

Book Review: Collective Bargaining, by Neil W. Chamberlain and James W. Kuhn

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Book Review

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COLLECTIVE BARGAINING. NEIL W. CHAMBERLAIN AND JAMES W. KUHN. Second Edition, McGraw-Hill, New York, 1965. pp. 451. (\$8.95)

The first edition of this book, which appeared in 1951, soon established itself as the leading modern textbook on collective bargaining. It was, however, something more than a mere introductory work, because its able handling of the various aspects of economics, economic history, law and social psychology that have contributed to the importance of collective bargaining has helped to open many doors to interdisciplinary research. Professor Chamberlain's formulation of the "governmental" and "industrial governance" concepts of collective bargaining has had much to do with the realization, not only in the United States and Canada but in overseas countries as well, that bargaining between representatives of labour and management is a phenomenon incapable of containment within the traditional boundaries of market economics and contract law. Because of its antecedents, a new edition of this book is automatically a significant addition to the rapidly growing body of North American literature on labour relations and labour law.

Historical introductions to basic textbooks on contemporary subjects are seldom calculated to stimulate interest, and rarely do. Happily, the first two chapters of this book do not quite fit the mould. In sketching developments in the United States since 1800—from individual bargaining to attempts by organized workers to impose their demands unilaterally upon employers, and on to the give-and-take of modern collective bargaining—those chapters throw into clear relief the contrast between unilateral and bilateral regulation of terms and conditions of employment. The generous use of quotations from old sources conveys much of the feeling of the times, and sometimes serves to demonstrate how slight have been the changes in basic attitudes over the years. For example, a highlight of chapter 2 is a quotation from Commons' *Documentary History of American Industrial Society*, reproducing a long passage from an employer's publication of 1863, of which the following is a part:

... However laudable the motives may have been, in which these "Unions" originated, they have at length come to assume a dangerous attitude, and to act a disorganizing and ruinous part. For example: they assume to dictate to employers, and the employed, the rates of wages to be demanded and paid; what men may be employed, and what number of apprentices; who shall be discharged, and who retained; when, and on what terms our establishments and business may be operated and carried on, or stopped, always vigilant to take advantage of the shifting conditions of business and work on hand and having apparently little or no regard to the justice or proprieties of the case, and enforcing their demands, as against the employers, by "strikes," and, as against workingmen, by both contributions and threats.¹

The third chapter, on the mechanics of the negotiation process, is the most enjoyable in the book and is a fine descriptive analysis of our "Arab marketplace" rituals of collective bargaining. While those procedures usually bring about some sort of rough justice between the

¹ Pp. 32-33.

parties, the authors rightly decry the extent to which ostensibly factual statistical data are distorted and debased in the furtherance of partisan ends. Boulwarism, the "take-it-or-leave-it" system of collective bargaining practised by the General Electric Company and held by the National Labor Relations Board to be a breach of the employer's statutory duty to bargain in good faith,² appears interestingly enough, to receive the authors' carefully qualified approval.

The heart of this book is the fifth chapter, entitled "The Nature of Collective Bargaining", in which the authors search for the true function of collective bargaining and the collective agreement. Three concepts of progressively greater sophistication are developed: first, the old "marketing" concept, which looks upon collective bargaining merely as a means of setting terms for the purchase and sale of labour; second, the "governmental" concept, which considers collective bargaining to perform the same function for industry that the legislative branch of government performs for the state as a whole; and third, a more particularized form of the governmental concept called the "industrial governance" concept, under which unions and management are looked upon as exercising mutual control over their industry. The latter two concepts are of great value in exposing the anachronism inherent in seeking to accord to management a dominant position in the industrial relationship on the basis of mere property rights or common law managerial prerogatives. The industrial governance concept in particular puts the master-and-servant aspects of industrial relations into their proper perspective, and gives due emphasis to the psychological and political functions of collective bargaining and to the way in which those functions satisfy employees' vital non-economic needs. "Mutuality" is the keynote of the industrial governance concept, and mutuality, in the authors' words "recognizes that property is the basis for authority only over property. Authority over men requires consent."³

