CHAPTER FORTY-NINE

Labor Relations and Conflict
Christopher Honeyman

The relationship between workers and owners or managers has been one of the central arenas of human conflict for centuries. Yet the rules and routines of that relationship vary enormously by locality, era, and industry. For starters, there is the ostensibly simple question of what to call the relationship. Labor relations is the classic term, and most scholars and neutral practitioners still regard labor relations as the center of a field in which industrial relations has come to mean something broader, while employment relations, confusingly, is sometimes used to mean relations with all workers, and sometimes just with nonunionized ones. At the same time, to see labor conflict primarily through the lens of classically organized labor now leaves out an increasing percentage of workers.

That is merely one part of the problem presented by a discussion in a single chapter of labor relations and conflict. Another is assessing what starting point will be most useful to readers. Spartacus, Karl Marx, and Samuel Gompers offer themselves as emblematic personalities, but none of them favors a contemporary discussion. And even if the scope were limited to a single personality, area, and locality, the perspectives of the political scientist, the social historian, and the economist are likely to be different.

In the face of all of these concerns, one could do worse than start with a federal appeals court judge, Samuel Alschuler, who in March 1918 issued an arbitration award in the meatpacking industry covering Chicago and ten other districts. Provisions included the eight-hour day and forty-hour week, overtime, a raise, and an equalized pay scale for men and women. Under government pressure, meatpackers agreed to a three-year pact. But the end of World War I meant a return to the old ways. On September 15, 1921, industry leaders Armour, Swift, Wilson, and Cudahy announced that they would not renew the agreement; instead, their plants would become nonunion (Bukowski, 1998).

This story encapsulates a whole series of recurrent themes in the field of labor relations and conflict: the fluidity and creativity of conflict-handling processes; the mutual dependence of processes often considered
separately by practitioners and scholars who have little experience in the overall sweep of conflict management; the refusal of a major labor dispute to remain anchored in a single company or locality; the capacity of such a dispute to serve as a milestone in broader social change (e.g., in the 1918 agreement’s provision specifying gender equality in wages); and the resurgent ideological opposition to collective bargaining at all. In almost a hundred years since Judge Alschuler’s arbitration award, and despite a stunning variety of ideas that have become outmoded and actually replaced in other disputing domains, not one of these themes has become obsolete in conflict over labor relations. I give attention in this chapter to several of these concepts, as well as to how the whole field of labor (and, beyond that, industrial) relations fits into human conflict more broadly and what we have learned from it about addressing conflict in general more constructively.

SOME LIMITATIONS

In undertaking such an essay with so large a set of possible questions, a certain humility is in order, and my approach has distinct biases and limitations. A proper scholar of labor relations could wax at length on a comparison between models of labor relations in different countries and how they have played out; but to do justice to that approach, the term “at length” would likely have to be taken literally. What from a distance may look (for example) like the German model of labor relations, with its characteristically intense level of government involvement, industrywide bargaining, heavy emphasis on publicly supported industrial training, and long-term employment patterns, may look quite unlike your personal experience of work in Germany if you happened to be born there as, say, a second-generation Turkish immigrant. Something similar is true of millions of ethnic Japanese to whom the Japanese model of lifetime employment would seem foreign to their experience of work, for the workforce is large among the thousands of scrappy or marginal subcontractors and suppliers on whose cutthroat competition the stability of more famous companies’ labor relations ultimately depends. Thus, the first limitation is one of scope, geographic and otherwise. For a publication that is primarily a US product, my focus will be primarily on the US experience of labor and industrial relations.

The second limitation is personal. My perspective on labor relations is that of a working practitioner. So what readers will see here will likely be quite different from a treatment of the same subject by a professor of labor relations. I offer it, with all its limitations, as a modest product of at least a certain amount of practical experience with labor conflict. There are whole libraries standing ready to fill the gaps this approach will inevitably leave.
The third limitation is one shared by many scholars and practitioners alike and already hinted at above. At a certain socioeconomic stratum of society, at least in the United States and Europe, it is a widely shared assumption that the subject of employer-employee conflict is centered on union-management relations. In this view, nonunion companies and “unorganized” employees are implicitly seen as less relevant or less typical. Basic statistics on union representation increasingly challenge this view, a topic to which I return in the pages ahead.

**BACK TO THE STORY**

For now, consider the strange role, or rather the strangeness of the multiple roles, assumed by Judge Alschuler. Not yet included in the story is the fact that following his arrival on the scene, Alschuler did not limit himself to calling meetings between the parties or conducting hearings in dignified surroundings. He also spent some time getting an education from representatives of the parties, who led him through the foul and stinking stockyards and meatpacking plants, perhaps not that greatly improved since Upton Sinclair’s 1906 description in his novel *The Jungle*. And here we see right away characteristics that have proven of immense value in understanding how conflicts in other domains entirely might be better addressed: a legal officer (a federal judge) was appointed chairman of a commission designated as one of mediation, by a political official (albeit the president of the United States), but subsequently acting in effect as an investigator in the middle of that function, before issuing an arbitration award, all in service of a series of large negotiations between parties over whom Alschuler had little or none of his usual judicial power. Here is process pluralism in creative operation, long before Carrie Menkel-Meadow came up with that term. (For a relatively recent recapitulation, see Menkel-Meadow 2003; see also chapter 50 in this Handbook.)

Then there is the huge geographical sweep of a dispute that might originally have been seen by many as based in local problems in the Chicago yards and plants. In actuality, it not only seems to have started elsewhere, but eventually spread to most of the industrially significant areas of the eastern seaboard. What happened in Chicago did not stay in Chicago in terms of the resolution either. So here is a sustained effort to resolve a dispute on a national level instead of treating each locality or even each plant as having its own labor relations problem that should be resolved by local people. There is also the extraordinary circumstance under which this strike was handled by an exercise of federal influence (if not direct power), which was originally related to the US entry into World War I: the meat
industry was deemed a vital part of the war effort, justifying a procedural innovation. And the reluctance with which the Chicago packinghouses accepted such intervention, or indeed tolerated collective bargaining at all, is underlined by their prompt insistence on reverting to nonunion status as soon as the three-year agreement expired: the 1918 settlement was merely an episode in a continuing conflict.

