AN INTRODUCTION TO ORGANIZED LABOR IN TELEVISION

THESIS FOR THE DEGREE OF M. A.
MICHIGAN STATE UNIVERSITY

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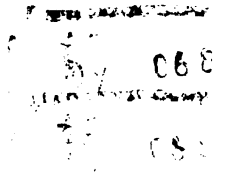
1969



ABSTRACT

AN INTRODUCTION TO ORGANIZED LABOR IN TELEVISION

By

Martin R. Bender

When describing the scope of unionization in television, management estimates between 50 to 80 percent of all stations in America are organized by one or more unions. Total membership from the industry in the talent and technical guilds and unions is approximately 50,000 employees.

The writing of this thesis was undertaken in response to the lack of emphasis placed on the importance of organized labor to television by college broadcast curricula. Further, it was recognized that most books attempting to portray the nature of TV management also fail in this respect. For the student of broadcasting to adequately prepare for a position of responsibility in the TV industry, the author feels a knowledge of the foundations and functions of television's labor organizations is essential.

The National Labor Relations Act of 1935 established the ground rules for modern labor-management relations.

That law for the first time declared that employees shall have the right to form, join, or assist labor organizations and to bargain collectively with their employers through representatives of their choosing. This paper uses this act as a point of departure for a discussion of the legal basis of unionism. The first chapter speaks of organized labor in general terms since television unionism shares a common foundation with unions in many industries.

The same approach is evident in Chapters III and IV which discuss the process of union recognition and collective bargaining, plus the fundamentals of the grievance procedure. The government has established a definite course to be followed by a union that seeks to represent a station's employees or a unit thereof.. After the National Labor Relations Board has certified a labor organization to be the majority choice of the employees, both union and management have an obligation to bargain toward an equitable contract in good faith. When discrepancies arise over the interpretation of contract clauses, the employee or the employer can channel his discontentment through the grievance steps until satisfaction is attained. The importance of arbitration and problems it has created are pointed out during the presentation of the grievance procedure.

Chapter V is concerned with the nature of television unionism as it appears today. In collective bargaining the unions that represent the "talent" people will emphasize a principle of compensation called "residuals." The unions that bargain for the technicians and craftsmen stress "seniority" and "job-security" at the negotiating table. These labor organizations also have over the years developed interesting personalities by which management can somewhat predict how the groups will react in various situations.

The histories of the principal unions active in television are discussed in Chapter VI. An introduction to their heritage adds perspective to the character sketches drawn in the preceding section.

It is not the intent of this thesis to cite all the problems or answer all the questions that one would face when working in TV union labor relations. It is hoped that the reader may gain some introduction to, and understanding of, the principles upon which the unions in the television industry are structured and function.

AN INTRODUCTION

TO ORGANIZED LABOR IN TELEVISION

By

Martin R. Bender

A THESIS

Submitted to

Michigan State University

in partial fulfillment of the requirements

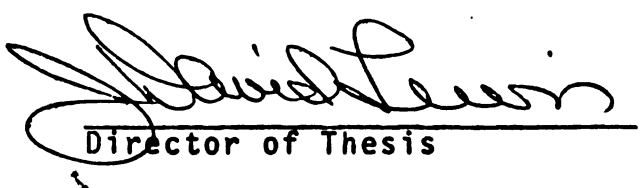
for the degree of

MASTER OF ARTS

Department of Television and Radio

1969

Accepted by the faculty of the Department of Television and Radio, College of Communication Arts, Michigan State University, in partial fulfillment of the requirements for the Master of Arts degree.



Director of Thesis

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CHAPTER I

INTRODUCTION

IATSE, NABET, AFM, DGA, WGA, IBEW, AFTRA, SAG. Today this alphabetic kaleidoscope represents nearly 50,000 employees in America's television industry. The union rank and file wear collars of either color--white or blue--and "do everything from pushing brooms to pulling punch lines."[1] According to recent estimates from the National Association of Broadcasters, employees in 80 percent of the nation's TV stations are organized by one or more unions, however, most industry executives are only willing to concede an approximation near 50 percent.[2]

At the outset a familiarization with the principle unions involved in the television industry seems appropriate. The lists in Table 1 and Table 2 should assist in focusing the alphabetic kaleidoscope when reference

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[1]John Gardiner, "Television Unions: A Tide of Rising Expectations Swell Up From the Ranks," Television Magazine (October, 1967), p. 30.

[2]Ibid., p. 30.

TABLE 1

PRINCIPLE UNIONS IN TELEVISION*

Common Reference	Full Title and Affiliation
AFTRA	American Federation of Radio and Television Artists, AFL-CIO
AFM	American Federation of Musicians of the United States and Canada, AFL-CIO
DGA	Directors Guild of America, Inc. Independent
IATSE	International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, AFL-CIO-CLC
IBEW	International Brotherhood of Electrical Workers, AFL-CIO-CLC
SAG	Screen Actors Guild, AFL-CIO
SEG	Screen Extras Guild, Independent
USA	United Scenic Artists of the Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO
WGA	Writers Guild of America, East, Inc. Independent Writers Guild of America, West, Inc. Independent

*Source: John Gardiner, "Television Unions: A Tide of Rising Expectations Swells Up from the Ranks," Television Magazine (October, 1967), pp. 30-33.

TABLE 2

JURISDICTIONAL LINES OF THE TELEVISION UNIONS*

CRAFT	LIVE OR VIDEOTAPE	FILM
(Talent Categories)		
Performers (including Announcers and Newsmen	AFTRA (SAG)[a]	SAG SEG
Musicians	AFM	AFM
Directors (including Assistant Directors and Production Managers)	DGA	DGA
Writers (including Newswriters)	WGA (NABET)	WGA
(Technical Categories)		
Cameramen, Audiomen, and Technicians	NABET IBEW (IATSE)	IATSE (NABET)
Stagehands and Grips	IATSE	IATSE (NABET)
Sound Effects	NABET IBEW IATSE AFTRA	IATSE
Make-up and Wardrobe	IATSE (NABET)	IATSE
Graphic Artists	IATSE	IATSE
Scenic Artists and Designers	USA IATSE	IATSE USA
Film Editors	IATSE (IBEW) (NABET)	IATSE

*Source: Richard L. Freund, "Stations and Networks: Relations with Labor Organizations," in Business and Legal Problems of TV and Radio (New York, Practicing Law Institute, 1968), p. 193.

[a]Parenthesis indicates union represents small but still significant portion of the employees in that craft.

is made to the various organizations during the initial chapters of this paper. The nature of TV unionism and these broadcast unions will be analyzed after a discussion of organized labor in general terms.

The right of television employees, or any group of workers, to form and join unions for the purpose of taking collective action to improve their economic position is today guaranteed under law. "The ultimate objectives of the labor movement are better wages and working conditions."[3]

> A large number of individual gains which labor regards as improvements in its position are included in the broad phrase "better wages and working conditions." The following may be noted here: safe working conditions, job security, seniority rights, and respect for the personal dignity of the individual worker. Such direct improvements in the position of workers have all been clearly accepted as legitimate labor objectives. Less clearly and freely accepted are those "uneconomic" objectives which may be classed loosely as "featherbedding" practices.[4]

To prepare adequately for any position of responsibility in the broadcasting industry an understanding of the principles of organized labor is essential. As the word "personnel" represents a station's most

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[3]1968 Guidelines to Labor Relations (Chicago, Commerce Clearing House, Inc., 1968), p. 51.

[4]Ibid., p. 51.

important asset, and its biggest single cost item, one must not dismiss union labor relations and collective bargaining as elementary concerns. Efficient and effective station management recognizes the importance of unions and works with them for the mutual benefit of the employees and the company.

Unfortunately for the student of broadcast management, the sources are limited from which he may obtain some perspective on the evolution and functioning of labor unions within the industry. Most broadcasting books seem reluctant to view unions as a major factor influencing day-to-day operations and profits. Abbreviated mention of the subject usually centers around the general manager's role as "the prime representative of the station in formal negotiations with the union to effect an equitable contract."[5] An almost philosophical air pervades the remainder of such discussions.

> There have been costly strikes in the broadcasting industry because either labor or management or both did not approach negotiations in a mature manner. There has been a degree of irresponsibility on both sides. Nevertheless, it is believed or at least hoped, that there can be more intelligent handling of labor-management problems in the future.

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[5]Milton D. Friedland, "The Network Affilliated Station," in Television Station Management, ed. by Yale Roe (New York, Hastings House, Publishers, 1964), p. 62.

> Nothing is more essential in union and labor relations than careful explanations of the rationale of company policies. When people know the reasons for doing something in a particular manner, they can be expected to have more understanding of the task. In cases where complete explanations are given, difficulties usually can be precluded. The bargaining table is, or should be, a meeting place of reasonable men.[6]

It is a personal observation that the graduate curricula at the major colleges offering broadcasting courses provide only the briefest exposure to union labor relations. The reasons for this, as theorized by several management personnel in conversation with this writer, appear to stem from the fact that a majority of the broadcast educators have come from the ranks of Academe, or from backgrounds in educational television. As is the rule in most educational institutions, union activity in ETV to date has been very limited. Faculties therefore, fail to acknowledge the impact which organized labor has had and will continue to have in the commercial television business.

> A revolutionary spirit is abroad in the land. The laborers in television's vineyard are in a sour mood. Not the fruit of their labor, but the stridency of their demands is setting management's teeth on edge. Small bands of workers, mindful that the wages in the next field are related to their own, are communicating across boundaries

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[6]Ward L. Quaal, and Leo A. Martin, Broadcast Management (New York, Hastings House, Publishers, 1968), p. 189.

> that once contained their several voices. Protests that lack the weight of numbers are finding a collective voice. The owners' intelligence network need not be especially sensitive to detect that labor has arrived at a new sense of its just rewards and a new sense of how to make sure it gets them.[7]

The format of this paper is divided into two discussion areas. First the legal basis of unionism is presented in general terms and at times references to television and broadcasting will be absent for several pages. The material in Chapter II and Chapter III covers the foundations upon which all organized labor is constructed. The passage of the National Labor Relations Act in 1935, served as the catalyst for the organization of non-agricultural labor as a whole. The development of television's unionism must be seen as a part of this general movement. The principles governing the functionings of the unions in the TV industry are not unique from the rules governing all organized labor.

Secondly, the talent guilds and technical unions have shown a tendency to emphasize certain specific interests in their practice of collective bargaining. What the men in front of the cameras consider important and are willing to fight for, are not paramount in the

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[7]Gardiner, "Television Unions: A Tide of Rising Expectations Swell Up From the Ranks," p. 29.

minds of the men behind the cameras; and vice versa. Chapter VI will analyze this nature of television's unionism as it appears at present and Chapter V will present a view of each major organization to add perspective to their activities today.

A union is an organization of people and, therefore, a very fluid and temperamental organism. It is not the intent of this thesis to cite all the problems and answer all the questions that would face someone engaged in labor relations with the aforementioned organizations. It is hoped that the reader will acquire an understanding of the principles upon which unions are structured and gain AN INTRODUCTION TO ORGANIZED LABOR IN TELEVISION.

CHAPTER II

THE LEGAL BASIS OF UNIONISM

To cite the foundations of unionism in broadcasting would be to discuss the development and struggles of the labor movement in America over the past 150 years. Television's organized labor cannot be viewed as unique entity unto itself, but must be seen as a part of that movement. It shares a common basis with unionism of many industries.

Wagner Act (1935)

Because it established the ground rules for "modern" labor-management relations,[8] we shall use the National Labor Relations Act of 1935 as a point of departure. Commonly known as the Wagner Act, this law for the first time stated:

> Sec. 7: Employees shall have the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.[9]

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[8]Neil W. Chamberlain, Sourcebook on Labor (New York, McGraw-Hill, Inc., 1964), p. 1.

[9]National Labor Relations Act (Wagner Act), Sec. 7.

For the welfare of the nation's commerce and to encourage industrial peace, Congress declared as a matter of public policy that there should be collective bargaining.

> Sec. 1: Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.
>
> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.[10]

In Section 8 of the N.L.R.A., Congress tried to provide for the necessary protection of labor's right to organize by labeling certain methods of interference as unfair labor practices. "It was to be an unfair labor practice for an employer to restrain or coerce his employees in exercising their rights, to

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[10] Ibid., Sec. 1.

try to dominate or even contribute financially to the support of any labor organization, to encourage or discourage union membership by discrimination in hiring or firing, or to refuse to bargain collectively."[11]

Subject to court review, the National Labor Relations Board was impowered under the Wagner Act to issue "cease and desist" orders or to direct other appropriate action when it found Section 8 violations. Through Section 9 of the N.L.R.A. this body was also given the sole authority to determine the appropriate bargaining units and to supervise all representation elections. The N.L.R.B. was not to be involved in the wage, hour, or working condition disputes as such, but was to be concerned "solely with the practical encouragement and facilitation of collective bargaining."[12]

Taft-Hartley Act

As the Wagner Act provided for employer unfair labor practices, the Labor Management Relations Act of 1947 (the Taft-Hartley Act) spelled out parallel

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[11]Foster Rhea Dulles, Labor in America (New York, Thomas Y. Crowell Co., 1966), p. 275.

