TRANSPORTATION LABOR RELATIONS— A LOOK AHEAD

By Colin Barrett*

In the parlance of business management theory, labor is one of the many inputs in the process of producing goods and services in an economic environment.

From this management-oriented vantage, labor is thus approximately on a par with such other elements of input as capital, plant and equipment, etc. In the labor-intensive transportation industry it is an especially important input—but it remains, nevertheless, only one of many needed inputs in the performance of transportation services.

Yet, however, accurate this view may be, however conducive to sober business decision-making, its dehumanized character tends to obscure the very important fact that the word "labor" also represents *people*. While at one level this may seem so obvious as not to require mention, it is nevertheless all too easy for the business manager to forget in his decision-making activities that—unlike any other element of operational input—labor constitutes individual men and women, with all the wants, the frailties and, above all, the emotionality of the human species.

On one plane the exigencies of day-to-day operations require the manager to consider "labor" or "the union" as a depersonalized entity. Yet at the same time he must be constantly aware that he is dealing with human beings, and in one of the most sensitive areas of human relations. It is a dichotomy that may sometimes force management decisions which, if viewed in the cold light of logic, may seem questionable—because the purely rational decision would be abysmally wrong in the context of the human environment in which they will be carried out.

Perhaps the clearest illustrations of the peculiar requirements of labor relations may be gleaned from a recently published book entitled *Working*, by Studs Terkel—a book which, in the author's view, should be required reading for all business executives engaged in labor relations activities.[1] The book is a series of tape-recorded interviews with individuals in numerous occupations, and casts an intensely human light on the many levels of labor on which our economic structure is based. Consider, for example, the plight of a man who picks fights with co-workers, purposely makes mistakes which spoil his work, deliberately taunts his supervisors—anything to break the monotony of a job he considers so boring that his most important job-related objective of each day is simply to reach "quittin' time."

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1. Published (1974) by Pantheon Books, division of Random House, Inc.

Because of this human side of labor—especially in an era when personal dignity, self-fulfillment and fundamentally individual goal-attainment have become so culturally important—perhaps no other area of business management offers so many problems and is so potentially disruptive to an enterprise as is labor. Indeed, the frustrations and difficulties of labor relations appear to play a significant role in the increasing tendency toward automation in the U.S. business community. Not infrequently, even where strictly rational considerations might dictate otherwise, companies will move toward automation because of the psychological desires of business managers to avoid the complexities of dealing with the pressures of labor.

Those pressures are not going to be easing in the foreseeable future; if anything, in fact, they will be even stronger. In our current inflationary economic climate, labor demands will be greater than ever before. Not only do workers want to offset the impact of inflation, but they are increasingly demanding a larger share of profits. The workers know it is their labor that makes it directly possible for business to manufacture goods and provide services, and, in their eyes, managers, owners and investors are little more than parasites living off the fruit of their toiling. While those more familiar with managerial complexities and capital needs may see another side to the picture, for the average worker these are simply words and phrases used to deprive him of what he views as his fair share of the proceeds of the work he does.

Nor are we likely to see any dramatic advances in productivity. Labor has grown far too sophisticated to ignore questions of working conditions, automation, etc., in negotiations. Along with the pressure for higher wages and fringe benefits there will be pressure for longer vacations, shorter work-weeks and more holidays—each decreasing the worker's available time on the job—while at the same time there will be strong resistance to work quotas or other approaches to increasing productivity. As for automation, not only will unions continue to fight layoffs—even by attrition—but the tight money market, which makes it more difficult to find the necessary capital investment, and the national energy problems (since it takes energy to run machinery) mitigate against any strong advances here.

This bodes particularly ill for the railroads, to whom labor problems are so important a part of their current financial difficulties. Work rules and seniority districts designed for the rail operations of 50 years ago or more continue to impede progress in that industry, and union leaders show few signs of relenting. Trustees of the Central of New Jersey did reach some extraordinary agreements with unions to allow improved services—but in this case it was a clear choice of take these actions or

close down the railroad. Unions may be expected to continue to give ground only grudgingly, if at all, on these important issues.

What all this adds up to is a strong potential for more strikes of the type that have impeded U.S. transportation during the last few years, as labor pressures continue and intensify.

Hopefully, if and when these strikes do occur, they may prod Congress to again consider legislation outlawing them. This is especially important for the railroad industry; every time a rail strike takes place, Congress finds itself compelled to intercede with emergency legislation to prevent the kind of economic catastrophe that would strike the country in the event of a prolonged national rail stoppage. To understand the full impact of such a stoppage, consider the problems of Great Britain—a much smaller nation with, therefore, much more potential for shifting needed traffic to other modes—encountered due to the slowdowns of the rail engineers last winter.

