
Upjohn Institute Press

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Chapter 1 (pp. 1-12) in:

Bargaining for Competitiveness: Law, Research, and Case Studies

Richard N. Block, ed.

Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2003

DOI: 10.17848/9780585469652.ch1

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Collective Bargaining in Context

Comparing the United States and Europe

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This book is an analysis of the relationship among collective bargaining, firm competitiveness, and employment protection/creation in the United States. Collective bargaining, at its essence, is the determination of terms and conditions of employment through negotiation between an employer and a representative of the employer's employees acting collectively as a group; hence the term collective bargaining. Although collective bargaining is generally contrasted with individual bargaining, for the vast majority of employees in the United States, the alternative to collective bargaining is unilateral determination of terms and conditions of employment by the employer, with perhaps a small zone of negotiations over wages or salaries and/or job duties.

Few institutions in the United States generate as much continuing controversy as collective bargaining. Any attempt to change the laws surrounding collective bargaining brings out waves of lobbyists, often attempting to invoke deep value-laden arguments to advocate or oppose legislative changes that serve or disserve the interests of unions and employers (Block 1997). For those who favor collective bargaining, unions and collective bargaining are an indispensable element of a democratic society. Unionism and collective bargaining provide industrial democracy, a means by which employees have a voice in their workplace lives. Only through the power associated with collective representation can employees make that voice heard. They argue that to be effective, such collective representation requires, at times, a willingness to subordinate the interests of the individual worker to the interests of the collectivity of workers. They would disagree that unions and collective bargaining impair economic efficiency, arguing

that in some circumstances unions enhance efficiency, and that the theoretical inefficiency argument incorporates a set of competitiveness assumptions that rarely hold. Moreover, proponents of collective bargaining would argue that even if unions impair economic efficiency, it is only short-run impairment that disappears after employers make adjustments in employment practices and production processes in response to unionism (Block 1995).

On the other hand, while those on the other side of the debate do not, in principle, oppose voluntary unionism, they would argue, as noted, that legally protected unionism and collective bargaining result in economic and political distortions that are inconsistent with efficiency and democracy. Collective bargaining, it is argued, gives disproportionate labor market power to employees, resulting in higher wages to unionized workers (e.g., supercompetitive wages) than they would receive in a competitive labor market in the absence of collective bargaining. Unionism also results in lower employment in the unionized sector than would otherwise occur, as the high unionized wages and terms and conditions of employment discourage employers from hiring workers. This low employment in the unionized sector causes unemployed workers to shift to the non-union sector, resulting in excess labor supply and lower wages for those workers. Thus, as compared to a competitive labor market, the distortionary effects associated with collective bargaining include lower employment for unionized workers, lower wages for nonunion workers, lower profits for shareholders, and less investment and economic growth.

Politically, to the extent that unionism requires the subordination of the interests of individual employees to a larger group, or collectivity of employees, it can be seen as inconsistent with individual rights. In addition, by forcing employers to negotiate with the employees' representative over matters affecting employment, collective bargaining impairs the property rights of employers to allocate their resources in the way that they see fit.

Despite concerns raised by skeptics of unionism and collective bargaining, all developed, industrialized, democratic countries have created collective bargaining systems (U.S. Department of State 1999). The values underlying these systems, however, differ across countries, reflecting, to a greater or lesser extent, the views expressed above. Although this book focuses solely on collective bargaining in the

United States, in a world of globalization, a complete understanding of the U.S. collective bargaining system involves placing the system in a worldwide context. This is best done by comparing the values underlying the collective bargaining system in the United States with values underlying the collective bargaining systems in other industrialized countries; we discuss this in the next section of this chapter. The following section undertakes a similar examination of Europe as an example of industrialized democracies with collective bargaining systems exhibiting a different set of values. The final section provides a summary.

VALUES AND EMPLOYMENT IN THE UNITED STATES

As noted, collective bargaining may be defined as the establishment of terms and conditions of the employment relationship through negotiation between an employer and a (legally recognized) representative of the employer's employees acting collectively as a group. There are two key elements to collective bargaining: the collectivization of employees and the employment relationship. In the United States, both of these elements are associated with certain values, premises, or assumptions that determine the status of collective bargaining. These values and assumptions are so ingrained in U.S. culture that it may be difficult to recognize them as values or assumptions that may not be universally accepted. Nevertheless, they do define how collective bargaining is viewed in the United States. Each of these elements will be examined through the lens of values.

Collectivism and the Employment Relationship

In the United States, a very high value has traditionally been placed on individualism. Indeed, as has been observed in a study of individualism and life in the United States, "individualism lies at the very core of American culture" (Bellah et al. 1987, p. 142).