[12]Ibid., p. 275.

prohibitions for the unions. A labor organization may be charged with an unfair labor practice if it:

1. Coerces or restrains employees in their freedom to engage in or to refrain from union activities, or employers in choosing spokesmen.
2. Coerces an employer to discriminate against employees under a union security agreement, except where the employee fails to pay reasonable dues and initiation fees to the union.
3. Refuses to engage in good faith bargaining with the employer or his representative.
4. Engages in conduct, including picketing, that influences nonperformance of work by employees in order to:
   A. force an employer or one who is self-employed to join a labor organization or an employer organization; or to force him to refuse to deal with or handle products of another company; or
   B. force another employer to recognize an uncertified union; or
   C. force any employer to bargain where another union has been certified as representative; or
   D. force the assigning of work to one craft or group instead of another unless in accordance with an N.L.R.B. order.
5. Levies excessive or discriminatory dues and initiation fees if it enjoys a union shop contract.
6. Engages in featherbed practices exactions (to require an employer to pay more employees than are needed for production).[13]

Landrum-Griffin Act (1959)

The 1959 Labor Management Reporting and Disclosure Act (the Landrum-Griffin Act) again amended the 1935

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[13]Stephen J. Mueller and A. Howard Myer, Labor Law and Legislation (Cincinnati, South-Western Publishing, 1962), p. 462.

law to prohibit "hot cargo" agreements between unions and employers. Under this type of agreement an employer "ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of another employer, or cease doing business with any other person."[14] This act also made it an unfair labor practice for a union to picket or threaten picketing to force an employer to recognize or bargain with an uncertified union (a union not judged by the N.L.R.B. election or other appropriate method to be the employees' choice for bargaining representative).[15]

An employer has no obligation to meet at the bargaining table with any union until by election or "other appropriate method" the union has been certified by the National Labor Relations Board as the employees' choice. In speaking of union recognition the important factor to recognize is that under the Wagner Act the certified collective bargaining agent for a specific employee unit has exclusive bargaining rights for all employees in that unit. This point was amended by the

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[14]National Labor Relations Act as amended by Labor Management Reporting and Disclosure Act, Sec. 8 (b) (4) (ii) (B).

[15]Ibid., Sec. 8 (b) (7).

Labor Management Relations Act to permit individual states to pass legislation restricting the concept of exclusive representation known as a "union-shop." As of this writing 19 states have so-called "right to work" laws making unlawful and unenforceable contracts which require union membership or the payment of union dues as a condition of employment.[16]

Union Security

While avoiding the "right to work" controversy, a brief examination of union security is in order. Four terms need defining; they are: closed shop, preferential hiring or preferential shop, union shop, and maintenance of membership.

Under a "closed shop" contract an employer would agree to hire and retain only union members of good standing. By identifying the supply of qualified labor with union membership, the unions argued that the employer and his employees could be assured that any new personnel were quality workers. In actuality, employers were almost compelled to hire through the unions or directly from the union halls. The strongest form of union security, this practice gave the unions a control of the labor supply which bordered on a

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[16]Chamberlain, p. 157.

monopoly and was therefore deemed illegal by Congress. But, like prohibition, "making a thing illegal and eliminating it may not be one and the same thing."[17] The discussion of IATSE in Chapter V should reveal this to be very much the case.

The second type of union security, "preferential hiring" or "preferential shop," falls under the same NLRA condemnation as the closed shop practice. When hiring, an employer under this type of agreement was obligated to employ union members first if available. He could hire non-union workers after the union supply was exhausted, but on the job, the union members were guaranteed preferential treatment in questions of layoffs, reemployment, promotions, transfers, etc.

The "union-shop" concept does not require union membership before employment, but a worker must join within a specific time period after he has been hired. Further, he must continue his membership for the duration of his stay with the company or with the bargaining unit. Failure to join or continue union membership on the part of the employee obligates the company to release him. A typical union shop clause reads:

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[17]Dallas M. Young, Understanding Labor Problems (New York, McGraw-Hill, Inc., 1959), p. 112.

(a) Technicians shall, subject to applicable law, be or become members of the Union (NABET) within 31 days following the beginning of employment or 31 days after the effective date of this Agreement, whichever is later; provided, however, that nothing herein shall require the Company to discharge or otherwise discriminate in any way against any Technician to tender the initiation fees, and periodic dues uniformly required as a condition of acquiring or retaining membership.

(b) The failure of any Technician covered to tender the initiation fees or periodic dues so uniformly required shall obligate the Company to discharge such Technician upon written notice to such effect, unless such dues or initiation fees are tendered within 31 days after receipt of such notice.[18]

"Maintenance of membership" is similar to the union shop arrangement with the addition of an "escape period." During that period, usually lasting for a week or fifteen days, an employee must decide whether or not he desires to continue his union membership. If he choses continuance, he agrees to such as a condition of his employment for at least the balance of the contract period.[19] Popular during the 40's, this type of clause sees only occasional use today.[20] No information is available regarding the number of agreements

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[18]Agreement between National Association of Broadcast Employees and Technicians and WJW-TV, Cleveland, Ohio, 1968, sec. 7.

[19]Young, p. 116.

[20]Ibid., p. 117.

in the broadcasting industry having this type of union security. Both maintenance of membership and union shop wordings fall within the blessings of the NLRA as amended, but as was previously mentioned, such union security clauses may be subject to state labor regulations.

Another word on union security is needed to emphasize its importance to labor's objectives. The individual may not directly benefit from the inclusion of the above concepts in a contract, but from the union's view, the perpetuation of the organization is at stake when this clause is discussed at the bargaining table.

> In order to get and maintain rights for workers, the union itself needs to be strong. The union as such, therefore, attempts to achieve sovereignty, to obtain rights for itself as an organization. These rights may be described as institution-building devices. They improve the union's power to implement the rights obtained for the workers.[21]

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[21]C. Wilson Randle, Collective Bargaining Principles and Practices (New York, Houghton Mifflin Co., 1951), p. 381.

CHAPTER III

RECOGNITION AND COLLECTIVE BARGAINING

By the law of the land, employees are guaranteed the right to organize and bargain collectively. Their employer has a corresponding duty to respect the majority voice and meet in good faith with the employees' chosen representative. The first area of consideration in this chapter will be the framework that has been erected through federal statutes and the National Labor Relations Board to assist and safeguard the employees in their selection of bargaining representation.

Union Recognition

As was pointed out in the preceedin g chapter, the National Labor Relations Board performs two responsibilities under the National Labor Relations Act. First, the agency is to protect employees exercising their right to self-organization from unfair interference by the employer or any union. Secondly, the Board is charged with the job of determining the employees' choice of bargaining representative. To that end a definite procedure has been established.

The determination commences when a petition indicating that "a question of representation exists" is filed with the NLRB. The petition delivered to the appropriate regional office may be initiated by any of three parties: (1) individuals representing the employees; (2) labor organizations seeking certification as bargaining agents; or (3) the employer. When there is reasonable doubt whether or not the union represents a majority of the employees, the employer may refuse to grant recognition, but certain conditions must exist before he can file an NLRB petition. "In fact, under the Taft-Hartley Act, an employer may file only when one or more individuals of labor organizations present to him a claim to be recognized as the exclusive bargaining representative."[22] In cases involving the decertification of a currently certified or recognized representative, this same petition procedure is followed. In no instance may the NLRB initiate the representation question or petition.

Once filed, the petition may be easily disposed of in one of three ways: (1) It may be withdrawn by by the petitioner; (2) The regional director of the

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[22]Randle, p. 100.

NLRB may dismiss the petition for a variety of reasons; or (3) The parties may consent to an informal or formal election. Dismissal of the petition is the director's prerogative if he deems the welfare of employer-employee relations will not benefit. "This problem is presented particularly in cases which involve (1) the employees of a newly constructed plant which does not yet operate at full strength, (2) the employees of a plant or plant unit which is undergoing a reduction in size, and (4) the employees of a plant which is about to close down."[23] Most representation cases are disposed of by a simple, informal consent election.[24]

If the case is complicated by disagreement over the bargaining unit or an election, a hearing is conducted and briefs and other pertinent documents presented. When faced with the task of prescribing the appropriate bargaining unit, the Board is guided by several directions in the LMRA. "Under the present law, the Board is prohibited from deciding a unit appropriate if it includes both professional and non-professional employees (unless a majority of the professionals vote for inclusion); from deciding that 'any craft union is inappropriate on the basis that

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[23] 1968 Guidebook to Labor Relations, p. 88.

[24] Randle, p. 102.

a different unit had been established by Board determination (unless a majority of the craft employees vote against separate representation); and from deciding that a unit is appropriate if it includes guards along with other employees."[25] In addition the NLRB is guided by:

> ...the fundamental concept that only employees having a substantial mutuality of interest in wages, hours, and working conditions, as revealed by the type of work they perform, should be appropriately grouped in a single unit. Various factors are taken into consideration by the Board in applying this general rule to the particular facts of each case. Chief among these criteria of appropriateness are: (1) the extent and type of union organization and the history of collective bargaining on behalf of employees involved or other employees of the same employer or of other employers in the same industry; (2) the duties, skill, wages, and working conditions of the employees; (3) the relationship between the proposed unit or units and the employer's organization, management, and operation of his business, including the geographical location of the various plants involved; and (4) the desires of the employees themselves.[26]

Having ruled on the differences, the NLRB thereafter usually conducts a formal election. The mechanics of this type of election parallel those of a political election from the initial signing of a voter register to the marking of "X" on a secret ballot next to the desired choice. In the event that no choice receives

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[25]"Fourteenth Annual Report of the National Labor Relations Board, pp. 32-33, in Randle, p. 111.

[26]Randle, p. 119.

a majority of the votes cast, a run-off election is held. With that one exception, a twelve month period is required to elapse before the NLRB may sanction another representation election in the bargaining unit.

The final step in representation cases is the certification of the appropriate party as indicated by the vote tally. If a majority of the votes cast are in the union's favor, the NLRB regional director issues a "Certification of Representatives." If the results go against representation by any union, a "Certificate of Results" is signed. It should be added that exclusive bargaining may be undertaken with an employer by mutual agreement without formal certification from the NLRB. Certification is sought, however, as a matter of sound business practice by the unions in order that their majority status can unquestionably be established. "The employer and the union can thus move ahead with full confidence into bargaining relationships without worry about the stability of the parties concerned."[27]

This presentation has been purposely oversimplified and it should be understood that representation cases can become extremely complex and drawn out depending on

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[27]National Labor Relations Act, Sec. 8(d).

the issues, personalities, and stakes involved. Voter eligibility, organizational picketing, and several other facets of the union recognition topic can lead to intricate arguments and legal maneuvering.

Collective Bargaining

After a union has been certified as the choice of the unit's majority, the employer has a legally enforceable duty to meet in collective bargaining with its representatives. Correspondingly, a similar obligation now rests with the union. Neither party is required to make concessions during the negotiating sessions, but the law does "require" both to approach bargaining in good faith with a sincere intention of reaching agreement whenever possible.

> ...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, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.[28]

The NLRA provides that the union and the employer must bargain collectively on issues with respect to rates of pay, wages, other conditions of employment,

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[28] 1968 Guidebook to Labor Relations, p. 281.

and questions arising under existing contracts. The law does not take steps to define "rates of pay, wages, hours of employment, or other conditions." In reality, the subjects of collective bargaining are many with those most generally accepted by labor and management as follows: wage rates, hours of employment, overtime, and work requirements; procedures and practices relating to discharge, suspension, lay-off, recall, seniority, discipline, promotion, transfer, and assignment within the bargaining unit; conditions, procedures and practices governing safety, sanitation, and protection of health in the place of employment; vacations, holidays, leaves of absence and sick leave.[29] Emphasis on particular subjects is relevant to the wants and needs of the parties bargaining and the economics of their situation.

At the risk of sounding like a cookbook, consideration has to be given to the preparatory measures needed to facilitate smooth collective bargaining sessions.

> In contract making there is a mutual responsibility for establishing procedures which will permit continuity of production. Among procedures which have been found of value, and are recommended, are the following:

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[29]Research and Policy Committee of the Committee for Economic Development, "Collective Bargaining: How to Make It More Effective," in Chamberlain, p. 32.

> (a) Pre-negotiation exploratory discussion should be held on problems which each side feels are vital and of mutual interest. Such discussions should take place before formal contract demands and proposals are formulated by either side.
>
> (b) Negotiations over contract terms should start well in advance of contract termination, where a termination date exists, with provisions for contract extension if agreement has not been reached by that date.
>
> (c) Proposed contract changes should be presented in writing in advance of formal negotiations so that both sides may have ample opportunity to study the proposals.
>
> (d) Prior to, or at the start of, contract negotiation meetings, the parties should specify the rules of the meetings; time and length of meetings; procedure on such matters as press releases; a list of representatives of each side and their authority; what, if any, transcript or record should be made of meetings; and like matters.[30]

One should not infer that preparation will create a utopia of harmony and peace at the negotiating table. A permanent air of cordiality is neither normal or expected in collective bargaining. "As a trial examiner of the National Labor Relations Board has said, 'the course of bargaining cannot be expected always to be smooth nor to be governed by the rules of a polite debating society...angry arguments, criticisms, and accusations between the negotiators...have their place in the process of collective bargaining.' They are things that 'might otherwise be heard on the picket line.'"[31]

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[30]Randle, p. 191.

