

1970

Coordinated-Coalition Bargaining Theory, Legality, Practice and Economic Effects

Minn. L. Rev. Editorial Board

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Editorial Board, Minn. L. Rev., "Coordinated-Coalition Bargaining Theory, Legality, Practice and Economic Effects" (1970). *Minnesota Law Review*. 2983.

<https://scholarship.law.umn.edu/mlr/2983>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Note

Coordinated-Coalition Bargaining: Theory, Legality, Practice and Economic Effects

I. INTRODUCTION

Historically, collective bargaining structure has been influenced by many factors. Each factor is important to the extent that it affects to total economic and noneconomic package that a union is able to negotiate. For example, the market situation in which negotiations take place is important. Unions generally try to create structures that are coextensive with the product markets in which they operate. Thus, a traditional goal of unions is to remove wages from competition by trying to achieve wage uniformity within a particular market.¹ The structure of the bargaining unit will also reflect the specific issue being bargained for. If, for example, the issue is wages, which will usually have market-wide implications, unions will tend to press for expansion of the negotiating unit. Decentralized bargaining ordinarily occurs if the issue is purely "local."²

Bargaining structures are also influenced by "representational factors." Work groups generally have two goals which are somewhat exclusive of each other. One goal is "bargaining power," the other is "autonomy in decision-making." Unions will form an alliance or create a common front to achieve greater bargaining strength but at the same time will try to minimize the loss of autonomy or the destruction of special group interests. The ultimate balance between these two goals will depend upon the homogeneity of the membership and the nature of the issues discussed at the bargaining table. Probably the most important factor in collective bargaining is the theory of maximizing benefits by inflicting a maximum of real or expected costs on the other party.³ This usually results in a confrontation of power,

1. Thus, in some industries such as automobile, steel and rubber, "pattern bargaining" has become the norm. Once a new contract is negotiated with one major employer, the rest of the industry follows with approximately identical terms. Likewise, formal systems of industry-wide bargaining have occurred in some industries—coal, railroad and trucking to name a few. Here almost all the employers in the industry associate together to bargain singly with the union.

2. A purely local issue might be the grievance procedure followed in the plant or the physical surroundings affecting a worker within a plant.

3. For a discussion of various theories regarding the maximization of monetary benefits see A. CARTER & F. MARSHALL, *LABOR ECONOMICS: WAGES, EMPLOYMENT, AND TRADE UNIONISM* 276 (1967).

but a balance eventually is struck between the bargaining parties and a new contract is signed.⁴

Each of the aforementioned factors can be used in explaining union tactics in coordinated-coalition bargaining. Before any concrete examples of actual coordinated-coalition bargaining are presented, however, a definition of coordinated and coalition bargaining should be framed and the contrasting theories behind the two should be examined. To an extent, labor, management and economists look at the issues differently. Although several authors have discussed coordinated bargaining and coalition bargaining as similar issues,⁵ there are some fundamental differences between the two:

Coordinated bargaining consists of an effort to achieve common bargaining goals by two or more unions who bargain separately with a common employer for a unit or units of employees certified by the Board or recognized by the employer, during the course of which the coordinating unions exchange information and other technical assistance, including the use on their bargaining committee of persons affiliated with another of the coordinating unions, in preparation for and during such bargaining.⁶

Coordinated bargaining is joint union bargaining and may have one or more of the following objectives: common expiration dates for all bargaining agreements with one employer or several employers, similar settlements in contracts with one employer or several employers, and simultaneous conclusion of negotiations with one employer or several employers.⁷ Coalition bargaining, on the other hand, is coordinated bargaining with an added ingredient. In coalition bargaining, unions force willing or unwilling employers to bargain company-wide or industry-wide for a master contract covering all employees, thereby destroying

4. Although governmental policy plays an important role in determining bargaining structure, it has not been included in the discussion here because it is discussed thoroughly in the text accompanying notes 25-69 *infra*.

5. See D. Benetar, *Coalition Bargaining Under the NLRA*, in TWENTIETH ANNUAL CONFERENCE ON LABOR 219 (N.Y.U. 1968); A. Ordman, *Some Major Developments Under the NLRA*, in TWENTY-FIRST ANNUAL CONFERENCE ON LABOR 17, 24 (N.Y.U. 1969).

6. I. Abramson, *Coordinated Bargaining By Unions*, in TWENTIETH ANNUAL CONFERENCE ON LABOR 231, 233 (N.Y.U. 1968).

7. E. Flynn, *The Impact of Coordinated Bargaining on Management*, in COLLECTIVE BARGAINING TODAY, Proceedings of the Collective Bargaining Forum—1969, 71, 72-73 (1970). As Mr. Flynn points out, coordinated bargaining may occur where two or more locals represent employees of one company, where two or more unions represent employees of two or more plants of one company or finally, where two or more unions represent employees of two or more companies. *Id.*

the established bargaining units within the company or industry. The threat of a company-wide strike increases the bargaining strength of all the unions involved by minimizing the employer's ability to shift production to other non-striking plants thereby reducing the employer's overall ability to produce and generate profits.⁸

Coordinated bargaining has been in the eyes of labor an historical necessity prompted by the increased corporate diversification of the American economy.⁹ Corporate growth and conglomerations have taken decision making power further from the source of the issues so that a union at a local or plant level no longer has the ability to influence or challenge these decisions.¹⁰ Joseph P. Molony, Vice-president of the Steelworkers has said of this trend:

It has made it impossible in many large companies for any one union to pull enough employees off the job to cause the company anything more serious than a minor inconvenience and a small dent in its total profit Once a union cannot hurt a company by strike, the balance of bargaining strength has disappeared.¹¹

With the growth in size of corporations and their expansion into different industries, the labor movement has acknowledged that it in turn will create larger unions by merger, or expand via coordinated-coalition bargaining. The primary goal, of course, is to increase bargaining power, but the leadership of the Indus-

8. Francis O'Connell, Director of Industrial Relations for the Olin Mathieson Chemical Corporation in a speech delivered on Dec. 9, 1966 at the N.A.M. Congress of Industry defines coalition bargaining this way:

. . . While purporting to bargain legitimately, i.e., only in and for the established bargaining unit, the unions mass their power and make it clear to the employer that none will bargain unless all are bargained with; that none will be satisfied, unless and until all are satisfied; and, that, unless all are satisfied, all will (at some point) strike. . . .

.
So, if the strike is company-wide and an agreement cannot be reached until a company-wide coalition of unions is satisfied, we have, notwithstanding the law, a company-wide negotiation in a situation in which the legal bargaining unit may only be a single plant.

9. A. Weber, *Stability and Change in the Structure of Collective Bargaining*, in CHALLENGES TO COLLECTIVE BARGAINING 13, 26-28 (L. Ulmen ed. 1967).

10. See Conway and Ginsburg, *The Extension of Collective Bargaining to New Fields*, in PROCEEDINGS OF THE NINETEENTH ANNUAL MEETING, Industrial Relations Research Assn., Dec. 1966, 303, 304.

11. J. Molony, *Coordinated Bargaining—the Union and Management*, in COLLECTIVE BARGAINING TODAY, Proceedings of the Collective Bargaining Forum—1969, 65, 69 (1970).

trial Union Department of the AFL-CIO¹² has determined that four other results will be forthcoming: coordinated bargaining will lead to "a great growth in organizing"¹³ because it indicates where union strength must be focused to contend with conglomerates; it will increase the need for computerization and data processing to handle company figures and data; it will allow unions to "[divide] up a pie of economic abundance instead of fighting over a pie of scarcity"¹⁴ as it eliminates or lessens jurisdictional disputes among the various unions; and finally, the struggle in negotiations will have the backing of the whole labor movement rather than a particular small segment.

Management has generally taken the approach that its interests coincide with those of individual employees to the extent that coordinated bargaining moves the decision-making process a step higher by centralization of power. Management claims this has lessened the importance of local issues and grievances causing not only numerous disputes over plant administration and work rules, but also making it more difficult for union leaders to sell agreements to locals. This in turn makes it more difficult for management to reach agreement with national union leaders.¹⁵ Management cites cases where unions have undergone internal dissension because of "local" revolts against international leadership and overcentralization.¹⁶ However, the real management complaint comes down to the issue of union power:

Conducting . . . negotiations on issues extraneous to the interests of a company or a particular plant within a company inevitably results in agreements that threaten the economic viability of that plant or company and, hence, the livelihood of its employees.¹⁷

Management's response to coordinated-coalition bargaining has

12. The Industrial Union Department is the major agency investigating and carrying out the procedures of coordinated-coalition bargaining.

13. Conway and Ginsburg, *supra* note 10, at 303.

14. *Id.* See also Lasser, *Coordinated Bargaining: A Union Point of View*, 19 LAB. L.J. 512 (1968); Note, *Coordinated Bargaining: The Unions' Attempt to Answer a Need*, 3 U. OF SAN. FRAN. L. REV. 353 (1969).

15. Farmer, *Collective Bargaining in Transition*, Industrial Relations Counselors Research Monograph No. 27, 47 (1967). See also Engle, *Coordinated Bargaining: A Snare—and a Delusion*, 19 LAB. L.J. 518, 523 (1968).

16. Among those cases noted are the overturn of top leadership in the United Steelworkers of America, and the split on the West coast by the pulp and paper workers to form a new independent national to promote regional interests. Farmer, *supra* note 15, at 48.

