Fordham Law Review

Volume 25 | Issue 2 Article 7

1956

Duty of a Labor Union to Bargain Collectively in Good Faith—An Unresolved Problem

ranty-allergy problem the ends of distributive justice demand a maximum reasonable protection for the buyer. In the implied warranty under discussion, reasonable fitness does fairly extend to minority classes of buyers who may be injured from the use of a processed product. The maxim *caveat venditor*, which concisely characterizes the present law of implied warranty in sales, is consistent with a rule calling for protection for the so-called allergic buyer, who is very often in fact one of the many who would be similarly injured. With this basic goal as a guide, the application of the reasonable fitness required by statute over the larger area suggested in this article can be realized with the best interests of both parties to the sales transaction being preserved.

THE DUTY OF A LABOR UNION TO BARGAIN COLLECTIVELY IN GOOD FAITH — AN UNRESOLVED PROBLEM

I. Introduction

An affirmative duty to bargain collectively and, with it, an obligation to carry out that duty in "good faith" devolved upon labor organizations with the passage in 1947 of the Taft-Hartley amendments[1] to the National Labor Relations Act, commonly called the Wagner Act.[2] On its face the placement of such an affirmative duty on a union would seem superfluous.[3] This article analyzes the wording of the statute, traces its legislative history, and reviews the cases which have applied it in governing the conduct of labor unions. The problem is to determine the nature of the union's duty particularly as it is circumscribed by a statutory obligation of good faith.

The Supreme Court of the United States recently granted certiorari in two cases which involve the good faith obligation in collective bargaining.[4] In both cases the National Labor Relations Board found a party guilty of the unfair labor practice of refusing to bargain collectively by finding a violation of that party's good faith obligation.[5] In both cases a Court of Appeals reversed the Board's finding, refused to enforce the Board's order, and held that the charged party had not failed to fulfill the good faith obligation.[6] The *Truitt Mfg. Co.*[7] case involved the employer's obligation while the *Textile*

1. 29 U.S.C.A. § 158(b)(3), (d) (Supp. 1955).

2. 29 U.S.C.A. §§ 151-66.

3. "It seems to me that unions would seldom refuse to engage in collective bargaining since that is one of the primary, if not the primary, reasons for their existence. . . ." 93 Cong. Rec. 1844 (1947).

4. NLRB v. Truitt Mfg. Co., cert. granted, 350 U.S. 922 (1955); NLRB v. Textile Workers Union, CIO, cert. granted, 350 U.S. 1004 (1956).

5. Truitt Mfg. Co., 110 N.L.R.B. 856 (1954); Textile Workers Union, CIO, 103 N.L.R.B. 743 (1954).

6. NLRB v. Truitt Mfg. Co., 224 F.2d 869 (4th Cir. 1955); Textile Workers Union, CIO v. NLRB, 227 F.2d 409 (D.C. Cir. 1955).

7. See notes 4, 5, 6 supra.

Workers Union case[8] involved the union's obligation. In the *Truitt* case the Supreme Court recently rendered a decision to which three justices dissented in part.[9] The Court reversed the Circuit Court decision and upheld the Board's finding and order.[10] The *Textile Workers Union* case[11] will be argued before the Supreme Court shortly. The history of these cases suggests that the courts and the National Labor Relations Board do not entirely agree upon the nature of the duty to bargain when circumscribed by an obligation of good faith.

A multitude of cases have involved the employer's duty to bargain and their cumulative effect in the evolution of a concept applicable to employers has been digested in a number of articles[12] because the duty first devolved *only* upon the employer in 1935 with the passage of the Wagner Act.[13] Since the union's duty was created more recently,[14] fewer cases have interpreted it.[15] For these reasons this discussion is confined to a consideration only of the union's duty to bargain and good faith obligation. The express statutory obligation of good faith superimposed upon the duty to bargain of *both* the employer and the union first appeared in 1947 in the definition of collective bargaining as set forth in section 8(d) of the Taft-Hartley amendments.[16] An analysis of this section somewhat aids the discovery of the nature of the good faith obligation which it imposes.

II. Diagrammatical Analysis of Section 8(d)

The following diagrammatical reproduction of the pertinent portions of section 8(d) presents the precise wording of the section with added headings (italicized) to reveal the relationship of the component phrases and clauses.