[31]Ibid., p. 194.

There is no Robert's Rules prescribing the order of business to be followed when the groups are seated at the bargaining table. The first step usually is for the union to outline its demands and commence discussion to clarify and justify them. If management has received these in advance, it may be expeditious for the spokesman to state the company's position on the issues as they appear in the initial meeting. In this way both parties will have a view of the others stand and be able to prepare for more specific negotiation in the second meeting. Session one, usually as a rule, sees little actual bargaining as neither side has had an opportunity to digest the other arguments nor had sufficient time to prepare counter-proposals or agree on tactics.

Another popular procedure is to dissect the current contract,.clause by clause, with the respective parties indicating their acceptance, suggesting modification, or proposing elimination or complete change of each.[32] Regardless of the method used, positions on the issues become known and the process of bargaining toward agreement can commence.

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[32]Ibid., p. 194.

Again at the risk of oversimplification, the following suggestions are noteworthy as an introduction to productive techniques that can be utilized in contract bargaining.

> (1) Learn the value of a change of subject. When it becomes apparent that no agreement can be reached at the time, table the issue and move to less controversial matters. Often the solution to the tabled issue becomes apparent as you proceed with negotiations.
>
> (2) Be a good listener. Hear the other side out. It is psychologically a good technique to have a "finished" speaker, that is, one who has "had his say;" there will be time enough to offer a counterproposal or to issue a denial after you have the facts.
>
> (3) Don't try to hurry the negotiation. Let it wander at times. If you try to guide the discussion or show impatience or restlessness you only irritate the other side and depreciate your bargaining "atmosphere."...
>
> (4) Learn to identify the techniques which give the best results. Discard those which irritate. Utilize the techniques which minimize the existing differences--for of these there are enough without encouraging more.
>
> (5) Question the evidence which is offered. By so doing, you gain time to think over the situation. Moreover, questions may expose weaknesses of which you can take advantage.
>
> (6) Delay using data and "facts" until they are thoroughly verified. Tell the truth. Erroneous or false statements can seriously injure negotiations.
>
> (7) Hold statistical materials in reserve. Carefully prepare the opening for its use. If used too early, before a favorable atmosphere has been created for them, the data will lose their impact. It is usually better, also, to reduce statistics to "pictures," such as graphs or charts, than to present them in "raw" form. Figures are generally distrusted--and they are indeed too often confusing rather than convincing.

> (8) In most sessions, there will be some "blue-sky" bargaining or ridiculous demands. It is better that these demands be carefully sidetracked than met head-on with ridicule. Some pride of authorship attaches even to the worst requests. Besides, someone may be looking for an opportunity to become angry.
>
> (9) Be factual rather than emotional. Think your way--rather than feel your way--through arguments, issues, and problems.
>
> (10) Occasionally bring up matters of common interest and agreement. It is decidedly "tiring" to fight controversial topics constantly...
>
> (11) Beware of the argument of "principle." Stick to particulars...
>
> (12) Proper language assists bargaining. Bargainers should avoid inflammatory remarks questioning the sincereity or good faith of the other party...
>
> (13) Avoid taking a stand publicly, through releases or advertisements in advance or during negotiations. A publicized position robs collective bargaining of its flexibility, making concessions difficult, and stalls negotiations. There is time enough to appeal to public opinion after all other techniques have proven fruitless.
>
> (14) Avoid sharp practices. Taking unfair advantage depreciates bargaining. Constructive collective bargaining takes place in an atmosphere of confidence and trust, not in an atmosphere of suspicion and doubt.[33]

The parties are obligated to continue collective bargaining until agreement is reached or a "genuine" impasse confronted. The occurence of a strike or a lockout does not relieve the negotiators of their duty to bargain, unless the strike or lockout is in violation of an existing, unexpired contract or some provision of law.[34] When all bargaining possibilities have

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[33] Ibid., pp. 204-206.

[34] 1968 Guidebook to Labor Relations, p. 290.

apparently been exhausted, several roads toward settlement still remain open.

Mediation and Conciliation

Mediation and conciliation are two such avenues. Perspective from a third viewpoint is sometimes all that is needed to encourage settlement. This method can serve as a "face saving" device, allowing the two parties to gracefully agree to budge from their stands on the basis of a third's suggestions. In any case, mediation and conciliation are most productive when resorted to before an operation shutdown occurs.[35]

To assist in this area the federal government in the Labor Management Relations Act created the Federal Mediation and Conciliation Service. This independent agency was directed to make its facilities available to aid in two types of deadlock cases: (1) disputes affecting national health and safety, and (2) disputes between union and employers engaged in interstate commerce (into which category most broadcasting services will fall). Further, the law provided that the FMCS must be given notice of collective bargaining situations effecting interstate commerce where settlement cannot be reached.[36]

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[35]Randle, p. 206.

[36]1968 Guidebook to Labor Relations, p. 311.

> Whenever a dispute over the terms or application of a collective bargaining agreement in an industry effecting commerce is not settled by conference, the parties are directed to "participate fully and promptly in such meetings as may be undertaken by the Service under this (Labor Management Relations) Act for the purpose of aiding in a settlement of the dispute. "(LMRA, Sec. 204(a)(3).)." However, the statute also provides that the "failure or refusal of either party to agree to any procedure suggested by the (FMCS) Director shall not be deemed a violation of any duty or obligation imposed by this Act (LMRA, Sec. 203(c).)."[37]

Many states also maintain mediation agencies and have similar reporting requirements.

In 1967, the FMCS was advised of 20,000 potential mediation cases, of which 8,000 were actually handled. Of those numbers, notice of 151 deadlocked bargaining disputes came from the television industry; 70 were handled, 12 of which involved strikes.[38]

Arbitration

Another avenue toward agreement in stalemated negotiations is that of arbitration, a technique principally employed to settle grievances arising from differences in contract interpretation. This method is often semantically confused with conciliation and mediation. Dr. Dallas Young of Case Western Reserve University explained the differences in this way:

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[37] Ibid., p. 311.

[38] "All is Not Quiet on the Labor Front," Broadcasting (April 8, 1968), p. 59.

> Conciliation, mediation, and arbitration are three terms sometimes used incorrectly as synonyms. Conciliation is "the act of a third party bringing together the two parties in dispute for negotiation and settlement of the dispute." Mediation is "the process whereby the third party not only brings the two parties together but actively participates in the negotiation, generally consulting with each of the parties separately and, by persuasion, effecting a compromise acceptable to both." Arbitration is "a judicial process. The arbitrator is a judge. The parties agree to accept his decision as final and binding, the parties are required to submit evidence, and each is permitted to cross-examine the evidence of the other. Upon the evidence submitted the arbitrator makes his award."[39]

Employers and unions are naturally hesitant to permit themselves to become committed in advance to a settlement formulated by a third party, who is most likely foreign to the company and industry and lacking in background on the pertinent problems and issues. For this reason arbitration is seldom used to resolve contractual negotiations.[40]

Strikes, Lockouts, and Secondary Boycotts

There are conflicting schools of thought when discussing the proper location of strikes and lockouts in the collective bargaining picture. Some writers regard strikes as an important part of that process, while others see them only as a breakdown of it.

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[39]Young, p. 132.

[40]Randle, p. 206.

There are even a few academics who do not see strikes at all; they dismiss the fact that some do occur as "pathological departures from the 'normal,' distasteful to consider, and interesting only to those with morbid tastes."[41]

To see men on the picket line and managers on the air is a very real phenomenon. For the purpose of this discussion, strikes and lockouts are the two most potent cards in the respective players' collective bargaining hands.

> In economic terms, the bargaining process is akin to any other type of market transaction in which the price of the commodity or service is subject to attempts of each party to gain an advantage for himself. Employers, like any other buyers, seek to obtain a low price; if the union demands too much, the can refuse to buy, while the union can refuse to sell if the terms are not satisfactory. The strike (or lockout) in labor-management negotiations, even if it is only threatened, is part and parcel of the bargaining process. When a contract expires and the parties cannot agree on a new one, a strike may be called on the grounds of "no contract, no work."[42]

In essence, therefore, a strike is "a temporary and concerted withdrawal of workers from an employer's

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[41]Edwin F. Beal and Edward D. Wickersham, The Practice of Collective Bargaining (Homewood, Illinois, Richard D. Irwin, Inc., 1959), p. 279.

[42]Evertt Johnson Burtt, Labor Markets, Unions, and Government Policies (New York, St. Martin's Press, 1963), p. 194.

service to enforce their (the employees' and the union's) demands, the workers retaining a contingent interest in their jobs."[43] The degree of contingent interest is dependent on the purpose of the strike, the means used in effectuating it (the legality of it), and the success of the employer in finding replacements for the strikers.[44]

The law approaches strikes in terms of "the right to strike," one of the vague, uncertain phrases in labor relations. While never defining it directly, the National Labor Relations Act as amended specifically affirms this right. Section 7 of the NLRA again reads, "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively..., and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..."[45] Section 13 provides that "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in

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[43]Mueller and Myers, p. 126.

[44]Ibid., p. 126.

[45]NLRA, sec. 7.

any way the right to strike, or to affect the limitations or qualifications on that right."[46]

> Putting these two provisions together, one gets perhaps as clear a picture of the nature of the right to strike as is possible from the most exhaustive analysis. It is evident from these two sections that both a right to strike and qualifications on that right are recognized.[47]

Protection against the issuance of injunctions to thwart a strike on the grounds of criminal conspiracy has been established through rulings of the Supreme Court and the provisions of the Federal Anti-Injunction Act of 1932 (the Norris-LaGuardia Act). For all practical purposes it is useless for private parties to seek injunction action to break a nonviolent strike.[48]

But as was stated, legal qualifications of the right to strike are also spelled out in legislation. The prohibitions include such practices as sitdown strikes, wildcat strikes, any violent strike activity, and work stoppages during the period and for the reasons covered by a no-strike clause of a collectively bargaining contract. In general terms, the legal questions of a strike center around the difficult definition of the objectives of the party resorting to this action. The

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[46]NLRA, sec. 13.

[47]Guidebook to Labor Relations, p. 239.

[48]Ibid., p. 240.

legality or illegality of a strike can only be determined after intricate argumentation to prove the strike's aims.[49]

The Supreme Court has been the primary influence interpreting the proper place to the "right to picket" in relation to the "right to strike." Like a strike, the legality of picketing varies depending on the manner in which and objectives for which it is carried on. In 1940, the Court declared that direct, primary picketing comes under the constitutional protection of free speech.

> Nevertheless, the Supreme Court also pointed out in the Thornhill (vs. Alabama) case that picketing is subject to the same legislative restrictions as other forms of speech. In addition, the court declared, in the (Bakery and Pastry Drivers vs.) Wohl case, that picketing is, by its very nature, more than mere speech, since the very presence of a picket line may induce action of one kind or another "quite irrespective of the nature of the ideas being disseminated."[50]

Constitutional protection is not enjoyed when engaging in "secondary picketing," at a site other than that of the primary labor dispute. The judges and legislators have not held "mass picketing" to be desirable and have provided for injunctions to limit

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[49] Ibid., p. 241.

[50] Ibid., p. 241.

the size of the picket line when necessary. In all cases the avoidance of violance is of prime concern.

> The Supreme Court has held, in more than one instance, and even after the "picketing-free speech" doctrine was created, that violent picketing was unlawful; it has gone so far as to say that all picketing may be enjoined in a case where circumstances are such that any picketing is likely to be attended by violence. The NLRA's prohibition of acts which restrain or coerce employees in the exercise of their right to refrain from concerted activities has led to a number of decisions in which violent picketing was declared unlawful. While hesitating to declare that all "mass picketing"...is unlawful, the NLRB has held that picketing which blocks plant entrances, which would tend to keep non-strikers from working, or which possess serious threats of harm violates the restraint and coercion ban of the NLRA.[51]

When it was first passed, broadcasters hoped that the Labor-Management Reporting and Disclosure Act would provide a cure-all for their secondary boycott problems. Provisions to reenforce the secondary boycott prohibitions of the Taft-Hartley Act were written into this legislation. Loopholes in the 1947 law allowed unions to apply economic pressures against sponsors associated with the station with whom they were in dispute. "In secondary boycott lingo the sponsor is a secondary or neutral employer when the station becomes involved in a primary strike."[52] Any pressure on such a neutral

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[51] Ibid., p. 243.

[52] "The Labor Bill and Radio-TV," Broadcasting (September 14, 1959), p. 60.

was now taboo under the LMRDA, or so interpreted the broadcasters at first. One provision of that act has done much to prevent management's panacea from materializing.

> ...for the purposes of this paragraph (Section 8(4)) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any service, at the establishment of the employer engaged in such distribution...[53]

Because the exact wording of any material involving a secondary party must be considered closely, the application of this proviso of the LMRDA is subject to technical legal interpretation. In its initial decisions in cases based on this section of labor law, the Supreme Court held that even picketing, despite the "other than picketing" restriction, is lawful to induce a consumer boycott of the products produced by a struck firm. The picketing restriction, the court ruled, "applies only to a consumer boycott against all products handled by a secondary employer for the purpose of forcing him not to deal with the primary employer."[54]

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[53]Labor-Management Reporting and Disclosure Act, Sec. 8(4).

