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COLLECTIVE BARGAINING

29 April 1948

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COLONEL BAISH: Gentlemen, we are fortunate to have as our guest speaker today Dr. William M. Leiserson, an independent labor-relations consultant. He is a real friend of the Industrial College and has given us many fine lectures in the past. Last year, from this platform, he talked on the subject of labor policy in the Federal Government. That publication is listed in your reference works for this year's study.

You have his published biography, so I will not go into detail. He has been an expert in labor relations subjects for almost forty years, and has held very important positions in government, in education, and as independent consultant.

His subject today is, "Collective Bargaining." It is a pleasure to introduce to this year's class and to our visitors Dr. Leiserson.

DR. LEISERSON: Instead of trying to give you a long lecture on collective bargaining, I thought I would outline in a rather general way what collective bargaining really is, what it consists of, its significance, and then let you ask questions to bring out the details. I understand you like to operate that way.

Many people have the idea that collective bargaining means just squabbling between employers and workers about wages. That is the sort of thing that gets into the headlines of the newspapers. Actually, collective bargaining is the most significant thing in our industries that anyone who has to have any dealings with industry, from the point of view of government or the Armed Forces, must understand. Let me illustrate what I mean by that.

You all know the importance of the management of industry. Management, however, is mainly the management of materials, supplies, goods, and machinery. But when management deals with men, then management is government. In other words, management is of two kinds: One is property management; the other, government.

Now if industry is to have any of the principles of democratic government in it, then there must be collective bargaining. That is what we mean by collective bargaining. Without collective bargaining, management of human beings is monarchical, totalitarian, aristocratic, or something like that. If you have collective bargaining, then you have something like democratic government in industry.

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That makes just as much sense as asking, "Is business good or bad?" Business is the way we make our living. There are a lot of bad people in business as well as good ones. Unions which conduct collective bargaining and demand it are a part of this business of making a living. True, there are a lot of bad people in them. But the proportion of bad ones isn't any greater than it is in business, or in any other kind of human endeavor.

Now how does unionism come about? A lot of employers and management people think when you do not have unions, collective bargaining, or any of that business, that the employees produce just as hard as they can. Some feel that when there are no restrictions, everything runs along smoothly. Well, that is an absurd idea. Wherever you get a group of human beings working together, they naturally and spontaneously make regulations to govern the conduct of the group.

If you have not been assigned a book, published by the Harvard University Press, called "Management and the Worker," by Roethlisberger and Dickson, by all means it ought to be in your library. That is a summary of experience gained at the Western Electric Company's Hawthorne, Illinois, plant, where a group of Harvard professors went to study relations of management and workers.

First of all, they started studying fatigue and how to eliminate it, how to increase production, and so on. They took one group of workers, fenced them off from the rest of the plant, put them under controlled conditions, and made certain changes over a period of three years: bringing the lights down to the men's workbench, reducing the hours putting in rest periods, and a lot of things like that. Production increased each time they made a change.

Then, like good scientists, they went back to the original conditions which prevailed before they started. They restored the longer hours, the overhead lights, and the other conditions. Then production increased more than ever. Being good scientists, however, they saw that there was something the matter with their experiment. They learned from the failure of their experiment.

They sat around discussing: "What's the matter here?" Finally, one of them said, "Let's call Mary, over there. She's been interested in what we are doing." (She was an Irish girl who had shown some qualities of leadership and had been interested in the experiment.) They said to her, "Mary, look what's happened here." She said, "Yes, I've seen that." They said, "Well we don't know why that happened." She said: "That's easy." "Why?" "Well," she said, "it's fun to work here with you people. We all like to work here. But out there, if we talk to anybody the foreman or forelady comes over and says, 'Shut up! Here, you all talk with us and discuss things with us. Out there, if we drop something on the floor, the foreman or forelady comes around and says, 'Whatya think this is? A pig-pen?'"

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In 1587, over three hundred years ago, in the London printing industry they had the same regulation, made by the municipal government. It read like this: Standing forms must not be kept. When you set up a form and print an edition from it, say, a thousand or two thousand, you must immediately distribute the type. However, if you do keep the forms and make another impression out of those forms, you must pay the workmen as if they had set them up all over again.

To start dealing with unions, or regulating them from the point of view that they are just new inventions of somebody, and that these are just featherbedding rules: That is what gets us into trouble. Back of everything we see in collective bargaining is a long history that goes into the ways of living of people. The rules and regulations which they made informally among themselves are formalized in collective bargaining agreements. That is what happens.