In the context of collectivizing the employment relationship, the primacy of individualism means that the rights of individuals are gen-

erally superior to other rights, and that individual rights take precedence over other rights when there is a perceived conflict.

American culture views the exercise of property rights as a direct derivative of individual rights. The basic principle is that individuals should be free to use and dispose of their property as they see fit, so long as no laws are violated. In other words, freedom of contract is highly valued. Individuals should be free to pursue their economic interests, generally free from restraints.¹

While one can readily conceive of people possessing individual rights, corporations have generally been viewed as legal individuals, with, for the most part, the same panoply of individual rights possessed by persons. Thus, corporations, which are fundamentally voluntary collectivities of shareholders, may pursue their individual (corporate) interests with the same vigor as persons.

As a result, the terms and conditions of the typical employment relationship are established by the agreement of two individuals, the employee and the corporation/employer, each exercising individual rights to obtain a mutually agreeable bargain that is in their respective interests, although neither party can include terms or conditions of employment that are illegal. Indeed, this individual determination of the terms and conditions of employment is the “default” or “normal” process in the United States for establishing the terms and conditions of employment.

Operating in such a milieu, unions, as collectivities of employees, are at a cultural disadvantage. Collectively determined terms and conditions of employment are considered the exception to the “normal” process of individual determination. Collectivization occurs only if a majority of the employees in *unit* decide to collectivize the relationship through the established legal procedures. Even if the employees decide to collectivize, the choice may be rescinded at appropriate times (Hardin and Higgins 2001).

Over the years, there has been a great deal of legal debate and positioning, both legislatively and before legal tribunals, regarding the proper scope of collective activity. This is because in order to act as an effective collectivity and as a representative of all employees, a union must necessarily aggregate the interests of all employees into a unified position. This aggregation means that some employees may view themselves as disadvantaged vis-à-vis the terms and conditions of

employment (that are perceived to be) available to them in the absence of collectivization. The point is that on occasion, the union must subordinate the interests of the individual to the interests of larger group. In addition, because of an obligation to negotiate with a union, the collective bargaining process places constraints on employer use of its property.

The result is that unionism and collective bargaining often conflict with two legal principles: individual employee rights and employer property rights. With respect to individual employee rights, although unions have been granted some privileges to pursue collective interests, there are some constraints on union behavior in circumstances in which such behavior may be viewed as being inconsistent with individual rights, as U.S. labor policy attempts to find a balance between collective action and individual rights that is consistent with its values. Thus, on the collectivity end of the continuum, a union, when chosen as the legal bargaining representative, represents all employees in the unit, and no employee may agree with the employer on terms and conditions of employment that are inconsistent with those on which the employer and the union have agreed. The union and the employer are also authorized to negotiate a union security clause, by which the employee must become a union member or at least pay dues and fees equal to those paid by a member. A union may also compel a member to follow its internal rules, including rules associated with working during a duly authorized strike.

On the individualism end of the continuum, as noted, a union shop provision may not compel union membership and adherence to the union's internal rules; it may compel only monetary payments. Moreover, those payments may be reduced by an amount that goes to political or non-collective bargaining activities of the union. Finally, states have the right to prohibit such provisions. Unions may not limit the rights of persons to resign from the union, thus constraining the extent to which working during a strike can be restrained. Unions may not use dues and fees collected under a union security clause for political purposes, as such use might be viewed as inconsistent with the employee's freedom of speech and association.

The conflict between employee collective activity and employer property rights has also been an attempt to strike a proper balance. On the employee collectivity end of the continuum, employees have the

right to engage in organizational activity at the workplace on nonwork time, and the employer must negotiate over terms and conditions of employment with a union representing the employees. On the property rights end of the continuum, the employer may generally prohibit a union (distinct from employees) from organizing on its property and may oppose a union organizational attempt by legal means. An employer may also make major changes in the structure of its business without negotiating with the union over those changes.

The Employment Relationship

In the United States, the employment relationship has always been viewed as primarily an economic transaction rather than a relationship that incorporates social content. This view is exemplified by the adherence of the United States to the doctrine of employment-at-will: as a general principle, either party can terminate the employment relationship at any time. In other words, the employment relationship is value-based; it exists only so long as that relationship creates sufficient value for both the employer and the employee. When the value created is insufficient for just one of the parties, the relationship can be terminated with no required notice.²

