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# Labor–Management Relations: Understanding and Practicing Effective Negotiations

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*Periodic collective bargaining between employers and unions, combined with contract administration and workplace dispute resolution, has provided many core insights for the broad field of negotiations. Over the past twenty-five years, this arena has advanced knowledge regarding the interdependence of integrative and distributive bargaining, the concurrent shaping of attitudes, the management of internal relations (within a party), and the roles of elected and appointed agents. Public sector negotiations have provided new insights into the dynamics of multilateral bargaining as well as a broad array of mediation and arbitration models. While the number of labor agreements negotiated each year has declined over the past half century, at least 23,000 private sector agreements are still executed each year and fundamental changes in industrial relations systems make continued attention to labor-management negotiations of increasing importance. In particular, this arena now features highly structured approaches applying interest-based bargaining principles and presents profound challenges as power relations shift in multiple ways.*

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## Introduction

Labor-management relations has long been a touchstone domain for the study and practice of negotiations, making it a highly appropriate focus as the *Negotiation Journal* celebrates its twenty-fifth anniversary. The bilateral process of collective bargaining as well as the multilateral processes of international relations represent perhaps the longest-serving archetypes for understanding the dynamics and essential features of all negotiations. The casual reader may, however, pass over this article on the assumption that the very institutionalized arena of labor management relations might not have much to offer to the larger field of negotiations in today's world. After all, bargaining between labor and management rests on a foundation of detailed laws, complete with administrative agencies providing rules and mediation services, and institutionalized organizations and processes that demand specialized knowledge and skills.

Although case law associated with labor-management negotiations in the United States goes back centuries, it was not until June 1935 that Congress embraced this venue for negotiations by enacting the National Labor Relations Act with the purpose of "encouraging the practice and procedure of collective bargaining and by protecting the exercise of workers' full freedom of association, self organization, and designation of representatives of their own choosing, for the purposes of negotiating the terms and conditions of their employment or other mutual aid or protection." Two private sector agencies now exist to help settle labor disputes: the Federal Mediation and Conciliation Service (FMCS) and the National Mediation Board, which serves airlines and railroads. Additional governing acts and agencies exist to manage public sector labor negotiations at federal, state, and local levels. Certainly this is an institutionally complex domain for negotiations.

But in their study of labor negotiations published in 1965, Richard Walton and Robert McKersie sought to demonstrate that the central features of labor negotiations were applicable to the emerging field of negotiations more generally. In that regard, the book applied the conceptual framework to two settings outside of collective bargaining: the international arena, using the Cuban missile crisis as the case example, and for social movements, the civil rights campaigns of the 1950s and 1960s.

To frame the roles that labor negotiators must assume and pursue in a way that demonstrates the generic features found in almost all negotiations,

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the *Behavioral Theory of Labor Negotiations* (Walton and McKersie 1965) summarized the negotiator's core functions as follows:

- Negotiators are competitors with their counterparts in claiming scarce resources — the *distributive* aspect of negotiations.
- Negotiators are collaborators with their counterparts in creating value — the *integrative* aspect of negotiations.
- Negotiators are relationship shapers during negotiations, an element that Walton and McKersie termed *attitudinal structuring*.
- Negotiators are coalition managers and consensus builders within their own party and sometimes purveyors of divisiveness within the other party, what the authors termed *intraorganizational bargaining*.

These four core concepts are at the heart of major theories and frameworks that have been subsequently developed for application in other arenas including managerial negotiations (Lax and Sebenius 1986), business negotiations (Raiffa 1982; Watkins 2002), and popular frameworks for negotiations (Mnookin, Peppet, and Tulumello 2004) — all of which highlight the interdependence and tensions around the integrative and distributive dimensions of negotiations. As well, *Getting to Yes*, the landmark book by Roger Fisher and William Ury (1981), focused on and made accessible the concept of integrative bargaining, which Walton and McKersie had previously drawn from the work of Mary Parker Follett (1933). Early observations on what was termed *attitudinal structuring* are foundational for vast literatures on the social psychology of negotiations (Bazerman and Neale 1992).