How are they formalized? Well, unions, as we know them now, both in this country and in England, came about toward the end of the eighteenth century. They arose just about then, when the journeymen began to find themselves a permanent class of journeymen. As long as they could move up and be masters quickly, they did not want any union. The masters and journeymen belonged together in the guilds, in one association. But when journeymen became permanent laboring people, they knew then that their boys would be apprentices and journeymen, not businessmen. That is when unionism came into being.

And what did they do? They got together and made a trade club--shoemakers trade club, printers trade club, bricklayers trade club--and said, "We're living in a democracy. The masters get together and tell the public what price they will pay for shoes, or printing, or bricklaying, or what not. They fix what they will charge. We, who do the work for the masters, should do the same. We should all get together and tell the masters what price we will work for. We should tell them the price of our labor." The employers did not like the idea. It was illegal for the workmen to do that sort of thing. They called strikes. The strikes were declared illegal.

Gradually the law changed, as these men began to get votes. When the constitution was first adopted in this country, most of the working people could not vote. The States, which determine the qualifications for voting, had included property qualifications. In other words, you had to own a certain amount of property before you could vote. Benjamin Franklin used to tell the story of a man who owned a mule. As long as he owned the mule he could vote. That mule was worth what you had to be worth in order to vote. When the mule died, he lost his vote. The man wanted to know whether it was he or the mule that had the right to vote.

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You cannot fight a war without the full and earnest support of the working people of the country. These people want unions. They want to be free to have their trade associations. So, during the First World War you had a great increase in union membership. Right after the war the employers set out to destroy that. They pushed back unionism to the skilled crafts again. During the war unionism spread to the big mass-production industries.

Then you had a long period when this situation prevailed. Skilled mechanics had their unions and bargained collectively. In the great mass-production industries the employers said, "No. We can have our trade association, but if any of you join one of those to promote the interests of your trade, you're fired from here." They had spies and all sorts of devices to discover who joined the union. That is why the Wagner Act was passed. It was bad that it was necessary to pass that law. This thing should have been worked out, as it was in many other free countries, by the employers recognizing that workmen have same right to organize that they have. Then it would not have been necessary to have a law.

When you pass a law then the lawyers and judges get in, who don't know anything about collective bargaining, and make all sorts of rules and regulations as to how this will work. You have to have long hearings. It takes months, even years to decide a question. Abuses set in from that. So now the Taft-Hartley Act comes along for the purpose of doing away with the abuses. Instead, it creates a lot of new abuses. We see-saw that way, back and forth. It makes no sense except to cause the country a great deal of trouble, unrest, and, in the final analysis, reduced production. The normal way is honest-to-goodness collective bargaining.

When the employees act together for common purposes, they form some kind of an organization. That organization is called a union. It used to be called the club. Then, it was called the brotherhood. All of them, you will notice, have some fraternal or social features connected with them. Why? Because the unions grew out of those informal organizations I mentioned, where people helped each other in the shops. There is always a mutual-aid department in a union. They have funeral benefits--mortuary funds, they often call them--and a lot of social services of that kind connected with union. Working people have to help one another that way.

On the economic side, when they get to the point where they bargain, as it is called, they sit down together to work out their problems. They work out a compromise. What you have there is a sort of constitution for the trade or the plant or the industry. They set up a kind of government. There cannot be any law and order without government. This is in the form of a charter--the contract, they call it, or collective agreement. The lawyers got

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For many years I made my living as a judge between a group of employers and union people in the city of Rochester, New York. Each side paid half of my salary. Each side could fire me at any time. That is how I learned to be impartial.

Now what was my job? I'll tell you about the very first case I ever had in Rochester. I was green at it. Here was the story: A fellow had been fired. The facts were developed by witnesses from both sides. He was a young Italian, a presser in a clothing shop. He had recently become quite skeptical of his Church. For your information, these pressers use a sponge to wet the cloth, then they press it. Well, he would put this sponge in water, squeeze it over the head of a devout Catholic woman, who was a finisher working right near him, and say, "I'm blessing you with holy water."

Well, she stood this for a while, and then she went to the Jewish boss and told him this fellow had insulted her religion. The Jewish boss fired him. The union took up his case. Why? The contract, or the charter of liberties, said the employer reserves the right to hire and fire. However, if any worker feels he has been unjustly dismissed, he shall have his day in court before the impartial chairman. That was my title. Instead of calling the whole shop out on strike, it was brought before the court. They called it the Labor Adjustment Board and I was chairman of it.

Well, what do you do with a case like that? What is justice? I certainly did not know. There were seven personnel managers from the plant on the employer's side and seven union men on the other side. I was the chairman. That was the Labor Adjustment Board.