A CONTINUING PHENOMENON

Understanding the proliferation of processes for handling different kinds of labor disputes, meanwhile, starts with recognizing labor relations “conflict” as a continuing phenomenon, built into the roles and self-definitions of labor, capital, and management. Disputes become their manifestation in practice. Other chapter writers in this Handbook have addressed this distinction in detail, in which a severe imbalance of power can mean that over quite a long period, a conflict may result in few or no visible disputes because the weaker party is either disheartened or convinced it would be weakened further if it raised any. In labor relations, the basis of the enduring conflict is simple enough: capital tends to see workers’ roles in terms of economic utility and to see individual initiative and competition as the basis for any advance in any particular worker’s situation. Labor tends to see the allocation of resources in terms of social justice and seeks some degree of equality. So far, straightforward enough.

The ramifications, however, are anything but simple, as the balance between these competing sets of values shifts according to regional and national culture, locality, industry, and circumstances. Yet the enduring nature of the underlying social and economic attitudes is highlighted when, at rare moments, someone behaves contrary to type and role. A manifesto by the enlightened industrialist George Mead, circa 1928, put “Why I Unionized My Plant” front and center for the readers of Factory and Industrial Management, and did so eloquently. (At the same time, it is worth noting that Mead’s attitudes did not change entirely: it seems not to have occurred to him that it should be up to the workers, not him, whether his plant became unionized.)

The Alschuler legal-political-negotiation-mediation-arbitration case also highlights an enduring difference between national cultures: in the United States, even a cursory search on “labor relations” will reveal a renewed vein of strong and largely successful conservative opposition to unions, and particularly to government’s institutional support for union-based systems of handling worker-management conflict. Under such labor relations systems as the modern German one or the French, at least the larger employers’ working
assumptions as to the need to deal with unions at all, and/or the role of government in such relationships, would likely be completely different. (Under the huge Mondragon cooperative system in Spain, which employs some eighty thousand people in some 250 companies, or within other similar cooperatives, expectations would be sharply different again.)

THE TECTONIC PLATES OF CONFLICT MANAGEMENT

Beyond the dizzying variety of forms found in different cultures and industries, a further factor helping to obscure what is going on in labor relations conflict is that in at least some key aspects, labor relations has long been “sticky.” It has not shown gradual change in response to social or economic pressures, but rather sudden and sharp shifts only after pressure for change had become overwhelming. Thus, labor began to show the ability to organize by the mid-nineteenth century, yet in most industries in the United States, it took until the 1930s to secure the legal right to do so. The burst of organizing that followed was impressive. Similarly, as public sector employers saw it, it took from the 1980s until roughly 2011 to even begin to obtain redress for escalating public sector pension and health costs, which by then had far outstripped the private sector contracts that were the original source of comparison. The 2011–2012 moves that resulted seemed cataclysmic to the unions, which had not seen this coming. Understanding this stickiness is key to understanding what is going on in an era of sudden and major change in the relative power of employers and employees.

One form of tectonic shift is an external threat, and in fact most of the major changes in labor relations conflict, both as to methods and rights, have followed some kind of external threat. Thus, the US War Labor Board and related government initiatives in both World Wars I and II were the real impetus behind major employers’ acceptance of arbitration or even mediation of major labor disputes. In World War I, employers’ acceptance was temporary, but for a variety of reasons, the changes stuck after World War II. Yet all of these influences and changes may remain obscure without some attention to why unions began to grow at all.

THE INDIVIDUAL AND THE COLLECTIVE: BACKGROUND

Because labor relations is widely seen primarily in terms of the relationship between employers and workers who are organized into unions, at least a little attention to the historical relationships between different kinds of individuals and unions helps establish the broader context. (I return for a
more contemporary look at the individual-and-collective dichotomy toward the end of this chapter.) In general, labor in the early industrial age, first in England and then in the United States and other industrializing countries, was characterized by a relatively small number of workers with high degrees of skill and a large mass of unskilled labor. The unskilled were often easily replaced in the event of a strike. And without any recognition by employers of a union’s right to exist or any government-mandated system for enforcing the result of an election, strikes were one of the few tools available.

The paper industry, which experienced significant labor conflict in the latter part of the 1800s, is a good example. A papermaking machine can be two stories high and as long as a city block, and it requires a crew to operate it. In the nineteenth century, the lead operator was a much more skilled individual than the rest of the crew. In a succession of major disputes in the 1890s, the companies sought to separate the interests of the crew leaders from those of other employees, and the unions began to enjoy some success in their strikes only when the crew leaders joined up. Similar stories could be found in many other industries in many other places.

Indeed, in the United States in particular, many early labor leaders despaired of organizing the unskilled mass, and the American Federation of Labor was explicitly designed to give skilled labor some power across trades, crafts, and industries by coordinating (and reducing rivalry) between organizations representing skilled labor. With the rise of enormous integrated production facilities in the early twentieth century (e.g., Ford Motor Company’s River Rouge plant, of which it was said with something approaching realism that the plant took in coal, iron ore, and sand at one end and turned out a car at the other), it began to seem to some labor representatives both more possible and more essential to organize the huge numbers of unskilled needed to operate such a plant. Yet the Congress of Industrial Organizations (CIO), the umbrella group that resulted, initially had to fight the AFL’s conservatism, as well as the employers’, to make any headway. It was not until ten years after World War II that the AFL and CIO joined into a single organization, and it is not irrelevant that it was in the era that followed that unions enjoyed their greatest influence.