"For the purposes of this section,

A. In General

To bargain collectively is:

1. the performance of the mutual obligation of the employer and the representative of the employees.

a. to meet at reasonable times and

b. confer in good faith with respect to wages, hours, and other terms and conditions of employment, or

2. the negotiation of an agreement, or any question arising thereunder, and

8. Ibid.

9. NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956).

10. Ibid.

11. NLRB v. Textile Workers Union, CIO, cert. granted, 350 U.S. 1004 (1956).

12. Smith, The Evolution of the "Duty to Bargain" Concept in American Law, 39 Mich. L. Rev. 1065 (1941), and cases cited therein; Annot., 147 A.L.R. 7 (1943), and cases cited therein; Note, 61 Harv. L. Rev. 1224 (1948), and cases cited therein.

13. 29 U.S.C.A. § 158(5), as amended, 29 U.S.C.A. § 158(a)(5) (Supp. 1955).

14. 29 U.S.C.A. § 158(b)(3) (Supp. 1955).

15. Cases cited notes 40, 41, 42, 43, 44, 45, 46, 48, 50, 51, 55, 57, 59, 60, and 63 infra.

16. 29 U.S.C.A. § 158(d) (Supp.1955).

3. the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation [presumably the obligation under A(1) above] does not compel either party to agree to a proposal or require the making of a concession:

B. In Particular

Provided, That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean . . . . "

This diagram reveals that the words "good faith" are used only in modification of the verb "to confer". Such a grammatical construction would seem to suggest that only acts or conduct which affect the subjective attitude of the parties toward the process of conferring should become indicia of good faith or the lack of it. This construction would further seem to suggest that the other elements of the definition which the words "good faith" do not modify should constitute distinct and separate objective requisites of the duty to bargain collectively. Hence a failure to meet at reasonable times or a refusal to execute a written contract incorporating any agreement reached should, as the Act provides, constitute in themselves a non-fulfillment of the definition and thus it would seem a failure of the duty to bargain collectively. These then should not be thought of merely as indicia of a lack of good faith. Likewise a direct refusal ever to meet, or ever to confer with respect to wages, hours, and other terms and conditions of employment, or ever to negotiate should be viewed as a failure of the duty to bargain without reference to the good faith element in the definition. Finally, the definition expressly eliminates any compulsion to agree to a proposal or any requisite of making a concession, and this suggests that these should not be considered as indicia of good faith, or the failure so to do, as a lack of it.

Though these conclusions would seem to flow from the grammatical construction of the definition as it was passed in Congress, their validity would be conditioned upon their consistency with the views expressed by Congress in reference to this section as well as section 8(b)(3) which imposed the duty to bargain on the union. Hence a consideration of the legislative history of these sections becomes germane.

III. Legislative History

The proposed House of Representatives amendment to the Wagner Act,[17] both as reported and passed, contained a provision which made it an unfair labor practice for a recognized or certified union to refuse to bargain collectively.[18] As stated in the report of the House committee, this had the effect of making ". . . the standards and definitions which have been discussed in relation to section 2(11) apply in case of unions, as well as in the case of

17. H.R. 3020, 80th Cong., 1st Sess. (1947).

18. Id. § 8(b)(2).

employers."[19] Section 2(11) of the House bill[20] contained by way of definition of collective bargaining, a number of requirements applicable equally to unions and employers, and some which applied only to unions. Sub-section (A) of 2(11)[21] required that, if an agreement was in effect which provided a procedure for the settlement of disputes, the parties must follow such procedure. Sub-section (B)[22] contained a detailed description of the collective bargaining procedure, which included a specified number of meetings within a stated period. It also included, as a condition for any lockout or strike, a procedure for notifying the employees of the employer's last offer and for conducting a secret ballot as to whether such offer should be rejected and a strike called. In addition, it specified and limited the subjects which could be discussed in the collective bargaining procedure and excluded therefrom such subjects as welfare funds, pensions, checkoff, and a number of other commonly bargained benefits. Section 2(11) rather conspicuously omitted any requirements that the bargaining be in good faith.[23]

Thus, the imposition of the duty to bargain collectively on the union served, in the House bill, as a device to make effective a series of defined proscriptions against union action. The bill did not directly make the proscribed actions unfair labor practices, but instead required unions to bargain collectively and then defined collective bargaining as refraining from engaging in the proscribed practices.

