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"BOOM BACKLASH" [1] made recent headlines in the May 26th issue of *The Wall Street Journal.* The sub-heading, "Efficiency Falls and Pay Training Costs Increase as Labor Supply Shrinks" [2] delves into the heart of industrial engineering. This represents, also, an expansive and enigmatic economic problem which is now confronting employers in northern Ohio and western Pennsylvania. It is the job of the industrial engineer to deal with the resulting problems of decreased productivity, contract erosion, and unbalanced labor relations.

In the township of Lordstown, Ohio, the General Motors Corporation has begun construction of a 75 million dollar plant, hopefully to be completed by 1970.[3] The creation of this plant, a possible future site for compact car production, must be accelerated if General Motors is to keep pace with Ford's new compact car. Employers in Ohio and Pennsylvania are rapidly losing their workers to this development project, which offers vastly increased pay rates and extended overtime to prospective employees.[4]

The first basic issue facing industrial engineers working for employers is the maintenance of productivity in a decreasing labor supply. As employees at other projects demand more gains to bring them in line with the Lordstown project, plant operations are hampered by continual work stoppages.[5] In an attempt to preserve maximum efficiency many area companies are being forced, in order to retain their present work force, to increase their rates and extend more employee benefits.

An additional industrial engineering problem is the incessant drain of skilled and employable workers from the available labor force to work at the Lordstown project. Both old and new companies must resort to less-qualified borderline employables for prospective employment. For example, because of the high turnover and minimal skills of the hired workers, a Cleveland based company, the Midland-Ross Corporation, was compelled to hire 1700 people before obtaining a work force of 750 for a new plant near Toledo, Ohio.[6]

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1 The Wall Street Journal, May 26, 1969, at 1, col. 6.

2 *Ibid.*

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

This seemingly insurmountable problem of maintaining productivity in a period of decreasing labor supply represents a challenging problem to the industrial engineer. In striving for work force efficiency, he utilizes the concept of productivity to measure economic growth, stability, and efficiency. This concept must be safeguarded by both labor union and by management in order to maintain levels which can provide maximum opportunities for employees and sustain a strong market position for the employer.[7]

In the past, labor and industry have not effectively cooperated in achieving economic goals. The collective bargaining agreement and grievance procedure are the extent of their formal relationship.[8] Both management and union are usually reluctant to enter a well-structured cooperative arrangement. Even when such an agreement is made, there is no organized machinery to implement it.[9] A cooperative clause is usually confined to a union pledge to support policy considerations in matters of productivity and efficiency, but enforcement provisions are vague and uncertain.[10]

The reluctance of the factions to agree arises from intrinsic attitudes of management and union personnel. Management has generally felt such matters as productivity and efficiency to be their exclusive domain. Any cooperative agreement is often viewed as an encroachment upon managerial duties. Conversely, the unions do not wish to identify too closely with company policy, for this may arouse suspicions in the workers.[11]

Arbitration and collective bargaining have provided for an intermediate means of achieving industrial peace. "The collective bargaining agreement states the rights and duties of the parties . . . it is a generalized code to govern a myriad of cases which draftsmen cannot wholly

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[7] Bureau of Labor Statistics, U.S. Dept. of Labor, Bull. No. 1425-5, Management Rights & Union-Management Cooperation, at 57 (April, 1966). Agreement of Pacific Columbia Mills and the Textile Workers Union of America: The union recognizes the responsibilities imposed upon it as the exclusive bargaining agent of the employees, and realizes that in order to provide maximum opportunities for continuing employment, good working conditions, and good wages, the employer must be in a strong market position, which means it must produce efficiently and at the lowest possible costs consistent with fair labor standards. The union, through its bargaining agency, assumes responsibility for cooperating in the attainment of these goals. The union, therefore, agrees that it will cooperate with the employer and support its efforts to assure a full day's work on the part of its members; that it actively will combat absenteeism and any other practices which restrict production. It further agrees that it will support the employer in its efforts to improve production, eliminate waste in production; conserve materials and supplies; improve the quality of workmanship; prevent accidents, and strengthen good will between the employer, the employees, the consumer, the union, and the public.

[8] *Ibid.*, at 25.

