

*GRADUATE SCHOOL OF BUSINESS
THE UNIVERSITY OF CHICAGO*

Selected Papers No. 8

Strikes :
The Private Stake
and the
Public Interest

By GEORGE P. SHULTZ



GEORGE P. SHULTZ,

trial Relations at the Graduate School of Business of the University of Chicago, is a long-time student in the field of labor-management relations. He has been Senior Staff Economist of the President's Council of Economic Advisers, consultant to the President's Advisory Committee on Labor-Management Policy, a member of the Illinois Governor's Committee on Unemployment, co-chairman of the Armour Automation Fund Committee, and a member of the National Academy of Arbitrators. Recently Dean Shultz helped develop a statement on National Labor Policy, published by an independent study group under the auspices of the Committee for Economic Development. This Selected Paper is based upon an address he delivered at the Sherman House, Chicago, on October 10, 1963, before the Executive Program Club of the University of Chicago, opening the Club's 1963-64 Luncheon Series.

Strikes: The Private Stake and the Public Interest

It has been widely observed that Congressional approval of compulsory arbitration in the railroad industry marks a breakdown of private bargaining, and may well lead to compulsory arbitration for a wide range of vital industries.

This is a tragic half-truth.

The misunderstanding of what has taken place on the railroads and in other cases of intense government intervention may well lead to a drastic and, I believe, undesirable shift toward compulsion in our system of industrial relations. But this will not reflect a breakdown of private bargaining.

There has been no real private bargaining on the railroads for decades. What has failed is government-dominated bargaining. Ironically, when this much-government system finally failed completely, the answer was more government—in the form of compulsory arbitration—rather than less. And the irony is the more striking since free and more-nearly-private bargaining is, by and large, working well.

My purpose here is to convince you that a free and private system of industrial relations is far superior to a government-dominated one; and that this alternative is really available, despite the many and serious steps taken in the other direction during the past few years. To do so, I know, I must face up directly to the questions raised for the community by strikes, especially strikes involving large numbers of people or strategically placed workers. I must present a way of dealing with major labor disputes that you judge to be a

workable, practical way. No doubt government has important responsibilities which will tax its capacities in this area, but its role must not be the dominant one toward which it now seems headed.

My theme will be developed through discussion of the following points:

- (1) Some general comments about labor policy and current labor relations problems.
- (2) Examination of the role of conflict in labor relations and of objectives, private and public, other than simply labor peace.
- (3) Analysis of why the present course of developments is wrong.
- (4) Advocacy of a different course—one more consistent, I think, with the values of free institutions operating in a market economy.

General Comments

Possible approaches to labor policy can be classified broadly into two types. The first, and most tempting to many people, is direct and solution-oriented. Its apparent simplicity is attractive. If we do not like strikes, outlaw them. If we don't like featherbedding, prohibit it. If we think wage rates are too low, raise them by action of the government; or if they are rising too fast, establish guides to control the rise. The emphasis here is always on meeting a pressing problem with a direct solution—or at least what may appear to be a solution. This approach can be summarized by the old saying, "There ought to be a law."

The other approach looks at the structure and processes from which solutions emerge, rather than at any individual result. When results in general are unsatisfactory, it asks what kind of process is producing them; and it leads to suggestions for changing the process, thus affecting results—but indirectly. I find it hard, by way of a process-oriented example, to accept an arrangement that involves the pay-

ment of unemployment compensation to strikers, as in New York or on the railroads.

On the whole, an approach that emphasizes processes seems to me preferable to one that goes directly to a particular result. This in part is a practical judgment about what is most likely to work. But it also is a statement of ideological preference—a preference for arrangements that allow freedom of action for companies, unions, and collective bargaining arrangements, and is in tune with the objectives of a society with at least major emphasis on individual and organizational liberty.

My second general comment is made in the interests of realism. In the field of labor relations policy, as in many others, there is hardly ever a course of action that is all gain. We are constantly engaged in weighing and balancing costs *versus* gains. We are always saying, “Yes, it would be nice to have a little more of this; but if we have more of this, we must be reconciled to a little less of something else which is also desirable, or which someone else may want.”

By way of example: Both labor and management people could doubtless agree that you can find some uneconomic work practices, in some industries, if you look hard enough. I think it is very unlikely, however, if you want to get rid of some of these practices, that it will be done unless companies—and in some cases the public—are willing to pay the price in terms of a little conflict. There may be a gain; but there is also a cost. If you are not willing to put up with any conflict, you are not going to get many of these gains.

Or, in a completely different type of example: The National Labor Relations Board has recently been struggling with the problem of how long a contract should bar an election to determine the representation wishes of workers. I believe they have now settled on three years; but at any rate, it is quite apparent that the longer the period you allow, the

more you are putting emphasis on the goal of stability in labor-management relations. You are saying, "Let a situation settle down a bit: let people work together and give them time to see what they can do."