Official government projections indicate the magnitude of the damage to this country's economy that could be done by a national railroad strike. Approximately 1.5 million workers would be unemployed by the end of the first week of a strike; for each additional week, another 1.5 million would be added to the unemployment rolls. The Gross National Product would be cut by $12-15 billion each week of the strike. The electric power industry, which depends heavily on coal, would be severely hurt. Within a week, mining industries would feel serious harm. Copper production would stop within a week or 10 days; steel production within two weeks. The list goes on well beyond these.[2]

Nor are the problems of transportation strikes limited to the rail industry. We had a hint of the impact of a national truck strike last winter, during the walkout of the independent owner-operators—and it must be remembered that owner-operators constitute but a small fraction of the industry's labor force. The 1970 Chicago-areaTeamster strike, lasting 12 weeks, cost the midwest an estimated $1.5 billion, forced layoffs of tens of thousands of workers, and drove a number of trucking companies out of business. Maritime strikes since 1962 have cost the nation an estimated $14.6 billion; the 1971 west coast shutdown alone brought unemployment of nearly 200,000. The effect of airlines strikes may be measured by the 1966 machinists' walkout, lasting 43 days and aimed at five major trunk carriers; 150,000 passengers a day were grounded, the struck carriers lost $7 million a day, and indirect losses to other sectors of the economy were

2. Testimony by Paul McCracken, Chairman of the Council of Economic Advisors, before the House Committee on Interstate and Foreign Commerce, 1970.

in the hundreds of millions.[3]

With these facts in mind, Representative James Harvey and Senator Bob Packwood sponsored proposed legislation in the 92nd Congress which would have forbidden railroad strikes; instead, binding arbitration procedures were proposed, with Administration support.[4] By very close votes in both houses, the legislation was defeated. A last-ditch effort of Senator Packwood to attach his bill as an amendment to the minimum-wage bill in the summer of 1972 was sabotaged when the White House abruptly withdrew its backing—apparently feeling that, in an election year, it could not afford to so seriously offend the unions.

There are some indications that the unions are growing more amenable to no-strike provisos, such as the experimental agreement signed by the Steelworkers to eliminate the possibility of a steel industry strike in 1974. But the unions are still adamant that they will not accept legislative compulsion in this area—and, in view of the composition of the present Congress, prospects for no-strike transportation legislation are very dim for the foreseeable future.

At the same time, there are some indications that businesses may have to become a lot more accustomed to the problems of unions and strikes, not only in the transportation industry but in all sectors of the economy. Unions are known to be strongly opposed to so-called "right to work" laws, which forbid compulsory union membership as a condition of employment. Right now, under permissive federal statutes, some states have and some do not have such laws on the books. But the unions are pressing for federal pre-emption in this area. Increased power for the unions to conscript members in this fashion would greatly strengthen them in their contract negotiations, and intensify their ability to cause widespread economic harm through strikes.

There is, however, one small bright spot in the picture. Although no-one really made an issue of it at the time, there was some question as to the legality of the independent truckers' united action in stopping work last winter. Recent rulings of the National Labor Relations Board in several cases in which the independents proposed to unionize led to the conclusion that they could not legally do so. Citing such things as the fact that independents own their own vehicles and have considerable operational freedom, the Board held that independents are not employees, who can organize in unions; they are contractors, and therefore not union

3. "Transport Strikes—Economic Impact!", published by the Transportation Association of America, March, 1973.

4. S. 2060 and S. 3232, introduced by Senator Packwood, and H.R. 9989, introduced by Representative Harvey.

material. In sum, it held that the independents are themselves business entrepreneurs—and, to rub it in, the Board also held that non-owner drivers who work for the independents are employees of the independents themselves, not of the carrier companies with whom the independents have contracted.[5]

This raises an interesting point: If the independent truckers are to be considered, as determined by NLRB, to be private businessmen in their own rights, then are they not subject to all the laws applicable to business—including anti-trust laws? And would the anti-trust laws not prohibit unified action of just the type that took place during the stand-down in January and February of this year? Obviously there are many questions still to be finally decided here, including the court system's acceptance of the NLRB's decisions. But those decisions raise at least the possibility that in the future such work stoppages may be found illegal.

But the independent truckers represent a very minor segment of the overall transporation labor picture—and elsewhere in that picture it appears that strong labor unions, with full legal right to strike, will remain the rule. This being the case, the question of how strikes are conducted becomes important.

Under present law, strikers are entitled to several forms of government financial assistance—welfare payments, food stamps, even in two states[6] unemployment compensation. Adding to these payments the money available through non-government sources—including the United Way, which has a strong union affiliation—striking workers can draw up to $300 a month or more while a strike lasts. By thus easing the financial pressure on the strikers, this serves to unbalance the economic scales in the collective bargaining process.