17. *Id.*

been to endure strikes rather than to submit to more costly settlements and adverse competitive positions. Management also contends that coordinated-coalition bargaining has forced it to conduct negotiations at a higher level, that is, more removed from individual plants. Finally, coordinated-coalition bargaining has forced management to increase labor litigation and to exert greater pressure for legislative reform.¹⁸

A third view is held by some economists who characterize coordinated-coalition bargaining as an attempt to "rationalize the historical incongruities or weakness of trade union structure and jurisdiction."¹⁹ Thus, the AFL-CIO through its Industrial Union Department has created a "supra-national union" to overcome such inadequacies. These economists differ from employers in their conclusions to the following extent. Although both recognize coordination as a bid for more union power, employers believe that it arises from an already over-powerful movement while economists believe it arises from bargaining weaknesses.²⁰ For example, several internationals in the same industry may be dealing with different plants competing in the same product market. If coordination did not arise, each of the internationals and plants would probably have different wage settlements, causing certain plants to operate at lower costs (partly because of lower wage settlements) which would affect employment and, consequently, the power of the union to gain concessions.²¹ A single corporation might have several plants organized by several unions, each with separate contracts and different termination dates. To the extent that one plant duplicates the production of another, a strike against one of the plants would shift production to another without significantly disrupting the company's operations. If coordination can bring about common expiration dates, or at least common strike agreements,²² the company will feel the full wrath of a strike and will likely settle for a larger package.²³ Finally, corporate conglomerates with diverse plants and product lines are in an obviously better position to force plant-by-plant local bargaining.²⁴

18. E. Flynn, *supra* note 7, at 76-79.

19. A. Weber, *supra* note 9, at 27.

20. Hildebrand, *Coordinated Bargaining: An Economist's Point of View*, 19 LAB. L.J. 524, 525 (1968).

21. *Id.*

22. A common strike agreement consists of one union striking until all other union contracts are terminated so that all unions are on strike. This creates a united front.

23. Hildebrand, *supra* note 20, at 525.

24. *Id.* at 526. To the extent that unions bargaining in a con-

II. THE LEGALITY OF COORDINATED-COALITION BARGAINING

To evaluate the legality of coordinated-coalition bargaining, it is most fruitful to delineate the scope of lawful union activity. A recent labor controversy involving the General Electric Company,²⁵ discussed in more detail later in this Note,²⁶ provides a good starting point.

Approximately 80,000 employees of General Electric are represented by the International Union of Electrical, Radio and Machine Workers (IUE) in 90 bargaining units. General Electric and the IUE have in the past bargained on a national basis for a contract covering all 90 units of the IUE. The 1963-1966 contract was due to expire on October 2, 1966. Prior to that time, the IUE and other unions representing employees of General Electric formed a Committee on Collective Bargaining (CCB) to coordinate bargaining and to formulate national goals in bargaining with General Electric. The CCB made several unsuccessful attempts to have General Electric meet with it for joint discussions on several matters, presumably in the place of preliminary discussions with the IUE alone. However, on April 13, 1966, the chairman of the IUE General Electric Conference Board and the manager of the General Electric Employee Relations Service discussed the possibility of a meeting to formulate rules for subcommittee meetings. The IUE representatives stated at that time that the IUE would not seek joint bargaining. The General Electric representative agreed to the meeting which was set for May 4, 1966.

On May 4, the Company discovered the addition of seven members to the IUE negotiating committee consisting of one member each from the other seven unions comprising the CCB. The Company refused to meet with the IUE even with knowledge that the seven were non-voting members, there solely to aid the IUE in negotiations and not there to represent their own individual unions.

The IUE filed failure to bargain charges²⁷ which eventually

glomerate situation are "fragmented and decentralized," a strike will be ineffective because an employer does not have to worry about a strike at any one plant because the other plants of the employer will produce different products and will bargain with different unions.

25. General Electric Co. v. NLRB, 412 F.2d 512 (2d Cir. 1969).

26. See Section 2 of Part III *infra*.

27. See 412 F.2d at 515-16.

were sustained by an NLRB decision in October, 1968.²⁸ The Board sustained the Union's contention that General Electric by its refusal to bargain with the IUE had violated section 8(a) (5) of the Labor Management Relations Act.²⁹ The Board, limiting its holding to the facts of the case, found that General Electric had violated the Act by refusing to bargain with the IUE Committee which included representatives from other unions. The Board held that a union has the right to select the members of its bargaining team to represent it in negotiations. The Board stated, "General Electric left the negotiating table before negotiations began, and, therefore, before it had any opportunity to determine whether the IUE Committee had, as it professed, come to negotiate an agreement only for the IUE."³⁰ The Board avoided two of the more important coordinated-coalition bargaining questions: whether a refusal to bargain may be justified if, in fact, the participating unions are "locked in" to a conspiratorial understanding to bring about company-wide coalition bargaining and whether a refusal to bargain may be justified if it becomes apparent that outside representatives are seeking to bargain for their own unions, rather than for the principal union involved in the bargaining.

The court of appeals upheld the Board on the General Electric violation. The crucial issue as the court saw it was the right of either side to choose its bargaining representatives freely. The court cited section 7 of the Labor Management Relations Act which guarantees to employees the right to join together in labor organizations and "to bargain collectively through representatives of their own choosing"³¹ Either side may choose its representatives as it sees fit and neither side may interfere with the other's selections.³² The exceptions to this general rule have been confined to cases where ill will or conflict of interests are so great as to make good faith bargaining impractical.³³

28. General Electric Co., 173 N.L.R.B. No. 46, 69 L.R.R.M. 1305 (1968).

29. 29 U.S.C. § 158(a) (5) (1964).

30. General Electric Co., 173 N.L.R.B. No. 46, 69 L.R.R.M. 1305, 1306 (1968).

31. 29 U.S.C. § 157 (1964).

32. See *Standard Oil Co. v. NLRB*, 322 F.2d 40, 44 (6th Cir. 1963); *McLeod v. General Electric Co.*, 257 F. Supp. 690, 701-02 (S.D. N.Y. 1966), *rev'd on other grounds*, 366 F.2d 847 (2d Cir. 1966); *American Radiator and Standard Sanitary Corp. v. NLRB*, 381 F.2d 632 (6th Cir. 1967).

33. See *Kennecott Copper Corp.*, 98 N.L.R.B. 75 (1952); *Douglas Aircraft Co.*, 53 N.L.R.B. 486, 489 (1943). See, e.g., *NLRB v. ILGWU*, 274 F.2d 376, 379 (3rd Cir. 1960); *Bausch & Lomb Optical Co.*, 108

The court relied upon *Standard Oil Co. v. NLRB*³⁴ where four oil refineries of the same company constituted separate bargaining units, one represented by the international and the others by three of its locals. The bargaining committee for each refinery added representatives of the other three bargaining units. The Company objected on the ground that the outside representatives were involved in a plot to bring about company-wide coalition bargaining. The NLRB accepted the union's disclaimer of such intention, and in enforcing the Board's order the Sixth Circuit stated: "Absent any finding of bad faith or ulterior motive on the part of the Unions we conclude that it was the duty of the Company to negotiate with the bargaining committees of the Unions"³⁵ In the *General Electric* case, the Second Circuit reaffirmed the reasoning of the *Standard Oil* decision but did not hesitate to point out, as did the court in *Standard Oil*, that "if the expanded bargaining committees actually had tried to force a single bargaining for the four units, the employer could properly have resisted."³⁶

The Company in *General Electric* made four attacks on the Board rule allowing mixed-union negotiating committees. The claim that outside influences and alleged conflicts of interest would be injected was dismissed by the court on the basis of precedent.³⁷ On the Company's assertion that the Board had made an improper adjustment of economic power, the court held that the Board had not stated this to be the rationale of its decision, and although the IUE's purpose was to increase its bargaining strength, the fact that such a purpose was incidentally accomplished did not vitiate the rule if otherwise justified.³⁸ The court evaded the Company assertion that to determine the motives of the union was an impossible task. Although recognizing the possibility of improper attempts by the union to ignore unit boundaries in bargaining, the court was unwilling to deal with the question of how far the law permitted bargaining cooperation among separately certified units and was satisfied to leave this determination to the Board. The court stated:

We agree that a mixed-union committee could make it easier to press [bargaining for employees in other units] illegally. . . . Nevertheless, cooperation between unions is not improper up

N.L.R.B. 1555 (1954); *NLRB v. Kentucky Utilities Co.*, 182 F.2d 810 (6th Cir. 1950).

34. 322 F.2d 40 (6th Cir. 1963).

35. *Id.* at 44.

36. *General Electric Co. v. NLRB*, 412 F.2d 512, 518 (2d Cir. 1969).

37. *Id.* at 519.

38. *Id.*

to a point and it is for the Board in the first instance to determine whether the line has been crossed.³⁹

The critical question in the area of coordinated-coalition bargaining, then, is how much cooperation is too much? It is fairly certain that the parties can negotiate on a coalition basis—bargain jointly for a common “master agreement”—if both the employer(s) and union(s) agree.⁴⁰ But the real problem arises when an employer refuses to bargain under such an arrangement and the union insists on the coalition issue to the point of impasse.

Section 8(b) (3)⁴¹ of the Act requires the union to bargain with the employer as long as it represents the employees in the unit. Section 9(a) states that the union chosen by the majority of the employees in a unit appropriate for collective bargaining “shall be the exclusive representative(s) of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment”⁴² Section 9(a) taken alone does not prima facie preclude a bargaining representative from demanding that the employer negotiate common demands jointly with that unit and another union representing a separate unit. An employer’s

39. *Id.* at 520. In *Minnesota Mining and Manufacturing Co. v. NLRB*, 415 F.2d 174 (8th Cir. 1969), decided after the *General Electric* case, the court also upheld the enforcement of a Board order finding that 3M violated § 8(a) (1) and (5) of the Act in refusing to meet and negotiate with representatives of the Oil, Chemical and Atomic Workers Union (OCAW), AFL-CIO, which included representatives of other unions invited to attend the negotiations for the purpose of participating in the discussions and advising the Union. The OCAW made it clear that the “outsiders” would be a part of the OCAW Bargaining Committee negotiating only for the OCAW. The Company contended that the arrangement was a “ploy” to negotiate major economic items on a company-wide level but the court stated, “We do not feel that 3M’s disapproval of the composition of the Union Bargaining Committee justified its refusal to bargain even though the presence of two ‘outsiders’ permits an inference that there might be cooperation among various unions.” 415 F.2d at 178.