The causes for the later loss of much of that influence are complex and largely beyond the scope of this chapter. But concepts of labor relations and conflict cannot be understood without recognizing that the most common explanations given for the unions’ loss of membership and influence in the past thirty years—explanations that center on adroit and persistent employer opposition to unionization, with the limited penalties under US labor laws and the threat of outsourcing as key weapons—are subject to question. In sidebar discussions during mediation cases in which the union was waiting for the other party to make the next move, I have many times heard union
representatives’ vehemence on this subject, and typically they dated the turning point in employers’ confidence that unions could be defeated to the breaking of the air traffic controllers’ strike of 1981 and ascribed to President Ronald Reagan the lead role in the resurgent ideology of antiunionism.

Yet for more than twenty years, this, as an American-centric story, has seemed less than convincing to me. (See the substantial list of European countries that had by then already seen declines in private sector union membership similar to that in the United States in Honeyman, 1992.) The stock explanation also seems insufficient after encountering veterans of the labor battles of the 1930s. When I began work in this field in Detroit in the 1970s, some of those who had been founding United Automobile Workers (UAW) members in the union’s earliest years were still to be found in the plants and union halls there. Their stories left little room for the idea that employers today are any more ruthless in opposing unions than they were then—probably the contrary, in fact, at least as to willingness to use overt violence. Yet in the 1930s, union membership went up.

This latter-day trend of loss of union membership has not only continued; it has expanded to include the public sector, which in 1992 and for some time thereafter was the bright spot in union organizing.6 It is now inescapable to anyone reviewing the numbers that the decline in union membership as a percentage of the workforce is multinational; explanations rooted in national politics or culture fail to explain this secular trend. I will venture a partial explanation below. First, however, it is necessary to discuss what a modern union actually does with conflict and how the various processes interrelate.

PROCESS PLURALISM AND THE MUTUAL DEPENDENCE OF DIFFERENT PROCESSES

Among people who are either studying labor conflict management or trying to practice it in thousands of workplaces every day, it would be pardonable to see their subject in terms of the visible resolution of the visible disputes. In collective bargaining, this means grievances, contract and grievance negotiations, mediation, arbitration, litigation, and strikes, as well as some more specialized processes. But except in the most disputatious workplaces, this panoply does not reflect the reality of disputing as seen from the perspective of a typical individual worker or a first-line supervisor.

To either of them, in most plants and other workplaces, inherent conflict or even tangible friction over some or another aspect of work or working conditions may be routine, but filing of formal grievances, let alone anything
as expensive as arbitration or as disruptive as a strike, is comparatively rare. So what does labor relations typically look like from an individual employee’s perspective in a unionized environment?

To begin, it seems worth noting that the common public perception of unions as huge entities dominated by a sometimes creative and diligent, sometimes bureaucratic, sometimes self-seeking, and sometimes outright corrupt but always distant leadership is an image fostered by employer groups and sometimes aided by the unions themselves; but it does not reflect the day-to-day life of the plant or job site. There, at least at the first level of representation, democracy typically rules, and the union representatives I have encountered by the hundreds are generally people who take on an extra and often burdensome task for little or no extra compensation. They resolve the vast majority of day-to-day labor disputes orally, in countless unrecorded discussions with individual employees, small groups, or individual supervisors. They are the backbone of any union that deserves to exist.

There is often a significant difference in personality type, and increasingly in educational level, between these first-line representatives and the “business agents” or equivalent who are salaried and work full time on union business. When I began meeting them in the 1970s, these individuals were typically long-service employees drawn from the production (or trade or trucking) environment directly, and they often—and certainly their leaders at the level of local president—had a good degree of political skill: in a five-thousand-person auto assembly plant, the local UAW president had many responsibilities that might remind an observer of the mayor of a small town, and several such whom I encountered struck me as having very much that kind of ability. Over the past forty years, however, there has been a shift, beginning in the public sector unions and now extended well beyond them, toward hiring younger professionals, often with master's degrees in labor relations, and sometimes with a law degree, for full-time union employment. Whether this has led to a greater emotional distance between the union staffs and the employees is certainly debatable; whether it has preserved the same degree of political ability within these staffs is debatable; but probably the ability to handle negotiations that increasingly involve complex technical matters has gone up. The result, however, from the rank-and-file employee’s point of view has probably been a trade-off between greater technical competence and a lesser sense of solidarity and group identity.

The Development of Conflict Processes

While the example of Judge Alschuler suggests the availability of advanced dispute resolution skills and multiple processes quite early on in the history of labor organizations, it is important, in seeking to understand the larger
history of conflict management as a field, to recognize that until the 1930s in the United States, collective bargaining existed only where employees were able to organize against often brutal opposition, and the law was generally no help. In fact, such systems of conflict management as existed did so in uneasy parallel with a legal system that by and large still treated unions as attempts at “combination” and used much of the same rationale in opposition to unionization that today would be reserved for antitrust discussions. The right to pursue any kind of legal penalty at all against an employer for refusing to bargain when a majority of workers had clearly opted for unionization did not arise for most of industry until the Wagner Act of 1935.

Against this backdrop, the subsequent organization of day-to-day disputing into channels that are, for the most part, relatively speedy, cooperative, and economical represents one of the greatest organizational achievements of labor, because the ability of an individual employee with a grievance to get some redress is at the heart of the whole idea of a union—at least, a typical US one. (In Europe and elsewhere for many years and with some lingering resonance today, the overarching Socialist or Communist political stance of many unions meant that pursuing individual grievances was not so much the focus of effort.) The invention of an integrated suite of conflict management methods in labor relations was responsible for ideas now being adapted to other disputing domains, sometimes by people who are unaware of the origins of a technique that they view as having come from people much like themselves (for all the reasons given in Rogers and Shoemaker, 1971).