Several recent Congressional efforts to ban food stamps for strikers have failed[7]—but the Department of Agriculture last year promulgated tighter regulations which would at least ban food stamps for those participating in strikes declared illegal in the courts, and which would also take unions and their personnel out of the food-stamp dispensing business.[8]

5. *George Transfer & Rigging Co., Inc.*, 208 NLRB No. 25; *Kreitz Motor Express, Inc.*, 210 NLRB No. 11, and *Daily Express, Inc.*, 211 NLRB No. 19.

6. New York and Rhode Island, both of which—after waiting periods—permit payment of unemployment compensation to strikers.

7. On three occasions over the past two years the House of Representatives voted favorably on such proposals; but they were turned down by the Senate by large margins, and were eliminated in legislative conference. Subsequent efforts failed in both Houses.

8. Food Stamp Program, notice of proposed rulemaking issued by the Food and Nutrition Service of the Deparment of Agriculture (7 CFR 270, 271, 272, 273, 274), published in the *Federal Register* January 29, 1974 (39 FR 3642).

This last is especially significant, in that it would reduce the potential for fraudulent dispensation of food stamps; former Illinois Governor Richard B. Ogilvie publicly estimated that some $230,000 in food stamps were passed out illegally during the 1970 Teamsters strike in Chicago, where union personnel graciously "helped" the government administer the program.[9]

It must be recognized, however, that prospects are not bright for definitive legislation or administrative action in this area. Again, the make-up of the current Congress, with its broad pro-labor sentiment, is responsible. The chance for strong action to ban governmental financial aid to strikers is near zero through 1976, with longer-term prospects dependent on what happens in politics after that.

Somewhat more encouraging prospects are offered by the so-called Super Tire case, in which two automotive tire companies are challenging New Jersey policies of granting welfare assistance to strikers. The companies—Super Tire Engineering Co. and the Supercap Corp.—were struck by the Teamsters in 1971; the strike lasted six weeks, during which many of the strikers received welfare payments from the state. It is these payments, and the policies permitting them which have been challenged by the companies.

This is not the first time such a lawsuit has been filed. But previous efforts have failed because, by the time the cases came up for hearing, the strikes were over; under these circumstances, it was held, the cases were moot. The same thing happened to Super Tire and Supercap—this time the Supreme Court ruled that, even though this particular strike was long past, the issue had signisignificance for the future and the parties were entitled to a full trial.[10] Now the case is once more back in the court system for a decision on the merits.

The particular significance of this case is that it places the matter in a forum not subject to the political pressures of elections and lobbying. Should the companies win, the effect could be widespread and have a significant impact on collective bargaining disputes for the indefinite future.

The philosophic problem posed by this question of public financial aid to strikers is one worth discussion. The accusation is often made that those favoring an end to this assistance propose to "starve workers into submission," and to "wage war on women and children" by depriving the

9. Reported in "Labor Strikes, Public Pays!", published by the Transportation Association of America.

10. *Super Tire Engineering Co., et al. v. Lloyd W. McCorkle, et al.*, case No. 72-1554, decided April 16, 1974, by the U.S. Supreme Court.

strikers' families of the wherewithal to purchase food and shelter. But such propagandistic rhetoric misses the point.

A striker is eligible for public aid only because of his own voluntary action in becoming a striker. He chose to walk off his job, in order to try to gain certain personal benefits from his employer. In a nation where there are still millions of genuinely poor individuals, who would lack food and shelter without government aid, it does not seem appropriate to divert funds to those who have voluntarily elected temporary poverty in order to improve their own economic lot without benefit to anyone else.

A flaw in this argument is that an indeterminate number of strikers are not voluntarily on strike, but are compelled to join their fellow union members. As a practical matter, it is simply not feasible to attempt to segregate these individuals, who may have voted against a strike, from their pro-strike co-workers. But what we have here is not a case in favor of public aid to strikers — it is a very strong case against compulsory unionization. No one should be required to leave his job against both his own and his employer's will. Union propaganda has made "scab" a dirty word in the American lexicon — but in actual fact a scab is no more nor less than a worker who disagrees with those of his co-workers who want to strike, and would rather go on working. Many believe he should have that right, and find the unions' tactic of first compelling him to strike, and then using the plight they have put him in as justification for public aid to all strikers, to be hypocritical and distasteful in the extreme.

Another strike-related statutory question relates to the violence and vandalism that often accompanies labor disputes. In some instances, rather than go on strike, workers will indulge in industrial sabotage efforts to win their point; in others they will strike and aim their violence at those crossing the picket lines; in still others, where strikes succeed in closing a business down, they will use vandalism to bring increased pressure on the recalcitrant employer.