Today, the processes associated with intraorganizational bargaining are still yielding new insights with respect to complex engineered systems (such as transportation systems, the power grid, etc.). The old labor adage that “it takes three agreements to get one — one within labor, one within management, and one between the parties — now has applications in multistakeholder situations where an agreement among “n” parties requires “n plus one” agreements for all the internal agreements (Cutcher-Gershenfeld, Barrett, and Lawson 2005). Thus, for more than forty years, scholarship on labor negotiations has sought to advance the literature more generally in a negotiations field that has become increasingly interdisciplinary.

## **The Early 1980s: *Negotiation Journal* and the Transformation of American Industrial Relations**

While there is no direct cause and effect, it is interesting to note that in the early 1980s when the Program on Negotiation launched *Negotiation Journal*, collective bargaining in the United States was undergoing

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fundamental change. Thomas Kochan, Harry Katz, and Robert McKersie had, with the help of Ph.D. students, documented a fundamental shift in industrial relations in the United States. The primary force shaping the employment relationship had shifted from collective bargaining to unilateral actions by employers, specifically, nonunion human resource policies accompanied by expanded federal legislation, specifically, the enactment of an increasing array of standards and protection of individual rights (Kochan, Katz, and McKersie 1994). At the same time, Michael Piore and Charles Sabel (1984) documented larger changes taking place in the very nature of work and markets — changes comparable to the first industrial divide a century earlier as we shifted from a craft to an industrial economy.

This shift in industrial relations was accelerated when in 1980, President Ronald Reagan's response to a strike by the air traffic controllers was to fire all of them. This sent management the message that it could "take on" unions and change the terms of collectively bargained agreements. In fact, the proportion of the workforce represented by unions had been declining for more than a decade prior to this time, but the president's action signified a fundamental shift away from a bilateral model for decision making in which negotiations were explicitly governed by law and practice to a unilateral model in which individual workers had relatively less standing to negotiate terms and conditions of work with their employers. While the negotiations literature did come to pay increasing attention to asymmetrical negotiated interactions (in which one party aims to destroy the legitimacy of the other) (Friedman 1994; Rubin and Zartman 1995), this dominant feature of labor-management relations at the launch of the *Negotiation Journal* may have been seen as too particularistic for a general journal on negotiations. In retrospect, the collapse of existing negotiations institutions could have provided raw material for analysis in the pages of *Negotiation Journal*, but this is a subject that is perhaps more appropriate for a mature field rather than one launching a pioneering journal.

## **Decline in the Number of Collective Bargaining Relationships**

The downward trend in union membership is well known. Between the mid-1950s when 32.5 percent of the workforce were in unions and today, when the density has dropped to 12.9 percent, the number of private sector labor negotiations taking place each year dropped correspondingly from more than 60,000 to approximately 23,000, with a decline — but not as steep — in public sector negotiations as well.

Such a significant decrease in "union presence" — and the corresponding drop in negotiating activity — extending more than a half century calls for an explanation. There are several dimensions to the story. First, heavily unionized industries and sectors have faced long-term declines in employment because of advances in technology, the outsourcing of jobs to workers

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in other regions or other countries, and industrial life cycles. For example, textile plants in New England vanished as work moved south and then offshore, meat packing plants in large urban cities closed as production shifted from being near consumers to being close to the source of supply, and, in the steel industry, new technology made it possible to produce the same amount of output with a vastly smaller labor force.

While it is not surprising that the existing base of unions would shrink over time, the big surprise in the story is that the union movement has not been very successful in organizing new workplaces to offset the steady decline in mature operations. For example, the new meat packing plants located in rural areas, new mini-mills in steel areas, and large textile plants in the southern United States — for the most part — have remained unorganized.

Unions want to get to the bargaining table in all these places but have faced strong employer resistance to their efforts to organize the workforce and have met with only limited success. Studies show that many workers, some estimate more than 40 percent, would join a union if it were available (Freeman 2007). But too many union organizing campaigns never result in actual elections. In pioneering work done that combined data from the National Labor Relations Board with data from the FMCS, John Paul Ferguson found the following: only 20 percent of all the cases that filed a petition for an election after showing substantial and likely majority support (usually in excess of 50 percent of the workforce) reached a first contract. When an unfair labor practice charge occurred, only 10 percent reached a first contract within a year of certification (Ferguson 2009).