Partly because of the increasing relevance elsewhere of the panoply of processes invented for labor disputes, it is worth laying out how they work together. The United States is instructive for this purpose because unlike the pattern in some other countries, its formalistic traditions in law rubbed off on labor relations, so that agreements are generally written down and normally have quite developed and clearly specified procedures for resolving issues that arise under the overall agreement.

A typical US labor contract has thus for many years contained not one but a series of methods of dispute resolution. These add up to a kind of “ecology of disputing.” In ecology, different species “cooperate” for the benefit of the whole, and I think that is a useful concept to apply to negotiation, mediation, arbitration, and the continuing but seldom-accessed (in most workplaces) availability of strikes and litigation.

Consider first the sheer variety of possible sources of conflict between a union and management in the throes of negotiating a new contract. It is not unusual for a moderate-sized bargaining unit, or grouping that negotiates together—say, one hundred to two hundred employees—to arrive at the first meeting with the management team with fifty or more issues on the table. Each issue has a constituency within the union; often, especially in
the public sector, there is a parallel process on the other side, which may raise a great number of issues of its own. But the constituency, those who really care about that issue, is likely to be slightly to significantly different in composition from one issue to the next. Much of what then happens can be seen in terms of a struggle between radical and moderate elements within each party. In a multifaceted negotiation, the fact that the moderate element on one issue may be the radical element on another obscures, but does not change, the essential relationship between moderate and radical.

For simplicity, I encapsulate a typical negotiating group as consisting of a radical minority and a moderate majority. (Where the situation is reversed, effective negotiation or mediation is unlikely.) In such a group, the radicals can be expected to emphasize philosophical and ideological purposes, partly out of conviction, but also because this gives them a platform in the continuing attempt to garner public support, and perhaps become the dominant faction. The moderates, meanwhile, are likely to emphasize the practical results of accommodation as opposed to confrontation. US labor agreements are replete with language, sometimes deliberately ambiguous language, that reflects the pragmatism of these moderates (see Honeyman, 2006).

It is worth reiterating that this is a very American story and starts with the nature of US labor relations, which is distinctive in that in the United States, a mantra of the field has been “management acts, the union reacts.” This catchphrase reveals a truth at the core of US practice: unions in the United States have mostly tended toward the pragmatic, while employers have often been quite ideological. In much of Europe for much of the past century, that situation was reversed.

**Some Differences Elsewhere from the US Model**

In other countries, the picture can be very different in other ways too, with much less reliance on the processes described below and with many agreements, as a result, not reduced to writing. Thus, both the visible form of an agreement and its subsequent procedures for administration are characteristic of national culture. In the United States, with its famously legalistic orientation, labor agreements can run to hundreds of pages, infused as they are with the culture of specificity and with ideas drawn from law, even when the parties negotiating them strive with success to avoid including lawyers in the more routine elements of their administration.

When agreements are not written down, they are less easily picked over for every detail. The moderates’ need to keep their own side’s radicals at bay then takes different forms. When the language of a written agreement is there for all to see, however, the negotiators who construct the agreement and the arbitrator who interprets it all show their relationship to the
moderate and radical elements on both sides by the practical and predictable result of their actions. The arbitrator in particular—a creature of the agreement and, one hopes, uniquely sensitive to its nuances—serves the moderates’ goals by distinguishing between tolerable and intolerable incursions into each party’s “principles.” The arbitrator couches her decision in terms of interpreting the agreement and often strains to avoid using the term equity in order to escape the accusation of the radicals on the losing side that the award does not “draw its essence” from the agreement. And in turn, the courts refrain from second-guessing the arbitrator by applying general legal principles, adopting instead the Supreme Court rulings in the “Steelworkers’ Trilogy” and related standards for deferral to arbitration’s results. At the same time, the “bargaining in the shadow of the arbitrator” that takes place in the earlier stages of grievance processes not only provides some degree of stability but ensures that the vast majority of grievances are resolved at relatively low transaction costs. This in turn preserves for both parties the financial ability to contest a grievance to the point of arbitration when they feel they must. From the point of view of the moderate on either side who desired a workable, if not ideal, agreement, the various processes of dispute resolution thus form an intricate ecology in which each part depends on the others for the success of the whole.

I make no claim that this “process ecology” operates in anything like the same way beyond the United States. One consequence of national cultural differences is a sharply different attitude among the parties toward government intervention, or the possible services of professional neutrals. For example, Britain is seen in most of Europe as the most similar among European countries to the manners and mores of the United States, in labor matters as in others. Yet at a time when I was one of twenty full-time staff members of a US state (not national) agency that handled on average about forty labor-management disputes a week in its limited jurisdiction, I was privileged to spend a day with the British national equivalent, the Advisory, Conciliation and Arbitration Service. I was further privileged that the day happened to include observing an actual arbitration hearing, and although the meat-and-potatoes of the proceeding seemed more familiar than otherwise, I was astonished when my guide explained why this was such a privilege: hearings were rather rare. I subsequently calculated that if I and just two of my US colleagues had applied ourselves, we could have handled the entire British labor arbitration caseload. Evidently the supposed similarities between British and American culture did not extend to how unionized plants resolved labor disputes.

So it is undoubtedly less a matter of “labor relations” culture than of national culture that in the United States, the structure of labor disputing and the resultant conflict management procedures came to be what they typically are. But the pattern that resulted has begun to be influential in
other kinds of human conflict, so it is worth laying out from another angle how it works. In general:

- Large numbers of individual concerns and complaints, whittled down through informal discussions between employee and supervisor (and often, at “step 1,” without a union representative even present), are reduced to
- a much smaller number of formally “filed” grievances, which proceed through
- several steps, with fresh consideration by successively higher-level union and management representatives at each, and with the remaining majority often settled at each stage, resulting in
- a few percent of grievances in some industries, or fractions of a percent in others, that are scheduled for an arbitration hearing. Even then, a significant percentage of the remaining disputes, perhaps half, are settled before an actual hearing or decision.