At the same time, you are paying a price. The price is that there will be some workers who are dissatisfied with the labor-management relationship, and they are not able to change it. You are telling them they can't do it. In that sense you are paying a price in terms of some loss of individual liberties.

So the point here is that we frustrate and delude ourselves in this field if we seek something that is perfect in the sense of being a costless solution. There are no costless solutions.

Now finally, insofar as general comments are concerned, it seems clear that some very sharp changes are taking place in the kinds of jobs which must be performed to put out today's and tomorrow's production. We do not, in my view anyway, have any crisis on our hands; indeed, I get a little tired of all the talk about a crisis in collective bargaining. But there is a transformation under way, and it produces great stress for many bargainers.

The Role of Conflict

It has been said that "job-security" now outweighs "wages" in importance as an issue for collective bargaining. Certainly, all the well-publicized recent disputes-railroad, newspaper, longshore-revolve around the issue of jobs; or perhaps more accurately, around the jobs that used to be there but may now be on the way out. So like it or not, we will have to struggle in labor relations with all the stresses and strains that inevitably accompany important changes in the structure of jobs. No one should be surprised if these stresses occasionally break into the open.

So much emphasis has been placed in recent years on the public interest in labor peace

that other important goals in labor relations-goals in which there is also a private stake and a public interest-have been almost totally obscured. Let us take a look at the role of conflict in attaining these goals. In doing so, we need not get in the position of advocating strikes, of condoning the purely destructive conflict that you see occasionally, or of denigrating in any way the importance of knowing how to resolve differences without strikes. Much has been learned in this area over the past three decades and many interesting and novel experiments' are now under way. All these are to be applauded and encouraged, but not to the point where we become Pollyannaish about labor relationships.

First of all, we must acknowledge that conflict, of which the strike is but one example, is a widely used method for producing generally desirable results for our society. We use it in the academic community, where much is made of the idea that a clash of views, a back-and-forth exchange, will yield illumination on the subject at hand. We have organized our economy on the basis of freedom to enter new businesses, to innovate, to engage in competition for markets. Let there be many companies in the field and let them fight with each other so that the consumer gets better products and lower prices. Some people get hurt by these processes; I need not tell you that they can on occasion be rough. But, by and large, they are productive.

By the same token, in the field of industrial relations the possibility of challenge and response, from a base of some power on both sides, can be constructive. It provides an opportunity for people who have different backgrounds and orientations to bring out and represent their interests forcefully. Such representation can be productive, but it cannot take place if we do not allow for the possibility of a clash in views and the likelihood of an occasional explosion.

Second, we must all realize, whether as members of "the public" or in our private capacities, that we have a tremendous stake and a great interest in the vitality of private parties and private processes. If you have a management that is moribund and is not doing anything, or if you have a union that is lazy and is not representing its workers adequately, you really do not have a healthy situation at all. We want, instead, companies and unions who are alert, energetic, driving—who are analyzing their interests and representing them vigorously. So we have a great stake, as the public, in having private parties who are vital in this sense. And if, because of our abhorrence of strikes, we take action that in effect takes the play away from private parties, we will sap their vitality, and wind up with a peaceful, stagnant inefficiency on both sides.

A good case in point is the railroads, where the government-dominated system of collective bargaining, at least until very recently, has fairly well sapped the vitality of the processes involved and has left the situation much worse than it otherwise might be. When it takes six years to settle a simple grievance, you surely have a bad situation,

Let Parties Be Responsible

Third, in this effort to suggest that the public has a stake in strikes other than only to get them settled, I offer you the great importance of having private parties *be* responsible, feel responsible and *take responsibility* for the results of their efforts. Whatever settlement is reached—good, bad, or indifferent—somehow it must be their own settlement. It is the settlement of the people who have worked it out, not somebody else's doing. "If we're responsible for it, we've got to make it work; it's our baby." It seems to me that the public has a great interest in seeing this kind of attitude develop.

Finally, we must recognize that some strikes

are simply part of the price we pay for free collective bargaining. If you tell people they are not allowed to strike or, in the case of management, take a strike, then they are simply not free to pursue their interests as they see those interests. It is just one of the costs that goes with the gain of having a free system. This is a very simple-sometimes a very harsh-but surely a most important point.

Now, I am not saying that the public does not have a stake in damping conflict as much as possible; in making it orderly; in seeing it channeled to some degree; in doing all kinds of things to pound a little sense into the people concerned and make them see just what is coming before they get involved in overt conflict.

But on the other hand, there are these other private stakes and public interests which are important but which hardly ever are mentioned. They get completely obscured by this great emphasis upon peace and tranquility on the labor scene.

Now, of course, the greater the costs of labor-management conflict, the less happy we are to pay them. This point, then, is of great importance: The price we are paying for free bargaining in this country is an exceedingly small one, and we should not be reluctant to pay it.