A separate article could be written on the subject of management attitudes toward unions and the efforts by unions and their supporters to create a fair playing field for workers when making decisions about union representation (Cutcher-Gershenfeld, Kochan, and Wells 1998). Currently (2009), Congress has before it the Employee Free Choice Act (EFCA) that seeks to address barriers that unions face in organizing workers and achieving first contracts. If this bill passes, even in modified form, it will likely set the stage for increased union organizing, but it will not fundamentally alter the divide that exists between employers and unions in many settings.

Simply put, management does not like to share power with respect to the employment relationship. A case in point: an offshoot of the union that has represented the clerical and technical workers at Harvard (Harvard Union of Clerical and Technical Workers [HUCTW]) for the past twenty years has been seeking to represent the same categories of workers at nearby higher education institutions. HUCTW is widely recognized as a pioneer in innovative partnership relations. One of its mottos is “you don’t have to hate Harvard to love the union,” and it has worked jointly with management to address such issues as work redesign, work/life balance, and training and skills development. Moreover, it is focused on building

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community as its primary end rather than defining itself *vis-à-vis* management (Hoerr 1997; Glover and Harris 2009). But typical of most managers, the response by one of the universities on the receiving end of an organizing campaign by this union has been to go on the offensive. Following a typical pattern, this organization has hired an outside firm to advise them on the best techniques and ploys for avoiding unionization rather than exploring what might be a constructive relationship with this unique union.

Another explanation for management's opposition to workforce organization can be gleaned from the research of Sandra Black and Lisa Lynch (2004) in which they found that productivity was lower when unions were present *and* when labor-management relationships were contentious. At the same time, however, they found that the best productivity outcomes occurred when a union was present *and* a partnership relationship existed. The traditional nonunion cases were better than a bad union-management relationship but not as productive as a good one. Managers assume, apparently, that unionization will bring a turn for the worst rather than an opportunity to be the best. Unions themselves too often assume that management does not accept their legitimacy and will distrust even those well-intentioned managers who are genuinely interested in partnership. Thus, today's labor-management arena represents a fertile field for the study of deeply held assumptions that cast a shadow over the negotiations process, although there has been insufficient research on these dynamics from a negotiations perspective.

## **Collective Bargaining in the Public Sector**

Starting in the early 1960s unionization in the public sector exploded and has remained stable since. While membership in private sector unions has dropped to less than 10 percent of the private sector workforce, unionization in the public sector has remained around 40 percent.

Public sector unions grew during the 1960s and 1970s as a result of legislation enabling public sector workers to join unions and engage in collective bargaining. Research on public sector labor negotiations highlights the phenomenon of multilateral bargaining (Kochan 1974) given the key roles played by legislative bodies as well as the executive branches of government and voters. What is called internal bargaining or bargaining at the "second tables" is a dominant part of the overall process of reaching an agreement in the public sector. Public officials sensitive to the support that unions enjoy among the citizenry in many sections of the country have been unwilling to engage in antiunion representation campaigns — a dynamic that has been termed in other contexts as a "two-level" game (Putnam 1988). This is not to say that efforts to revise contracts to include terms less favorable to public sector workers, especially in times of economic duress, have not succeeded, but rather that this is a vivid and fertile domain for examining these kinds of negotiations dynamics.



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In addition to advancing our understanding of second tables and the multilateral aspects of negotiations, collective bargaining in the public sector also has advanced our understanding of many different models of dispute resolution. For police and firefighters in many jurisdictions, various forms of interest arbitration have been introduced (including decision making issue by issue or as a package, arbitration preceded by mediation or with the same individual able to play both roles, with decisions limited to final offers or with the neutral able to construct a package — to mention the most prominent variations). While Massachusetts does provide for arbitration of new contract terms for the uniformed services, few settlements have been reached via this route. Rather, with the help of mediation and fact finding, the parties have been able to reach agreement on a voluntary basis (Dunlop 1984; Zack 1985; Susskind and Cruikshank 1987; Ury, Brett, and Goldberg 1988; Rowe 1997; Mnookin, Friedman, and Cutcher-Gershenfeld 2001). Many different approaches to dispute resolution can be found in this large natural experiment of so many different systems of public sector labor relations. As well, the process of fact finding and the identification of “comparables” during public sector negotiations represents one of the most tangible illustrations of the classic Fisher and Ury (1981) recommendation to use “standards” in negotiations. It is these institutional innovations that have informed alternative dispute resolution methods in many domains outside of labor-management relations.