40. *McLeod v. General Electric Co.*, 257 F. Supp. 690, 705 (S.D. N.Y. 1966), *rev’d on other grounds*, 366 F.2d 847 (2d Cir. 1966); Engle, *Coordinated Bargaining: A Snare—and a Delusion*, 19 LAB. L.J. 518 (1968); Wagner, *Multi-Union Bargaining: A Legal Analysis*, 19 LAB. L.J. 731, 733-34 (1968); Goldberg, *Coordinated Bargaining Tactics of Unions*, 54 CORNELL L. REV. 897, 915 (1969).

41. 29 U.S.C. § 158(b) (3) (1964):

(b) It shall be an unfair labor practice for a labor organization or its agents —

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

42. 29 U.S.C. § 159(a) (1964).

duty to bargain, however, originates under section 8(a) (5)⁴³ which requires the employer to bargain only with the majority representative of an appropriate unit of his employees and with no other.

An employer confronted with coalition bargaining can make two arguments based on section 8(a) (5). First, he can argue that the coalition of unions is an *inappropriate* bargaining unit for his employees since the Board has designated separate units for collective bargaining, and for a union to insist on joint bargaining on a multi-plant basis would defeat that designation and blur unit boundaries.⁴⁴ The union has two counter arguments. It may assert that the previous determination of the appropriate unit by the Board is in fact incorrect, and that in reality the appropriate unit for collective bargaining purposes is larger, covering several plants rather than the single plant which the Board would generally find appropriate.⁴⁵ The union might also argue that even though the coalition of unions is an inappropriate bargaining unit, two separate unions representing separate bargaining units may properly discuss common demands jointly. Because a combined unit might be inappropriate for collective bargaining purposes, it does not necessarily follow that a demand for joint bargaining is inappropriate.⁴⁶ Under this theory, chosen representatives of each unit would still act for their respective units, but demand that the employer discuss demands common to both units jointly. This, of course, is no longer coalition bargaining because the two unions are no longer bargaining jointly for a common master agreement but for individual unit contracts containing similar terms. Thus, theoretically, the same bargaining result can be obtained as with coalition bargaining although different means are used.

43. 29 U.S.C. § 158(a) (5) (1964):

(a) It shall be an unfair labor practice for an employer —
(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

44. 29 U.S.C. § 159(b) (1964) states:

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: . . .

45. See *Id.* and *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 683-84 (1944). For factors considered in determining the appropriate bargaining unit see Hall, *The Appropriate Bargaining Unit: Striking a Balance Between Stable Labor Relations and Employee Free Choice*, 18 WEST. RES. L. REV. 479, 481-504 (1967).

46. See generally *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958).

The employer can argue that under section 9(a) of the Act the elements bargained for in a coordinated bargaining scheme are not subjects properly includable under "conditions of employment" and are thus outside the scope of mandatory bargaining.⁴⁷ Under section 8(b) (3) it would be unlawful for the union or bargaining representative to press a non-mandatory subject of collective bargaining to an impasse.⁴⁸ However, *United States Pipe and Foundry v. NLRB*⁴⁹ stands in the path of the section 9(a) employer argument and, depending on what the decision actually stands for, can lead to opposite conclusions. The Fifth Circuit was there confronted with the problem of whether unions representing separate plant bargaining units and negotiating individual contracts with the same employer could insist that the termination dates of the individual contracts being bargained be on the same date. The issue was a simple one—whether a demand that an employer agree to a common expiration date in his contracts with representatives of other bargaining units is a mandatory subject of bargaining includable under section 9(a) "conditions of employment." The answer, however, has led to different possibilities. The court held that a common expiration date was a mandatory subject of bargaining, reasoning that identical contract termination dates at each plant "had a vitally important connection with the wages, hours, and other terms and conditions of employment" of the units at the other plants because "[w]ith a common expiration date, it is obvious that each union might be able to negotiate a more advantageous new contract for the employees represented by that union,"⁵⁰ since the employer would no longer be able to shift production to other plants to absorb the impact of a strike at one of the plants.⁵¹

47. See *U.S. Pipe and Foundry Co. v. NLRB*, 298 F.2d 873, 877-78 (5th Cir.), cert. denied, 370 U.S. 914 (1962). See also *Fibreboard v. NLRB*, 379 U.S. 203 (1964); *Ozark Trailers, Inc.*, 161 N.L.R.B. 561 (1966); *Westinghouse Elec. Corp.*, 153 N.L.R.B. 443 (1965); Goldberg, *supra* note 40, at 916.

48. See *Longshoremens' Ass'n v. NLRB*, 277 F.2d 681 (D.C.C.A. 1960); *NLRB v. Retail Clerks Int'l Ass'n*, 203 F.2d 165 (9th Cir. 1953); *Compton v. Carpenters Union*, 220 F. Supp. 280 (D.C.P.R. 1963); Wagner, *supra* note 40, at 739.

49. 298 F.2d 873 (5th Cir.), cert. denied, 370 U.S. 919 (1962).

50. *Id.* at 877.

51. It should be noted, however, that a union still cannot bargain to an impasse on an issue which affects only the bargaining position of another unit. Thus, a union engaged in multi-plant coordinated bargaining can demand as a condition to agreement only certain terms and conditions of employment in contracts at other plants if its own bargaining power is increased. *Standard Oil Co. v. NLRB*, 322 F.2d 40

The decision carried to its logical extreme could lead to some startling results. As one commentator suggested, "It does not take a syllogist to recognize that carried to its logical conclusion the Sixth [*sic*] Circuit's analysis would permit unions to achieve the functional equivalent of multi-plant coalition bargaining by negotiating on a coordinated basis."⁵² The reasoning behind this is that common wages, hours and other working conditions would all be important to each bargaining unit because unions at one plant would still have to "bail with a sieve" while production was maintained at other plants, if the employer was still in a position to play one union off against the other. The bargaining power of one union would still depend upon the wages, hours and working conditions negotiated by other unions representing different units. An employer could agree to higher terms in one plant and then use the productive capacity of that plant to defeat the bargaining tactics of the other unions at the other plants.

Management has made two criticisms of the scope of the decision. The first is that the underlying rationale of the opinion, that a union's bargaining power is increased, depends on similar contract agreements demanded by all the unions involved and on mutual reciprocity by all the unions to common contract expiration. Both of these, it is contended, are conclusory statements and, therefore, "the increase in bargaining power perceived by the court . . . would not result from common expiration dates as such nor a single union's ability to insist adamantly upon them, but rather from the fact that the unions involved could be expected to engage in coordinated bargaining thereby conferring additional bargaining power upon one another."⁵³ The second criticism is that the Fifth Circuit has expanded section 8(d)⁵⁴ so far as practically to approve multi-plant bargaining without employer consent or Board proceedings to determine the appropriate unit.⁵⁵

The union response has been that the underlying rationale of the *United States Pipe and Foundry Co.* case is not only sound,

(6th Cir. 1963). See Wagner, *supra* note 40, at 740. For the argument against this position see notes 57-59 and accompanying text *infra*.

52. Wagner, *supra* note 40, at 741.

53. *Id.* at 741-42.

54. 29 U.S.C. § 158(d) (1964):

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to *wages, hours, and other terms and conditions of employment*. . . . (emphasis added).

55. Wagner, *supra* note 40, at 741.

but that it should even be expanded. Not only have unions opted for agreements whereby several unions bargaining with the same employer agree that none will sign a contract for less than the agreed upon terms without the consent of the other unions,⁵⁶ but also agreements whereby the union, although getting the agreed upon terms, refuses to sign until the other bargaining units attain the same results.⁵⁷ The justification for this position is that "[t]he employees in each unit have a direct and immediate interest in the terms and conditions of employment in every other unit since a low scale of wages and benefits in one unit will tend to depress these items in all units."⁵⁸ The legality of such action is based on the section 7 right to strike for other employees of the same employer even though in a different bargaining unit,⁵⁹ and that such a strike does not violate the secondary boycott section of the Act, 8(b) (4).⁶⁰

This brings into issue the whole problem of the simultaneous strike.⁶¹ The difficulty in arranging a simultaneous strike is that the unions must secure common expiration dates in their contracts with an employer. This is particularly difficult because most agreements contain "no strike" clauses. For such a tactic to be effective, moreover, each union must insist that it will not return to work until the unions at the other plants have secured satisfactory agreements.⁶² This amounts to conditioning

56. See Goldberg, *supra* note 40, at 904. This type of agreement was upheld in *Standard Oil Co. v. NLRB*, 322 F.2d 40 (6th Cir. 1963) allowing the unions to coordinate their bargaining such that there would be a common front against the Company. Certain common demands were imposed upon Standard by the unions bargaining individually, although they had agreed to the common terms formulated by a Council composed of a number of the locals in Company plants.

57. *Id.* at 907. The *Standard Oil Co.* case, 137 N.L.R.B. 690, *enf.* 322 F.2d 40 (6th Cir. 1963), disallowed this agreement on the rationale that once the bargaining unit reaches an agreement (i.e., the terms offered by the Company to it are acceptable) it has a duty to sign the written contract. The interesting point about the case is how *United States Pipe and Foundry Co.* is distinguished. Although deciding that that case was inapplicable to the *Standard Oil* situation, the court seemed to imply that if the unions had raised the issue of refusing to sign until all unions were offered the common demands at all plants, at the bargaining table before or during negotiations, the demand might have been a proper or mandatory subject of bargaining under section 9(a) and the *United States Pipe and Foundry Co.* case.