[54]Guidebook to Labor Relations, p. 247.

On the basis of this Supreme Court ruling a federal appeals court held, in agreement with the NLRB, that unions engaged in a dispute with a television station did not violate the NLRA by using coercive means to induce consumer boycotts of firms advertising wares over the struck employer's airwaves, since the station was a producer of goods and services which it advertised within the meaning of the publicity proviso.[55]

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[55] Ibid., p. 247.

CHAPTER IV

THE GRIEVANCE PROCEDURE

A grievance can include "any discontent or dissatisfaction, whether expressed or not and whether valid or not, arising out of anything connected with the company that an employee thinks, believes, or even 'feels' is unfair, unjust, or inequitable."[56] When such are properly brought to light, the settlement of grievances is a primary responsibility of the parties of collective bargaining. With the foresight that differences of opinion will arise in the day-to-day application of a contract, machinery for the rapid resolution of disputes is written into the final agreement. No gripe, regardless of how petty it may initially appear, can be denied this "due process." For John Jones in the control room, "the grievance process is the subject's right to dispute the king;' it is the means by which management's exercise of power can be made reasonable and responsible."[57]

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[56]Michael J. Jucius, Personnel Management (Chicago, Richard D. Irwin, 1949), p. 470, in Randle, p. 463.

[57]Chamberlain, p. 191.

For John Smith behind the executive desk, the grievance procedure is a "systematic process of communication from worker to management and back again."[58] It has the ability to point out the symptoms of poor working conditions and poor management, plus being a good barometer for forecasting problems that will be raised at the next negotiation of a contract.[59]

The Grievance Process

> 13. GRIEVANCE: (a) A grievance is defined as a conflict, dispute, or question between the Union and the Company as to the interpretation, application or performance of the terms of this Agreement. The Union may present a grievance to the Company, or the Company may present a grievance to the Union. A Technician may present a grievance to the Company provided a representative of the Union is given an opportunity to be present.
> (b) To be considered, a grievance must:
> (1) Be reduced to writing.
> (2) Cite the applicable contract provisions alleged to have been violated, stating all pertinent facts to the best of the complainant's knowledge and belief.
> (3) Be signed.
> (4) Be dated, and
> (5) Be delivered to the General Manager if the grievance be against the Company, or to the Shop Steward of the Union if the grievance be against the Union.
> (c) Representatives of the Union and of the Company designated for the purpose will meet and consider any grievance within 14 days from the date written notice of the grievance is delivered.

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[58] Randle, p. 462.

[59] Ibid., p. 462.

(d) The terms of settlement of any grievance shall be reduced to writing and signed by the parties, and copies shall be furnished the Union, the Company, and any Technician directly concerned.
(e) If any grievance is not settled within 30 days following the date of delivery, either party may request, in writing, arbitration to be conducted as hereinafter provided (Clause 14 to be discussed later in this chapter).
(f) A grievance which has neither been settled nor referred to arbitration within 60 days from the date of delivery shall be deemed withdrawn...[60]

The preceeding clause from a recent NABET contract is somewhat typical of most grievance procedures to be found in the television industry. Dependent on the company, the managerial organization, the bargaining unit, and the union involved, variations of a basic four step pattern are used.

Step 1- Provides for the informal discussion of complaints by the shop steward with the management supervisor.
Step 2- If not resolved at Step 1, the grievance is reduced to writing and Step 2 provides for discussion by a local union committee with local management representatives.
Step 3- If not resolved by the local grievance committee, the dispute moves to Step 3- attempted resolution by the international office of the union with the main office representatives of the company. (Some contracts try to avoid this step if possible and handle all disputes on a local basis. To that end for example, Clause "g" of Section 13 in the previously quoted contract reads, "Unless there is mutual agreement to the contrary, the consideration of all grievances by representatives of the Union and of the Company will take place within the City of (origin).")

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[60]Agreement between National Association of Broadcast Employees and Technicians and WJW-TV, Cleveland, Ohio, 1968, sec. 13.

Step 4- If this fails, the fourth and last step is referral to arbitration.[61]

Besides following this simple four step pattern, a well constructed grievance clause will score well when analyzed against a list of sound operations practices.

(1) An agreement should clearly specify what types of issues are subject to the grievance procedure.
(2) There is no one ideal grievance procedure. Each procedure must be tailored to the establishment it is designed to cover.
(3) Individual employees may, under the NLRA, present their grievances to management, but a union representative must participate in any settlement.
(4) Grievances should be settled as close to the site of origin as possible. (This means adequate training of foremen and union representatives in the handling of grievances and interpretation of the contract.)
(5) Grievances should be settled as rapidly as possible. When delays tend to occur, time limitations for one or more of the steps involved may be desired.
(6) Presentation of grievances in writing may or may not be necessary in the early stages of grievance procedures, depending upon local conditions, but it is highly desirable in later steps.
(7) Before any grievance is referred to a neutral person or board, an attempt at settlement should be made by top union and management officials.
(8) Every procedure should contain a provision for arbitration of grievances as a last resort.
(9) Outside union officials should have the right to investigate grievances within the (station), provided due notice is given to management and care is taken not to interrupt production unnecessarily.

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[61] Richard L. Freund, "Meditration of Grievances," in Proceedings of New York University Nineteenth Annual Conference on Labor (Washington, D.C., The Bureau of National Affairs, Inc., 1967), p. 334.

> (10) Investigation and settlement of grievances should be confined to nonworking hours as much as possible. When time must be spent during working hours, however, the payment of union representatives by the company cannot be considered as a "right," but rather as a voluntary phase of the problem of making collective bargaining work more successfully.[62]

The question is raised, can an employee settle his grievance without the intervention of the union, or without following the procedure outlined in the contract? The law appears explicit on point number two, he must follow the contractually prescribed process, but on the first issue there is an involved question in the interpretation of Section 9(a) of the National Labor Relations Act as amended by the Taft-Hartley Act. That is the section that states the union's right to exclusive representation of all employees in the unit in respect to wages, hours, and other conditions of employment:

> Provided, That any individual employee or a group of employees shall have the right to any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.[63]

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[62]Young, p. 132.

[63]NLRA, sec. 9(a).

The word "present" is important as it does not provide for "participation."[64] But studying the clause as a whole, and noting past practices:

> ...it appears that the employer has a duty to bargain with the majority representative as to matters arising under agreements made with that representative. On the other hand--with respect to matters not covered by such agreements--the employer may deal with individual employees or groups of employees, so long as adjustment does not create a conflict with matters covered by an existing collective agreement. However, the NLRB holds that an employer may not lawfully deal with a minority union concerning individual grievances, even if the employees involved desire that union to handle their grievances, if another union has majority status.[65]

Going one step further, in addition to the union's right to be present during any adjustment meeting, the employee may ask for and receive the union's assistance in settling his grievance even if it concerns a matter not covered by an agreement between the Company and the union.[66]

Arbitration

Using the NABET example again, section 14 reads:

> 14. ARBITRATION: (a) Request for arbitration shall be in writing, dated, and signed by the party requesting same. No request for arbitration shall be valid unless all steps in the grievance procedure outlined in Section 13 above, shall have first been taken.

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[65] 1968 Guidebook to Labor Relations, p. 287.

[66] Randle, p. 484.

> (b) All arbitration shall be conducted under the rules of the American Arbitration Association.
> (c) The decision of the arbitrator on matters submitted shall be final, binding, and conclusive upon all parties. The same question of issue shall not be the subject of arbitration more than once, except upon a showing of new evidence or change in condition or circumstances.
> (d) The arbitrator shall have no authority to add to, modify, or subtract from the terms of this Agreement...
> (e) Unless there is mutual agreement to the contrary, all arbitration hereunder shall be conducted within the City of (origin). Each party to the arbitration shall bear its own expenses, including expenses of counsel and witnesses presented by it; but the parties will share equally the fee and expenses of the arbitrator.[67]

In Chapter III it was pointed out that there exists a definite difference in the meanings of conciliation, mediation, and arbitration. To reemphasize, conciliation is the bringing together of two parties in a dispute by a third; in mediation the third party is an active participant in the bargaining discussions; and in arbitration the resolution of a dispute is reached through a final and binding decision by the third party. In many cases conciliation and mediation are tried during the grievance resolution process, but arbitration is the generally accepted terminal point of such procedures.

The American Arbitration Association is a non-official agency established in 1926 to encourage and

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[67]Agreement between NABET and WJW-TV, sec. 14.

promote the use of arbitration for the settlement of civil and commercial disputes. Since 1937, it has extended its facilities into the area of labor-management relations and now is considered the principle organization to which industries of all kinds can turn for qualified arbitration assistance.[68] The association provides the parties of the dispute with a list of persons experienced in the practice, but the parties themselves by mutual agreement make the final selection of the impartial umpire. Operating in the same manner, the National Academy of Arbitrators is another professional organization involved in arbitrating grievance cases.

The cost of arbitration has been a subject of rising concern in recent years. The original economic virtues of arbitration have disappeared and the smaller business concerns and unions are finding the process financially burdensome or even out of economic range.[69] The average daily rate charged by American Academy members in 1962 was $126.[70] If the company and union

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[68]Young, p. 133.

[69]Robben W. Fleming, The Labor Arbitration Process (Urbana, University of Illinois Press, 1967), p. 31.

[70]Ibid., p. 38.

lawyers have to become involved in the case, or if a court reporter is called in to make a formal record of the proceedings, the bill can become quite large, rather quickly. Total average costs per arbitration case in 1963 as reported by the Federal Mediation and Conciliation Service was $640 for the unions, and $1,025 for the companies.[71] The imbalance is attributed to higher legal fees charged the companies. The final cost figure for processing a grievance through this level must also take into consideration several additional items not included above: (1) travel expenses for the arbitrator, counsel, and the court reporter, (2) lost time paid for committeemen attending the hearing, (3) conference room expense, (4) preparation time by the company and union representatives other than counsel, and (5) service fee for the agency under whose auspices the hearing is conducted.[72] Some feel any damages assessed the company in the arbitrator's award should also be included in this list.[73]

In a speech delivered to a New York University Labor Conference, Mr. Richard L. Freund, Vice President

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[71] Ibid., p. 50.

[72] Ibid., p. 50.

[73] Ibid., p. 50.

for Labor Relations at ABC summarized the problem in this way:

> ...Despite its almost classic simplicity, this grievance procedure had not disposed of old problems nearly as fast as new issues arose. The reasons lay not in the grievance procedure itself, but rather in two other prime factors. The first was the combination of a rapidly changing technology and tremendous innovations in the methods of producing television programs. The second, and perhaps more important, was an over-emphasis upon the precedent setting nature of practice by all concerned at every level so that innovation was questioned, grieved, fought over, and if necessary, arbitrated as each side sought to outdo the other in zealously guarding its rights. Arbitrations had become long drawn out affairs, with not only main issues, but side issues carefully prepared and argued. As the backlog of arbitrations grew, it was realized that the entire procedure was becoming self-defeating. If the pileup of unresolved disputes were allowed to continue a dangerous loss of confidence in the entire grievance process could result.[74]

Meditration

Improvisation has been employed in some broadcasting firms to alleviate some of the financial considerations that burden the efficiency and hamper the effectiveness of arbitration. Toward that end and to aid in expediting the disposal of backlogged grievances in large broadcasting companies, a process called "meditration" is being tried with favorable success. As the name implies, meditration is a combination of mediation and arbitration procedures.

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[74]Freund, p. 335.

The meditration process was originally inaugurated as an experiment for two broadcasting companies and union officials representing the technicians in their employ. It was instituted as an intermediate step after the final grievance stage, but before arbitration, and was reserved for cases in which both parties agreed to its use.

> Let me describe how a grievance is "meditrated." Two representatives of the union and two from the company sit down with the impartial umpire. Each side gives its version of the grievance. This is not given in a long, elaborate presentation, but rather in a brief, informal manner, stressing the key points and emphasizing the most pertinent facts. The assertion of fact and the contractual and equitable arguments are made in much the same manner as they would be in a grievance meeting, and in less than thirty minutes the impartial umpire usually has a fairly clear understanding of the issues involved...
>
> Once the arguments have been made, the impartial umpire attempts to secure a resolution of the problem by mediation, being careful not to indicate how he would decide the case as an arbitrator... If,...despite his efforts, the parties cannot be brought together, then, if they both agree, they can ask him to decide the issue then and there, based on the information he has obtained from the discussion.[75]

If, however, either of the parties feel justice would be better served by full arbitration, they may make such referral before the issue is entrusted to the decision of the impartial umpire.

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[75] Ibid., p. 335.

The success of meditration depends essentially on two factors: "first, the careful selection of cases appropriate for this telescoped process; and second, the forceful yet delicate role played by the impartial umpire."[76] On the first key point, cases selected for meditration usually meet one or more of the following criteria:

> (1) There is no major issue of principle involved nor any major problem of contractual construction that can have an important bearing on working conditions.
>
> (2) There is no large financial stake in the outcome of the issue.
>
> (3) The issue is one which has not been resolved in the grievance procedure, largely because of political factors, despite a clear preponderance of the equities on one side or the other or an obvious solution which could accomodate the interests of both sides...
>
> (4) The problem of such a character is that the parties feel a full arbitration could do more harm than the case is worth. This is particularly true where the contract clause is plainly ambiguous, but both the parties have developed a tacitly understood modus operandi based on a mutual fear of testing the other side's asserted interpretation of the clause. A small issue develops which requires the interpretation of that clause...[77]

The second key element governing the success or failure of this type of program is the role of the impartial umpire.