## **Features of the Bargaining Process**

The United States lags most industrialized nations in that it is only within the past decade and a half that we have been systematically tracking the contours of the collective bargaining process. Still, many of the trends that characterize labor relations in the United States have also occurred in other countries. The extent of unionization has declined in most industrialized countries with the exception of Scandinavia (Bamber and Lansbury 1993). The nature of labor-management relations in the United States, with the emphasis on enterprise-level bargaining, provides an opportunity to link the economic and noneconomic agendas in ways that have long been seen contrasting with industry-level and national-level institutions in other countries. These other systems, sometimes referred to as “peak” negotiations, have less opportunity to link pay and benefits to the realities on the “ground,” but a combination of global engagement with multinational enterprises and conservative government strategies to decentralize bargaining in nations ranging from Australia to Denmark has brought the U.S. model into greater prominence. Both the adversarial dynamics of the U.S. model and the interest-based innovations are getting greater international play (Wailes, Ramia, and Lansbury 2003).

In the United States, national-level data on collective bargaining were first collected in 1995, when three national random sample surveys were

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conducted with matched pairs of union and management negotiators in 1996, 1999, and 2003 under the auspices of the FMCS (Cutcher-Gershenfeld, Kochan, and Wells 1998; Cutcher-Gershenfeld and Kochan 2004; Cutcher-Gershenfeld et al. 2007). Most collective bargaining agreements run for three years, reflecting a balance between the time and resources involved in preparation and bargaining (making annual negotiations especially difficult) and the need to periodically update the terms and conditions of employment. Approximately one-quarter of agreements, however, span more than three years in duration and occasionally run as long as eight years (Cutcher-Gershenfeld and Kochan 2004). Indeed, some relationships feature living agreements with continuous resolution of most issues and periodic reopeners on wages and other financial matters. These long-term and “living contracts” are an institutional innovation in labor-management relations that may have broader applicability in other domains in the coming years as business and other negotiated agreements become more dynamic.

The vast majority of settlements have been reached without resort to collective action (either the union calling a strike or management ceasing operations, often referred to as a lockout). But often agreements are not reached before the expiration of the prior agreement. Indeed, in the FMCS survey, more than half of the negotiations were not concluded thirty days or more after the contract expiration date. This is illustrative of the dynamics of negotiation when traditional sources of power diminish in their effectiveness to compel agreement.

The use of a problem-solving or interest-based approach to negotiations is familiar to the vast majority of union and management negotiators, although only approximately one-quarter to one-third of the respondents report using the process in recent negotiations (Cutcher-Gershenfeld et al. 2007). Case study evidence suggests that in many instances hybrid models are in use, involving facilitated brainstorming, joint subcommittees, and systematic exploration of options at some times as well as traditional hard bargaining at other times. Concurrent with these collaborative and hybrid approaches are a substantial number of more adversarial relationships, with approximately 30 percent of union negotiators reporting “somewhat” or “very adversarial” relations but only about half as many managers reporting the same perception (and remember that these are matched pairs of negotiators) (Cutcher-Gershenfeld et al. 2007). The picture that emerges is one of polarization toward collaborative and cooperative extremes in labor-management relations as well as contrasting perceptions by labor and management. The fact that we can even describe the array of different approaches to negotiations, with accurate survey data, points to a need for similar capabilities in other negotiations domains.