In such a system, dozens to thousands of problems can receive some sort of attention for every one that actually triggers the cash expense to the union of paying its half of the fee for an outside arbitrator, or the equivalent plus the (often higher) expense to the company of bringing in its own lawyer. The safety valves built into such a system usually include an explicit agreement that there will be no strikes over grievances. And the parties’ resort to expensive litigation is at a minimum under most such systems. Yet every employee who is concerned about something that happened at work knows there is the potential for his or her grievance to go all the way up. This is a constant reminder to management that someone is watching; “keeping them honest” is not just a slogan for a broadcast news show.

From personal observation of hundreds of labor-management relationships, I believe these arrangements may often bog down with delays, particularly at the higher levels, but are otherwise reasonably fair, reasonably effective, and reasonably economical. To employees who are not organized, these traits should logically be a great inducement to form and join unions. Yet as already noted, union membership has declined. Again, I venture an explanation below.

**CREATIVITY AND PROCESS PLURALISM:**

**A LEARNING LABORATORY**

To show how a large array of complex developments takes place, a microcosm can be helpful. In this section, I use Wisconsin as the primary
example, because while its early experience with labor conflict was similar to other northern and industrializing US states, its political and administrative responses in the mid- to late twentieth century were more creative than most others, and in turn produced what for upward of thirty years was arguably the most comprehensive learning laboratory of labor relations to be found anywhere.

First, in terms of process innovation and worker benefits, there came a series of early twentieth-century innovations that began to soften the edges of class conflict: workers’ compensation, unemployment compensation, the beginnings of a pension system. (Note, however, that furious employer opposition to “recognizing” unions scarcely abated from the state’s first strike in 1847 to after World War II.)

But none of the early political changes actually required any individual employer to recognize a union or to do anything much more invasive on a daily level than pay the associated taxes. In the mid-1930s, however, the state one-upped the national political agenda and passed a “little Wagner Act” supporting collective bargaining along the general lines of its namesake, but with some uniquely progressive features. It also prompted an amendment that foreshadowed the 1947 Taft-Hartley Act and infuriated the unions: the amendment defined and prohibited “unfair labor practices” by unions as well as employers. Allowing for this and other political reverses, this legal structure over a longer period became fortuitous for the development of the “professional neutral,” for a series of largely accidental reasons including the fact that the agency created to administer the law was very small, which necessitated cross-training of its staff to handle any kind of neutral process. This appears to have resulted in the first general-purpose group of dispute management “neutrals.”

The growing cross-functional experience that resulted appears to have been influential in the choice of mechanisms for resolving public sector disputes when these were later added to the system’s remit. Experience with these, particularly hybrid mediation-arbitration, in turn became the basis for a remarkable innovation quite outside labor conflict: one of the most experienced and able mediator-arbitrators, Howard Bellman (2006), became the state’s labor and industry secretary for a time and promptly used the post to persuade the governor and legislature to enact a model statute that provided for negotiation and, if necessary, final-offer arbitration between a landfill operator and a community over the terms of operation of a new landfill. This innovation not only became the first such statute anywhere to attempt to reduce the pressures that were making it nearly impossible to start new waste dumps; it became an unmistakable example of the role of labor conflict management as a test bed for designing systems to resolve other kinds of conflict, because in this instance, the provenance was unmistakable.  

11
A System Comes to a Halt

During the same years, several factors combined to create complacency. One was, ironically, the psychological consequence of a political innovation: the process of mediation-arbitration, which ensured almost zero strikes in Wisconsin in the public sector over a thirty-year period (and did it without an escalation in wages and benefits, at least as compared to the more strike-oriented jurisdiction of Illinois immediately to the south), had a side effect: it took the “juice” out of labor relations disputes and made them not only more technical than political but also a bit too safe to pursue to impasse. The result was a degree of disconnection between the adverse economic reality being felt by the taxpayers in rural communities and the collective bargaining in the county courthouse or school systems serving them. Augmenting this sense of disconnection were the standards of comparison of wages and working conditions used in the collective bargaining system, which underlay the attempts not merely of arbitrators and mediators, but of negotiators as well, to ensure some kind of fairness on both sides. For reasons entirely understandable to anyone who has attempted to collect detailed data in the unruly private sector, such data were not economically obtainable to either party, at least not at the level of specificity needed to fulfill legal standards.

Bargaining in the shadow of the arbitration system, the parties downplayed private sector comparisons. This contributed to the tendency, as wages, pensions, and health benefits eroded in the private sector, for these changes not to be reflected in local public sector collective bargaining, or at least not with great immediacy or speed. City managers, county board members, and the like often ground their teeth in frustration, which contributed to the political tsunami that eventually followed.

What this process felt like to a working professional who encountered these anomalies day by day can be summed up on a personal level: in hundreds of cases across the state, I routinely encountered very liberal public sector unions facing very conservative school and county boards, who routinely described Madison, the state capital, as “50 square miles surrounded by reality”—this, despite the political and legal innovation in what for many years stood as the most advanced and most comprehensive system for managing labor relations conflict in the public sector. In other words, the underlying pressures mounted, for reasons traceable at least partly to what might be seen as relatively small technical flaws in the design of the conflict management system.

The relationship of intellectual and professional “hardening of the arteries” to these developments is potentially relevant to other domains of dispute resolution as well. The history of labor conflict in the public sector in
recent years, of course, is not going to be exactly replicated in any other field of human conflict; yet there are worrying parallels, which imply possible threats to the future of the conflict management field more generally. (For a thorough series of analyses from multiple disciplinary perspectives, see the seventeen articles on the threat of routinization in conflict management work in a special issue of the *Penn State Law Review*, vol. 108, no. 1, 2003.)