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[77] Ibid., p. 337.

> In the first place, it is absolutely essential that he know:
> (1) The industry;
> (2) The contract under which the parties operate;
> (3) The parties themselves, their political problems and particularly the men who will take part in the meditration process.
>
> He must be able to pick up not only the essentials of the problem, but also the nuances and the readiness of either or both sides to compromise, in a very brief period of time, if the program is to succeed. Secondly, the impartial umpire must at all costs avoid an indication of how he would (or will) decide the issue, while trying to persuade both sides to compromise.[78]

Six to ten cases per session has been the rate of disposal experienced by those using meditration in the grievance process. As normally a full arbitration of just one case would require two or three sessions, the obvious result is a tremendous savings in time and expense. But there exists several admitted disadvantages in the meditration system.

> In the first place, if the matter is ultimately thrown into the impartial umpire's lap for an immediate decision, there is always the danger that the brief discussion and argumentative presentation of the facts and issues will increase the probability of the arbitrator going astray and reaching an erroneous decision. Secondly, in the event that the issue ultimately goes to full arbitration, the impartial umpire, in the course of attempting to mediate may unconsciously have pre-judged the situation and will not hear the case in formal arbitration with a completely open mind. Also, in the course of the informal arbitration, material which eventually might be inadmissable, or assertions which are not provable,

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[78] Ibid., p. 338.

> will inevitably have made some impression on the impartial umpire. Finally, the entire concept of "meditration" has the disadvantage of making it easier for the parties to avoid their basic responsibility to solve their own problems.[79]

Mr. Freund concludes by stating his pleasure with the advantages of the meditration process and his faith in it as an efficient method of solving "problems in labor relations quickly before the basic relationship between union and management is damaged."[80]

Joint Adjustment Board

Another deviation from the normal grievance process being successfully tried in the broadcasting industry is a method followed by script writers under the Writers Guild of America through the Joint Adjustment Board. The writers concerned are covered by an industry-wide contract, meaning the bargaining group is a multi-employer unit. One step before arbitration, the writers grievance clause provides for a hearing before a panel of eight individuals; three representatives are from the networks, one represents independent producers, three are professional writers, and one member is a union business agent.

A brief presentation of pertinent information is made after which the parties and their attorneys

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[79] Ibid., p. 340.

[80] Ibid., p. 340.

are questioned by the Board. This completed, the Board excuses the parties and discusses the question in private. The key to the entire procedure lies here. "It is an unwritten rule of this 'game' that the Board will look at the matter from a neutral point of view and not simply reflect the interests with which they are suposedly allied."[81]

Upon reaching unanimous agreement, the Board strongly urges the parties to accept the recommendations.

> It is pointed out to both sides that if eight people representing divergent views can agree on a result, it can't be very far from the result that a reasonable arbitrator would reach. Furthermore, the composition of the Board usually consists of a majority of the current principle negotiators who would normally be the prime source of witness material on contract construction or past practice. Finally, as previously stated, the issues often are largely factual and the amounts involved would not make a full fledged arbitration worthwhile. If the question before the Board is largely a matter of appropriate compensation and the Board's recommendation represents a compromise of conflicting claims, the possible gain to either side from arbitrating is further diminished.[82]

The recommendations of the Joint Board of Adjustment are generally accepted and costly arbitration efficiently avoided. Application of this panel principle would be worthy of consideration where other multi-employer bargaining units are in existence.

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[81] Ibid., p. 343.

[82] Ibid., p. 343.

In summation, the grievance procedure guarantees an employee the right to a "due process" hearing of his complaints of unjust treatment on the job or in questions of contract interpretation or application. The company may also follow the same process against the union when it is discontented with performance under the collective bargaining agreement. The process is patterned after a simple four step outline:

(1) The grievance is discussed first between the Shop Steward and the appropriate management representative.

(2) If unresolved there, it is reduced to writing and carried to a local grievance committee and discussed with top level local management.

(3) If still not adjusted, the union's international officials can meet with main office management on the issue.

(4) Either party, after step three has been tried, may request that the case be taken to arbitration for resolution by an impartial umpire.

Two major variations of this process exist in the broadcasting industry. "Meditration," a combination of mediation and arbitration, is being tried to avoid too many costly arbitrations and to attempt to shorten the backlog of unresolved grievance cases in large

companies. The Joint Board of Adjustment, a panel of labor and management representatives, is being employed to hear grievances between the writers and the networks and large independent producers. This type of panel seems most desirable where a multi-employer bargaining unit is concerned. In almost all procedures, arbitration remains the terminal point of the grievance process.

CHAPTER V

THE NATURE OF TELEVISION UNIONISM

We have explored thus far the foundations of unionism in general terms. This chapter and the next will examine the nature of television unionism specifically. First, the overall picture of organized labor in TV will be discussed and later, the backgrounds of the individual talent and technical unions will be outlined.

In the introduction of this paper, note was made of a "revolutionary spirit" in the television vineyard. Labor has attained a good knowledge of the wages and benefits being paid in the field, and has "arrived at a new sense of its just rewards..."[83] The technicians in the control room, and the announcers in the booth have gained a new sense of local collective power which has been manifest in an unwillingness to trust the union leadership to bring from the bargaining sessions an agreement in accordance with their desires. They know that any agreements made by the bargaining agent must have majority approval

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[83]Gardiner, "Television Unions, A Tide of Rising Expectations Swells Up From the Ranks," p. 29.

from the unit's membership before they can be signed into contract status.

> ...when labor leaders sit down to bargain with management, they know that whatever they bring home to the rank and file is subject to a local scrutiny that has never been more disdainful of leadership inefficiencies or more ready to reorganize to get what it wants. Local insurgencies are growning out of anger at the extravagance of "international" organizations that are unable to administer to the grievances of the far-flung union locals.[84]

Across the bargaining table, management is handicapped by the public's awareness of how truly lucrative the television business is. The FCC's annual financial reports render unconvincing any counters to the economic demands of the unions. But management's most sensitive spot is indirectly made less vulnerable, at least for the time being, by the lack of cohesiveness among the television unions as a whole. "Television, at its heart, is local station operation and the heart of TV unionism is perforce local organization. Even in their national network agreements the major unions are split; once between talent and technician and again down each of those lines."[85]

The initial divisions talent and technician, are known in the industry as "above-the-line" and "below-the line" labor respectively. Small bargaining units

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[84] Ibid., p. 29.

[85] Ibid., p. 31.

result from the secondary break down into a wide variety of job classifications. A complex maze of contracts, each spelling out the duties of a few employees in specific terms has become characteristic of the television industry.

> Television, which draws upon a multiplicity of talents and skills, developed largely along craft lines. The locals with craft unions often are most jealous of their prestige and attendant rights and they insist upon separate negotiations and contract provisions they may have gained in other entertainment fields. Probably IATSE is the most dramatic example. The networks have more than 30 agreements with IATSE locals, covering such titles as stagehands, soundmen, and electricians, as well as make-up artists, hair stylists, film editors, graphic artists, and even drapery workers. The range of occupations make pin-pointed provisions a necessity.[86]

It is not unlikely for a local station to have several agreements with one parent union in the same way as the networks.

"The fragmentation imposed by the nature of the business and the step-by-step introduction of new unions, as mass entertainment progressed from live to film to tape performance, have been minus factors in union strength."[87] True, the unions have never dealt the industry, overall, a serious economic setback,

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[86]"TV's Complex Labor Contracts," Broadcasting (July 18, 1960), p. 29.

[87]Gardiner, "Television Unions, A Tide of Rising Expectations Swells Up From the Ranks," p. 31.

but this is not to say they are operating from a weak bargaining position. To the contrary "all a union has to hit is the universe embraced by its contract and that may be just one station, one network, or a segment of the program-production business."[88]

> There are some indications that broadcast-associated unions will be pulling together in a new surge of cooperative vigor. If some bitter interunion and intraunion fighting were stopped, a united labor front would be all the more worrisome to management.[89]

As has been established, the above-the-line unions are those letters of the kaleidoscope that represent persons working in the talent areas of TV. This includes "just about everyone who has anything to do with the creative process of a film, live, or tape television program--from continuity writer to musical arranger, from stars to extras, and even...producers and directors."[90] The unions and the guilds, and their jurisdictional lines run as follows: (1) Among performers, announcers, and newsmen in live and video tape productions, the American

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[88] Ibid., p. 31.

[89] Ibid., p. 31.

[90] Morris Gelman, "Above-the-Line Unions," Television Magazine (November, 1967), p. 40.

Federation of Television and Radio Artists (AFTRA) is the most popular alliance. The organization roster is 18,000 strong in 32 chapters and 8 locals across the country. (2) For those in performing roles in filmed programing, the Screen Actors Guild (SAG) is the chief collective bargaining representative with nearly 17,000 members. (3) The Screen Extras Guild (SEG) has organized about 3000 individuals who play the background parts in the films. The membership figures in both SAG and SEG include persons working before any film camera, whether the finished product is intended for the theatre or television. (4) Approximately 1700 members of the Writers Guild of America, East and West (WGA), make their livelihood in the television industry, while (4) about 3,400 TV directors, assistant directors, and production managers have banded together under the Directors Guild of America (DGA). (6) Musicians have found their collective strength in the well established and powerful American Federation of Musicians (AFM). Primarily, the Federation's 260,000 members in the U.S. and Canada work on a freelance basis, with only about 2000 instrumentalists still finding full-time employment in broadcasting. Other less unionized talent areas include producers, composers, and film cartoonists.

The bargaining agents for three to four hundred individuals in each of three groups are (7) the Producers Guild of America (PGA), (8) the Composers and Lyricists Guild of America (CLGA), and (9) the Screen Cartoonists Guild (SCG) and the Motion Picture Screen Cartoonists (an IATSE affiliate).

"Residuals" is the one word that most commonly echoes through national collective bargaining meetings involving these talent unions. For our purposes this term will be limited "to additional compensation payable to an individual who has contributed his services to the production of a recorded television program when that program receives exposure beyond its intended use."[91] In essence, it is the demand for reuse payments to performers, directors, writers, and musicians.

> Residuals have been a part of television since 1952, when video followed radio into the maze of mechanical reproduction of programs and commercials. Radio had shifted from live to transcribed programing and the talent unions, aware of what recorded music had done to the AFM and to live music, didn't wait for the invention of videotape; TV already had its kinescopes and film was being used for TV programing.[92]

[91]Richard L. Freund, "Residuals in Broadcasting," in Subsidiary Rights and Residuals (New York, Federal Legal Publications, 1968), p. 102.

[92]"Residuals, Fair or Foul," Sponsor (September 10, 1962), p. 28.

AFTRA and SAG initiated and won the first fights for the right to residual payments. In the days of live television, talent was considered a very inexpensive commodity and the number of stations producing or buying syndication material was minimal. "The opposition to the idea of residuals was perfunctory; most didn't care and the few that did were ignored."[93] For their pioneering efforts these two performers' unions still command the most profitable residual clauses in the business.

The sources of the residual schedules outlined in the following pages were the TV master contracts in effect during the spring of 1968. All had been negotiated by the specified unions on an industry-wide basis with the networks and major program production companies. The schedules are for the reuse of program material within the television medium and are presented in percentage terms of the original talent fees paid. They have been divided into videotape/kinescope and film categories, and then subdivided according to domestic (usually including Canada) and foreign circulation.

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[93] Ibid., p. 28.

TABLE 3

THUMBNAIL OUTLINE OF TELEVISION RESIDUALS*

I. Performers (Actors, Singers, Dancers, Announcers)[a]

Videotape/kinescope		Film		
Run	% of applicable minimum fees	Run	% of applicable minimum fees	
Domestic Residuals				
			network	syndication
2nd	75	2nd	50	40
3rd	75	3rd	40	30
4th	50	4th	25	25
5th	50	5th	25	25
6th	50	6th	25	25
7th	10	7th	15	15
8th	5	8th	15	15
9th & all additional combined	5	9th 10th & all additional combined	15 15	15 15
Foreign Residuals				
British Isles and Cyprus	25	15% of applicable minimum fees plus an additional 10% when gross foreign income exceeds: $ 7000 for 30 min. film, 13000 for 60 min. plus, 18000 for 90 min. plus, and an additional 10% when gross foreign income exceeds: $10000 for 30 min. film, 18000 for 60 min. plus, 24000 for 90 min. plus.		
Rest of Europe	10			
Africa	5			
Asia and Australia	5			
Central and S. America	5			
World-wide Buyout	50			

*Source: Letter from Richard L. Freund, American Broadcasting-Company, New York, December 3, 1968.

Notes:

[a]Unions concerned are AFTRA (Videotape/kinescope) and SAG (Film).

TABLE 3--Continued

II. Directors[b]

Videotape/kinescope			Film		
Run	% of applicable minimum fees		Run	% of applicable minimum fees	
Domestic Residuals					
				network	syndi-cation
2nd	75		2nd	50	40
3rd	75		3rd	40	30
4th	50		4th	25	25
5th	25		5th	25	25
6th & all additional combined	25		6th	25	25
"high budget" dramatic or musical[c]					
	network	other			
2nd	50	40			
3rd	40	30			
4th	25	25			
5th	25	25			
6th & all additional combined	25	25			
Foreign Residuals					
None			None		

Notes:

[b]Union concerned is DGA.

