If you've been in construction for awhile, you've no doubt heard the expression “collective bargaining,” but you may not fully understand its meaning or history. Collective bargaining is the process that is normally associated with labor negotiations that occur between an employer and a group of employees over terms and conditions of employment. Most of the time, the employee group is represented by a labor union, whose representatives act to negotiate and bargain for their members. Common bargaining topics include employee wages, fringe benefits, work hours, safety and job security—but topics also could include any other matter that might affect an employee’s personal and/or economic well-being, such as vacation pay, pensions, health and welfare protection, grievance and arbitration procedures, paid holidays and even arguing for the rights of minorities, women or the elderly.

If you're a member of any of the common construction trades, you may belong to a union. A union is simply an organization of workers who have similar skills. It exists for the purpose of improving the economic and personal well-being of its members, often via the collective bargaining process with one or more employers. A company that hires only union members is referred to as a closed shop. Most of the time, the workers in a closed-shop situation—if not already affiliated—are required to join the union (for their respective trade) within a specified period of time after being hired.

Companies that do not restrict employment based on union affiliation are known as open shop or merit shop contractors. Those in this group are not bound to territorial union agreements.

The collective bargaining process is a negotiation between employee and employer. The proceeding is often facilitated with the aid of a mediator, a neutral third party who acts as a middleman and attempts to bring both sides together through reasoning and compromise. In situations where the parties are steeply divided or negotiations become stalled, an arbitrator could be brought in to forcibly resolve the dispute and impose a decision on both sides. Depending on where you live and the agreement itself, the arbitrator’s final judgment may be binding (hence the term “binding arbitration”) on the parties involved. I use the word “may” because in some countries (like Britain), it is mandated that the arbitrator’s decision be truly final, while in the United States, the judgment may be subject of voluntary agreement by the parties (making it in essence not-so-binding).

Though the bargaining battle has been waged in some form since the beginning of the employer/employee relationship, the modern labor movement wasn’t really recognized until mid-19th century Great Britain. During the industrial revolution, widespread awareness arose over the rights of employees. One need only to read a little Dickens to gain an empathy for the employee oppressiveness of the day. This social awareness eventually grew into bitterness and retaliation toward the employer . . . and a movement was formed.

Though small and disorganized at first, the initial efforts sounded a call for the...
proletariat to seek economic and legal protection from employers who would try to exploit themselves and their families. By the 1860s, British workers (primarily textile workers and miners) began to organize en mass. Today, the European labor organizations still remain comparatively stronger than those in the United States; many are either affiliated with political parties or are the political party

But even with the British impetus, workers in the United States had already been quietly laying the ground work for reform. Labor unions, though primitive, began to develop as early as the 1830s; two main motive forces being the Knights of Labor and the Industrial Workers of the World. Powered by the introduction of the steam engine and the burgeoning use of water-powered machinery a factory system similar to the one developed in Britain was materializing here. Unfortunately, the same worker oppression and exploitation that plagued Britain found similar footing in the United States.

The young but burgeoning U.S. factory system was starting to produce tremendous wealth for a select few and hardship for others. Like Britain, social stratification became even more defined, and employee bitterness grew until the trend toward employee representation found identity in 1886, when the group that eventually became the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) was formed. At the time, this group included nearly all the larger U.S. unions, had a membership of nearly 4 million, and was a formidable social force with which to be reckoned. The employee now had a definable collective voice against what they viewed as oppressive employers. In addition, autonomous departments were being formed, like the Building and Construction Trades division, which was set up in 1916.

The Empire Strikes Back

But negotiation is a two-way street. To make collective bargaining work, both the employer and employee must want to make it work, and alas, that wasn’t the case. As American industry saw unprecedented growth and prosperity, the leaders of industry were little inclined to sacrifice their gains and negotiate with unions—whom they viewed as a threat to their livelihood. Industry’s leaders began to strike back. During the post-World War I era, the labor movement began suffering serious setbacks.

U.S. Steel, headed by Albert Gary, raised union hackles when he refused to meet with striking employees about wage increases, working hours, the implementation of the collective bargaining process and more. Left with what they felt was little alternative, the AFL endorsed and supported a steel worker strike against U.S. Steel. Gary retaliated, labeling the strikers “unpatriotic,” and began to implement now-infamous union-busting strategies that included the introduction of “strikebreakers” into the employee masses, the hiring of armed guards and the fostering of negative propaganda about the union and its leadership. The strike persisted, but in early 1920, the company proved too strong for the strikers, who returned to
work under the same conditions as before.

It was a resounding victory for management. In the decade that followed, wages dropped sharply and union membership began eroding. In fact, about one million union members were lost between 1920 and 1923 alone. At the same time, unemployment rose. It was a time of considerable hardship for many of those out of work (remember, there was no unemployment insurance or employee benefits to speak of). The National Association of Manufacturers and other anti-union open-shop groups continued their counter-movement to diminish the power of the unions. But the union movement continued to fight.