58. Goldberg, *supra* note 40, at 907.

59. *Id.* at 908 and cases cited.

60. 29 U.S.C. § 158(b) (4) (1964). See *id.* and cases cited.

61. A simultaneous strike occurs when all or most of the unions in a bargaining relationship strike at the same time. The reasons for such a strike are discussed in Part I of the Note.

62. This, of course, is to prevent employer "whipsawing" which

agreement at one unit upon agreement at other bargaining units. It is clear that employees in one bargaining unit have a section 7 right to strike in support of fellow employees in any other bargaining unit of the same employer.⁶³ However, the cases granting supportive strikes are those where one group of employees strikes in support of the demands of employees in another bargaining unit. The type of strike here envisioned would be for employees in one unit to strike for demands in another unit, and at the same time, employees of the latter unit to strike for demands of the former unit. Thus, the strike would serve two purposes: improvement of the immediate benefits to the first unit and added support to the strike occurring at the second unit. A strike to achieve better benefits in one's own unit is clearly protected as would be a strike for employees in another unit.

The section 7 right to strike for another unit as well as to strike for one's own demands would become important at the beginning of the negotiating session when the union would resist the demand by an employer that the agreement contain a "no strike" clause. This would be accomplished by the union's insistence that it will not waive the section 7 right to strike in support of fellow employees, although itself willing to complete negotiations and to sign a contract.⁶⁴ Upon a company's refusal to sign such a contract, the union could refuse to sign any contract until the objectives of the supportive strike had been accomplished. The unions' refusal to waive the section 7 right to engage in supportive strikes would be a mandatory subject of bargaining, not violative of section 8(b)(3). The argument could be made that the unions' demands for simultaneous settlements relate to matters "extraneous" to each individual bargaining unit, but *United States Pipe and Foundry Co. v. NLRB*⁶⁵ again precludes this con-

would weaken the bargaining power of the group of unions acting as a whole.

63. *Texas Foundries, Inc.*, 101 N.L.R.B. 1642, 1683 (1952), *enf. denied on other grounds*, 211 F.2d 791 (5th Cir. 1954); *Houston Insulation Contractors' Ass'n v. NLRB*, 386 U.S. 664 (1967). See also *NLRB v. Peter Cailler Kohler Swiss Chocolates Co.*, 130 F.2d 503, 505-06 (1942).

64. Employers would be reluctant to sign such a contract because if they were to sign, the particular unit involved would not be required to return to work but could engage in "supportive" strikes even though under a new contract.

65. 298 F.2d 873, 878 (5th Cir. 1962). There the court noted in discussing the situation where the representatives of several bargaining units agree on the same demand and make the same demand upon the employer in each separate bargaining relationship:

That expansion [of the bargaining unit] is more apparent than real, for the very real, hard problem faced by each of the three unions, acting as the exclusive representative of the employees

clusion. It would seem that if demands for common contract expiration dates are mandatory subjects of bargaining, then unions should also be entitled to end their strikes together.⁶⁶

Only the *Standard Oil Co.*⁶⁷ case arguably could make the foregoing union activity illegal. There, two of four bargaining units of Standard Oil reached agreement, and then announced that they would not sign the agreements until settlement was reached at a third unit. None of the unions advised the employer during negotiations that its signing might be conditioned upon settlements being obtained elsewhere. This was held unlawful by the Board. The Sixth Circuit in distinguishing the case from *United States Pipe and Foundry* stated:

In our case the Unions did not even bring the subject of agreement at Toledo up for discussion at the bargaining table. They imposed agreement at Toledo as a condition after agreements were reached at Cleveland and Lima and without having previously conferred with the employer about it.⁶⁸

Although the decision may be read to hold unlawful a union's belated introduction of the simultaneous settlement issue, there is language in the opinion that such a demand would be extraneous to a particular union's bargaining demands and therefore would not constitute a mandatory subject of bargaining.⁶⁹

As can be seen, the legal issues involved in coordinated-coalition bargaining are complex and indefinite with many questions yet unresolved. Possibly more important than the legal issues, however, is the context in which they arise. The next section of the Note explores the context in which the issues of coordinated-coalition bargaining arise, and also the economic repercussions

in its unit, is that a common expiration date for all three contracts vitally affects the ability of each union separately to bargain.

This is likewise buttressed by the fact that if supportive strikes are protected activity, the exercise of that right—and refusal to sign an agreement waiving it—could not be “extraneous.”

66. See *Evening News Ass'n*, 166 N.L.R.B. No. 6; *Weyerhaeuser Co.*, 166 N.L.R.B. No. 7. In each of these cases, employers had agreed among themselves that if one were struck the others would lock-out in support of that employer. The effect of the agreement was to exert the combined bargaining pressure of several employers in several bargaining units against a single union in order to enhance the bargaining power of the struck employer. The Board held that employers, not in a multi-employer bargaining unit, could lock out their employees. See also *Goldberg*, *supra* note 40, at 909-10.

67. 137 N.L.R.B. 690, *enf.* 322 F.2d 40 (6th Cir. 1963).

68. 322 F.2d at 45.

69. *Id.* “The logic of the Board in support of this conclusion is that the Toledo issue was an extraneous matter imposed upon the Company after agreements had been reached at Cleveland and Lima.”

and impact that these issues have on both the collective bargaining process and third parties.

III. CASE STUDIES IN COORDINATED-COALITION BARGAINING

Because of limitations in space the following case studies will be limited to two select industries. The copper industry and the copper strike of 1967-1968 will be examined because it magnifies clearly the objectives and pitfalls of coordinated-coalition bargaining. The bargaining at General Electric will be examined because of the litigation it has produced and because it exemplifies to the fullest extent the union struggle against a powerful, diverse, large-scale enterprise.

A. THE COPPER STRIKE

Of all the cases that could be presented, the lengthy strike in the nonferrous metal industry most clearly illustrates the strategies and techniques used by management and unions in the bargaining process.

The "nonferrous" or copper industry is dominated by four companies: Kennecott Copper Corporation,⁷⁰ Anaconda Company,⁷¹ Phelps Dodge Corporation⁷² and American Smelting and Refining Corporation.⁷³ These four account for 80 to 90 percent of the total mining, smelting and refining of copper in the United States.⁷⁴ Copper is of great importance to the American economy, being used in its elemental form, in alloys and in almost all the water tubing and electrical wiring made. Its strategic importance is attested by the federal government's establishment of a "national stockpile" and reservation of 10 to 29 percent of all United States copper production for defense purposes.⁷⁵

70. Kennecott is one of the two largest producers of copper in the world, employing an average of nearly 29,000 people, and having a net income before depletion of about \$165 million in 1969. *FORTUNE*, May 1970, at 188-89.

71. Anaconda is one of the largest producers of copper in the world, and the third largest in the United States, employing an average of nearly 44,000 people, and having a net income of about \$99 million in 1969. *Id.* at 186-87.

72. Phelps Dodge is the second largest domestic producer of copper, employing an average of nearly 18,000 people, and having a net income of \$89 million in 1969. *Id.* at 188-89.

73. American Smelting and Refining is the fourth largest domestic producer of copper, employing an average of 13,400 people, and having a net income of \$100 million in 1969. *Id.*

74. W. CHERNISH, *COALITION BARGAINING* 169 (1969); Timmins, *The Copper Strike and Collective Bargaining*, 21 *L.A.B. L.J.* 28, 29 (1970).

75. W. CHERNISH, *supra* note 74, at 169.

Originally, the two principal unions in the copper industry were the International Union of Mine, Mill and Smelter Workers and the United Steelworkers. There are also several craft unions with bargaining rights. The Mine, Mill and Smelter Workers were known throughout their history to have had radical leanings and were constantly harassed by rival unions, especially the Steelworkers, United Mine Workers, Teamsters and other craft unions.⁷⁶ The fact that there were 26 different internationals in copper may have been the major factor in causing the coordinated bargaining push in the industry. One of the major union complaints about the industry was that each company was trying to gain labor cost advantages over its competitors and also cost advantages within each of the company's own plants. By union fragmentation, the companies achieved different wage scales in most of the plants, different rates for the same job in the same plant and different rates among the unions in the industry.⁷⁷ Early in 1967 the Steelworkers announced the merger of the Steelworkers and the Mine, Mill and Smelter Workers which would become effective July 1, 1967, about the same time that most of the agreements in the industry would expire.⁷⁸

The bargaining relationships existing in the industry consisted of various forms of joint bargaining. This occurred because the War Labor Board, during World War II, had granted several separate bargaining units the same termination dates. Since then, although joint bargaining has occurred, the companies have maintained separate contracts with each bargaining unit.⁷⁹

76. The Mine, Mill and Smelter workers having become CIO members in 1935 were thereafter accused of Communist infiltration and were expelled from the CIO in 1950. From then on the union decayed both financially and in membership. See *id.* at 173-75.

77. J. Molony, *Coordinated Bargaining—the Union and Management*, in *COLLECTIVE BARGAINING TODAY*, Proceedings of the Collective Bargaining Forum—1969, 65, 66 (1970).

78. W. CHERNISH, *supra* note 74, at 175.

79. *Id.* at 176. For instance, Phelps Dodge and Anaconda bargained for separate properties consisting of integrated operations in joint sessions, the former negotiating separate but similar contracts, the latter negotiating on an individual or multiple unit arrangement. American Smelting and Refining saw 12 locals band together in a confederation to negotiate similar settlements, and because they had common termination dates, ASARCO had problems in forging different agreements among the 12 locals. However, ASARCO never engaged in joint bargaining and the agreements did reflect differences in geography. Kennecott went furthest in coordinated bargaining, bargaining jointly with unions on a four-division basis covering four different mining and processing locations. *Id.* at 175-79.