[c]minimum fees for these shows are much higher than for other programing.

TABLE 3--Continued

III. Writers[d]

Videotape/kinescope or live reuse			Film		
Run	% of applicable minimum fees		Run	% of applicable minimum fees	
Domestic Residuals					
	network	syndication	Entertainment Film		
				network	syndication
2nd	100	40	2nd	50	40
3rd	75	30	3rd	40	30
4th	50	25	4th	25	25
5th	50	25	5th	25	25
6th	25	--	6th & all additional combined	25	25
6th & all additional combined	--	25			
7th & each subsequent	5	--			
			Documentary Film		
			2nd	35	Royalty on distributor's residual gross of 1% for news and 4% for other film.
			3rd	30	
			4th	25	
			5th	25	
			6th	25	
			7th & each subsequent	5	

Notes:

[d]Union concerned is WGA.

TABLE 3--Continued

III. Writers--Continued			
Videotape/kinescope or live reuse		Film	
Run	Amount of payment	Run	Amount of payment
Foreign Residuals			
Non-syndication use (within a limited period)		Entertainment Film	
British Isles and Cyprus	$25	15% of minimum applicable fees if telecast at all in foreign markets, plus an additional 5% when gross foreign income exceeds: $6000 for 30 min. film, 12000 for 60 min. plus, and an additional 5% when gross foreign income exceeds: $8000 for 30 min. film, 16000 for 60 min. plus.	
Rest of Europe	25		
Africa	10		
Asia and Australia	20		
Central and S. America	20		
World-wide Buyout	75		
Syndication		Documentary Film	
15% of applicable minimum fees if telecast at all in foreign markets, plus an added 5% when gross foreign income exceeds: $6000 for 30 min. prgm. 12000 for 60 min. plus, and an additional 5% when the gross foreign income exceeds: $8000 for 30 min. prgm. 16000 for 60 min. plus.		Royalty on distributor's residual gross of 1% for news films and 4% for all other films.	

TABLE 3--Continued

IV. Musicians[e]

Videotape/kinescope		Film	
Run	% of National TV Recording Scale	Run	% of National TV Recording Scale
Domestic Residuals			
2nd	75		
3rd	75		
4th	50		
5th	50		
6th	50	None	
7th	10		
8th	5		
9th	5		
10th and subsequent	none		
Foreign Residuals			
British Isles and Cyprus	20		
Rest of Europe	10		
Africa	5	None	
Asia and Australia	5		
Central and S. America	5		
World-wide Buyout	45		

Notes:

[e]Union concerned is AFM.

Before leaving the subject of program residuals, two points deserve further comment. First, one notices that no formula for foreign residuals is dependent on the run concept. The rationale for this is simple. The unions have found it immensely difficult to audit the reuse of television programing domestically; to keep check on use world-wide would be virtually impossible. Thus, agreements discussing payments for foreign circulation cite the country in which the program is telecast, or are based on a percentage of the distributor's gross overseas income from the show.[94]

> Secondly, where the run concept appears, it is to be noted that the residual payments, as a percentage of applicable minimum fees and rates, are generally higher in the "live" (videotape/ kinescope) than in the "film" residual formulae. This is partly explainable in terms of the fact that generally the minimums in "film" television have been higher than in "live" television. Therefore, the smaller percentages in the film residual schedules nevertheless will often result in dollar yields to the talent roughly equivalent to those in the "live" structures.[95]

This variation can also be attributed to the previously popular union practice of forbidding any replay of "live" programming. When videotape made the reuse of

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[94]Freund, "Residuals in Broadcasting," p. 113.

[95]Ibid., p. 113.

programs on a major scale feasible, "the unions feared.. (it)..would cut down employment in the live field and extracted a high residual rate as the price for acceding to any residual formula at all."[96]

Collective bargaining agreements frequently impose severe restrictions on the ability of the producer to exploit material originally produced for television in other media. Complex compensation formulas exist in local contract clauses to cover subsidiary uses of TV program material in radio, publications, phonograph records, and the legitimate theatre.[97] As a final note, the talent unions have also won equally complex, but much more profitable, payment schedules to cover the reuse of television commercials. In 1966 for example, SAG commercial residuals accounted for more than 38% of all such monies paid its members.[98]

Next to his base salary, the union performer or announcer at a local television station is most concerned with his "on camera" premiums. Talent fees, as they are usually refered to, are popular in local

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[96]Ibid., p. 113.

[97]Ibid., p. 102.

[98]Gelman, p. 42.

AFTRA agreements. The amount of compensation is often determined by the length and purpose of the staff artist's appearance on the air: is the individual the principle performer or a secondary player; is he on the program to deliver a commercial message; is the program on which he appears an entertainment show, a news/weather/sports program, or a public affairs presentation? An examination of several NAB Labor Contract Summaries of AFTRA agreements also shows that fee schedules will differentiate between sponsored, participating, and sustaining programs.[99]

Below-the-Line Unions

The roster of below-the-line unions is much shorter than that of the talent fraternities. In number there are only three primary unions that represent the large majority of television's organized "behind-the-scenes" workers. Among technicians and engineers the most popular organizations are the International Brotherhood of Electrical Workers (IBEW) and the National Association of Broadcast Employees and Technicians (NABET). As film grew in

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[99]National Association of Broadcasters, Labor Contract Summary - Talent (Washington, D.C., NAB, Department of Broadcast Management, summaries of contracts effective from 1966-1970).

importance to television programing and the number of employees working in film related crafts increased in the medium, so also did the strength and influence of the International Alliance of Theatrical Stage Employees (IATSE). "There are a handful of other unions that represent blue-collar TV labor but their numbers in TV's shops are so small as to be of slight significance in the industry's broad labor picture."[100] The three unions mentioned above dominate the scene for all intents and purposes.

> If talent is a sometime thing with enormous rewards, below-the-line workers have tended to insure themselves steady work if more modest pay scales. As the stars have hitched their wagon to residuals, so the technicians and motion picture craftsmen have had the foresight to feather their beds with job-security agreements, perpetuating certain operating techniques that may prevent reduction in personnel and guaranteeing the availability of jobs for the ins, sometimes at the bittersweet cost of keeping out the outs.[101]

Characteristic of the technical unions is a consistency in organizational and contractual philosophy.[102] Each organization has developed over the years what can be called its own "personality." Aware of their character, management can somewhat predict

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[100]John Gardiner, "Below-the-Line Unions," Television Magazine (December, 1967), p. 44.

[101]Ibid., p. 44.

[102]Ibid., p. 44.

the approach the individual unions will take, and the points they will stress at the bargaining table.

IATSE is the best example to illustrate union personality. Management has labeled it as a feather-bedding union which will try to multiply assignments whenever possible. The union as an unwritten rule will keep its membership at a fairly consistent level. Although no labor organization and employer can enter into an agreement whereby the employer will only hire union members--the "closed-shop" concept--IATSE has subtle ways of applying pressure to assure that its members are given first employment considerations. The theory is that combined, these elements will guarantee steady work for IATSE card carriers--the ins.[103]

IATSE International has a reputation for keeping close watch on its locals and for being very reluctant to sanction strike actions. IBEW and NABET on the other hand are noted for very autonomous locals.

> It is partly due to IATSE's centralized power that the union is a management favorite. Whatever accusations may be made about its feather-bedding tactics or tendencies to closed-shop behavior, TV industry negotiators are grateful for its consistency, thankful that when they reach agreement with the union representatives,

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[103] Ibid., p. 46.

> they can be reasonably sure that it won't be vetoed by the rank and file, and that the union is not "grievance happy, arbitration-happy and strike-happy..."[104]

"IBEW is much more important to broadcasting than broadcasting is to IBEW."[105] Of a total membership near 950,000 in this union, only 12,000 of that number are covered by TV-radio agreements. The union after 1940 switched to autonomous locals, 25 in the broadcast industry, to solve growing problems from centralized bookkeeping. Not a featherbedding union, IBEW negotiators will emphasize seniority and job security during contract talks.[106]

Both IATSE and IBEW "came to television from the outside, having firm roots elsewhere before they took hold in TV's fertile earth."[107] Only one below-the-line union, NABET, is truly broadcast oriented. This union originated at NBC in 1933 when 300 engineers and technicians founded the Associated Technical Employees.

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[104] Ibid., p. 52.

[105] Ibid., p. 54.

[106] Ibid., p. 46.

[107] Ibid., p. 46.

After thirty five years and two name changes, the group now represents 8,500 employees at NBC, ABC, and 51 local stations.[108] NABET, however, has gained another distinction, that of the most unstable labor organization in the broadcast industry. In recent years, the organization has been riddled by internal dissension and top-level personnel changes. In 1966, there was strong speculation that IBEW would take over all NABET interests, but a "no raiding" agreement of the AFL-CIO affiliation precluded any such attempt.[109]

In negotiations NABET is concerned, like the other below-the-line unions, with seniority and job-security, but it places more emphasis on wage rates. Lacking the direction and advice of a strong home office, the union locals have developed a tendency to approach collective bargaining with a strike-ready offensive and a lop-sided interpretation of the phrase "give and take."[110]

"Despite a mix of operating techniques in TV's below-the-line unions..., this segment of broadcast labor seems to be leveling the differences in compensation among the several organizations."[111]

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[108] Ibid., p. 46.

[109] Ibid., p. 46.

[110] Ibid., p. 52.

[111] Ibid., p. 54.

> Gains made by a union with one employer are among the most effective labor tools to pry other managements up to comparable working conditions and wage levels. And gains made by one union are the rewards of another whose negotiations may follow. From management's side that means concessions to one bargaining unit now are tantamount to concessions to another unit later. Furthermore a concession made is very likely a concession lost from the bargaining kit forever and if it's a salary concession, it's one whose cost is apt to be compounded in all future agreements with that union.[112]

IATSE, NABET, and IBEW have fought pitched battles over jurisdictional lines in the past, the most public occurring when videotape was first introduced unto the television scene. Today the fighting is more within the unions than between them. The three groups are beginning to realize the potential benefits of respecting one another's causes. Particularly on the local station level, there is a climate of loyal unification increasing among the organized below-the-line labor.[113]

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[112] Ibid., p. 53.

[113] Ibid., p. 54.

CHAPTER VI

HISTORICAL SKETCHES OF THE TELEVISION UNIONS

To add perspective to the picture of television unionism today, a brief discussion of the heritage of the primary labor organizations is presented here. There exists little trace of a common denominator as unions came to television from many directions. One does observe that most of the groups were in one way or another active in the entertainment industry in pre-television times and became involved in the medium as a matter of natural evolution.

American Federation of Television and Radio Artists

A group known as the Actors Equity Association originally held jurisdiction over announcers, actors, singers, and newsmen in radio. The organization established a division known as the Radio Equity to serve these individuals in the 1930's, but many conflicts arose with the Screen Actors Guild and the American Guild of Musical Artists who also had members active in the medium. The three through the Associated Actors and Artists of America, "a loosely knit umbrella organization of the various entertainment organizations,"

agreed to relinquish their interests in radio to a new separately chartered group. The American Federation of Radio Artists was created under the auspices of the AAAA in August of 1937.[114]

By July of 1938, the first contracts involving union performers had been signed by both CBS and NBC. Further union efforts prior to and during World War II concentrated on the organization of announcers and performers at local stations. A peak membership for AFRA of 24,000 was reached in 1946.

The AAAA in April of 1950, established another organization under its wing to negotiate for talent in live TV. Known as the Television Authority, its life as an AAAA division was short lived. In 1952, the TVA was merged with AFRA to create the American Federation of Television and Radio Artists (AFTRA).[115]

The two strong selling points of this union have been the residual programs it has been able to negotiate and the pension and welfare plan it has established. As was pointed out in the last chapter, AFTRA along with SAG, "pioneered the concept of residual payments that has brought earnings to people who previously had had to

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[114]Gelman, p. 41.

[115]Ibid., p. 41.

hear themselves on radio or see themselves on TV with no dollar return. Now the performer is paid for his perfomances...from the first to the last time the performance is rendered."[116]

> An item of which AFTRA is very proud is its Pension and Welfare Funds. These were one of the first such benefit packages to be put together for entertainers. For years performers were at the mercy of employers as they could be stripped of all welfare and/or Pension benefits by leaving one station or employer for another. With the birth of (AFTRA's) plan the performer has a completely protable benefit program. The Pension and the Welfare portions follow the performer in his moves from station to station (as long as the stations are P and W payees) and once a pension amount is vested the performer cannot lose it.[117]

Through the 1950's, AFTRA and SAG repeatedly disputed over jurisdictional line and pitted their strengths against one another in NLRB representation elections. AFTRA usually faired poorly at the ballot box and in 1959 a strong movement developed within AFTRA to merge the group with the Screen Actors Guild. The move was soundly rejected by SAG, then under the influencial leadership of Ronald Reagan. The Screen Actors saw for themselves few advantages to unification with the weaker union.

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[116]Letter from Kenneth A. Bichl, Executive Secretary, AFTRA, Cleveland Local, Cleveland, January 9, 1969, p. 1.