While interest-based approaches to bargaining have the potential to generate substantial mutual gains, convincing constituents that interest-based negotiations will deliver agreements that are superior to those



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reached via traditional bargaining is especially difficult when there has been a history of deep adversarial bargaining. As a result, collective bargaining is generating innovation, but it is not transforming the majority of labor-management relationships (Susskind et al. 1990; Hunter and McKersie 1992; Fonstad, McKersie, and Eaton 2004).

## **Concession Bargaining**

One of the dominant themes of the past several decades has been the reversal of the historic role of unions, namely, steadily increasing wages and benefits. During the 1950s, 1960s, and into the 1970s, the gains in living standards driven by unions were made possible through comparable increases in productivity, and the result was an overall reduction of inequality in society (Bluestone and Harrison 1982). Starting in the early 1980s, however, in industry after industry, management came to the bargaining table seeking to retrieve distributive gains that had been won by unions and their members over the years. Management used forcing strategies and was often prepared to use the threat of bankruptcy or other power moves (such as threatening to hire replacements or move work to other locations) to secure changes in the cost of labor. Two industries that witnessed the dramatic rolling back of wages and fringe benefits were airlines and trucking, industries that had recently been deregulated and put to the test of the marketplace.

These moves undid the so-called “Detroit Accord,” the 1950s foundational agreement that first established the link between wages, changes in the cost of living, and productivity gains. Historically unions have been able to raise wages and fringes above the nonunion sector by between 15 and 20 percent. As long as an industry remained heavily unionized, this advantage could be sustained, and indeed research has shown that unionized plants generally are more productive than nonunion plants so that the higher hourly compensation costs could be offset by greater productivity — the 15–25 percent productivity advantage that was noted earlier (Black and Lynch 2004). But high-performance nonunion operations have also emerged — in some cases accelerated by deregulation and in other cases by foreign competition (such as in the auto and steel industry). As a result, the Detroit Accord collapsed with the 1982 auto negotiations: productivity continued to grow in the United States, but it was not matched by a parallel growth in worker earnings.

The changes that have occurred as a result of concession bargaining have substantially affected wages and salaries: some airline pilots work for only half of their accustomed salaries; pension programs have been dismantled and, for more than half of the U.S. population, shifted from defined benefit to defined contribution; health-care plans for retired workers have been eliminated; and lower-tier hiring rates have been put in place for new employees.

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Today, a new wave of concession bargaining is occurring in the public sector. Officials are asking unions to take rollbacks and or to freeze wages — in some cases as a *quid pro quo* for avoiding or minimizing layoffs. They have achieved some success, but many union groups have said “no” and pressed for cost of living adjustments and implementation of scheduled increases. Considerable editorial criticism has been levied at the unions that have resisted concession bargaining. While such a stand does mean more layoffs, those who are affected are the shorter service workers, given the presence of seniority provisions that have been a hallmark of unionism. Many senior workers are particularly concerned that any slackening of improvements in their economic position will adversely affect their pensions, which, in the public sector, are often based on final salary levels. In one recent negotiation a member of the union bargaining committee responded to management’s proposal to freeze wages with the comment, “I have just done a quick calculation and your proposal will cost me \$2,000 per year in pension benefits.”

Referring to the reduced purchasing power of the middle class, President Barack Obama has stated that unions are not part of the problem, they are part of the solution. A tension has clearly developed between the intense concession pressures on wages and benefits and the historical role of unions in building the American middle class. Thus, the increase in concession bargaining offers lessons about the role of pure power and pressure in bargaining as well as the difficulty of attending to broader societal consequences in bilateral bargaining relationships.

## **The Power of Labor–Management Cooperation**

The counterpoint to distributive bargaining and the rolling back of wages and benefits has been the process and potential of integrative bargaining, reflected today in labor management partnerships, joint problem-solving initiatives, and “fostering” approaches to negotiations (Walton, Cutcher-Gershenfeld, and McKersie 1994). Several factors have moved some parties to seek common ground: decentralization of operations, complex work system issues, new compensation arrangements that reward achievement via gain sharing, and an increased emphasis on enhancing career employment and skill capabilities for the workforce — all of which are reflective of a larger shift to knowledge-driven work in a wide range of occupations and settings (Cutcher-Gershenfeld et al. 1998). Joint subcommittees, sometimes criticized as cumbersome, are increasingly seen as a powerful, decentralized format for joint problem solving and action (McKersie and Cutcher-Gershenfeld 2009).

