21. *Ibid*, para. 555.

mulating and becoming an obstacle during the periodic contract negotiating process.

### Creative Collective Bargaining

The Task Force *Report* has taken cognizance of some of the new or « creative » developments in collective bargaining<sup>22</sup>, and recommends that « parties consider the wisdom of regular negotiations throughout the term of the collective agreement so that deliberations are not restricted to times when pressures for settlement and apprehension of economic sanctions will produce unhappy compromises and . . . the oversight of issues that do not have critical priority »<sup>23</sup>. In this respect, the *Report* has shown a real awareness of new approaches to the « traditional » form of collective bargaining.

As J.J. Healy and his associates have pointed out<sup>24</sup>, basic to the « new » approach is a strong *commitment* on the part of both parties to identify problems through joint research, to seek solutions as problems arise, to tailor plans according to the parties' own needs, to maintain good communications both vertically within labour and management respectively and horizontally at each level of their interrelationship, and most importantly, to take the initiative to move into areas not considered part of the « traditional » collective bargaining process. According to Healy, the specific plan itself is of secondary importance — the crucial issue in the new approach is *commitment* to identify and solve mutual problems. The Task Force *Report*, by emphasizing « experimental clauses applicable for a specified period, or applicable only in certain plants and areas », focuses more on the mechanisms rather than on the more fundamental principles essential to the successful achievement of « creative » collective bargaining.

### Conclusion

In conclusion, I would like to say that I have attempted — by trying to find my way through a maze of scattered paragraphs throughout the Task Force *Report* — to highlight these parts of the *Report* which deal with the collective bargaining process.

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22. *Ibid*, paras. 298, and 401-402.

23. *Ibid*, para. 562.

24. See *Creative Collective Bargaining* (Meeting Today's Challenges to Labour-Management Relations), J.J. HEALY, Ed., Prentice Hall, 1965, particularly pages 282-288.

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