When the Steelworkers absorbed the Mine, Mill and Smelter Workers, the scene was set for a show of strength by the new merger and the copper industry was chosen as the first major test of industry wide coordinated-coalition bargaining. The major union complaint was that the bargaining units in the industry were so fragmented that a strike at one plant of a company was fruitless because the company could shift production to other plants not on strike. This allowed the company to wait out the union by operating non-struck facilities more extensively, thereby weakening the union's bargaining position.⁸⁰ A related problem was the wage scale within the industry. The unions were particularly concerned about the wide divergences in wage scales,⁸¹ and the lack of "[m]utually agreed-on job classification programs"⁸² In late October, 1966, the Industrial Union Department of the AFL-CIO held a major meeting in Chicago⁸³ to make "a detailed analysis of the operations, financial analysis, plant locations and organizational status, contract analysis, and pension examinations for each of 10 companies which it included in its definition of the nonferrous industry."⁸⁴ The meeting also served to sell the virtues of coordinated-coalition bargaining. A later conference was scheduled by the Steelworkers and Mine, Mill and Smelter Workers for March, 1967. In the interim the Steelworkers and Mine, Mill and Smelter Workers had requested wage, pension and other data of the companies to prepare for effective bargaining, but claimed that one company refused to supply data and that another company's information was totally inadequate.⁸⁵ At the second conference, the "1967 Non-Ferrous Bargaining Policy Goals" were formulated and included industry-wide uniformity on all issues and joint bargaining involving all the internationals with bargaining rights at the companies.⁸⁶ The major thrust, however, was the demand for a master contract at each company:

80. J. Molony, *supra* note 77, at 66.

81. For instance, minimum rates at ASARCO's 20 operations ranged from \$2.18 per hour to \$2.66 per hour. Phelps Dodge showed a range of minimum rates for similar plants from \$1.40 per hour to \$2.07 per hour. *Id.* at 67.

82. *Id.*

83. Included at the conference were representatives from both major unions, the United Auto Workers, the International Association of Machinists, the Industrial Union Department of the AFL-CIO and several other unions.

84. W. CHERNISH, *supra* note 74, at 180.

85. Timmins, *supra* note 74, at 29-30.

86. *Id.* Other demands included a cost-of-living escalator clause, substantial wage and salary changes, equalization of rates, job and

[The non-ferrous companies] should now convert these [single economic settlements for several plants] to full company-wide master agreements including coverage of all subsidiary units All agreements in each Company and in the industry should bear a common termination date and should provide for automatic inclusion of newly certified or recognized units.⁸⁷

Bargaining began in early May, 1967, with sessions marked by bargaining committees of coalition union representatives and demands that the policies formulated at the second conference be followed.⁸⁸ The companies refused to include all their properties in one negotiation effort and made separate proposals for each location.⁸⁹ The companies did make final offers to the traditional negotiating units before the June 30 termination date amounting to about \$.50 per hour,⁹⁰ but the unions claimed that the companies made no further efforts to bargain and that they were guilty of a concerted refusal to bargain.⁹¹ This, of course, prompted the 26-union coalition strike against the copper industry,⁹² which the companies believed was due to impossible demands—industry-wide bargaining and coordinated bargaining.⁹³ The strike lasted from July, 1967, until March, 1968. Although many charges and counter-charges were made during the strike, there are at least three possible explanations for the strike. One explanation is that this was truly a union attempt to gain company-wide or even industry-wide bargaining;⁹⁴ another explana-

income security, group insurance, more vacations and holidays, changes in the length of agreements and pension plan modifications. One company measured the total cost at \$2.85 per hour or about four times the increase gained by the UAW with Ford Motor Company in the same time period. The unions would have priced the total package at something around \$2.00 per hour. See W. CHERNISH, *supra* note 74, at 181-82.

87. W. CHERNISH, *supra* note 74, at 182.

88. *Id.* at 183.

89. Timmins, *supra* note 74, at 31.

90. W. CHERNISH, *supra* note 74, at 184.

91. Timmins, *supra* note 74, at 31.

92. Chernish believes that the Industrial Union Department was the major factor behind the ability of the unions to gain such power in the early bargaining stages. He claims that the representatives assigned by the coalition took away the power of local union officials to conduct bargaining and therefore pushed the coalition issue to the forefront leaving other issues secondary. He also believes that the unions failed to engage in meaningful bargaining until after the strike began, thereby allowing more unions to join the strike, and thus strengthening the unions' bargaining position. W. CHERNISH, *supra* note 74, at 185.

93. Timmins, *supra* note 74, at 32. A typical statement was that the negotiations were developed to provide for an industry-wide settlement rather than a settlement for a particular company's employees.

94. Chernish and industry management take this view.

tion stresses that this was a union effort to win the highest welfare and benefit package in the history of copper mining and an effort by the Steelworkers to show the way to industrial influence;⁹⁵ finally, the unions claimed that the strike resulted because of management's insistence "on treating labor as a competitive cost and trying to gain or retain an advantage in labor cost over their competitors."⁹⁶ The strike itself had nation-wide economic repercussions as it crippled the economies of several states and communities. As the strike gained momentum, several remedial measures were suggested.

An original aim of the coalition, it has been suggested, was the invocation of the Taft-Hartley emergency provisions for an 80-day cooling-off period.⁹⁷ The use of this remedy would benefit the unions in two ways: it would allow the unions to present to the government an industry-wide approach to bargaining; it would also allow the early strikers to work until the end of the 80-day period when the remaining contracts would expire and all could go on strike.⁹⁸ The Government declined to use the Taft-Hartley provisions on the grounds that its invocation was of questionable legality, and that there was no reasonable expectation of settlement within the 80-day period. Pressure mounted for compulsory arbitration, but the manufacturers believed that this would destroy collective bargaining by putting the determination of labor costs on third parties thus allowing undue governmental interference.⁹⁹ The governors of the affected states, although playing a peripheral role, suggested a fact-finding board for invoking Taft-Hartley but this was not acted upon.¹⁰⁰ In November, 1967, after five months of striking, several senators appealed to President Johnson to name a fact-finding board to seek a settlement. The Steelworkers were in favor but the companies of the industry opposed the proposal.¹⁰¹ In late January, 1968, the President announced the appointment of a three man fact-finding panel to uncover the core of the dispute and to act as mediators in settling the dispute. The union approved, as

95. Timmins would tend to focus on this as the reason for the strike. See Timmins, *supra* note 74, at 33.

96. J. Molony, *supra* note 77, at 66.

97. Labor Management Relations Act (Taft-Hartley Act) §§ 206-10, 29 U.S.C. §§ 176-80 (1964).

98. W. CHERNISH, *supra* note 74, at 187.

99. Timmins, *supra* note 74, at 32-33.

100. W. CHERNISH, *supra* note 74, at 188.

101. *Id.* at 190-91. The companies declined the endorsement believing that its legitimization would put too much stress on the coalition demand of company-wide bargaining.

did the copper producers, who expressed reservations.¹⁰² The panel found the real problem to be that of company-wide bargaining and recommended that the parties scrap the issue of company-wide bargaining and negotiate the other issues within three groupings separated by the work done and product manufactured.¹⁰³

Finally, on March 16, eight months after the start of the strike, the first contract was ratified by the Steelworkers—the locals of the Arizona mining operations of Phelps Dodge and another refinery covered by a single contract. The agreement was for approximately \$1.13 per hour for 40 months. Thereafter, other contracts were signed.¹⁰⁴

An analysis of the negotiated settlements after the strike reveals that both sides won and lost. The unions won wage and fringe benefit packages valued at approximately \$1.00 per hour, with some even more than this.¹⁰⁵ This, the union claimed, represented an increase of more than twice the size of any ever negotiated in the past, and the improvements were claimed to be about three times as good as any of the offers made by the companies before the strike.¹⁰⁶ In copper mining, smelting and refining operations and on brass fabricating properties, wage packages from \$.51 to \$.57 per hour were provided.¹⁰⁷

102. *Id.* at 191-92.

103. *Id.* at 194. The three groupings were copper mining, smelting and refining; production of other nonferrous metals, and copper wire and cable and brass fabrication.

104. *Id.* at 195-96.

105. Steelworkers 1968 Report on Collective Bargaining-Nonferrous Metals. Chernish estimates the packages at \$.70-\$1.04 per hour. See W. CHERNISH, *supra* note 74, at 200.

106. Steelworkers 1968 Report on Collective Bargaining-Nonferrous Metals.

107. *Id.* This figure includes across-the-board raises, increment increases and wage restructuring programs. By the effective date of the last increment increases, the minimum rate at the large producers will be \$2.98 per hour, the maximum being \$4.44 per hour for some properties. There also were other significant benefits. The pension programs now run concurrently with the agreement and expire at the same time. They provide basic monthly benefits of \$5.00 per year of service without limitation on credited service, and full pension after 30 years of service at age 60 supplemented by \$130 per month until the pensioner is eligible for Social Security. Also included were pensions for widows of workers who die before retirement if after the age of 55 and with ten years of service; \$100 monthly minimum benefit for disability pensions; pensions vesting after ten years of service, and monthly benefits of \$3.50 per year of service for employees already retired. One of the major improvements claimed was the new or improved Supplementary Unemployment Benefit plan providing laid-off workers with \$25 per week for the first 26 weeks and \$50 per week for

However, the major demands of the coalition as far as common terms are concerned were not achieved. The union admitted that although common termination dates within each company were not achieved, the widely scattered contract expiration dates were narrowed. A June 30, 1971 date was standardized throughout the industry for the expiration of copper contracts; a September 30, 1971 expiration date was set for the brass operations of Anaconda, Kennecott and the Federated Metals Division of American Smelting, and the lead-zinc properties of that company have contracts terminating on December 31, 1971.¹⁰⁸ No single contract covering an entire company was signed and no single economic package was extended across the operations of a particular company,¹⁰⁹ but the unions felt that a great victory had been won even though the major coalition effort failed.