The concept of labor-management cooperation has roots reaching back nearly a century to Louis Brandeis’s 1912 Protocol of Peace that ended the 1912 New York garment workers strike and then to Dorothea de Scheinitz’s 1949 study *Labor and Management in a Common*

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*Enterprise*. Today, Kaiser-Permanente and a coalition of unions, Southwest Airlines and its unions, the United Auto Workers (UAW) and Ford Motor Company, the International Association of Machinists/UAW and Harley Davidson, and many other high-profile examples of labor-management cooperation exemplify the ways that labor and management can expand the proverbial pie through problem solving and joint action (Rubenstein and Kochan 2001; Hoffer-Gittell 2003; Glover and Harris 2009; Kochan et al. 2009).

With such positive results, why are there not more examples of labor-management cooperation, and why are the initiatives that do take place sometimes not sustained? Researchers have examined why efforts to work together often have a short life span and why “islands of success” rarely diffuse and transform whole systems. Leadership turnover on both sides can bring about a demise of the cooperative program, with a return to a more traditional if not more adversarial relationships. Some of the abandonment of joint programs also stems from ideological clashes. For example, a union that is involved in a joint program in one set of facilities will find it untenable to continue if management is trying to keep other, often newer facilities unorganized. On the management side, many feel that the “ability to act” is lost when it engages in a partnership program with the union. And as far as the rank and file are concerned, many are suspicious of union leadership that becomes too closely aligned with management, wondering if union leaders still represent their best interests or are enjoying what are seen as their “cushy” meetings with management.

One concept that has emerged from research on sustainable innovations in labor-management relations is the notion of “bargaining over how to bargain” (Cutcher-Gershenfeld 1994). What began as prebargaining agreements on ground rules has emerged as a full-blown dialogue on the structure and nature of the bargaining process. One of the most visible and dramatic instances of this approach involved a series of two off-site “bargaining over how to bargain” sessions, with more than two-hundred lead UAW and Ford negotiators in preparation for the 2007 national negotiations. As a result of these sessions, the parties agreed to dramatically restructure the bargaining process, which involved reconfiguring the work of twenty-four joint subcommittees, addressing topics such as quality, safety, and continuous improvement.

Traditionally, one side would make opening demands, the other would present counteroffers, and they would jockey back and forth trying to find a mutually acceptable compromise. By contrast, the parties used the following seven-step process:

1. Opening and shared vision: Each side will make opening statements on an issue (including the formal presentation of UAW demands as per the UAW constitution) that are designed to be constructive, and both will

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engage in a joint brainstorming process to identify those aspects of the issue on which there is a shared vision of success.

2. Joint data collection: Where appropriate, both sides are empowered to conduct joint data collection on the issue.
3. Analyze underlying interests: Both sides will engage in the joint identification of underlying interests — collected in separate lists of union interests and management interests — facilitated by the cochairs or by internal facilitators available on request.
4. Generate options: Both sides will engage in full brainstorming of options on each issue, which includes the opening demands from the UAW as well as additional options based on the interests identified and the data collected, again with facilitation available on request.
5. Negotiate agreements: After discussing the elements of a shared vision, data, interests, and options, the parties will then engage in the bargaining toward agreement on each issue.
6. Main table calibration: While the major economic issues are reserved for the main table, most remaining bargaining is distributed across subcommittees that will periodically update the main table on their efforts.
7. Anticipate implementation: When agreements are reached on issues, the parties will also set in place clear action plans for implementation, specifying the who, what, when, where, why, and how needed to implement the agreement.

In fact, in the subcommittees and at the main table, the UAW and Ford reached breakthrough agreements in 2007 that leaders from both sides have stated would not have been possible without the many process changes introduced. Moreover, the process was extended to include joint implementation in ways designed to survive leadership turnover and other contingencies. The notion that a highly institutionalized process might be completely restructured by mutual agreement is a significant example of negotiation innovation from the labor-management domain — literally reshaping the institutions while “in motion.”