[117]Ibid., p. 1.

The only nationwide walkout undertaken by AFTRA took place in 1966 against the networks over the percentage of earnings management may withhold from the talent fees earned by newsmen. In the 13 days that the strike lasted, the weaknesses and internal problems of AFTRA became public. Drawing the most attention was the rebellion against the union's power lead by newscaster Chet Huntley. The national stratum of the union is still suffering from the defections from its authority during that period and the locals are showing varying degrees of bargaining strength and membership loyalty.[118]

Screen Actors Guild

The Screen Actors Guild is the power among the talent unions. Its membership of 1700 has the ability to close down tight every major motion picture studio and television film operation in the country. The jurisdiction of the Guild covers acting work in the entire motion picture field--motion pictures for theatre, motion pictures for television, including commercials, motion pictures for industrial and commercial uses, and even many of those made for educational and religious purposes. SAG has collective bargaining contracts with the producers in each of four separate

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[118]Gelman, p. 41.

but related types of film work. The unions master contracts cover (1) theatrical pictures, (2) filmed television entertainment programs, (3) television commercials, and (4) industrial and education pictures. The Guild through its New York office also negotiates contracts to cover extra players on the East Coast.

In March of 1933, six Hollywood actors met to discuss the working conditions and wage cuts they were being forced to accept by the studios and producers. The meeting focused on the need for an independent film performers union and the discussion ended only after the foundations of the Screen Actors Guild had been outlined. On June 30, 1933, articles of incorporation as a non-profit corpiration were filed in Sacramento and SAG was officially born.

It took a four year struggle for SAG to gain union recognition and a contract from the motion picture industry. During that period the union grew in membership to several thousand and gained the economic power to threaten an industry-wide strike if a union-shop was not granted. On May 9, 1937, after a final strike threat, the leaders announced victory. The first SAG contract was signed setting minimum pay scales and

establishing continuous employment guarantees for the film players. A 12-hour rest period between calls was also provided for with effective penalties set for any violations of the rule.

> Successive contracts have brought a multitude of other continuing benefits for Guild members, including (1) vastly increased minimum rates for all classes of actors; (2) five-day week; (3) pension and health and welfare plans paid entirely by the producers; (4) increased compensation for overtime, Sundays and holiday work; (5) premium pay for night work; (6) pay for wardrobe fittings and tests.[119]

When the Screen Actors Guild negotiated its first contracts in the television field in 1952, it established the principle of residual payments for domestic reruns of TV entertainment films. The 1964 contract negotiations were highlighted by the gain of special fees for the actors for that programing was sold to markets in foreign countries.

> In a related field, after a six-week strike in 1960, the Guild won a formula for payments to actors for their television rights when theatrical features are sold to television. The Guild was not satisfied with this original arrangement and in a progressive departure from ordinary collective bargaining aims, the Guild in 1965 devised and secured producer approval of a totally new formula for payment for television rights in theatrical features. The formula sets for each actor in the cast of a theatrical picture an irreducible minimum for his television rights--a minimum that

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[119] The Story of the Screen Actors Guild, (Hollywood, Screen Actors Guild, Public Relations Department, 1966), p. 5.

> cannot be reduced no matter how low the earnings of a particular picture. As the television earnings of the picture increase, the actor's minimum fee rises.[120]

Residuals are also the major emphasis of negotiations when SAG representatives sit down to negotiate the terms of their Television Commercials Contract. Through that agreement actors receive compensation for their services throughout the "life" of a commercial--as long as the commercial appears on the air.

To administer these residual plans and to distribute the payments to the membership, the Guild maintains a separate department of about twenty employees at its Hollywood headquarters. Besides handling residual checks, the number of which has now grown to nearly 16,000 per month, this unit also checks the use of television programing around the world to prevent any SAG member from being short changed.

> ...SAG hasn't found it wise to sit back and wait for residuals to come rolling in from prompt and proper producers. Instead, a great deal of staff time is spent in reading television guides and entertainment sections of newspapers from 16 different areas of the country. Also inquiries--based on information from performers responding to a tip from fans--often are made to stations. These are sometimes backed up with personal visits to inspect station logs. It isn't an infallible system, but like ratings, its the only game in town.[121]

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[120] Ibid., p. 6.

[121] "Key Job for SAG," Television Magazine (November, 1967), p. 71.

Screen Extras Guild

The Screen Extras Guild represents some 3000 film background personnel in Hollywood, San Francisco and Hawaii. Among the major talent unions SEG is low in economic strength and status. About 80 percent of the membership also carry SAG cards as the income one can expect as an extra is only nominal, as well as, irregular.

Originally in the early 1940's, the Screen Actors Guild bargained for extras as well as performers. Disenchanted at being represented only as an afterthought, a large group of extras broke away and founded the Screen Players Union. An internal political struggle developed and a faction of that group soon defected and formed the Screen Extras Guild. The new union campaigned and finally defeated the SPU in representation elections in 1946.

The key points of present contracts held by the Screen Extras Guild are not residuals, but rather profitable pay clauses for hazardous work. Besides the daily rate of $29.15, an extra can collect $100.00 if he has to, for example, ride a horse or scale a mountain. The union is comparatively weak and unable to resort to strike action to press any demands. Old political problems still haunt and divide the leadership.[122]

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[122]Gelman, p. 46.

Writers Guild of America

The heritage of the Writers Guild of America can be traced to 1912 and an organization known then as the Authors Guild. This association was originally founded for the protection of writers of books, short stories, and magazine articles. Drama writers in about this same year also formed for collective protection under the Dramatists Guild. By 1915, the two had merged under the title of the Authors League. By the end of World War I, the Authors League saw need to bring writers working in a new medium into its membership. The Screen Writers Guild was established within the motion picture industry as a branch of the League in 1921.

The Screen Writers Guild functioned more as a social fraternity than a labor brotherhood through the twenties and the early years of the depression. The group's headquarters was principally used for social activities, the production of experimental play, and the exchange of professional information. With the impetus of the national movement for organized labor and the protection of the Wagner Act, the memberhsip amended the Guild's objectives to emphasize the protection of writers' rights and economic conditions.[123]

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[123]Letter from Allen Rivkin, Director of Public Affairs, WGAW, Hollywood, December 23, 1968, p. 2.

The group gained strength in 1936, by altering its ties with the Authors League to an affiliate status. Collective bargaining with the producers commenced in 1939, and the Screen Writers Guild signed its first contract in 1942.

Another medium, radio, developed into an industry during this same period and the Authors League organized another branch, the Radio Writers Guild. Again as television grew in the early post World War II days, another branch, the Television Writers of America, was formed under this authors group. Eventually the TV unit gained autonomy and in 1952 defeated the Screen Writers Guild and the Authors League in representation elections among the writers working in live network television. It was evident that the decentralization was resulting in extensive duplication of efforts and costly jurisdictional rivalries. A new union structure, simpler in organization and stronger in bargaining ability, was needed to serve the writers of entertainment material.

Representatives from each of the groups met in New York and in October, 1954, unveiled the new labor organization, the Writers Guild of America. Only two administrative units divided the membership; Writers

Guild of America East with offices in New York represented any member residing east of the Mississippi River, and Writers Guild of America west with offices in Los Angeles represented the western membership.

Although TV film negotiations are handled on the West Coast and live television bargaining is conducted on the East Coast, all contracts are on a national basis and subject to ratification by both halves of the Guild. Today membership in WGAW is near 2700, while 1500 entertainment writers and 800 radio and television news writers belong to WGAE.[124]

Contracts have been won with all three networks and just about every TV and theatrical film producer. The only time Writers Guild members walked the picket lines was in 1960. The inability to reach agreement on a satisfactory residuals pattern for post-1948 movies being sold to television resulted in a 22 week strike against the networks and the film producers. The parties finally agreed to scuttle an old, low-paying royalty-type system and adopt the residual plan outlined in Chapter V.[125]

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[124] Ibid., p. 1.

[125] Gelman, p. 47.

Directors Guild of America

The Directors Guild of America represents some 3400 television directors, assistant directors and production managers in New York, Hollywood, Chicago, Detroit, San Francisco, Washington, D.C., Boston, Philadelphia, and St. Louis. The Guild in its present form has existed since 1960 when two groups, the Screen Directors Guild and the Radio Television Directors Guild, merged to more efficiently promote their parallel objectives. A synopsis of the Director Guild history reads as follows:

1936: Twelve motion picture directors formed the Screen Directors Guild with an initial membership of approximately 75. The published aim was "to achieve proper recognition for the Director in films and to gain the creative freedom that they enjoyed for all their fellow Directors and for all those who would follow in the future."[126]

1937: Assistant directors were permitted membership and the Guild's strength quickly grew to 95 percent of all the Hollywood film directors and assistants.

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[126]"Thirty one Years of Progress," Newsletter of the Directors Guild of America (Hollywood, June, 1965), p. 2.

1939: The first agreement of consequence was signed with the producers. It recognized the direcotr's job as a creative function and guaranteed his right to screen credits. Minimum wages and working condition standards for assistant directors were also outlined.

1944: The agreement was amended to include minimum salaries for directors.

1950: The SDG won its first TV film contract containing minimum wage and working condition clauses plus a residuals program recognizing "the Director's right to participate in revenue from filmed shows which were used on television commercially."[127] In the fifteen years to 1965, this provision amounted to nearly nine million dollars in payments to television film directors.[128]

1955: A headquarters building featuring a private theatre was established in Hollywood.

Meanwhile in radio:

mid-1930's: A New York luncheon club of radio directors evolved into the Radio Directors Guild when mutual problems relative to wages and working conditions dominated the table conversation. An AFL charter was

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[127] Ibid., p. 2.

[128] Gelman, p. 44.

obtained and a few contracts signed in the New York area, expansion being limited by World War II.

1951: The organizations name was appropriately changed to the Radio Television Directors Guild when television directors, assistant directors, and stage managers at CBS, NBC, ABC, and Dumont were granted membership, but only token contract bargaining commenced. "Those members working in television were asked to help the infant industry grow by not making exorbitant demands on the companies, in return for which they were assured that their interests would be protected, since employers indicated that they should consider themselves part of the creative team whose rewards grow in proportion to the growth of the industry."[129]

By 1955, several members of the RTDG found it necessary to also join the SDG in order to direct both live and filmed TV programs. Irritated by the need to pay double dues, they began a campaign to unite the two organizations. In 1958, the heads of both groups confered on the situation and agreed to pool their efforts effective January 1, 1960, the new

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[129]Mike Kane, "Here's Past and Present of Radio-Television Directors Guild," News Letter of the Directors Guild of America (Hollywood, June, 1965), p. 4.

organization's title was to be the Directors Guild of America. The SDG Sunset Boulevard building has become the Directors Guild headquarters with a branch office now in both New York and Chicago.

American Federation of Musicians

The American Federation of Musicians was officially christened on November 6, 1896 and established itself as a powerful talent union long before commercial television was ever thought of. The history of this union is that of a continuous struggle with the rise of automation, the AFM members being among its first victims. Between 1929 and 1930 when "talkies" took over the movie houses, orchestra pits became obsolete and about 5000 union musicians were out of work. By the start of World War II, records threatened to displace the large majority of musicians who depended on live radio for a living.

From 1940 to 1958 the union was lead by James Ceasar Petrillo, who gained fame by fighting aggressive battles against the growth of the record industry, the transcription business, and any other concern that made a profit from the mechanical reproduction of music. Although mostly in vain, his efforts did establish AFM royalty and residual payments in 1942.

> ...(Petrillo) raised wages, reduced hours, and improved working conditions for the musicians and brought the wrath of the government down on them. His demands--and personal ego--seemingly knew no bounds. In efforts to get stations to hire more musicians and to secure guaranteed employment for AFM members, he pushed too hard, once too often.[130]

The Lea Act passed by Congress in 1946 was written with the direct intent of curbing Petrillo's pressure on the broadcast industry. By that law, the union was prevented from fixing quotas for stations, requiring them to employ a certain number of AFM members. The effect is seen in the statistics today; only about 2000 of its 260,000 members are able to find full-time employment in broadcasting.

Under its current president, Herman D. Kenin, AFM seems to be making some strides toward a comeback. The number of television specials, both live and taped, have helped, in addition to the increasing number of filmed series that prefer original arrangements and live music over the canned variety. "Most significantly the pugnacious approach of Pettrillo has been out and a softer sell is in."[131] Still more musicians are making more money from hotel, nightclub, and ballroom work than in the television business.

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[130]Gelman, p. 45.

[131]Ibid., p. 45.

International Alliance of Theatrical Stage Employes.

> Of all below-the-line labor organizations touching television, the International Alliance of Theatrical Stage Employes (IATSE) bears the strongest resemblance to an old-line association of the crafts. Its discipline is toughest and its organization is tightest. The characteristics stem from its earliest days of bargaining as the representative for the craftsmen of the footlights--on Broadway and in Hollywood.[132]

IATSE's diary dates back to 1893 when show business was confined almost entirely to the stage. Carpenters, propertymen, and electricians were the first to join and seek recognition a union. In 1908, the membership was widened to encompass similar workers in the new and expanding film industry. Photographers, grips and projectionists closed ranks under the IATSE banner, which by then had become tattered by racketeering.[133] The union's dark hours lasted until the mid-1930's when its present president, Richard Walsh and the newly founded NLRB exposed the people who had dominated the union for several decades. Two IATSE executives, George Browne and William Bioff, were cited and convicted for extortion and sentenced to prison. They had accepted generous payoffs from the Hollywood studios in return for labor protection. Walsh, then a vice president, stepped into the presidency and has been

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[132]"Things They Say About IATSE," Television Magazine (December, 1967), p. 49.