Other chapters which will be of particular interest to lawyers are those on bargaining units, grievance procedures and collective bargaining law (chapters 6 and 10-12). The relative unimportance in North America of European-style industry-wide or nation-wide bargaining has brought about the growth of "pattern bargaining", under which the terms of a collective agreement negotiated with a major employer will often exert a controlling influence upon the terms of other agreements in the industry. Although the authors only discuss pattern bargaining very briefly in their chapter on bargaining units, that discussion, read in the light of their remarks on "coercive comparisons" in an earlier chapter, makes it quite clear that local or plant-level bargaining is not as overwhelmingly important on this continent as it is often thought to be.

The two chapters on collective bargaining law trace very well the long process of legislation of American trade unions and their activities—so well, in fact, that a Canadian reader has to remind himself that the equivalent process in his own country has been even slower and

² General Electric Co., (1964) 150 N.L.R.B. 192.

³ P. 135.

less thorough than in the United States. The outlines of present American collective bargaining law are sketched clearly enough in chapter 12, but there is very little in that chapter, or in the earlier chapter on grievance procedures, on the vexing problem of the right of individual employees to enforce for their own benefit the terms and conditions negotiated on their behalf by their bargaining agents and embodied in collective agreements. This problem is an inevitable concomitant of a system of collective bargaining law which confers upon unions the exclusive authority to bargain for large numbers of employees. It is currently a question of prime importance in both the United States and Canada, and it demands that the courts attempt the formidable task of balancing the interests of individual employees, on the one hand, against the interests of the parties to collective bargaining and of the effective administration of collective agreements, on the other hand. Some discussion of the problem is surely called for in a textbook on collective bargaining, particularly when it is remembered that the American law, unlike that of most of Canada, envisages the continuation of bargaining even after the signing of a collective agreement.

Chapters 13 to 15, on the economics of collective bargaining, are heavy going for a mere lawyer. Apart, however, from a cryptic reference to "Marshallian 'rents'" on page 371, the authors take pains to clarify the meaning of their technical terminology, and generally succeed in putting across the reasons why collective bargaining has flourished in spite of its basic inconsistency with classical market economics. This part of the book provides economic support for the industrial governance theory of collective bargaining developed in chapter 5. In the result, the authors say, collective bargaining has survived the antipathy of classical economists because it fills needs that cannot be measured on a purely economic scale. Nevertheless, in these chapters as in all the others, the authors are careful to avoid portraying free collective bargaining as an unmitigated good, and go to considerable lengths to make it clear that the parties to such bargaining cannot consistently be counted upon to agree on terms that will accord with the best interests of society as a whole.

Almost inevitably, in a far-reaching textbook of less than five hundred pages, nearly every reader will wish that some areas had been more fully covered. Perhaps the most important subject insufficiently treated is automation and the limitations inherent in ordinary collective bargaining as the means of coping with it. As is mentioned above, the authors discuss the difficulties involved in inducing the parties to free collective bargaining to take account of any interests except their own, but this discussion is not brought specifically enough to bear upon problems of technological unemployment and upon the widely held fear that such problems may be too large for the parties themselves to solve unaided. Another highly significant matter that is dealt with hardly at all is collective bargaining in the public sector; one looks in vain for some guidance on the American approach to this problem, which has very recently been attacked in Canada by the creation of a major new legislative and administrative framework at the federal level.

It should be noted that, except for the first three or four chapters, this is probably not a book that a lawyer can profitably curl up with in the expectation of filling the gaps in his appreciation of the non-legal aspects of collective bargaining. It is too concise, too blandly written and somewhat too technical for that. However, as a reference work for supplying non-legal background in specific areas, and to a lesser extent as a tool for sharpening one's understanding of Canadian labour law through the acquisition of some appreciation of its American counterpart, this book will be very useful indeed.

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