## **Negotiations at the Strategic and Operating Levels**

In their study of U.S. industrial relations, Kochan, Katz, and McKersie (1994) outlined the concept of three interacting levels of industrial relations: the strategic, contract negotiations, and operating levels. At the *strategic* level, many companies have been providing union leadership with regular briefings, and in a number of instances, unions have nominated representatives to serve on the respective corporate boards of directors.

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Shifting to operating level, the emphasis on teams and worker involvement has generated new patterns of interaction. In some cases, supervisory spans of control are broader and workers perform the operations with less direct supervision.

The FMCS survey reported a number of participative work practices and strategic partnerships, but these were a minority — less than 10 percent of the situations could be characterized as having alignment and transformation across the three levels of the system. This represents a challenge to the U.S. industrial relations system and to the collective bargaining process: if more than a small minority of union–management dyads can link collective bargaining to frontline operations and strategic forums in transformational ways, it would powerfully illustrate negotiation effectiveness in an important institutional context.

### **The Next Twenty-Five Years**

The last quarter century has witnessed a dramatic downward trend in the number of collective bargaining negotiations that shape the conditions of the employment relationship. At the same time, we have seen a wealth of innovations applicable to a broad range of negotiation contexts — some widely adopted and some less fully utilized. Substantive innovations such as cost of living clauses, arbitration provisions, and joint committees for oversight and implementation have proven helpful in many different settings. Process innovations such as negotiated ground rules, mediation, neutral and joint fact finding, the use of subcommittees for parallel processing during negotiations, the use of brainstorming and facilitation during negotiations, bargaining over how to bargain, and other innovations have also been used successfully.

What are the future prospects for labor–management negotiation? Will it reestablish a more central role in our economy and will it continue to provide valuable insights for the field of negotiations more generally? Has the country reached a turning point? Several indicators warrant a cautious “yes.” President Obama has expressed support for unionization and indicated that if Congress passes the EFCA, he will sign the legislation. The previous administration sent several signals that collective bargaining was not welcome. For example, on his first day in office, President George W. Bush terminated the program of labor–management partnerships between federal agencies and unions representing government employees. Then, after the terrorist attacks of September 11, 2001, the White House issued an executive order prohibiting collective bargaining for homeland security workers, portraying unionization as a threat to national security.

The roles that innovations such as labor–management partnerships, knowledge-driven work, and interest-based bargaining will play in the future remain to be seen. There are many new challenges on the horizon, including:

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- understanding the dynamics of the negotiation process when one of the parties (usually the employer) is “forced” by a union election and government order into a bargaining relationship;
  - alternatively, understanding deep and far-ranging problem solving that affects additional stakeholders such as customers or society;
  - assessing the dynamics when parties roll back gains achieved in prior negotiations in ways that go beyond incremental concessions because of the concurrent collapse of product markets, financial markets, and labor markets (such changes do not take place easily);
  - better appreciating the many constituencies “looking over the shoulder” of the lead bargainers — a special case of principal-agent interactions (Mnookin and Susskind with Foster 1999);
  - more fully tracing the multiple levels present in a typical labor-management relationship — affording the opportunity to study the interplay between strategic choice, the process of negotiating agreements, and the task of implementing and sustaining these agreements; and
  - anticipating and addressing the impacts of accelerating rates of technological change on the slower-moving institutions of labor-management relations.

With support from public policy, the country could well witness a new era in which collective bargaining plays an increasingly important role in the economy, specifically because it has the potential to deliver better outcomes for all stakeholders (Kochan and Osterman 1994; Kochan and Lipsky 2003). If this happens it will be because labor-management negotiations — both process and substance — will have adapted to today’s realities, with new representational models and new bargaining processes better matched to the global knowledge economy. We believe that the likely result will be a more problem-solving-oriented process that will take into account a more distributed workforce, with expanding knowledge and skill demands, accelerating technological change, globalization of markets, outcomes relevant to society, and basic issues of fairness and justice. An institution that can adapt in these ways will not only be important to society but will continue to be a valued source of new ideas for the field of negotiation.

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