We are all familiar with the statistics; by this time perhaps we all tend to dismiss them. But you just cannot get away from the fact that the volume of strike activity, of overt conflict, is very, very small. It runs in the neighborhood of less than one-fifth of one percent of man days worked lost through strikes each year. It is down at that low level right along. So we are not dealing these days with a situation in which somehow conflict has gotten all out of bounds and is all around us. It isn't. It may seem to be, but on a statistical basis, it isn't.

Moreover, I will assert that there are very seldom times when strikes pose genuine threats to the health or safety of the community, or even to the operation of the economy. The resiliency of the economy, its ability to adapt and insulate itself from these things, is really very remarkable and should not be underrated. According to elaborate reports of people who have studied big strikes, the supposed dire effects from the impact of a strike are very hard to find.

The Longshore Case

Now, perhaps you will say that the recent longshore strike, in which a Taft-Hartley injunction was used, is a case against me. That may be, but I think it is worth noting that the President sought and got an injunction against such a strike on the grounds that, if the strike were permitted to occur, it would create a national emergency. But after the injunction expired, a strike did run for over one month and what did people talk about? All I read about in the ***Wall Street Journal*** was the bananas; you are not going to get bananas, they are doubling in price. My, oh my, should we throw away our freedoms for a hand of bananas? Just for fun, one morning in New York after the strike had been on some weeks, I ordered bananas with my shredded wheat to see if they would come. The waiter didn't even give me an argument, he brought the bananas. Or a banana, I should say. Maybe he only had one. This is not to deny the genuine economic hardship and public inconvenience that can be caused by a prolonged strike on the docks or in some other industries. But the allegations of hardship need the closest scrutiny, and the true costs must be balanced against the price of intervention.

It should be further noted that, in the face of this crisis, the Senator Morse Board was appointed and was able to bring about a settlement under threat of Congressional in-

volvement. The wage package was certainly steep and the settlement made little contribution to resolution of the basic issues of efficiency of operation and job security. I would rather have seen the parties fight it out.

So, in summary, my point is that the public has vital interests in allowing people freedom to strike-or take a strike-if they want to, and if these interests are disregarded, the system of industrial relations is going to change very drastically.

Furthermore, in taking this position, at least in this day and age, we are really not taking such a terrible risk, because the volume and the impact of strikes are not nearly so great as alleged. Most goods and services turn out to have fairly close substitutes, which, indeed, is one reason for prompt settlement of most disputes. Or, alternatively, inventories may provide a considerable hedge against the impact of a strike. There are problems, of course, but they are far overrated, and the health and safety aspects are usually not present.

A Dangerous Course

The present course of national policy has seemed, at least until very recently, to be: Intervene early; intervene with preconceptions of what the right answer is; and intervene frequently, over a wide scale, with high officials. And now the picture is further complicated by the fact that Congress, albeit reluctantly, is in the act.

I do not think that is a considered policy, but is just what has happened. That is in a sense the effective policy we have, and it has been born out of all sorts of frustrations, out of all sorts of problems arising from the structure and issues of collective bargaining.

Let us make the following points about this course:

This is an instance, to use the economists' terminology, where supply creates its own demand. As my colleague, Robert Livernash, put

it: "If the President hangs out his shingle, he'll get all the business." People will come to a high official if he is willing to have them. So what we see as a result is a lot of pressure for intervention, from whichever party thinks it has more to gain. And there is also a lot of pressure for high-level attention. Who can be satisfied with just a plain old Federal mediator? Who's he? Or even the director of the Federal Mediation and Conciliation Service. It is getting to the point where you are not a big boy any more unless you have the Secretary of Labor involved. One thing leads to another in a cumulative process that is difficult to reverse.

Furthermore, when these high-level procedures are used with great frequency (and no doubt you have to use them sometimes), they completely lose their impact. Somebody who is very high up should be saved. He should not be running around, doing this, that, and the other thing with all kinds of disputes that everybody and his brother get into. Regardless of how much and how genuinely he wants to be helpful, he just cannot, because it depreciates the currency, so to speak.

Potential for Failure

This process also demands solutions, as in the case of the Morse Board. If you are going to take the intervention route, then you have to provide the answer. If parties feel they are not getting what they want through bargaining, they are certainly going to find out what the government's answer is and try to use that leverage as much as possible. We are all familiar with this process. And it can ruin private bargaining because it forces each party to hold back any concessions that might normally be made. Anything you concede will be held against you in the next higher round of discussions. This is precisely what has happened on the railroads, where the one thing every-

one agrees on is that there has been little real bargaining until recently.

Finally, this course has in it a very, very great potential for failure. We are going to run into situations, right along the line, where all these procedures are going to be indulged in, and where one party or the other-management in some cases, union in others-will say: "With all due respect to you, Mr. President, or to your Board, I just don't agree with you, and I'm standing on my position."