[9] *Id.*

[10] *Id.*

[11] *Id.*

anticipate." [12] Under the NLRA, both the union and employer have a duty to bargain, which provides a means of judicial arbitration without the use of the courts. The United States Supreme Court has favored a voluntary settlement of disputes rather than a coerced settlement under government authority. Justice Douglas expounded his view in *United States Steelworkers of America v. Warrior & Gulf Navigation Co.*[13] by saying:

> . . . the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties.[14]

However, in *Textile Workers Union of America v. Lincoln Mills of Alabama,*[15] the court held that grievance arbitration provisions in collective bargaining agreements could be enforced through Section 301 (a) of the Labor Management Relations Act.[16] In this case, the court favored an agreement in which the arbitration provision was the *quid pro quo* for the provision not to strike.[17]

Company-union agreements and collective bargaining have provided the separate parties with the needed protections from abuse. A union pledge is frequently coupled with one from management, often to guarantee worker protection or exchange benefits.[18] The Wagner Act of 1935 established the NLRB as a discretionary body to oversee the fulfillment of such compacts. But any pre-emption of jurisdiction by the NLRB would render the specific arbitration and collective bargaining agreement meaningless if a dispute ensued based on such a pact. Management would lose the benefits pledged to it as well as those pledged by it, thereby constituting an erosion of the contract and an unbalanced labor-management situation. Employers and industrial engineers will need to scrutinize carefully the inclusion of grievance arbitration procedures in collective bargaining agreements, even in exchange for a "no

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12 United States Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578 (1960).

13 *Ibid.*

14 *Id.* at 581.

15 353 U.S. 448 (1957).

16 Labor Management Relations Act, 29 U.S.C. § 185 (a), 61 Stat. 156. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties.

17 Textile Workers Union of America v. Lincoln Mills of Alabama, *supra* note 15, at 455.

18 Bureau of Labor Statistics, U.S. Dept. of Labor, *supra* note 7, at 27.

strike" clause, when such protective procedure can be handily discarded by the NLRB.[19]

The NLRB must permit the parties to settle their disputes by agreed means rather than by superseding the structure and imposing judicial review in an area exclusively provided for by party agreement. Continued infringement of the arbitral process by the NLRB inhibits the value of the grievance arbitration procedure in collective bargaining agreements.[20] Furthermore, this encroachment has a debilitating effect on the use of these measures as an institution for promoting industrial peace and stability.[21]

Contract erosion occurs when one party to the contract continually protests issues, causing the other party to gradually weaken its interpretation of contractual terms. This gradual blending of terms is detrimental to the effectiveness of such labor contracts and precludes the desired balance between the parties. Contractual erosion of this sort must be adequately protected against, by the careful scrutiny of industrial engineers, in order to insure industrial peace and labor relations stability.

Case decisions and constitutional provisions are utilized to regulate the scope of labor-management relations. Injunctive relief through the judiciary under the NLRA and Taft-Hartley Act provides a temporary remedy for unbalanced labor-management situations. The NLRB can enforce its orders in any unfair labor practice or dispute by invoking the use of the courts to issue injunctions.[22] The extended coverage of the NLRB touches upon all labor related activities which have an economic effect on interstate commerce. The Taft-Hartley Act only provides for an 80 day injunction against threats to national health, safety, or substantial industrial detriment.[23] But these are emergency procedures and cannot provide adequate relief for future permanent problems of contractual erosion and unbalanced labor relations.

The federal government has the extensive power to provide permanent relief. Through a broad judicial interpretation of the *Commerce,* and the *Necessary and Proper* clauses,[24] the federal government has enabled Congress to legislate in the area of labor relations. In *NLRB v. Jones & Laughlin Steel Corp.,*[25] the court upheld the constitutionality of the NLRA as a valid exercise of the Commerce power. The court said, regarding such ". . . activities . . . (that) if they have such a close

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19 Cohen, NLRB: Poacher on the Arbitral Domain, 55 A.B.A.J. 437, 440 (1969).

20 *Ibid.*

21 *Id.*

22 CCH, 1967 Guidebook to Labor Relations 321 (1966).

23 *Ibid.,* at 271.

24 U.S. Const., art. I, § 8, cls. 3 and 18.

25 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937).

and substantial relation to interstate commerce that their control is essential to protect commerce . . . Congress cannot be denied the power to exercise that control." [26] The *Commerce* Power is itself as great as are the economic needs of the nation.

The present structural system of labor law is broad enough to encompass the increasing industrial engineering problems of decreased productivity, contract erosion, and unbalanced labor relations. When the economic consequences become too great a threat to industrial peace, the activities leading to such consequences must be eliminated.

Continued, uninterrupted production can be effectively maintained through the instrumentality of collective bargaining and grievance-arbitration procedures. These instruments of economic stability and growth must be adequately protected in order to achieve optimum usefulness and for sound furtherance of national labor policies. This provides a major role for the industrial engineer.

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[26] *Ibid.*