[133]John Gardiner, "Below-the-Line Unions," p. 47.

retained in that positon by confirmation elections ever since.[134] Although early critics of his appointment thought the union should have chosen someone who had not served under racketeers, he is credited with cleaning up IATSE and is now regarded by management as one of the finest leaders in entertainment unionism.[135]

> Organizing by the Alliance in the TV field began with the establishment of several locals of the Television Broadcasting Studio Employes. These offered the advantage of combining all crafts within a single organization, but their scope was limited to individual cities. In 1951, with the creation of the Radio and Television Department, a system was established of providing direct membership in IATSE without the local union set-up.[136]

The 60,000 membership is principally comprised of theatre motion picture projectionists throughout the U.S. and Canada. The 12,000 members who come from television firms include stagehands, makeup artists, wardrobe attendents, graphic artists, technicians at some stations, remote lighting crews, cameramen, soundmen, grips, film editors, electricians, set designers, scenic artists, and screen cartoonists.[137]

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[134] Ibid., p. 47.

[135] Ibid., p. 47.

[136] An Introduction to the IATSE (New York, International Alliance of Theatrical Stage Employes), p. 2.

[137] John Gardiner, "Below-the-Line Unions," p. 47.

IATSE, as the list readily indicates, has control over everything but talent in the television film studios. On the local station level, the union is also strongest in film related areas--newscameramen, soundmen, processors, editors, and projectionists.

The membership demographics of IATSE closely reflect the closed-shop personality discussed in Chapter V. Father-son-uncle-nephew-brother ties are common among the middle-aged to elderly employees who have become entranced by the union contracts job security clauses and IATSE's unwritten membership policies. "Legally unions cannot be closed to new members, but de facto exclusion will be tolerated by management when it might otherwise be faced with union reprisals such as slowdowns or other difficulties."[138]

International Brotherhood of Electrical Workers.

Only about 1.5 percent of the total 950,000 membership of the International Brotherhood of Electrical Workers (IBEW) function in broadcast related jobs. Approximately 12,000 technicians at CBS, Sports Network, Lew Ron Productions, and 176 television stations have been organized under this craft union.

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[138] Ibid., p. 47.

> The members of the IBEW are, for the most part, engaged in the installation, operation, maintenance and repair of electrical and electronic equipment in the broadcast industry. In radio and the sound side of television, they are concerned with the electrical reproduction of (audio) sound, from the microphone to antenna. In television, the reproduction of the picture form the front of the camera, on tape or film, through its transmission from an antenna.
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> In some places--generally outside the major metropolitan areas--the IBEW represents floor directors, set constructors, motion picture cameramen and editors, and in a few cities--announcers and newsmen. Other unions, which traditionally represent these people, often do not operate in relatively-smaller cities, and the people involved choose to associate themselves with the technicians, in many instances (although usually under separate contracts).[139]

The electrical workers union formed in 1891, first became involved in the broadcast industry in the 1920's. Employees at stations in St. Louis united under the IBEW in 1926 to raise wage rates and to reduce the length of the work week. Technicians in Chicago in 1932, were the second group of radio workers to join. The first all radio local under the IBEW was chartered in 1933 in Birmingham, Alabama, followed by several more in quick succession.

> One of the greatest leaps in unionism stemmed from the organization of the "Associated Columbia Broadcast Technicians" in 1932-33. This was a company union of employees of the Columbia Broadcasting System. It later expanded to include a few of the employees of CBS-affiliated stations and the name of the organization was ammended to

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[139] Brief History, Philosophy and Agreement Principles, IBEW Broadcasting (Washington, D.C., International Brotherhood of Electrical Workers), p. 4.

> "Associated Broadcast Technicians." After much discussion and internal strife, a referendum of the membership voted to affiliate with the IBEW and, in 1939, this nationwide unit operated as a single local union. In 1940, the membership in each city involved was granted an individual charter and the ABT lost its separate identity. Thus, by 1940, there were 50 local unions whose membership in whole or part consisted of technicians employed in broadcasting, and about 20 of which had membership of only broadcast technicians.[140]

During World War II progress from the union's point of view was hampered by the wage freezes imposed upon many industries by the federal government. The trend since has been for the IBEW unit at CBS network to set the pace in wage and working condition gains for the other locals to strive to match. A definite commitment to the principles of seniority and job-security are evident in the union's negotiation and contract strategy.[141] Like the other below-the-line unions, IBEW places its bargaining emphasis on higher maximum pay rates and extra benefits for the long term employees and members.

National Association of Broadcast Employes and Technicians

The National Association of Broadcast Employes and Technicians (NABET) holds two distinctions in the broadcasting business. First, the union is the only truly broadcast oriented organization having no interests outside the industry. Secondly, NABET is

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[140] Ibid., p. 2.

[141] John Gardiner, "Below-theLine Unions," p. 46.

currently considered by management to be the most unstable labor organization on the entertainment scene.[142] In 1966, it sustained a membership revolt stemming from discontent with the international home office's interest, or lack there of, in the problems of the locals.

In 1933, about 300 engineers and technicians at NBC founded the Association of Technical Employes. They gained union recognition and won their first contract with the network in January of 1934. Expansion resulted in a name change in 1940, when the group adopted the title, the National Association of Broadcast Engineers and Technicians. Shortly thereafter, as NABET's jurisdictional lines continued to grow, the work "Engineers" was changed to "Employes." Today the union has contracts with three networks, NBC, ABC, and the Canadian Broadcasting Corporation, plus agreements with 51 local stations in the U.S. and Canada. Because of its bargaining practices, however, NABET has gained a reputation among TV managers as a strike-happy group that lacks centralized leadership and an outline for a sensible long-range organizational strategy.[143]

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[142] Ibid., p. 48.

[143] Ibid., p. 48.

CHAPTER VII

CONCLUSION

This paper opened with an examination of the legal basis of unionism in general. Three primary labor laws provide the foundation for all organized labor, including television unions. In 1937, Congress passed the National Labor Relations Act (the Wagner Act) establishing as a matter of U.S. policy, the right of employees to form, join, and assist labor unions to improve their personal economic positions. This law cited collective bargaining as the key to minimizing industrial strife between employee and employer. Certain methods of interference on the part of employers with union organizing were labeled as "unfair labor practices" and the National Labor Relations Board was created to protect and assist the worker in excercising his rights spelled out in this Act.

The Labor Management Relations Act (the Taft-Hartley Act) was passed twelve years after the NLRA in 1947. It placed qualifications on union power in its "union unfair labor practice" provisions. The restrictions were similar to those the 1937 Act placed on employers.

Most recently, the 1959 Labor Management Reporting and Disclosure Act (the Landrum-Griffin Act) focused on the problem of corruption in labor organizations. This law made illegal certain pressures unions would apply on an employer to secure recognition as a collective bargaining representative or to gain unfair advantages at the negotiating table.

Our discussion spoke of the legality of four types of union security clauses. Federal law sanctions the kind of union security known as a "union shop." The bargaining agent chosen by the majority of the employees in a unit has exclusive bargaining rights for all employees in that unit. Any new employee must join the union within a specified period and remain a member in good standing as a condition of employment.

"Maintenance of membership" is similar to the union shop arrangement with the addition of an "escape period." The employee may choose during that time whether or not to continue his union membership with the qualification, that if he does choose continuance, he agrees to such for at least the remainder of the contract period. However, nineteen states have "right to work" laws that make unlawful and unenforceable any contracts that include either of these concepts. No collective bargaining agreement in

these states may require union membership or the payment of union dues as a condition of employment.

The "closed shop" agreement, whereby the employer hires only union members, is prohibited by the National Labor Relations Act. "Preferential hiring" clauses, whereby an employer agrees to employ union members first if available, fall under the same federal condemnation.

The presentation continued by outlining the steps by which a union gains recognition as the collective bargaining agent for a group of employees. Congress has charged the NLRB with the job of administering the petition-hearing-election process and with the task of prescribing the appropriate bargaining unit when a disagreement exists. Exclusive bargaining may be undertaken by a union with an employer through mutual agreement without first obtaining formal NLRB certification as the majority's choice for representative. Certification is sought, however, as a matter of sound business practice by the unions to unquestionably establish that majority status.

After a union has been certified, both union and employer have a legally enforceable duty to meet in collective bargaining. The two parties are "required" to approach negotiations in good faith with a sincere

intention of reaching an agreement whenever possible. They are obligated to continue bargaining until an agreement is reached or a "genuine" impasse is confronted. A strike or lockout does not relieve the negotiators of their responsibility unless the strike or lockout are in violation of an unexpired contract or some provision of law. When all bargaining possibilities appear exhausted, several roads toward settlement still remain open.

Conciliation and mediation are two of these avenues. They allow the parties to gain perspective on their situation from a third viewpoint. By conciliation, a third party brings the two in dispute together to continue the negotiating process. In essence, he acts as a "go between." In mediation, the third party actively participates in the bargaining, making suggestions to influence the negotiators toward a possible compromise.

Another avenue to agreement is that of arbitration. Here the third party listens to the issues involved and decides what in his opinion would be the fairest resolution. That decision then is final and binding on the parties in dispute. It is natural, therefore, that in contractual questions concerning precedent setting problems or large sums of money,

both union and management are hesitant to permit themselves to become committed to the will of the arbitrator.

A correlation with a basic market transaction was drawn to illustrate the place of strikes (and lockouts) in the collective bargaining picture.

> In economic terms, the bargaining process is akin to any other type of market transaction in which the price of the commodity or service is subject to attempts of each party to gain an advantage for himself. Employers, like any other buyers, seek to obtain a low price; if the union demands too much, they can refuse to buy, while the union can refuse to sell if the terms are not satisfactory. The strike (or lockout) in labor-management negotiations, even if it is only threatened, is part and parcel of the bargaining process. When a contract expires and the parties cannot agree on a new one, a strike may be called on the grounds of "no contract, no work."[144]

The law approaches strikes in terms of "the right to strike." While never really defining it, the NLRA as ammended specifically affirmed the thinking that organized labor is entitled to this power. Today, for all practical purposes it is useless for private parties to seek injunctions to break nonviolent walkouts. Strikes and lockouts must be viewed as the two most potent cards that the respective players in the collective bargaining game hold in their hands.

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[144]Burtt, p. 194.

Therefore, they should be used only with the utmost in judicious judgement.

A very important job of the unions in the television industry, and of unions in general, is the part they play in the grievance procedures outlined in collectively bargained contracts. The grievance process is the employee's guarantee of "due process" for his complaints of unjust, unfair, or inequitable treatment. The company may also use the procedure when it feels the union or an employee are not abiding by the provisions of their contract. Variations of a basic four step pattern are used:

(1) Informal discussions of the grievance are held between the shop steward and management supervisor.

(2) If not resolved at the first level, the grievance is discussed by a local grievance committee of the union and local management representatives.

(3) If satisfaction is still not obtained, the national office of the union takes the issue to the home office of the company.

(4) If this fails, the fourth and final step is referral to arbitration.

In the broadcast industry two major variations of this process exist. "Meditration," a combination of mediation and arbitration, is being used to alleviate the backlog of unresolved cases in large companies. The Joint Board of Adjustment, a panel of labor and management representatives, is an attempt by the script writers, the networks, and the large independent producers to avoid costly arbitration. In most all instances, arbitration will be the terminal point of grievance processes.

This paper then turned from the general, to the specific. The nature of television unionism was presented; first the overall picture of organized labor in TV and then an outline of the heritages of the individual talent and technical unions. Those two divisions, talent and technical, are called "above-the-line" and "below-the-line" unions respectively. Because these groups are again divided according to specific job classifications, a complex maze of contracts has resulted in the television industry.

"Residuals" (additional compensation for the reuse of programing or program material) are the main emphasis of most national collective bargaining

meetings involving above-the-line unions. At the local level, "talent fees" or "on-camera" premiums are of primary concern.

The below-the-line unions have generally fought hardest for seniority and job-security clauses. As their relations in the industry progressed, each union has developed its own personality by which management can somewhat predict their moves. IATSE is a close-knit and stable organization; IBEW will keep close watch on its locals; and NABET has gained a reputation for being strike-happy.

Because unions have come to television from many directions, there exists little trace of a common denominator between the labor groups. One does observe that most of the organizations in some way were active in the entertainment industry in pre-TV times and became involved in television as a matter of natural evolution.

Technology will continue to progress in the television medium and union labor-management battles will parallel the enlarging bag of benefits and temptations. The cry has been that unionism is largely responsible for the high cost of today's television production. The unions do contribute to TV's inflated budget,

but so also does "management inefficiency, poor planning, the rising cost of raw materials and utilities, and inconsistent weather."[146] "There's really no need for anyone to weep. Television has been a good provider for all concerned."[147]

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[146]Gelman, p. 72.

[147]Ibid., p. 72.

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