The arrangement was I would make the decision. It was not to be made by a majority of the board. Well, I called them in. I said, "Look here, I'm green at this game, and I may make some terrible decisions. I don't know your industry. You'd better help me. You'd better get together on this thing." Whereupon, the labor manager of the plant where the fellow worked said, "We offered him his job back but not at that same place. We want to put him somewhere else in the plant where he won't get into trouble." So I turned to the labor representative and said to him, "What's the matter with that? That looks reasonable to me." Then it came out, although they did not say so. This fellow was active in the union and the officers who thought that was a proper settlement were sort of forced by public sentiment in the union to bring it to the judge rather than agree to it.

So I said, "All right. I know what to decide now." I reconvened the court and said, "Here is my decision: This man has been out of work for about a month. That is punishment for what he did. But to fire him is too severe a penalty for that offense. Therefore,

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In industry now there are probably 100,000 collective agreements governing the relations of workers and employers. Many of them have arbitrators or umpires as they sometimes call them. Ford has an umpire under his agreement; so has General Motors, U.S. Rubber, and many others. These are the impartial chairmen who are developing law in industry by deciding disputes about grievances and other differences. Their decisions set and follow precedents. On these developments we must depend for peaceful and orderly handling of human relations in industry, for law and order in industrial relations.

The Government will need to supervise the industrial laws made by employers and unions of workers. But whatever government legislation is adopted, if it is to be practical and effective, must be based on this common law that is developed within industry. If it is not so based, then the general laws are inept and do not work.

The Wagner Act, to a certain extent, was not based on this common industrial law. Yet, to a very large extent it was. That is why it was very largely successful. But, to a certain extent, it wasn't. And because it wasn't, certain abuses developed.

Then we got the Taft-Hartley law. That is hardly at all based on this common law. That is why we are going to have more and more trouble with it. It is a lawyer's law and not a law developed by the people, the management and workers together. That is why collective bargaining is, as I have briefly described it to you, basically, so important in these industrial relationships.

I thank you.

COLONEL BAISH: Dr. Leiserson is ready to answer questions. You are not necessarily limited to collective bargaining.

QUESTION: We have a general feeling in this country that monopolistic practices are unhealthy. To some, it appears that to have industry wide unions is monopolistic in tendency and, therefore, unhealthy. Would you comment on any trend in labor-management relationships to break down that differentiation.

DR. LEISERSON: Well, in a sense, when any number of workers get together, they do it to restrict competition among themselves. If the Sherman Anti-Trust Law were applied to them, they would have to be found monopolistic in this sense of restriction competition among working people. So would every farmers cooperative. As the unions grow larger, they have more and more power, so do farmers' organizations, the same as business organizations.

Adam Smith, who taught us the idea that competition is the good thing--the life of trade--and monopoly bad, would have considered it terrible to have a corporation the size of General Motors, or any

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Who hollers, "monopoly!" Maybe the American Telephone and Telegraph Company when they had the strike with their union. If we had one union regulating conditions in the AT&T, wouldn't it be terrible? But if you have one corporation running it--individualism--that is free enterprise. We have to look at these things realistically if we want to understand how working people feel. If half of your salary were paid by them, as mine was, you would find out how they felt. We are not going to get anywhere without understanding how workers feel, just as we must understand how employers, managers, and investors feel.

If you think a union is a terrible thing, then industry-wide bargaining is bad. Most of the unions are made up of pretty decent people, just like most businesses are made up of pretty decent people. There are, at the same time, some terrible businessmen and there are some terrible union people. Both kinds have had to go to the penitentiary from time to time. But neither side is in a position to throw stones at the other and say, "You're wicked!"

Actually, we have more difficulty when we have these small bargaining units, where you do not have enough responsibility or intelligence developed to understand what this is all about. You have to have a hundred thousand or two hundred thousand men in an organization before you will develop enough qualities of leadership, or find enough men with qualities of leadership so as to develop responsibility. If you fight unions, they develop war leaders. If you cooperate with them, they develop cooperative leaders. You see that again and again. Every industry has about the kind of union and the kind of union leader it deserves. If you look back far enough you see how they were created.

Whether we like industry-wide bargaining, or not, it is no more monopolistic than the farmers' cooperative. It is a cooperative organization for selling their product, labor, cooperatively; just like the farmers do. Only the U. S. Government lends money to the farmers to withhold their products--wheat, cotton, and other things--so they can get better prices. It lends them up to 90 percent. Imagine what happens if the U.S. Government lent working people money up to 90 percent of their normal earnings so they could stay on strike longer in order to put their wages up.