Employers continued to play the patriotism card (a damning label at the time), and even alleged communist involvement among some of the stronger union members and founders. Employers painted themselves as heroes who would save the nation from the terrible union scourge of the time. Strikebreaking strategies evolved, and vigilantism—on both sides—grew. Violence became associated with some labor negotiations, and new conditions for employment began to form, such as “yellow dog contracts” that workers were required to sign before being hired. These contracts pledged that new hires would never join a union.

At the same time, employers created and promoted their own employee representation organizations or “company unions”—of which they had far greater control and influence. Bitterness was rampant and growing on both sides.

Both sides continued to score periodic victories. Unions still enjoyed a grassroots hold on a vast supply of workers and though not like before—the movement
did enjoy a resurgent momentum throughout the early 20th century. In 1933, President Roosevelt fostered a number of programs designed to quick-start a flagging economy and restore confidence in a nation that appeared divided. Backed by Roosevelt, the congress created the National Recovery Administration Act, whose section 7a specifically gave the right to unions to exist and negotiate with employers. But soon thereafter, the Supreme Court ruled that the NRA was unconstitutional, and 7a was gone.

But union momentum had once again been sparked, and shortly thereafter the National Labor Relations Board was created. Today, the board still oversees collective bargaining activities; conducts elections for union representation; and polices and provides remedy for unfair labor practices. In the same year, the Mine Workers union announced the creation of the Committee for Industrial Organization, which was mostly composed of about a dozen leaders from AFL unions. At first, and for a few years, the AFL and CIO didn’t exactly see eye to eye on the issues and at times were even antagonistic toward one another. In 1938, the CIO held its first constitutional convention and became the Congress of Industrial Organizations (CIO; yes, the same initials).

Both the AFL and CIO continued to prosper throughout the period and coupled with Roosevelt’s domestic programs—helped to launch and pass a number of ground-breaking social programs such as national social security, unemployment compensation, workers’ compensation and the 1938 federal minimum wage-hour law (which was at the time was 25 cents per hour). After some time co-existing—and although still harboring a few areas of disagreement—both organizations soon came to realize they were fighting essentially the same war.

The stage was set, and the two were united into the AFL-CIO in December 1955.

The Evolution Continues

A year after the NLRB was formed in 1935, Sen. Robert F. Wagner of New York helped to enact another pivotal doctrine—the National Labor Relations Act, known as the Wagner Act. The crucial act built on the now-defunct NRA Section 7a to further establish a legal basis for unions and set in place collective bargaining as a matter of law—not of choice. It also provided for secret ballot elections for the choosing of unions and protected union members from employer intimida-
tion. The Wagner Act eventually became the Landrum Griffin Act in 1959, and it is still in effect today. Though a positive step at the time, provisions of these latter acts would come back to hamper union progress for years to come.

Unions and the collective-bargaining process continued to evolve until inroads were made into virtually every facet of private and public employment. Government employees, teachers, firefighters and musicians found representation in unions. Unions broke new ground, representing and assisting workers with new hurdles. In fact, the Civil Rights Act of 1964 was strongly supported by the AFL-CIO and was a significant step toward equal rights for minorities. Despite pitfalls along the way, unions and the collective bargaining process still enjoyed an overall solid-and respected—reputation.

Unions Today

But employers never went away, and today’s unions don’t enjoy the growth and success of its predecessors. Market is king, and employers control the purse strings. Years of willingness by many workers to forgo union loyalty in favor of putting food on the table for themselves and their families has fostered a growing ambivalence toward union membership that the unions find hard to battle. Though still alive in small (mostly urban) pockets of society, the mass, intense union loyalty is all but gone. By the late 1970s some 20 states had banned the closed shop through right-to-work laws.

By the 1980s, many unions sought to save some existing jobs through concessions of earlier gains, and then in 1993 fought unsuccessfully against the passage of the North American Free Trade Agreement, which they feared would spawn membership job losses if ratified. Public sentiment for unions waned, and in 1981, possibly the most dramatic—and watched—defeat came when Ronald Reagan broke the air-traffic controllers’ strike. Manufacturing—where unions were traditionally strong—declined and a shift to service industries began to take place. Even the unions themselves hurt their own cause through periodic episodes of corruption, scandal and outright arrogance. By 1997, unions accounted for only 14 percent of non-agricultural wage and salary workers, down from 33 percent in 1953.

Of course there’s much, much more to the story Unionism, representation and collective-bargaining is a complex, passionate and emotional topic. I’m sure both sides could regale the listener with far more justification and substantiation for their cause than I’ve been able to render. As for our group, the construction industry, we still stand as a house divided—sort of. Though we have our share of staunchly union and open-shop firms, we often welcome both union and non-union workers onto many projects . . . albeit through separate gates.

Though hardly scientific, I have noticed in my own dealings that—with the exception of downtown or high-profile projects—today’s owners do appear to be growing even more ambivalent toward 100 percent union representation on their jobs. Most often, they simply want what they perceive as the best economy—the most bang for their buck—whether it be union or not. I guess then, at that point, it’s up to each side to make their own case as to what constitutes “economy” . . . and let the best man win.

About the Author

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