It is also telling that there are few legal or societal requirements associated with the level of terms and conditions of employment. With the exception of the substantive requirements to pay a minimum wage and overtime for certain employees who work more than 40 hours in a week or 80 hours over two weeks, the bulk of U.S. employment policy, embodied in law, generally addresses only discrimination and differential treatment as between groups of employees viewed as being favored and employees in “protected groups.” Thus, there is no law requiring that employers provide health insurance for employees. But the law does prohibit employers who choose to provide health insurance from providing greater levels of coverage for males than for females, for example. The law does not state the wage the employer must pay, but the law prohibits an employer from paying female employees less than male employees, and vice versa.³

This principle of nondiscrimination is consistent with the values the United States places on individualism and productivity. As a general rule, employees should be hired and rewarded based not on immu-

table characteristics, but rather on business considerations and the value they create. Thus, employment policy is not truly designed to address social concerns. Rather, it is designed to ensure that the labor market functions efficiently, with employment-related decisions based on productivity rather than personal characteristics unrelated to value.

VALUES AND EMPLOYMENT IN EUROPE

With a market that rivals the size of the United States, the European Union (EU) is a dominant force in the global economy. Moreover, with the recent monetary union and eventual expansion into eastern Europe in the next five years, the EU will play an increasingly important role in the industrialized economies. As a confederation of nations, the political and regulatory frameworks within the EU differ across countries. Some countries reflect market liberalism and a *laissez-faire* approach to regulation, while others emphasize a collectivist or corporatist approach to policy (Leat 1998). Despite these differences in regulatory orientation, the European Commission has actively sought to harmonize labor standards across member states. Harmonizing labor standards through the policy-making process and the binding directives from the European Commission have a significant impact on the rights of employees on issues of participation, employment security, and collective bargaining across European countries. Moreover, the values behind these standards reflect a different approach to collectivism and individualism and the employment relationship when compared with the United States. In this section, we contrast the values in Europe regarding collectivism and the employment relationship with those of the United States discussed previously.

Collectivism and the Employment Relationship

In the United States, individual employees are given the right to form a labor union or collective body to represent them at the workplace. The existence of labor unions comes from the desire of individuals who vote to form or disband them. Labor unions have no legal status at the workplace apart from that given to them by individual

employees. In addition, their role in society is largely economic. They represent workers in their negotiations with companies about wages and working conditions.

Although labor unions engage in political activity in the United States, they are viewed no differently in the political process than any other interest group. Labor unions in the United States are not given special roles in policy making and are not perceived as serving a social function.

In contrast, collective organizations in Europe are afforded rights apart from individuals and are given explicit roles as representative organizations in EU policy making. In Germany, they are given rights in the constitution to exist and carry out activities that serve their underlying purposes (Berghahn and Karsten 1987). In addition, labor unions across Europe do not have to win elections in order to exist or negotiate with management. Labor unions in many European countries often negotiate with employer associations in centralized bargaining structures where contracts are extended to workers in all firms within the employer association. Labor unions in some European countries serve quasi-public roles. For example, in Sweden and Belgium, labor unions manage the unemployment insurance system (Visser 1996). In France, labor unions manage a number of social security funds, including unemployment benefits and work accident insurance (Graham 2000). Moreover, in Germany, labor unions participate with employer associations in determining the curriculum for various occupations in the German system of vocational training (Berg 1994).

Reflecting the role played by labor unions and employer associations within member countries, the EU has integrated the input of labor and employer peak associations into the policy-making structure of the EU. Prior to instituting directives, the European Commission consults with labor and employer representatives in an effort to build consensus. Social directives that affect the employment relationship, such as working time or part-time work, will come into effect only after a negotiated consensus emerges with labor and employer representatives. This approach to policy making reflects the value attached to consensus, consultation, and corporatism within Europe and the European Union (Sciarra 1999).

The key point regarding the discussion above reflects the fundamental differences in the views of unionism between the United States

and the EU. Whereas labor unions in the United States are viewed as having a strictly economic function, labor unions and employer associations in Europe are commonly referred to as *social partners*. These partners are engaged in a social dialogue within a social market economy. The word *partners* implies equality between labor and employers in the employment relationship. While the bargaining power between the two may not always be equal, the term *social partners* describes how both labor and employers are seen as having equal legitimacy within the society. The explicit recognition that the European economy is a social market economy rather than simply a market economy is reflective of how the employment relationship is viewed in Europe.

The Employment Relationship

Unlike the United States, which gives virtually total authority to property owners or shareholders over business and investment decisions, governments in Europe are much more willing to support the rights of stakeholders, such as labor unions and workers, to a say in business and employment-related decisions. For example, in Germany employees have the opportunity to elect a works council that has rights to information, consultation, and codetermination on various employment-related issues. Management must consult with works councils on issues regarding personnel planning, such as implementing new technology or changing the organization of work. However, on issues of pay schemes or work schedules, management and the works council must codetermine the policy. Similar rights of participation exist in the Netherlands, Sweden, Belgium, France, Denmark, Austria, and Switzerland.