The proposed Senate amendment to the Wagner Act[24] also contained a provision making a union refusal to bargain collectively an unfair labor practice.[25] It did not, however, contain the elaborate definition of the collective bargaining process contained in section 2(11) of the House bill's definition of collective bargaining.[26] This definition included, as the House bill did not, the notion of good faith. It also included limitations upon the right to strike. Instead of the previously noted last offer ballot, however, section 8(d) limited the right to strike by a requirement that notices be given to state and federal mediation services and that there be a sixty-day cooling off period.[27]

Thus, section 8(b)(3),[28] in conjunction with section 8(d) of the Senate bill, performed only in part the same function as the similar provisions in the

19. H.R. Rep. No. 245, 80th Cong., 1st Sess. 31 (1947).

20. H.R. 3020, 80th Cong., 1st Sess. § 2(11) (1947); N.L.R.B., Legislative History of the National Labor Relations Act pt. I, at 36-40, 163-67 (1947).

21. Id. § 2(11)(A).

22. Id. § 2(11)(B).

23. See H.R. Rep. No. 245, 80th Cong., 1st Sess. 19-23, 30-31, 69-71 (1947); N.L.R.B., Legislative History of the National Labor Relations Act pt. I at 310-14, 321-22, 360-62 (1947).

24. S. 1126, 80th Cong., 1st Sess. (1947).

25. Id. § 8(d); N.L.R.B., Legislative History of the National Labor Relations Act pt. I at 114-16 (1947).

26. Ibid.

27. Ibid.

28. Id. § 8(b)(3); N.L.R.B. Legislative History of the National Labor Relations Act pt. I at 112 (1947).

House bill by placing limitations on the right to strike. The committee reports do not indicate whether anything more specific was intended by these sections. The majority report simply states that the obligation imposed by section 8(b)(3) upon unions ". . . is the same as that imposed upon employers by Section 8(a)(5)."[29] The minority views of the committee apparently did not regard the provision as significant enough to comment upon either favorably or unfavorably.

In the debate on the Senate floor, a few Senators indicated what they had in mind by the requirement that a union bargain collectively. Their comments give an indication that at least some of the proponents of these sections believed that union adamancy and the adoption of a "take it or leave it" attitude would negate the good faith requisite of section 8(d).[30] They also suggest that little critical analysis was given to the component requisites and at least one Senator was dubious as to the feasibility of enforcement of a subjective good faith requisite.[31]

Congress resolved in conference the differences between the Senate and the House bill, with respect to the nature of the duty to bargain collectively, largely by adopting the Senate version. The bills differed very little in the specific provisions which required unions to bargain collectively. The major differences existed in the definition of collective bargaining. On this issue the House conference report first set forth the detailed procedures which had been proposed by the House and then described the Senate amendment in these words:

"The Senate amendment did not in the definition section, contain any definition of 'collective bargaining', but did contain (Sec. 8(d)) a provision stating what collective bargaining was to consist of for the purposes of Section 8. It was stated as the performance of the mutual obligation of the parties to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or with respect to the negotiation of an agreement, or with respect to any question arising thereunder; and the execution of a written contract incorporating any agreement reached if desired by either party. This mutual obligation was not to compel either party to agree to a proposal or require the making of any concession. Hence, the Senate amendment, while it did not prescribe a purely objective test of what constituted collective bargaining, as did the House bill, had to a very substantial extent the same effect as the House bill in this regard, since it rejected, as a factor in determining good faith, the test of making a concession and thus prevented the Board from determining the merits of the positions of the parties."[32]

The Conference committee then reported that the Conference agreement fol-

29. S. Rep. No. 105, 80th Cong., 1st Sess. 22 (1947).
30. 93 Cong. Rec. 4138 (1947).
31. 93 Cong. Rec. 5005 (1947).
32. H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 34 (1947).

lowed in general the provisions of the Senate proposal, with certain clarifying changes which did not affect this portion of the definition.