**THE EFFECTS OF GLOBALIZATION AND OTHER FORMS OF GEOGRAPHIC SPREAD**

Labor relations and associated conflict are influenced by perceived practices abroad, as well as within the United States. In more recent years than the meatpacking example at the start of this chapter, labor costs in Vietnam, circa 2000–2012, for example, affect labor negotiations in Indiana; employer militancy in the public sector in Wisconsin circa 2011 inspires employer militancy in other states. At the time of this writing, the apogee of this trend has been a recent and stunning labor defeat in Michigan, when it became a “right-to-work” state (a state in which even the right to bargain for mandatory employee payment toward the cost of collective bargaining and contract administration is outlawed). Yet the geographic spread of a power shift toward or away from employers does not necessarily occur across industry or occupational lines; arguably, experience in one industry spreads to another industry haltingly, both when unions are on the upswing and when they are in decline. The most dramatic example is in the continued expansion of unions in the public sector for roughly three decades after their decline in the private sector had already set in.

**THE LATER BENEFICIARIES OF LABOR RELATIONS INNOVATION**

One of the key contributions of labor relations to conflict management has been indirect, in its service as the first truly wide-scale field of experimentation and practice in which virtually all of the arts and sciences of conflict management took effect. These include stepped negotiations, mediation, arbitration, administrative law, standing neutrals, and the development of specialized nonneutral practitioners on both sides who are usually much less partisan than their image and who resolve most disputes or threatened disputes without recourse to neutrals. This experience, of thousands of cases over decades, provided practical examples as well as heart to those
who first wondered why the divorce courts, the civil courts, public policy processes, and even international dispute settings could not do some of the same things. Then they set about seeing to it that those environments did.

In the larger sphere of human affairs, this was not a small contribution. Its most significant single element may have been the development of a cadre of professionals, partisan as well as neutral, who had internalized for very practical purposes many of the ideas (such as the interrelationships between conflict management processes, and the cognitive biases that affect everyone) only later codified in the expanding field’s new textbooks. For example, Frank Sander, originator of the concept of the multi-door courthouse, had early experience as a labor arbitrator in addition to being a professor at Harvard Law School.

As one example of the wider influence of this model, what formerly was a pattern in the construction industry of routine and very expensive disputes between the myriad contractors and other players on any major job (architect, city officials, engineers, suppliers of all kinds) has now been largely ameliorated over much of the globe by adoption of stepped negotiations, standing neutrals, and provision for mediation before resorting to arbitration, and for arbitration rather than resorting to law, along with a series of other ideas largely derived from US labor-management conflict management experience. Some of the same ideas are now beginning to make their way into internationally accepted concepts of corporate governance.

**THE SHRINKING SPACE FOR COLLECTIVE BARGAINING**

Many of these considerations have affected the attitudes of both employees and employers toward unions over time. But I believe the cumulative shift over the past thirty years in how labor relations conflict is handled reflects not so much the actions of employers as it does the balance of the preferences of employees, who continue to have some degree of the right to organize. In addition, I believe the “space” to pursue employee interests in collective bargaining has shrunk over the years largely as the direct result of the successes unions have had in fostering legal protections that provide to unorganized workers some of the same benefits unions fought so hard to win for their directly represented employees decades ago.

The result is that to a cumulatively impressive extent, such benefits as a degree of protection against unjust discharge (and, wisely or not, in many European countries, even against economically driven layoffs); protection against discrimination based on race, gender, age, and other characteristics; provision for old age; indemnity for employees injured on the job; and comprehensive health insurance have been to a greater and greater extent
effectively removed from the scope of collective bargaining by being provided on a broader societal level. The percentage of workers with skills that are hard for employers to replace overnight has also gone up sharply in most industrial economies.

At the same time, for workers whose education and skills have not kept pace with the rising demands of modern economies, intense competitive pressure from developing nations on the industries that tend to employ them have led not only to global outsourcing but to the dominance in many urban areas of immigrant labor in sectors such as construction, which at one time was among the better-paid work that lower-skilled workers could get. To see labor relations in these terms may go beyond the scope of what most plant-level union or management officials (or scholars specialized in the field) would consider properly part of the subject; but these broad trends have had such huge impact on what is bargained on behalf of workers, who bargains it, how it is bargained, and where it is bargained, that they may cumulatively explain more about the fortunes of the long-suffering union movement than either the movement’s own actions with employers and industry or employers’ varying levels of cooperation with or opposition to the unions. These broad trends may even supply some explanation for the otherwise-puzzling fact that the sharply rising inequality of wages between ordinary workers and upper-level managers and professionals has not led to any visible increase in the level of determination among employees to insist on unionizing. In most of the United States, for these reasons, I think it is simplistic to view employees as passive sufferers. They are more realistically seen as conscious actors in a continuing drama in which they often can, in fact, still choose to have a union or use a union merely as a threat if they see either as in their overall interest.

**Union Issues Go Mainstream**

Less directly but even more powerfully, many issues that began as collective bargaining struggles have moved first into the law (particularly, discrimination issues) and later into individual arbitration. For example, concepts of “just cause” as being required for discharge under a typical union contract no longer stand in bright-line contrast to the nonunion concept of “employment at will”; the concept of “wrongful” termination has filled some of the space. Management lawyers now routinely advise clients on how to reduce the chances of having to defend against such a claim, and although arbitration is often derided as employer-dominated, the plaintiff’s bar has calculated that the economics for them, with remedies that, ironically, are often larger than under typical union contracts, warrant paying close attention when a potential client of this kind calls.
I believe that the larger trend represented by this example has had enormous consequences for employees’ perception of the desirability of collective bargaining. The list of concepts impinging on the “just cause space” alone is quite long. Since the 1930s or even earlier, there has been a degree of income security for the elderly, for those injured at work or laid off, and a premium pay rate for those required to work overtime. In the 1960s came protections against discharge or other discrimination based on race; then gender, age, religion, national origin, and other human characteristics. Later still, legal protections were extended to disability and, in many forms of work, sexual orientation. And along with these kinds of protections has come an expanding list of items that at one time could be secured by employees only through collective bargaining on directly economic items. More recently, we have seen such innovations as maternity and paternity leave and something approaching universal health care.

