Proper Subjects for Collective Bargaining Under Federal Legislation

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attorneys should, therefore, avoid this expression unless it is used in con-
junction with other descriptive words that give it a definite meaning. Otherwise, litigation that could have been avoided may ensue to unravel the meaning posed by the use of the term ground rent in a document.

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PROPER SUBJECTS FOR COLLECTIVE BARGAINING UNDER FEDERAL LEGISLATION

The subjects of collective bargaining are numerous and varied. Those generally accepted by both labor and management as proper subjects include the following: wage rates, hours of employment, overtime, discharge, suspension, layoff, recalls, seniority, discipline, promotion, transfer, plant safety and sanitation together with protection of health in the place of employment.

On the other hand other subjects are usually considered to be the sole prerogative of management and therefore not proper subjects of collective bargaining. Those subjects in this category usually include the corporate or other structure of the business, the location of plants, production schedules, the number and personnel of the official and supervisory force, and processes and means of manufacturing.

Having already achieved, to a great extent, the direct benefits of proper wages, reasonable hours and healthful working conditions, union efforts recently have been and continue to be directed to matters which yield indirect benefits that could aptly be described as fringe issues. These subjects have caused much litigation before the National Labor Relations Board and in federal courts. In the main, management has contended that such matters

92. A provision in a trust agreement providing for the investment in "ground rents" is as indefinite as a provision to invest in "real property." A carefully worded provision might state: "The trustee shall have the power to buy and sell only such irredeemable ground rents as exist incident to land in Pennsylvania and that are recognized by the law of Pennsylvania and which yield not less than four per cent interest at the time of purchase by the trustee. Furthermore the irredeemable ground rent must expressly provide that the owner thereof shall have the rights of distress and re-entry should there be a default in the payment of the ground rent. The trustee shall not have the power to purchase any irredeemable ground rent that is encumbered by a mortgage, judgment or any other lien whatsoever."

It is the practice of some title companies to insure the title of the grantee except for such encumbrances or ground rents as exist against the land. As all ground rents are encumbrances of land this statement adequately protects the title company; but the grantee should be cautioned to check against all types of ground rents to ascertain to what extent his property is covered by the title insurance policy.

93. Camp v. Byrd, 229 U.S. 530 (1913) ("ground rent" held to include the reversionary interest); Moran v. Hammersla, 188 Md. 382, 52 A.2d 727 (1947) (ground rent agreement too indefinite to permit specific performance).

1. I CCH LAB. LAW REP. § 3020.
2. Ibid.
3. Hereinafter the National Labor Relations Board will be referred to simply as the board.
as pension plans, merit increases, insurance plans and retirement programs are not compulsory subjects of collective bargaining.

The mandatory collective bargaining requirement was embraced mainly in Sections 8(5) and 9(a) of the original National Labor Relations Act. Section 8(5) of the original act requires an employer "to bargain collectively with the representative of his employees subject to the provisions of Section 9(a)." The latter section provided that the duly selected representative of the employees in an appropriate unit shall be their exclusive representative "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." These sections were re-enacted in Sections 8(a)5 and 9(a) of the amended act without material change.

The statutory language, "rates of pay, wages, hours of employment or other conditions of employment," defines the matters as to which the statute requires collective bargaining by the employer. It has been held that this language requires collective bargaining as to all matters affecting the employees as a class. The contention of management that the language of the statute should be limited to matters which were historically the subject of collective bargaining as of the date of its adoption has been rejected.

The question of unfair labor practice as it relates to management's refusal to bargain in good faith may arise in one of two ways. Either the management may unilaterally put into effect some new plan affecting the workers, or the union may request bargaining on a subject and management refuses on the ground that it is not a subject intended to be covered by the act. It is desirable to keep this in mind in the following discussion of specific subjects of collective bargaining since the decisions of the board and the courts have almost without exception been favorable to the union where the dispute arose out of unilateral action taken by the employer.

**Welfare Benefits**

It has been held that the word "wages" following the words "rates of pay" in the act was intended to cover all direct and immediate economic benefits flowing from the employment relationship. It is with this basic thought that group insurance plans, pensions and retirement plans have been held to be subjects of required bargaining under the act.