This phraseology of the definition certainly does not conflict with, and even tends to support, the conclusions drawn from the foregoing analysis of section 8(d). The most that this legislative history indicates is that little thought was given to the precise nature of the duty which sections 8(b)(3) and 8(d) imposed on unions. Certainly it reveals a paucity of consideration as to the application of the component requisites of the definition to a determination of whether a union has failed to fulfill its duty to bargain. Only a review of the cases in which the courts and the National Labor Relations Board have been called upon to apply it offer any real clue to its meaning today.

IV. Review of Cases

The legislative history of section 8(b)(3) of the Taft-Hartley amendments to the Wagner Act and the very wording of section 8(d) of those amendments indicate that the nature of the duty to bargain which is imposed upon unions is identical with the duty placed upon the employer in section 8(5) of the Wagner Act and now section 8(a)(5) of the Taft-Hartley amendments. This should follow, at least in so far as the conduct involved is clearly analogous, as suggested in one case dealing with the union's duty.[33] Hence, some consideration of the nature of the good faith obligation as expounded in a few of the recent cases involving the employer's obligation should be helpful since the courts and the Board have been influenced by the reasoning developed by the employer cases.[34] ". . . [S]incerity of effort and intention to arrive at and consummate an agreement . . ." become the elements of the good faith requisite.[35] The ultimate issue as to whether the party conducts ". . . its bargaining negotiations in good faith involves a finding of motive, or state of mind which can only be inferred from circumstantial evidence."[36]

A review of the cases which have considered the union duty to bargain fall generally within one or more of six types of conduct involved in the charged violation of section 8(b)(3). Some of them refer to the good faith requisite of section 8(d) in order to find a proscription of the conduct while others find the conduct to be a more direct violation of the section. In analyzing these cases it becomes useful to discover, where possible, which requisite of collective bargaining the court or Board has held that the union has failed to fulfill.

A. Insistence Upon an Unlawful Provision

These cases were decided under what has been asserted as a well-established principle: the Act does not permit ". . . the insistence, as a condition precedent to entering into a collective bargaining agreement, that the other party to the

33. International Brotherhood of Teamsters, 87 N.L.R.B. 972 (1949).

34. See Note, 61 Harv. L. Rev. 1224 (1948) (analysis of cases involving employer's good faith obligation).

35. NLRB v. National Shoes Inc., 208 F.2d 688, 691 (2d Cir. 1953).

36. NLRB v. Reed & Prince Mfg. Co., 205 F.2d 131, 140 (1st Cir. 1953).

negotiations agree to a provision or take some action which is unlawful or inconsistent with the basic policy of the Act."[37] Some of these cases by the language used indicate that this conduct constitutes a direct violation of section 8(b)(3) and does not merely indicate a failure to fulfill the good faith obligation. The Board has reasoned that such intransigence did not reflect "an intention to avoid coming to *any* agreement"[38] by finding that substantial evidence did not support a finding that the ". . . adamant position with respect to the hiring hall evinced a mind closed to persuasion and without sincere purpose to find a basis for agreement, an attitude which the Board and the courts have found to be incompatible with good-faith bargaining."[39] The well-established principle regarding insistence upon an illegal provision disposed of these cases as a per se violation.[40] In another case, in which other conduct was held to be a reflection on the good faith obligation, the insistence upon an illegal provision was held to be a more direct violation since the Board concluded that ". . . such a deliberate frustration of the operation of the bargaining process violates the Act, in that it reflects a complete negation of that duty to bargain which the amended Act imposes upon statutory representatives of employees."[41]

Other cases suggest that such an insistence violates the good faith obligation and in that manner constitutes a refusal to bargain. One of these cases indicates what is meant by good faith in section 8(d): "By finding lack of good faith in such insistence I do not mean that it is done with 'evil purpose', but merely that it is an insistence on inclusion of provisions without the scope of proper negotiation between the parties which may constitute a bar to effecting an accord."[42] Still other cases give no indication as to whether they find the insistence to be in direct violation or a violation by failure to fulfill the good faith obligation.[43] However, such conduct was not held to amount to a

37. National Maritime Union, CIO, 78 N.L.R.B. 971, 981-82 (1948).

38. Ibid.

39. Ibid.

40. National Maritime Union, CIO, 78 N.L.R.B. 971 (1948) (illegal hiring hall provision); accord, American Radio Association, CIO, 82 N.L.R.B. 1344 (1949) (illegal hiring hall provision); National Maritime Union, CIO, 82 N.L.R.B. 1365 (1949) (illegal hiring hall provision).