In retrospect, several conclusions can be drawn. First, it seems clear that the coordinated effort by the unions led to a larger economic package than would have been bargained had each of the unions gone its separate way. Although losing on the single contract issue, and also on the common termination date issue, the unions by means of the joint strike tactic did have a substantial effect on the final economic package. Second, it is evident that the collective bargaining process completely broke down for the full period of the strike. This led to the prolonged strike and provoked agitation for third-party and governmental intervention. Whether the unions had hoped for intervention or not, it is evident that such intervention would have given them an excellent opportunity to promote the virtues of coordinated-coalition bargaining. Third, it is evident that the issue of coordinated-coalition bargaining, if demanded at the bargaining table, will be resisted to the end by employers and may thus lead to prolonged strikes which may or may not have severe repercussions on the economy. If the impact on the economy is extreme, governmental intervention is likely to result.

The effect of a prolonged strike on the public is by no means minimal. The effects of this strike attest to this. The settlement

the second 26 weeks and a retirement, death, and disability program providing for five months pay. The retirement, death, and disability programs were "firsts" for Anaconda workers. Improvements were also claimed in the equalization of health and welfare coverage at the various properties, employee contributions to the plan having been eliminated. Weekly sickness and accident benefits of \$75 to \$80 for 52 weeks, applicable to the first day of hospitalized illness, became standard in the industry. *Id.*

108. *Id.*

109. W. CHERNISH, *supra* note 74, at 200.

forced a price increase in copper at a time when price increases were discouraged. The strike impaired the balance of payments by \$500 to \$700 million. It caused a loss of wages of about \$215 million, a loss of about \$300 million in profits, \$120 million in federal taxes, \$6.2 million in strike benefits and inestimable damage to state and local economies.¹¹⁰ Finally, a great deal of litigation was generated by the union tactics in the copper strike. Kennecott Copper brought section 8(b) (3) charges against the unions based on the alleged efforts of ten internationals and other locals to bargain with Kennecott on a company-wide basis. Kennecott initially had bargained separately with a total of five bargaining units—its Western Copper properties, its lead and zinc facilities in Utah and Missouri (two units—Ozark and Tintic) and its facilities for refining and fabricating copper located in Maryland and Missouri (two units—Chase and KRC). The trial examiner found that as a precondition to agreement for the Western Copper Properties that the unions demanded: (1) common contract expiration dates for all agreements; (2) a company-wide economic package applied to all units, and (3) a rule that contract settlement be achieved at all union-represented units before work resumed at any of the units. This was held to violate section 8(b) (3) of the Act, on the ground that allowance of the union demands would have meant a merger of separate bargaining units contrary to the rule that with nonmandatory subjects of bargaining “neither party may attempt to force upon the other enlargement of an establishment unit”¹¹¹

The trial examiner reached a similar result in the *AFL-CIO Joint Negotiating Committee (Phelps-Dodge)* case.¹¹² The trial examiner’s decision in this case, however, was appealed to the Board which affirmed his decision.¹¹³ The unions tried to distinguish this case from the *Kennecott* case, where the trial examiner had found that the unions in the Western Copper Properties of Kennecott were insisting that they negotiate terms and conditions applicable to other properties. The unions tried to show that although they originally requested joint bargaining on a company-wide basis and requested a master contract for all

110. *Id.* at 200-01.

111. United Steelworkers (Kennecott Copper Corp.), Case No. 27-CB-453, BNA, Daily Lab. Rep. No. 27 D-1 (Feb. 10, 1969). This decision became a Board order when the unions failed to file exceptions within the prescribed period of time.

112. See Daily Labor Rep. No. 135-D1 (July 15, 1969).

113. AFL-CIO Joint Negotiating Committee (Phelps Dodge), 184 N.L.R.B. No. 106, 74 L.R.R.M. 1705 (1970).

of the company's properties, when Phelps Dodge refused such requests, they agreed to negotiate in five locations for separate agreements.¹¹⁴

A majority of the Board found that one of the primary goals of the AFL-CIO Joint Negotiating Committee was company-wide bargaining and that "the strikes conducted . . . were intended, in substantial part, to force the Charging Party to accede to the Respondents' demands for such a companywide agreement."¹¹⁵ To reach this result, the Board relied on the bargaining objectives formulated in the "1967 Nonferrous Bargaining Policy Goals," the record of negotiations as a whole,¹¹⁶ statements from the respondent's authorized publications and statements by Nonferrous Coordinating Committee members before the Secretaries of Labor and Commerce that company-wide bargaining was a major factor in the copper strike.¹¹⁷ The Board went on to hold, "The conduct of negotiations on a basis broader than the established bargaining unit is nonmandatory, and the Respondents' insistence that the Charging Party engage in such bargaining was violative of the Act."¹¹⁸

114. Brief for Respondents at 33-37, AFL-CIO Joint Negotiating Committee (Phelps-Dodge), 184 N.L.R.B. No. 106, 74 L.R.R.M. 1705 (1970).

115. 184 N.L.R.B. No. 106, 74 L.R.R.M. 1705, 1706 (1970).

116. It is here that the lone dissenter, Member Brown, differs from the majority. He noted that after Phelps Dodge rejected the proposal for extending negotiations to all of the properties of Phelps Dodge, bargaining continued on traditional lines. 74 L.R.R.M. at 1708. Even after the traditional bargaining resumed, however, the respondents demanded common expiration dates for all agreements, a limited no-strike clause allowing employees at the Arizona mines to strike if a lawful strike were in progress at other operations of the company and a "most favored nations" clause which would allow adoption of a more favorable provision bargained for in any other contract covering operations of Phelps Dodge or any of its subsidiaries. After these demands were dropped, the respondents insisted on simultaneous settlements at other bargaining units before signature of any agreement at the Arizona operations, and that no contract for the Arizona operations be signed until the Nonferrous Industry Conference approved the contract. This approval did not occur until agreement had been reached at the other properties. *Id.*

The majority argued that the aforementioned *in toto* manifested an attempt to enlarge the bargaining unit by merging the bargaining in separate units. 74 L.R.R.M. at 1707 n.7. Member Brown argued that to conclude that any of these demands "are equitable [sic] to a demand for a single master contract applicable to all locations is a *non sequitur*. . . ." *Id.* at 1709. He also argued that barring a no-strike clause, supportive strikes are legal, no-strike clauses and expiration dates are bargainable subjects and that a "most favored nations" clause may be a mandatory subject of bargaining. *Id.* at 1709-10.

117. 184 N.L.R.B. No. 106, 74 L.R.R.M. 1705, 1706 (1970).

118. *Id.* at 1706-07.

The ultimate question to be determined by this example is whether the benefits derived from an uncontrolled and free system of collective bargaining, as described above, match the costs to the public and third parties who are injured because of it. As the copper strike illustrates, the stakes are very high for labor to push coordinated-coalition bargaining and for management to resist to the point of total impasse. However, the greatest impact may fall on innocent third parties who are adversely affected by such strikes.

B. COORDINATED-COALITION BARGAINING AT GENERAL ELECTRIC

If any company was to be chosen because of its experience with coordinated-coalition bargaining, it would be General Electric. More litigation and animosity has developed in bargaining at General Electric than any other company of its size.

General Electric is the fourth largest corporation in the United States and the largest electrical manufacturing company in the world, with gross income from sales and services in 1966 of nearly \$7.2 billion and net income of nearly \$340 million. In 1968, sales reached \$8.4 billion and net income approached \$360 million. Because of the strike in the industry, sales in 1969 reached only \$8.5 billion, and net income dropped to \$278 million.¹¹⁹ The Company employs about 400,000 people¹²⁰ at 159 plants in 129 cities, at service locations, warehouses and offices throughout the nation.

The labor relations policies of the Company have caused serious problems. General Electric's approach to collective bargaining was influenced by a former Vice-president, Lemuel R. Boulware, who advocated that the Company research the problems of its employee relations and after making a complete examination, make what it believes to be a fair and firm offer.¹²¹ This of course means that the Company considers the demands of the union, but rarely moves from its original position, believing that its first offer is fair and equitable. Unions have looked at "Boulwarism" as a negation of collective bargaining and therefore illegal under the Labor Management Relations Act. They main-

119. STANDARD & POOR'S, STANDARD N.Y.S.E. STOCK REPORTS, No. 162, 966 (Aug. 21, 1970).

120. FORTUNE, May 1970, at 184-85.

121. See Northrup, *Boulwarism v. Coalitionism—the 1966 GE negotiations*, in MANAGEMENT OF PERSONNEL QUARTERLY, Bureau of Industrial Relations (1966) at 2-11; L. BOULWARE, THE TRUTH ABOUT BOULWARISM: TRYING TO DO RIGHT VOLUNTARILY (1969).

tain that it is a policy "to portray the company as the sole defender of the workers' economic interests," "a deliberate effort to bypass or circumvent the union at all levels" and a "technique which comprises many ostensible negotiations sessions prior to the expiration of the contract . . . after which the company unveils one comprehensive offer, covering all the points on which it chooses to respond, and from which it refuses to deviate in any meaningful way."¹²² The courts have found General Electric guilty of unfair labor practices in the use of "Boulwarism."¹²³ The real question, however, is how General Electric was able to maintain this type of bargaining relationship for such a long period of time, when most of the company's employees are unionized.¹²⁴ One of the answers is that before 1966 disunity and antagonism were prevalent among the unions bargaining with General Electric.¹²⁵ Until 1966, there was little if any communication among the unions. Because of this, General Electric could hold separate talks with each union, and in many cases each individual local unit of a union. Since General Electric bargains with over 80 unions at 150 locations, this allowed the company's "divide-and-conquer" tactics to become an effective defense to the strike mechanism.¹²⁶

Traditionally, bargaining between the International Union of

122. Handbook on the 1969-1970 Strike Against General Electric (AFL-CIO 1969) at 15-16. [hereinafter cited as Handbook].

123. NLRB v. General Electric Co., 418 F.2d 736 (2d Cir. 1969). The court was called upon to review the findings of the NLRB that General Electric had violated the NLRA in the 1960 negotiations by refusing to furnish the union necessary information, presenting an offer on a take-it-or-leave-it basis and dealing with the IUE through the local unions and its membership rather than the membership through the IUE. The court found that "Boulwarism" had two major facets:

1) A take-it-or-leave-it approach to negotiations emphasizing the powerlessness and uselessness of the Union to its members, and

2) A communications program picturing the Company as the true defender of employee interests, denigrating the Union, and curbing the Company's ability to change its own position.