These are widely, though not universally, regarded as social advances, improvements in the human condition. But accepting the social advance view, it seems inescapable that with each such advance, at least a little, and sometimes a large chunk, of the agenda that at one time could only be aspired to by employees who had a union was diverted into other channels or even guaranteed for all. Each such advance thus incrementally reduced the pressure on employees to withstand employer opposition and insist on having a union to represent them.

Equally significant, on a procedural level many traditional collective bargaining issues have moved into the standard operating procedures of large organizations, as well as many medium-sized ones. The reasons derive from the earlier rights to collective bargaining but are not often recognized as such, partly because most of this activity has been gradual, noncontroversial, and the obscure result of changes in hiring and staffing in management’s back offices.

In addition, the indirect effect of simply having specialized staff in labor relations and employee relations (which are often separate departments), who are selected and trained for their knowledge of legal requirements and their interest in ensuring consistent management, has probably had an effect on labor relations conflict in entirely nonunion enterprises as well as wholly or partly unionized ones. It inherently creates not just widely promulgated “best practices” and similar influences, but also a certain set of expectations as to “minimum” practices. These depart from both the pure, “uninfluenced by third-party” relationships between management and employee that employers claimed were best, and from typical union claims that all situations where the employee “has no one to speak for him” are grossly unfair. In other words, it is my impression from encounters over a long period that the mere thought of having to explain and perhaps defend
his latest whim, or off-the-cuff response to some infuriating employee, to the vice president of human resources has been enough to dissuade many a supervisor or manager from hasty action—though statistics on actions not taken are of course hard to come by.

The result is a somewhat more regularized, somewhat more bureaucratic set of relationships than was typical when unionization began—and this elusive “dog that did not bark” may be a large part of the explanation for why employees in recent years have not fought harder to become or remain unionized. Along with the shrinking space for directly economic bargaining, this factor appears common to much of Europe as well as the United States. These trends may explain something about why union membership as a percentage of the workforce has fallen so similarly in so many countries, when their public politics in other respects have been so different.

THE NEAR-TERM FUTURE OF LABOR RELATIONS AND CONFLICT

In the United States, it is always risky to predict what will happen on the broader fields of conflict in labor relations; few people, for example, would have predicted in early 2011 that in early 2013, Michigan would be a right-to-work state. But some trends seem likely. The first is some degree of reduction in the existential threat that appeared to face unions as recently as two years prior to this publication. One element is the threat of offshoring of manufacturing, which is now starting to recede, partly because much of the low-skill labor that can be outsourced to China has been outsourced already—and is even now being outsourced from China to still lower-wage countries as China starts to catch up economically. Moreover, an increasing percentage of blue-collar manufacturing work involves such advanced skills, and such small numbers of employees in relation to the value of the goods produced, that some of the work is returning to the United States because of other cost factors (e.g., the plummeting cost of natural gas for running a plant). I recently found myself witnessing the settlement of a case I was about to hear as an arbitrator, in which the company agreed to return to work an employee whose carelessness had caused “running scrap” valued in the multiple thousands of dollars. The company was palpably influenced by the prospect that to train his replacement would have taken five years.

At the same time, the United States is still perceived internationally as not only a formidable competitor but a country with relatively peaceable and stable labor relations (take a look at a typical South Korean labor dispute, by way of comparison). It is increasingly recognized that it is our
failure to train people adequately for the more math-intensive, design-intensive plant work, and not our prevailing wages and benefits, that is a key limitation in maintaining or even adding to the remaining manufacturing jobs in the United States.

Yet this relative stability is not necessarily to the long-term advantage of organized labor, because it may remove the pressures that any entrenched force needs in order to adapt. Labor relations and its associated conflict exist as part of a more complex scheme of rights and privileges that include what society provides or fails to provide under public education, health care, and more. Organizational approaches that adapt to take these things into account are more likely to be successful over time. But for most of the same reasons discussed by writers on disruptive innovation in business and technology (Christensen, 1997), it is also very difficult for previously successful organizations to respond internally to radically new conditions when they are neither businesses nor engaged in technology-centric work.16

This discussion also hints at the astonishing persistence of some obsolescent deals, as well as structures and approaches. One telling example is the uniqueness of the United States in saddling employers (with many exceptions) with the health care of workers. The origins of that system are now widely forgotten but instructive: the entire US health care system continues to be financially grounded in the oddball circumstance that during World War II, when the war created a labor shortage, wage controls were in effect, but the government did not freeze fringe benefits, so the unions bargained for employer-paid health care. It seems improbable that anyone would have thought it logical at the time that so abstruse and particular a set of conditions should have become effectively cemented at the core of national health policy to this day, even in the face of widespread national health care systems in other countries and even under the Affordable Care Act. Yet there it stands.

CONCLUSION: THE ROLE OF CREATIVITY, LOGIC, AND ILLOGIC IN HANDLING CONFLICT

There is a clear tendency in much of the scholarship and teaching of conflict management to assume not only that conflict-handling “systems” are actually designed by someone, with good intentions or ill, but that people are mostly rational actors pursuing their self-interest and that such systems should also be logical. (For a trenchant critique of this bias in business schools in particular, see Kaufman, Lewicki, and Coben, 2013.)