41. Chicago Typographical Union, 86 N.L.R.B. 1041, 1042 (1949) (a provision which in effect would discriminate against nonunion employees), followed, American Newspaper Publishers v. NLRB, 193 F.2d 782 (7th Cir. 1951); accord, International Typographical Union, 87 N.L.R.B. 1215 (1949) (a provision which in effect would discriminate against nonunion employees); International Typographical Union, 87 N.L.R.B. 1418 (1949) (a provision which in effect would discriminate against nonunion employees); International Typographical Union, 104 N.L.R.B. 806 (1953) (a provision which in effect would discriminate against nonunion employees).

42. Penello v. United Mine Workers, 88 F. Supp. 935, 942 (D.D. Cir. 1950) (invalid closed shop and benefits restricted to union members); cf. Local 421, Amalgamated Meat Cutters, 81 N.L.R.B. 1052 (1949) (illegal closed shop clause).

43. Local 1664, International Longshoreman's Ass'n, 103 N.L.R.B. 1217 (1953) (illegal hiring hall provision); Essex County and Vicinity District Council of Carpenters, 95 N.L.R.B. 969 (1951) (illegal closed-shop provision).

refusal to bargain if the union did not insist upon inclusion of the illegal provision[44] even though the final contract included it.[45] Furthermore, the Board found no refusal, and did not even designate as an indicium of lack of good faith, a union's adamant insistence upon a hiring hall provision which it did not find to be unlawful.[46] Since the provision was insisted upon as a condition precedent to any bargaining,[47] this would at least seem to be a refusal to confer with respect to this condition of employment.

B. Refusal to Be Bound for More Than a Short Period

In a case in which one of the provisions insisted upon by the union would permit the union to suspend or abrogate the contract, the court held that ". . . good faith does not permit such extraneous and unlawful provisions to be insisted upon by an employee group as a condition of a wage agreement."[48] The court held, "Collective bargaining under the Act therefore has two essential elements: (1) conferring with respect to wages, hours, and other terms and conditions of employment, and (2) that such conferring shall be done in good faith."[49] The Board in another case held that insistence upon a "60-day cancellation clause" in the contract did not reflect a good faith attempt to negotiate a mutually satisfactory contract, ". . . establishes a continuing disregard . . . of the good-faith standards of bargaining required by the Act . . .", and that unwillingness to be bound for more than 60 days rather than the traditional term in itself raises a presumption that the party is not bargaining in good faith.[50]

C. Seeking to Bargain Individually with an Employer Represented in a Multi-Employer Bargaining Unit

The Board has held that seeking to bargain individually with an employer represented in a multi-employer bargaining unit is not a violation of section 8(b)(3).[51] This was held in a case in which violation of section 8(b)(3) was not charged, but was alleged as a defense to a charge that an employer

44. Nassau County Typographical Union, AFL, 87 N.L.R.B. 1263 (1949), aff'd, 105 N.L.R.B. 902 (1953) (illegal policy merely alternative to acceptance of valid previous oral contract).

45. International Longshoreman's Union, CIO, 90 N.L.R.B. 1021 (1950) (unlawful hiring provisions).

46. National Union of Marine Cooks, 90 N.L.R.B. 1099 (1950).

47. Ibid.

48. Penello v. United Mine Workers, 88 F. Supp. 935, 941 (D.D.C. 1950) (also involved invalid closed shop and other discriminatory provision).

49. Id. at 939.

50. Chicago Typographical Union, 86 N.L.R.B. 1041, 1043 (1949) (also involved illegal provision), followed, American Newspaper Publishers v. NLRB, 193 F.2d 782 (7th Cir. 1951); accord, International Typographical Union, 87 N.L.R.B. 1215 (1949); International Typographical Union, 87 N.L.R.B. 1418 (1949); International Typographical Union, 104 N.L.R.B. 806 (1953).