Recognizing that these national rights to participation and consultation can be diminished in a global economy where relevant corporate decisions fall outside their jurisdiction, the EU implemented a European-wide works council directive in 1994 and later extended its coverage to include more countries in 1997. The European Works Councils (EWCs) are established within large, multinational companies operating in Europe. These councils do not give employees or trade unions the same extensive rights to codetermination enjoyed by workers in national legislation. Instead, EWCs' main objective is to provide employees with information and allow for consultation with

management. The establishment of EWCs by the EU illustrates its willingness to support the rights of stakeholders to have a voice in the employment relationship between workers and companies operating in Europe. The European Works Council Directive also shows the types of labor and social standards the EU wants to harmonize across countries. With monetary union bringing countries closer together, greater harmonization of labor and social standards is likely to follow.

The EU is also strengthening the role of collective bargaining in the implementation of European legislation. European Union directives often use collective bargaining as an instrument of flexibility. Directives regarding health and safety and working time use collective bargaining as a means of negotiating flexibility into broad multinational legislation (Veneziani 1999).

SUMMARY

Rather than provide the reader with a full description of collective bargaining in the United States, the discussion in this chapter is intended to demonstrate that the assumptions underlying work, employment, and employee collectivism in the United States are value-based conceptions of employment rather than universally recognized truths. United States culture values individualism, property rights, and a transaction view of employment, and that is reflected in American conceptions of employment and the narrow and circumspect role of collective bargaining and unionism in the employment relations system. On the other hand, European culture values collectivism more than the United States culture, and Europe is more willing than the United States to see employment as having a social purpose as well as an economic purpose. Thus, unions and collective bargaining play a much greater role in the European employment system than in the United States employment system.

Thus, as one reads the case studies in this volume, one should understand that they reflect the U.S. collective bargaining system and U.S. conceptions of employment. Moreover, we will better understand the collective bargaining system in the United States when we realize

that there are other systems in industrialized democracies with a different set of values and assumptions.

Notes

This research was supported in part by the International Labor Organization under contract no. 5453. The views expressed in this book are those of the authors and do not necessarily reflect the views of the International Labor Organization.

1. Freedom of contract is limited, as there are some “contracts” that the United States has determined are sufficiently undesirable as to be unlawful. Thus, an employer and an employee may not agree to pay a wage below the legal minimum, even if the employee would accept such a wage.
2. In economic terms, the value of the employment relationship will be sufficient for the employer to maintain it when the employee’s marginal revenue product, the additional revenue produced from an additional unit (hour) of that employee’s labor is at least sufficient to cover the employee’s compensation. For the employee, the value of the employment relationship will be sufficient to maintain it when the employee’s compensation is at least equal to his or her reservation wage, or the minimum level of compensation the employee must receive to keep the job. The reservation wage is influenced by such factors as fixed expenses associated with employment (e.g., commuting, child care) and by the wage rate the employee could obtain with another employer.
3. In contrast, there is no law prohibiting employers from discriminating against workers on the basis of employment status. Thus, full- and part-time workers performing the same work can be paid differently.

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Bargaining for Competitiveness

Law, Research, and Case Studies

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Editor

2003

W.E. Upjohn Institute for Employment Research
Kalamazoo, Michigan

Library of Congress Cataloging-in-Publication Data

Bargaining for competitiveness : law, research, and case studies /

Richard N. Block, editor.

p. cm.

Includes bibliographical references and index.

ISBN 0-88099-261-1 (pbk. : alk. paper) — ISBN 0-88099-262-X

(hardcover : alk. paper)

1. Collective bargaining—United States. 2. Collective bargaining—European Union countries. 3. Job security—United States. 4. Job security—European Union countries. 5. Labor unions—Law and legislation—United States. 6. Labor unions—Law and legislation—European Union countries. 7. Wages and labor productivity. 8. Labor economics. 9. Competition, International. 10.

Globalization—Economic aspects. 11. Comparative industrial relations.

I. Block, Richard N. II. W.E. Upjohn Institute for Employment Research.

HD6508.B357 2003

331.89'0973—dc21

2003004639

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Kalamazoo, Michigan 49007-4686

The facts presented in this study and the observations and viewpoints expressed are the sole responsibility of the authors. They do not necessarily represent positions of the W.E. Upjohn Institute for Employment Research.

Cover design by Alcorn Publication Design.

Index prepared by Nancy Humphreys.

Printed in the United States of America.

Printed on recycled paper.