Id. at 756.

124. The International Union of Electrical, Radio and Machine Workers (IUE) has filed refusal-to-bargain charges against the company as a part of each negotiation since 1954.

125. The major unions bargaining with General Electric are the International Union of Electrical, Radio and Machine Workers, International Assoc. of Machinists, UAW, Allied Industrial Workers, International Brotherhood of Electrical Workers, Sheet Metal Workers International and Alliance, American Federation of Technical Employees, American Flint Glass Workers, United Electrical, Radio and Machine Workers, Teamsters, Steelworkers and Pattern Makers League of North America.

126. Handbook, *supra* note 122, at 16-17.

Electrical, Radio and Machine Workers (IUE) and General Electric was nationwide, General Electric negotiating with the IUE on items such as general wage increases, employee benefits and arbitration. Local supplements covering local conditions not covered in the national agreement were negotiated between local management and the union.¹²⁷ The IUE, however, was one of the few unions bargaining that had a national contract;¹²⁸ the others bargained exclusively with local management.

1. *The 1966 IUE-General Electric Negotiations*

In 1966 a significant change occurred when the Committee on Collective Bargaining (CCB) was formed. This unit consisted of the presidents of seven international unions.¹²⁹ The function of the CCB was to coordinate activities among the various unions and to make them agree on common goals in the upcoming negotiations with General Electric. To accomplish this, the CCB pooled its resources and enlisted the aid of the AFL-CIO in establishing a teletype network of its own to counteract that of General Electric. The effort by the unions was endorsed by the Industrial Union Department of the AFL-CIO and was aided by its personnel.

On March 15, 1966, the CCB held a rally in Washington, D.C., at which some 300 delegates attended and pledged mutual support for each other in their upcoming negotiations with General Electric. The agreement listed a series of economic¹³⁰ and non-economic¹³¹ issues which the unions intended to press jointly.

Following this rally, the presidents of the coordinating unions requested an informal meeting with General Electric but were refused. Since joint meetings were impossible, the IUE wrote to General Electric on April 13, stating that the Union would abandon further requests for joint meetings. After this response, the Company agreed to a meeting. The meeting, ar-

127. W. CHERNISH, *COALITION BARGAINING* 82 (1969).

128. The United Electrical, Radio and Machine Workers and Pattern Makers League also had national bargaining agreements.

129. The IUE, International Ass'n of Machinists, UAW, Allied Industrial Workers of America, International Brotherhood of Electrical Workers, Sheet Metal Workers Int'l Alliance and American Federation of Technical Employees.

130. Included were national bargaining goals for wages, holidays and vacations and income and employment security. See W. CHERNISH, *supra* note 127, at 87 for the complete demands.

131. Included were arbitration issues, full union shop, automation provisions, continuity of service, an anti-discrimination clause and pension and insurance programs. See *id.*

ranged for May 4, never convened because when the IUE negotiating committee appeared, including representatives of the other ten unions, General Electric left, claiming that they had not agreed to a joint meeting.¹³² After this meeting had failed, a series of legal battles erupted. The union charged General Electric with a failure to bargain; General Electric, in turn, filed counter-charges that the 11 unions and the Steering Committee were engaged in an illegal conspiracy to bring about coordinated-coalition bargaining.¹³³ The Company lost the legal battle and had to settle for an IUE committee which included representatives of the other ten unions.¹³⁴ The negotiations also brought governmental intervention as the October 1st and 2nd contract deadlines with General Electric approached, due in part to a September 28, CCB conference at which the membership of the 11 unions agreed that if no agreement had been reached by October 2nd, they would shut down 90 percent of the General Electric plants.¹³⁵ The Johnson Administration was determined to request a Taft-Hartley injunction if negotiations did break down in order to prevent interruption of General Electric's defense production. When, however, Mr. Meany, President of the AFL-CIO, protested to President Johnson on the use of Taft-Hartley, Johnson requested that strike action be deferred for 14 days and that a presidential panel be appointed to assist the Federal Mediation

132. For opposing viewpoints on this meeting compare W. CHERNISH, *supra* note 127, at 90-92 with Lasser, *Union Review of Coordination at GE and Westinghouse*, THE AM. FEDERATIONIST 13 (April 1967).

133. W. CHERNISH, *supra* note 127, at 92-96; Lasser, *supra* note 132, at 17.

134. See W. CHERNISH, *supra* note 127, at 96-102. The company refused to accept coordinated bargaining for the following reasons:

1) General Electric was convinced that the basic strategy of the union coalition was to present a "united front" for rejecting any company proposals to force a company-wide strike.

2) General Electric believes in negotiating in a forthright manner holding nothing back simply to be able to make last-minute, strike-threat concessions;

3) The coalition is merely a strike-broadening and strike-lengthening tactic benefiting no one;

4) General Electric believes the long-term strategy of the coalition is to bring about industry-wide bargaining in the electrical industry;

5) Coalition leaders want to shatter the wage guidpost;

6) The strike-bound coalition intends to force governmental intervention by refusing to bargain;

7) Centralized negotiations will make local strikes over local issues more prevalent; and

8) General Electric has had a 33-year bargaining history of sound and peaceful contract settlements unmatched by any other major manufacturing concern. For the legal arguments presented see notes 25-39 *supra* and accompanying text.

135. Lasser, *supra* note 132, at 16.

and Conciliation Service in reaching an agreement.¹³⁶ This was agreed to by both parties, and settlement was reached on October 16 shortly before the end of the 14-day period.

In reaching agreement, the unions claimed that because of coordination significant benefits were attained. They noted that the 1966 agreements were better than either of the two preceding contracts—the annual wage increase was on a more adequate level, a partial cost-of-living escalator was negotiated and inequity adjustments for day, skilled and salaried workers were established. The final agreement, covering 36 months and 3 weeks, increased the value of the earlier offers by 5 to 7 cents per hour.¹³⁷ Finally, the unions claimed “[t]he most far-reaching result was membership recognition that coordinated bargaining, in spite of its complexities and difficulties, has completely proved itself and must continue as a permanent feature of GE and Westinghouse negotiations.”¹³⁸

The Company disagreed with the unions’ contentions claiming that the economic package negotiated was geared to market conditions and that nothing bargained was an unusual departure from previous General Electric policies. The Company claimed success in one battle—no significant change was made in altering General Electric’s limited arbitration of grievances. The Company was unwilling, however, to say flatly that coordination had been ineffective.¹³⁹

2. *The 1969 IUE-General Electric Negotiations*

After the 1966 negotiations, the IUE was convinced that coordinated bargaining would be followed in later negotiations with General Electric. Objectives for the second round of coordinated bargaining with General Electric were disclosed at a meeting on March 6, 1969, in which the ten AFL-CIO unions¹⁴⁰ making up the Coordinated Bargaining Committee (CBC) participated. Of the issues and demands made by the CBC, the following were the most important:

a. *Wages*—The committee claimed that the value of the 12.4 percent wage and fringe package increase of October, 1966, had

136. *Id.* at 18.

137. *Id.* at 19. Pension, insurance and vacation benefits were also claimed to have been improved.

138. *Id.*

139. W. CHERNISH, *supra* note 127, at 103-04.

140. The IUE, International Brotherhood of Electrical Workers, Machinists, Steelworkers, Sheet Metal Workers, Technical Engineers, Allied Industrial Unions, Carpenters, Plumbers, and Flint Glass Workers.

been cut to 3.1 percent by inflation. The committee asked for a cents-per-hour wage increase based on the increase in the cost of living, increased productivity and wage settlements in other industries. This would mean something over 7.5 percent during the first contract year.¹⁴¹

b. *Union Shop*—The committee demanded a full union shop for all employees.¹⁴²

c. *Pensions*—This was a major issue to the CBC because they felt that General Electric employees were receiving substantially less than other major industries such as the auto industry, the aircraft industry and basic steel. They asked for a minimum pension benefit of \$7.50 per month per year of service.¹⁴³

d. *Arbitration*—This was one of the Company's major claims to victory in 1966; the CBC demanded a full unrestricted arbitration clause.¹⁴⁴

On May 14, almost six months prior to contract expiration, negotiators for the IUE Coordinated Bargaining Committee met with General Electric officials in two subcommittees, one dealing with contract language, the other with pensions and insurance. However, the value of these meetings was lessened by General Electric's insistence that the subcommittee work had to be repeated during full-scale negotiations. When full-scale talks began, almost five months passed without any sort of compromise.¹⁴⁵

On October 7, after a long period of relative inactivity, General Electric presented what it termed "the best offer in its history" to the IUE. The General Electric offer consisted of a general increase of 20 cents per hour the first year without provisions for wage increases in the second or third years and no

141. Coordinated Bargaining Committee, *Issues and Answers* (AFL-CIO 1969) at 3.

142. *Id.* at 4-5.

143. *Id.* at 14-17.