51. Morand Bros. Beverage Co., 91 N.L.R.B. 409 (1950).

unlawfully discharged employees in violation of section 8(a)(1) and 8(a)(3) of the Act[52] because the employees of one member of an employer bargaining association called a strike after an unsuccessful attempt to bargain with that employer individually. The Board agreed that the union was required to bargain with the associations as the agent of the employers until an impasse was reached. A majority of the Board found that the union had bargained with association representatives until negotiations collapsed and, in proposing negotiations with individual employers, did not seek to exclude association representatives.[53]

In one of its comments on the dissenting opinion which had suggested that the union's overtures to the individual members of the multi-employer associations are analogous to an employer's attempt to take unilateral action or to deal with individual employees directly, rather than through their statutory agent, the majority decision asserted that ". . . the cases relied upon in the dissent are wholly inapposite because the situations are not at all analogous. Underlying the Board's holdings in all those cases is the concept that an employer's unilateral action and individual bargaining is the antithesis of, and derogates from, the practice and procedure of collective bargaining, which it is the policy of the Act to encourage. Here, however, there was no attempt by the Local to substitute unilateral action or individual bargaining for collective bargaining, but only to substitute for one type of collective bargaining (association-wide) another type of collective bargaining (on a single-employer basis)."[54]

In affirming the Board decision the Court of Appeals extended this reasoning by drawing an analogy to other employer cases where it was stated: "Moreover, the Supreme Court's condonation, in National Labor Relations Board v. Crompton Mills, 337 U.S. 217, 224-225, 69 S. Ct. 960, 93 L. Ed. 1320, of certain Board decisions to the effect that an employer's unilateral grant of a wage increase previously offered to and rejected by the union is not an unfair labor practice would seem to indicate that, conversely, the Union's submission, to the individual members of the Associations, of a proposal which had been submitted to and rejected by the Associations would not be violative of Act."[55]

Conversely there is some indication that there would be no violation of section 8(b)(3) where a union insists upon bargaining with a multi-employer unit, at least as to unresolved items under the provisions of a valid persisting multi-employer contract, and refuses to bargain individually with employer-members of the unit who declined to bargain through the unit as to these items.[56] However, one Federal District Court has held that the fact that a multi-employer bargaining unit has been obstinate and hard to bargain with

52. 29 U.S.C.A. §§ 158(a)(1),(3) (Supp. 1955).

53. Morand Bros. Beverage Co. v. NLRB, 91 N.L.R.B. 409 (1950).

54. Id. at 419.

55. Morand Bros. Beverage Co. v. NLRB, 190 F.2d 576, 581 (7th Cir. 1951).

56. N.L.R.B. Administrative Rulings of General Counsel, Case No. 993, Lab. Rel. Rep. (34 L.R.R.N. 1439) (1954).

is no defense to an action for a mandatory injunction against a union to bargain collectively with that unit where there is evidence to support a finding of a violation of section 8(b)(3).[57]

D. Outright Refusal to Bargain

Because labor organizations are formed primarily when employees desire to negotiate with their employer, the cases in which the unions are charged with unlawful refusal to bargain rarely involve any allegation of an outright refusal by the union to meet and negotiate with the employer.[58] Nevertheless, in *Penello v. United Mine Workers*[59] the court found, among other violations of section 8(b)(3) previously noted, an outright refusal by the union to accede to a request for further bargaining conferences in direct violation of the section.

E. Refusal to Reduce Agreement to Writing

Although no cases have so held, dicta indicates that a refusal to reduce an agreement to writing would constitute a per se violation of the Act, provided, of course, that an agreement had actually been reached[60] by all the parties,[61] and even ". . . that an announcement at the outset of conferences of an unwillingness to reduce a contract to writing is per se violative of the Act."[62]

F. Demand for Posting of a Performance Bond

The Board held in one case that a demand by the union that the employer post a $5,000 performance bond as a condition to the settlement of a strike constituted a refusal to bargain[63] by drawing an analogy to a case where a similar demand by an employer was held to be a refusal to bargain.[64] In the *Teamsters* case the Board held that ". . . the Union's good faith in advancing this proposal is not decisive of the issue."[65] Such language suggests that they viewed the demand as a more direct refusal than merely as an indicium of lack of good faith.