When that happens-and it already has on at least one occasion-the gauntlet is down. That is a terrible situation for the President to be in. As President Kennedy said, in effect, in a television interview last Spring, commenting on the steel price conflict, "Well, what could I do, after all this had happened, there I was and I had been defied? I had to pull out all the stops."

The question one needs to ask is: Was it wise to get in that position in the first place? I ask this with respect not only to steel but to a whole range of cases. The potential for failure not only is great, it is absolutely certain that the high authority is going to be defied by the strong-minded groups we have in this country. And the results of failure of this kind of an approach drive you inevitably further into all sorts of relatively drastic types of solution that are not process-oriented but result-oriented. The big one that is always mentioned-everybody falls for it, I think-is compulsory arbitration. And now, as a friend of mine put it in discussing the railroads, "Here we is, damned if we ain't."

What Should Be Done?

The implications of the present course are serious. We have gone quite a long way, and we ought to ask ourselves: Isn't it time for a fresh look? There are, of course, all sorts of places where blame can be put. But our problem, at least as I see it, is to say: "Where do

we go from here? How do we rearrange things so that we can have a reasonable process of bargaining, and so that we don't get our high public officials involved in these impossible situations?"

Let me throw out a few ideas in the full realization that it is much easier to be critical than to be constructive.

First of all, as an administrative proposition, it seems very important somehow for the government to change its stance, to make a more considered assessment of the possible impact of strikes, and to help the public make such an assessment. The government seems now in the position of always playing up the possible damaging impact of a strike. I would like to see a shift to a stance in line with what the facts are, with the public being told, "All right, so there's a strike; there are still plenty of bananas. Relax, it isn't a crisis after all." Now, of course, a serious situation must be labelled as such; but it seems to me that the cry of an impending crisis comes all too quickly. And in this the press seems all too ready to cooperate. So my first point is to educate the public about what is really going on.

Refuse To Get Involved

Second, it is very important for the high-level people to virtually refuse to get involved, and to say, "I've had it and I'm just not going to spend so much time on labor disputes any more." Let the top officials disengage themselves and try to get the problem pushed into an area where there are professional people who are supposed to spend all of their time doing this kind of thing. The mediation resources of the community are vast; and with leadership from a Mediation Service that is given a real chance, these resources can do a great deal.

My third point rests on a common analysis of the impact of major strikes. One almost always finds that the public health and safety

aspect or defense aspect of the strike, when present, is a very small component of the total picture-involving the transportation of food from the Mainland to Hawaii, for instance, or the production of certain special types of defense steel.

So perhaps we can use an approach that has not been tried much but which would seem to offer real potential for protecting the public interest. We could have limited, continued operation, but still let most of the strike go on-an approach built on the possibility of partial operation of struck facilities. To be sure, there are all sorts of political difficulties, but the difficulties are worth facing up to.

Now some may say, "Partial operation-that's just strike breaking," or "This is just giving the employer a chance to divide the union against itself," or "giving the union a chance to divide the employers," by picking a little piece out of the total situation. After all, the industry wanted industry-wide bargaining for the sake of strength. The union wanted to have the industry sewed up for the sake of strength. So, some might argue, partial operation is simply a way of favoring somebody in their strategy.

I do not agree. Of course, if you let the union or the company call its shots on partial operation and have it done exactly the way either one wants, then partial operation could be manipulated in this way. But if you have your partial operations directed by a public official whose objective and legal responsibilities are purely and simply to get certain goods transported, or produced, in certain small quantities, then it seems to me the bargaining strategy argument really ought to fall by the wayside.

Finally, just to show you that I haven't lost my mind completely, let me assure you that I believe it is very important to encourage a wide variety of mediation approaches, private approaches. Private approaches have been

producing and will produce good results. I hesitate to mention third parties, because that always seems to come with little grace from someone who acts occasionally in that capacity. But I'll mention it in part to say that, at least in my observation, some of the most effective third parties are drawn from unions or companies into some particular dispute. So it isn't always a so-called neutral. It may be that procedures which involve people with some standing from a company or from a union, in a private way and without commitment of all the superstructure of government, can produce a good result.

Together some of these things can help any administration give the public assurance that the government is doing something. It is trying to help get things settled; it is protecting the public interest in at least partial operation. Perhaps, if accompanied by sane and careful statements about the impact of a strike, these measures will diminish the pressure from the public somewhat and allow some of these less spectacular procedures to operate.

In any case, you can see that the cornerstones of my position are an assessment that the strike situation in 'this country does not present us with a crisis, that private processes can work well, but that private processes are doomed unless we develop more tolerance for at least a minimum level of conflict.

To be sure, there are costs as well as gains. But for my part, freedom and the vitality of private parties and private processes are worth the cost.