Working professionals on the union or the management side, not to mention labor mediators, are not generally under this particular illusion and
perceive limited utility in either prescriptive solutions or “scientific” management. In my mind’s eye, I can still see federal mediator Christina Sickles Merchant telling a 1988 Law and Society Association group of scholars about her recent encounter with the United Airlines CEO and her incredulity at his incredulity that his pilots could have struck when it was “totally illogical” because they were the highest paid in the industry. (She told him he should fire the person who told him bargaining was supposed to be logical.) My own experience includes repeated encounters with the limited role of science in actual management, such as an arbitration case in a plant where the company engineer and the union time study official got different measurements when they observed the same job for purposes of setting an incentive rate. (I asked the witness, in my most neutral tone, “What happens then?” “They get together. And they bargain.”)

Similarly, the first labor mediator I ever met and one of the best, the redoubtable David Tanzman, taught me in a sentence what he saw as the core of the job. Plainly viewing my interest in mediation as a career with considerable skepticism, in an era when the typical “new hire” as a mediator was about double my age at the time, Tanzman remarked that much of what he had to do every day consisted of creating or encouraging a different perception of an offer that was already available. But this was not the language he used (and of course the more modern term, reframing, was not then part of professional mediators’ lexicon). Tanzman had a much more pungent and effective way of putting it: “If I really work at it, maybe I can sell somebody a roll with a hole that was boiled before it was baked. But it’s easier to sell him a bagel.”

They are, of course, the same thing. Thus may practice challenge the “logic” view. But it takes true skill to see a lack of logic as a potential asset to all concerned and as a means to get something worked out. Labor relations conflict has served as a fine stage for such theater, and I close with an example from the same source that might be instructive well beyond the labor relations setting.

About a year after I got a mediation job, in Wisconsin, I went back to Detroit for a conference and there encountered Tanzman again. I was surprised to run into him in the hall, because that very morning’s paper had prominently featured him as the mediator (now retired from the federal service and in a private capacity) in a teachers’ strike that had caused the city to grind practically to a halt. In the manner of discourse of that time and profession, my greeting was jocular: “What are you doing here? You’re supposed to be working.” His response was jovial: “Oh, that’s all worked out. It’ll be in the evening paper; they’ll be back at work in the morning.”

I expressed surprise. The union had been insisting on binding arbitration of all unresolved contract items before they would stop the strike; but
the morning’s paper had reiterated that the school board refused to turn over their powers, as they saw them, to an unelected arbitrator. Tanzman responded that an hour ago, the parties had agreed to binding mediation. I was even more incredulous: “Binding mediation? That's a contradiction in terms, it can’t exist!”

At moments of difficulty as a mediator, Tanzman’s retort has come back to my mind ever since: “It does now.”

Notes

1. This settlement later had an even broader impact, for example:

   **New York Strike Settled**

   The strike affecting approximately 3,500 New York butcher workmen has been settled. The workers agreed to call off the strike Tuesday and resumed work the following day, having consented to abide by the decision of Federal Judge Samuel Alschuler of Chicago, who acted as mediator for the grievances of Chicago workers. Prior to the settlement repeated efforts were made by the Meat Packers’ Association of New York to affect a compromise. The decision of Judge Alschuler is expected also to settle the status of other striking butchers in Paterson, N.J., Boston, Mass., Baltimore, Md. and other cities. *(The National Provisioner, December 13, 1919)*

2. I conducted my first federal hearing into a labor dispute at the age of twenty-four without the benefit of any formal study in the field (or, for that matter, of law). I went on from there as a full-time “neutral” to more than two thousand disputes, serving as a mediator, arbitrator, and in other roles over almost forty years and over a fairly wide range of industries and public sector functions; but I have never studied the field in an academic sense.

3. The 1919 settlement referenced in note 1 was clearly a holdover.

4. The unskilled were not always unable to organize. One of the more remarkable strikes was a New York City strike in 1899 against the flagship newspapers of both William Randolph Hearst and Joseph Pulitzer—by seven- to twelve-year-old boys. The newsies’ strike not only reduced circulation to a fraction of its usual level, but within three days, the advertisers withdrew almost all advertisements. The employers’ customary twin recourse to the law and to hired thugs failed, and both Hearst and Pulitzer were forced to offer a compromise. Still, no ongoing union resulted. See Nasaw (1986).


6. The most recent figures as of this writing show that private sector union membership in the United States now stands at 6.6 percent of the workforce *(Bureau of Labor Statistics, 2013)*; at its peak in the 1950s, the rate was about 36 percent. But in France, which from the United States generally looks like a strong union...
environment, private sector union membership stood at 5.2 percent by 2003. Other Western European countries had higher private sector unionization, but except in the Nordic countries, both the percentages and absolute rates were all down sharply compared to their respective peak years (Visser, 2006).

7. Some US states had formal dispute resolution mechanisms remarkably early on; for example, Wisconsin had a State Board of Arbitration (which however functioned more in mediation) as early as 1901 (Holter, 1999).


10. This is only when it is working; see Ury, Brett, and Goldberg (1988) for an insightful analysis of the exceptions and what can be done about them.

11. This did not mean that the parties foreswore efforts to knock the other side out of the game with litigation. See Honeyman (1984) for the “case of first impression” result of such an attempt.

12. See CPR (2011) for a discussion of an effort at further expansion of these methods to a variety of major industries across the globe.


14. The main US professional organization of this kind of staff, the Society for Human Resources Management, has about a quarter of a million members.

15. The statute went into effect at the end of March 2013, but legal challenges continue as of the date of this writing.

16. The unions as a general social movement were in fact presented twenty-five years ago with a model for a potentially disruptive innovation of their own, dubbed “associational unionism” and explicitly designed to capitalize on already-visible economic trends, and thereby to give unionism a fresh lease on life. They ignored it, probably because for any actual, existing union, it would have involved wrenching change immediately in exchange for benefits that would accrue only slowly. See Hecksher (1988).

17. David Tanzman, when I worked as a lowly field agent in Detroit for the National Labor Relations Board, was the chief federal mediator in the region. In a center of power for both industry and the unions, that was no easy job.

References