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6. Hereinafter the National Labor Relations Act as amended by the Labor Management Relations Act will simply be called the act.
8. Wilson & Co. v. NLRB, 115 F.2d 759 (8th Cir. 1940).
9. W. W. Cross & Co. v. NLRB, 174 F.2d 875 (1st Cir. 1949) (Congress intended to impose upon employers a duty to bargain collectively with their employees' representatives with respect to any matter which might in the future emerge as a "bone of contention" between them, provided it of course should be a matter "in respect to rates of pay, wages, hours of employment, or other conditions of employment").
In a case involving a group insurance plan, the court reasoned that a group insurance plan provides a financial cushion in the event of illness or injury arising outside the scope of employment at less cost than could be obtained through contracts of insurance negotiated individually and, thus, the term “wages” in the act was intended to include such benefits. Since group insurance programs are held a proper subject of collective bargaining, an employer may not, by unilateral action, expand an already existing plan without violating his duty to bargain as to wages and other conditions of employment. Pension payments were held to be “wages” or at least to be included in “conditions of employment.” The court reasoned that such plans were an inducement to the worker to accept employment and therefore affected his financial status. Payments under such a plan are distinguishable from voluntary payments made on the marriage of an employee or at the birth of his child, since they form a part of the consideration for work performed.

Paid holidays, vacations and bonuses have been held to be integral part of the earnings and working conditions of the employees and therefore proper subjects of collective bargaining. A Christmas bonus regularly paid to employees was held to constitute one of the elements of compensation of the workers, and therefore to be a term of their employment as to which the employer was under an affirmative duty to bargain under the act.

Merit Increases and Incentive Pay Plans

Employers must bargain with the representatives of their employees concerning individual merit wage increases. The mere fact that an employer labeled such merit increases as gratuitous did not obviate the fact that such raises do effectuate changes in rates of pay and wages which by the act were made the subject of collective bargaining.

The establishment of an incentive pay plan is by the act a proper subject of collective bargaining. If the union requests negotiation of such a plan the employer’s unilateral establishment of one, which would affect the basic wage rates of the employees set by an existing collective agreement, would constitute a violation of the employer’s duty to bargain under the act.

Miscellaneous Subjects

Where the employees had no public or employer-furnished means of transportation to public eating places, it was held that the employer was

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11. Ibid.
13. Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), cert. denied 336 U.S. 960 (1949) (the employee would be entitled to sue and recover upon the refusal of the company to pay benefits and therefore could not be regarded as a mere gift).
18. Ibid.
under a duty to bargain on the price of meals furnished by the company. Similarly, company owned houses have been held to be of such interest to employees in connection with their work that the employer was under an obligation to bargain on the amount of rent to be charged. The court stated that in many instances houses owned by the employer are a necessary part of the enterprise and the rent charged represents a substantial part of the workers’ remuneration.

There has been some litigation involving subjects having no relation to financial remuneration. It has been held that the interpretation of an existing collective bargaining contract is a proper subject for negotiation between a labor organization and an employer. Although it is not illegal for an employer to insist on a management rights clause whereby the employer reserves the right to hire, discharge and discipline employees without recourse to arbitration, such employer may not, without violating the act’s good faith bargaining requirement, change lunch periods or establish additional night shifts without consulting the union while the contract is being negotiated.

Waiver of Right to Bargain

Once a contract has been entered into between a union and an employer, those matters which are not made a part of the contract but which are proper subjects of collective bargaining remain open for bargaining unless expressly waived by the contract. The board is reluctant to deprive employees of any bargaining rights in the absence of a specific waiver on the particular subject. Even where the union agreed not to make demands on its social security program including group insurance until a specific date, it was held that such agreement did not give the employer the right to act unilaterally on those issues without bargaining with the union.

Conclusion

It is clear from the foregoing discussion that the board and the courts have taken a very broad view of what constitutes “wages”, “rates of pay” or “other conditions of employment.” One of the chief reasons is that the act was designed to lessen industrial strife. Many of the disputes over whether a particular subject is a proper one arise when the employer takes unilateral action thereon. In this situation there is a strong feeling of resentment built up between the union and management. Therefore the board,

21. Id. at 974.
22. Rapid Roller Co. v. NLRB, 126 F.2d 452 (7th Cir. 1942).
23. Not only is the employer required to bargain, but under the act the employer must bargain in good faith. NLRB v. Montgomery Ward & Co., 133 F.2d 676 (7th Cir. 1943).
25. General Motors Corp. v. NLRB, 179 F.2d 221 (2nd Cir. 1950).
26. Tide Water Associated Oil Co., 85 N.L.R.B. 1096 (1949) (the union had agreed to a waiver of the union’s right to bargain on a pension plan).
because of the danger of a strike, will immediately certify the question and hold a hearing.

As we have seen, even after a contract is signed the union may request bargaining on any proper subject unless there is a specific waiver in the signed contract. The employer should keep this in mind and attempt to get waivers signed on the subjects not covered by the contract.

The trend is to include more and more subjects as being proper for purposes of collective bargaining. It is likely that, in the not too distant future, some of the subjects that are now definitely considered management prerogatives will be held to be included within the orbit of compulsory subjects of collective bargaining.

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