V. Conclusion

The legislative history of section 8(b)(3) and 8(d) offers very little evidence of a clear concept of the definition of collective bargaining in the minds of the legislators. A review of the cases has revealed only rare insight into the component parts of the definition and the apparent relationship of the good faith obligation among those parts. The cases do serve to emphasize a

57. Madden v. United Mine Workers, 79 F. Supp. 616 (D.D.C. 1948).
58. 16 N.L.R.B. Ann. Rep. 220 (1951).
59. 88 F. Supp. 935 (D.D.C. 1950).
60. International Molders Union, AFL, 91 N.L.R.B. 139 (1950).
61. N.L.R.B. Administrative Ruling of General Counsel, Case No. 43, Lab. Rel. Rep. (27 L.R.R.M. 1362) (1951).
62. Chicago Typographical Union, 86 N.L.R.B. 1041, 1042 n. 3 (1949).
63. International Brotherhood of Teamsters, 87 N.L.R.B. 972 (1949).
64. Jasper Blackburn Products Corp., 21 N.L.R.B. 1240 (1940).
65. International Brotherhood of Teamsters, 87 N.L.R.B. 972, 979 (1949).

dictum from a Supreme Court case which recognizes that ". . . a statutory standard such as 'good faith' can have meaning only in its application to the particular facts of a particular case."[66] Giving a clearer meaning to the good faith standard in its application to the particular facts of a particular case demands a clearer analysis of the elements of the collective bargaining definition than has heretofore been revealed in the cases. The analysis of the definition in section 8(d) suggests that a consideration of the facts in each case should follow a pattern established by the grammatical construction of that definition. That construction establishes the following pattern to be used in a consideration of the facts:

(1) Whether the acts or conduct amount to an outright refusal to bargain.

(2) Whether the acts or conduct violate one of the objective requisites in the definition.

(3) Whether the acts or conduct, by their nature, constitute indicia of a lack of good faith.

(4) If the acts or conduct do constitute such indicia, whether, when considered in the light of all the facts in the case, they support a finding of a failure to fulfill the subjective good faith requisite.

The Supreme Court will have an opportunity in the *Textile Workers* case[67] to clarify the meaning of the statutory definition of collective bargaining. The court will there be dealing with acts and conduct by the union which amount to harassing tactics[68] with the purpose of bringing economic pressure to bear upon the employer in support of lawful bargaining demands. The acts and conduct involved in this case do not amount to an outright refusal to bargain nor do they violate any of the objective requisites in the definition of collective bargaining. The question is whether, by their nature, they constitute indicia of a lack of good faith. The Circuit Court has held that they do not since ". . . there is not the slightest inconsistency between genuine desire to come to an agreement and use of economic pressure to get the kind of agreement one wants."[69] If the Supreme Court affirms the Circuit Court decision they will establish the union's right to use economic pressure in the form of harassing tactics without bringing itself within the proscriptions of the good faith obligation. If the Court reverses the Circuit Court, it will have established a new proscription under the requisite of good faith which does not

66. NLRB v. American Nat'l Ins. Co., 343 U.S. 395, 410 (1952).

67. Textile Workers Union, CIO, 108 N.L.R.B. 743 (1954), enforcement denied, 227 F.2d 409 (D.C. Cir. 1955), cert. granted, 350 U.S. 1004 (1956).

68. "But the Trial Examiner and the Board found that the Union 'decided "to force the employer's hand in the then current negotiations," not by a strike "in the commonly understood sense of the word," but by a series of unprotected harassing tactics: an organized refusal to work overtime, an unauthorized extension of rest periods from 10 to 15 minutes, the direction of employees to refuse to work special hours, slowdowns, unannounced walkouts, and inducing employees of a subcontractor not to work for the employer'." Textile Workers Union, CIO v. NLRB, 227 F.2d 409, 410 (D.C. Cir. 1955).

69. Ibid.

appear to be consistent with the established criterion of determining lack of good faith by finding intent not to reach an agreement.[70] In either event, the Supreme Court has an opportunity in this decision to set forth a pattern to be followed by the National Labor Relations Board and the courts in their consideration of cases in which a union has been charged with a violation of its duty to bargain collectively in good faith.

70. See NLRB v. National Shoes Inc., 208 F.2d 688 (2d Cir. 1953); Rapid Roller Co. v. NLRB, 126 F.2d 452 (7th Cir. 1942); NLRB v. George P. Pilling and Son Co., 119 F.2d 32 (3d Cir. 1941); NLRB v. Boss Mfg. Co., 118 F.2d 187 (7th Cir. 1941).