But that is what the Government does for the farmers, and I don't think it is bad. When we didn't do that, the farmers didn't make a living and that was far worse. You had the farm depression to the point where they wanted to sell the farmers out because they could not pay the mortgage. People began wanting to hang the sheriff who came around. You see, we're that kind of people--and we should be! It is much better to do it that way, through cooperatives, and help people maintain their standards of living.

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discuss the Taft-Hartley Act. There are a great many things involved. I can mention one or two very briefly.

Mr. Denham has explained to you the numerous elections required by the Taft-Hartley Act. The law has put the Government into the business of running elections in every industry in the country. Considering the number and frequency of elections, when are workers going to have time for production? After all, there are always campaigns before these Taft-Hartley elections. Then, along come municipal government campaigns, then county, State, and Federal. On top of that you throw in the union-shop elections. Administratively, these provisions are impossible. Only people who don't know what is going on in labor relations could think up a fantastic thing like that.

The purpose of the union-shop election was what? They had the notion that the closed shop was a denial of liberty. (To a certain extent it is.) They thought it meant the working people were forced into the union. Therefore, they outlawed the closed shop and authorized the Union Shop if a majority of all the employees that are eligible will vote for it by secret ballot in a government-conducted election. But the truth is, there isn't any difference between the union shop and the closed shop that is of any importance. Both compel membership in a union as a condition of employment.

The old craft unions, which have practically all the mechanics in their trade in them, supply labor to the employers. Even when the big nonunion industries wanted a patternmaker they had to call on the Patternmakers Union to get one because they are skilled mechanics. You can't just hire them out on the street. Most of these craft unions say, "Before a man gets a job in a shop he has to be a member of the union."

But in the mass-production industries, no union can possibly supply all the kinds of labor they need; nor do the unions want to assume the responsibility for doing it. So they have a different form of closed shop; they say the employer can hire any people he wants to. But within thirty days after a man has been hired he has to join the union. This is what the Taft-Hartley Law says is a union shop and not a closed shop.

If there is any objection to the closed shop, it is that everybody is compelled to join whether he likes it or not. That is the real objection. The law makes a distinction, however. If a man is compelled to be a member before he is hired, it is a closed shop. If he is compelled to join after he is tried out on the job, then it is a union shop. There is no essential difference.

The framers of the law thought that if you give American workmen the right to vote on whether they want a union shop or not, the union leaders will not be able to force them into unions against their will.

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didn't provide a peaceful, judicial method of settling the difference of opinion.

When they settled the strike of 1947 and set up a welfare fund, pensions, and other working conditions, they again wrote out a contract. In 1948 they again got into a row as to whether this contract required some actuarial basis for the pensions, or whether it does not; whether you could just pay out the money and forget about the people who come after the money is gone, or whether you will have to work out a basis to protect everybody; and, further, as to whether every member of the union, regardless of whether they worked for the companies that contributed ten cents a ton, or not, are entitled to these benefits.

It is a dispute about a contract. Mr. Lewis sends a letter. The operators have dishonored the contract; so the men walk out. Of course, the operators say they haven't done anything of the kind. They are in the courts now, trying to keep the decision by Senator Bridges from being enforced.

Now, here is what is to be learned from this experience. It is not so much a matter of personalities as defective machinery for acting in orderly, proper, and sensible way about interpreting provisions of union agreements. That is why I thought it was important to describe to you, as part of collective bargaining, that it is a charter; it is a law. You have to have judicial machinery interpret it. There must be umpires, impartial chairmen within its own legal systems. If you take it out of that legal system, you get a lot of other things happening.

When I say "within its own legal system," I mean in the first instance. There is always appeal to the courts after an arbitration board, umpire, or impartial chairman makes a decision. But if you appeal them after the collective bargaining judicial machinery has considered them, then the court finds out what this thing is about. It doesn't look for legal principle somewhere in old-English common law to settle a modern industrial dispute, or even creates new principles. It finds them in the customary or common law of the industry itself.

So, what I mean is this: Both of those big strikes--the last one and this one--in the coal industry were about the simple question of interpretation of their contract. Those are, legally, contracts. Either party could go to court and ask for an interpretation.

But what happens? When it got to the court, it got in on a request for an injunction. So they talk about injunctions, the LaGuardia Act, and a lot of other things that lawyers are learned in. But the question of interpretation of the contract was never discussed or decided by the court. These other legal questions

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COLONEL BAISH: Dr. Leiserson, on behalf of the Industrial College and our visitors, we thank you very much for this fine talk.

DR. LEISERSON: I'm afraid I have given you several lectures instead of one.

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