144. *Id.* at 19. Among other benefits, the committee demanded vacation pay to be paid at 25 percent above the employees' average earnings and a vacation schedule giving a minimum of two weeks for one year of service and a maximum of six weeks for 25 years of service. There was also a demand to eliminate employee contributions in financing group insurance and health plans and to have the plans apply to all retirement. Finally, the committee demanded that sickness and accident benefits be raised to two-thirds of gross pay for 52 weeks, the elimination of all area wage differentials, and job protection and transfer. *Id.* at 7-13.

145. Handbook, *supra* note 122, at 6.

cost of living protection of any kind. The Company instead proposed wage reopeners in 1970 and 1971.¹⁴⁶ The IUE, in the meantime, had demanded a total of \$1.40 per hour in a 30-month contract, a one cent cost of living increase for every 0.4 percent rise in the price level, and a five cent per employee per hour fund to eliminate geographical wage differentials.¹⁴⁷

The General Electric offer was rejected unanimously by the IUE negotiating committee, the IUE Conference Board and the 12 internationals of the CBC. General Electric refused to move from its original position after the IUE committee reduced certain economic proposals and presented other counter-proposals on October 21. On October 25, the unions tried to avert a strike by proposing that the bargaining issues be presented to the American Arbitration Association. This was unsuccessful as was an effort by the Federal Mediation Service to have the parties meet in one last effort to avert a strike.¹⁴⁸ The strike began on October 26, 1969, when the existing agreement expired. Nearly 150,000 members of 13 unions at 150 plants in 33 states went on strike.¹⁴⁹ On December 6, General Electric revised its first proposal, offering general increases of three percent for wage reopeners in the second and third year, but no improvement in first-year wage proposals. General Electric also offered a cost-of-living provision to raise wages one-half percent for each additional one percent increase in the Consumer Price Index after the first one percent increase, and to raise the minimum pension benefit to \$5.25 on January 1, 1971, and to \$5.50 a year later.¹⁵⁰ The union rejected the offer as inadequate and the strike and boycott continued. After a month of stalemate, movement toward settlement came when federal mediator J. Curtis Counts joined the talks. From January 8 to January 29, General Electric made some small improvements on its December 6 offer, but the strike continued.¹⁵¹

146. Letter containing offer from John R. Baldwin, chief General Electric negotiator, to John H. Shambo, Chairman of the IUE-GE Conference Board, October 7, 1969, in *BNA COLLECTIVE BARGAINING—NEGOTIATIONS AND CONTRACTS* 12:125 (Oct. 16, 1969).

147. Handbook, *supra* note 122, at 4.

148. *Id.* at 6-7.

149. The strike lasted 14 weeks and was supplemented by a nationwide AFL-CIO campaign to raise \$1.00 from each member of the 121 AFL-CIO national and international unions to support the strikers, and a nationwide consumer boycott against General Electric products which began on Nov. 28, 1969.

150. Coordinated Bargaining Committee Progress Report, Dec. 7, 1969.

151. IUE News, Feb. 4, 1970, at 3. During the three weeks of media-

After three months of striking, the IUE and General Electric reached tentative agreement on January 29. The major elements of victory claimed by IUE President Jennings consisted of \$.50 in hourly wage increases and a \$.21 maximum in future cost of living gains for all bargaining unit members at all locations; a new minimum pension of \$6.50 per month for each year of service, estimated to be worth about seven cents of the total agreement; improvements valued at ten cents per hour in sick leave, health insurance, and the elimination of the insurance contribution, and \$.05 to .25 adjustments for skilled workers.¹⁵² The agreement represented a 19 cent increase in wages and a \$.05 increase in pension benefits over the December 6 Company offer. The total value of the wage and fringe benefits was estimated to be over \$1.00, or 7.5 percent per year.¹⁵³

Although both sides claimed victory, there was some degree of pessimism from both the Company and the unions. The unions heralded the outcome of the strike and the impact the strike had upon General Electric¹⁵⁴ but also noted that there was a great deal of friction and failure of communications between the coordinating unions involved in the negotiations.¹⁵⁵ The Company admitted that the agreement was inflationary but was pleased that the final package was possibly less costly than the original offer with two reopeners. The Company also succeeded in preserving management rights, and preventing the establishment of new bargaining patterns in the industry.¹⁵⁶ The Company claimed that the coalition of unions sought a strike to demonstrate its effectiveness, and that to carry out this intention, the solution for the unions was not to bargain seriously but to "delay—first in actual bargaining, then through almost endless and patience-exhausting harping on non-economic issues" carry on the facade of collective bargaining.¹⁵⁷ The greatest victory claimed by the IUE was that "Boulwarism" was finally defeated

tion, only two face-to-face meetings were held, one on Jan. 15 and the other during the final week of negotiations.

152. *Id.* at 1-3.

153. *Id.*

154. Compton, *Victory at GE: How It Was Done*, THE AM. FEDERATIONIST 1-2 (July 1970).

155. *Id.* at 8.

156. Address of E.S. Willis, General Electric's chief negotiator on employee benefits at a meeting of the American Pension Conference, March, 1970, in *Management Review of Coordination at GE*, BNA COLLECTIVE BARGAINING—NEGOTIATIONS AND CONTRACTS 14:71, 74 (July 23, 1970) [hereinafter cited as Address].

157. *Id.* at 72.

—President Jennings stated, "Our members have nailed shut the casket of Boulwarism."¹⁵⁸

Although it is unclear to what extent, if any, coordinated bargaining played a role in achieving national goals or company-wide goals for all the unions in the CBC, it does seem clear that coordination and cooperation by the CBC caused the strike against General Electric to be more complete and therefore more effective.¹⁵⁹ The cooperation received from fellow laborers in the consumer boycott against General Electric and the one dollar per person strike fund also added to the strike's effectiveness. Without the coordination achieved by the CBC, it seems likely that General Electric could have maintained its historic "divide-and-conquer" tactics, and its "Boulwaristic" approach to labor relations. This would have put the unions in their traditionally weak positions. Although many of the goals of the March 6, CBC meeting were not attained, the unions involved in the CBC can claim success in abolishing or at least weakening the effects of "Boulwarism," after General Electric Board Chairman Fred Borch had announced that GE's December 6 offer would not be improved. Coordination at General Electric, then, may be said to have had some effect on the overall functioning of collective bargaining by introducing "give-and-take" bargaining into the labor relations of the company. This may have the beneficial effect of lessening the labor tensions at General Electric. However, the costs of the strike were considerable. Employees lost over a quarter of a billion dollars in wages, the company lost even more in sales, and profits were reduced considerably.¹⁶⁰

IV. CONCLUSION

Although it is risky to state any definite conclusions as to the effects of coordinated-coalition bargaining based on the small sampling of case studies presented in this Note, several general conclusions can be drawn from the facts surrounding the two studies made. First, it seems clear that the attempt to broaden the bargaining unit by the unions composing the coordinated-coalition bargaining scheme has had some impact on the final settlement reached between the company and the unions in-

158. IUE News, Feb. 4, 1970, at 3. The response from General Electric was equally predictable: "The unions could claim Boulwarism was buried just as it was announced in 1966. I am sure they will resurrect it and then re-bury it in 1973." Address, *supra* note 156, at 74.

159. See Address, *supra* note 156.

160. *Id.* at 71.

volved. The impact appears to be 1) that the final negotiated agreement has been larger than in the absence of coordinated-coalition bargaining and 2) that the unions' attempts to expand the bargaining unit and to create wage and bargaining uniformity throughout a company or industry have been relatively unsuccessful.

Second, to the extent that coordinated-coalition bargaining stresses industry-wide issues such as wage and bargaining uniformity, purely local issues have played a decreasing role in the collective bargaining process. This may tend to aggravate local tensions, making it more difficult for union leaders and employers to sell agreements to locals. Third, employers faced with the prospect of union demands for expanded bargaining units and wage and fringe benefit uniformity throughout a company or market have resisted, and in resisting, have been willing to settle for lengthier and better managed strikes on an industry- and company-wide level. At the same time, however, employers have increased the number of suits brought against unions for unfair labor practices, and at the same time, have increased the time and money spent in lobbying for legislative reform against these union practices.

Finally, the stress placed by unions on market-wide wage and benefit uniformity and the resistance that employers have created, have seriously affected the public and other third parties. First, lengthy strikes have not only crippled needed production of vital national goods, but have also reduced corporate and wage income, thereby reducing taxable income in staggering amounts. Moreover, as the case study of the copper industry illustrates, state and local economies have been severely damaged. The large totals of lost production, corporate and wage income and taxable income have brought into focus the important question of whether restrictions should be placed upon the system of free collective bargaining as it presently functions. Second, it appears that during these lengthy strikes, the collective bargaining process, instead of operating to reach settlement, has completely broken down, and interested third-party intermediaries increasingly have had to play the dominant role in forcing the parties to agreement. Not only is this expensive, but valuable talent is wasted. The whole theory of free collective bargaining becomes meaningless and useless if the interested parties are unable to reach an accord without third-party intervention.

Although it now appears that the NLRB and courts are pay-

ing more attention to the basic facts and realities arising out of employers' assertions of union unfair labor practices in coalition bargaining, rather than relying on the technical distinctions that the law makes between legality and illegality,¹⁶¹ the Board and the courts are nevertheless hamstrung in assessing and weighing the economic strengths of each side.¹⁶² Consequently, no matter how coercive an economic weapon may be to the other interested bargainer or interested third parties, as long as the actions are "legal" within the purview of the Act, the Board or court may not interfere.

While this may be a proper role for the Board and courts to assume, it is incumbent upon Congress to legislate to protect adequately the public interest there is in seeing that industrial strife is kept to a minimum so that the public does not become the major cost-bearer of industrial strife.

161. See notes 111-18 *supra* and accompanying text.

162. See *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965); *NLRB v. Insurance Agents Int'l Union*, 361 U.S. 477 (1960).