Such violence is, of course, contrary to state criminal laws. But in many areas law-enforcement officials are secretly (or not-so-secretly) sympathetic to the workers, or are reluctant to act strongly for fear of inciting still greater violence; in either case, it is not uncommon for local police to look the other way when labor violence occurs. Under the so-called Hobbs Act,[11] the Congress made labor-related violence a federal crime — but the Supreme Court subsequently held that the Hobbs Act did not apply to violence committed in pursuit of what it called "legitimate union goals."[12] There was introduced in the last Congress a bill to amend the Hobbs Act so as to eliminate this loophole.[13] Unfortunately, it failed to

11. Section 1951, title 18, U.S. Code.
12. *U.S. v. Enmons*, 93 S. Ct. 1007 (1973).

win enactment; and the present Congress' attitude is not likely to be especially favorable in view of the opposition that has been expressed by organized labor. Thus far discussion has focused on the conduct of strikes on labor's side of the fence. There is also, in the air transportation area, legislation which may have an impact on management's approach to strikes.

Unlike railroads and motor carriers, airlines do not negotiate contracts on an industry-wide basis; rather, each airline deals with the unions separately. In theory, this means each carrier-union negotiation is an entirely separate and distinct entity. In practice, however, reality being what it is, there is a very strong element of carry-over from one negotiation to the next; that is, once an air union has reached one agreement with one carrier, it is very reluctant indeed to settle for anything less in its subsequent talks with other carriers. As a result, the union-carrier negotiations are of considerable interest to all other carriers.

The industry has recognized this mutuality in their much-publicized Mutual Aid Agreement, under which all airlines come to the financial aid of any line so unfortunate as to sustain a strike. In part, this simply reflects the economics of air transportation; when one carrier is struck, its competitors will normally pick up a "windfall" of the traffic that otherwise would have moved via the struck carrier. And in part it is a recognition of the reality that a strike-enforced labor settlement on one line will very quickly become the *starting point* for union bargaining with other carriers.

The airlines' mutual-aid agreement is quite distinct from the question of public assistance to strikers, since the payments to the struck airline come from its peers in private industry and not out of the public purse. A better comparison would be with union strike funds; just as the union-member employees of other lines help finance the strikers, so do the airlines themselves help carry the economic burden for *their* side of the dispute. And, contrary to some very unrealistic propaganda put out by the unions—who are, needless to say, exceedingly hostile to the mutual-aid pact—no airline gains financially by a strike; mutual-aid payments are not even high enough to wholly offset the struck carrier's losses, let alone improve its financial condition.

Currently legislation is pending before the Congress to specifically outlaw the Mutual Aid Agreement.[14] The proposed legislation would override rulings of the Civil Aeronautics Board that the carriers' agree-

13. H.R. 8580 in the House, S. 281 in the Senate.

14. H.R. 614 and numerous other similar bills in the House; S. 306 in the Senate.

ment is legal.[15] Although a good deal of space has been devoted to the question of strikes and their ramifications, because of the leading role this type of activity plays in the labor area, no discussion of labor can stop here. Another very important consideration is the increasing intervention by government agencies in the transportation industry's—and, in fact, all of the business community's—relations with its workers.

The Occupational Safety and Health Standards, for example, include specific standards applicable to longshore work and to materials handling and storage, as well as many other regulations affecting, directly or indirectly, the transporation industry. While there is no question of the need for protection of employee safety and health on the job—and there is a good deal of room for improvement in these areas—it is doubtful whether the broad regulatory type of approach is the proper vehicle to handle this problem. What too often happens is that companies with even extremely high safety records must pay the penalty, in terms of increased protection costs, for the records of those with prior safety histories.

Questions of discrimination on the basis of race or sex constitute another area in which there is increasing governmental intervention in the employer-employee relationship. In a nation where schoolchildren are bussed miles across town to achieve racial balance in a community's school system, where girls are encouraged to play sports with boys even to the point of being eligible for college football, it does not seem likely that this pressure is going to relax any time in the foreseeable future.

The transportation industry appears to have been singled out as a particular target in this area—whether justly or unjustly is a question that will be up to the courts to decide. The Justice Department last year filed the first class-action racial discrimination suit against the motor carrier industry, naming 349 major trucking companies, the industry's bargaining agent—Trucking Employers, Inc.—as well as the International Association of Machinists, the Teamsters Union, and a Teamsters suborganization as defendants. The suit accused them of systematically discriminating against blacks and persons of Spanish ancestry.[16]

Basically, the carriers and unions were accused of relegating minority workers to lower-paid, less desirable jobs, and of hiring inadequate numbers of minority representatives. Consent decrees signed by a number of the carrier defendants indicate what the Administration wants—hiring

15. Following a four-year investigation of the mutual-aid agreement, the CAB concluded that "the mutual-aid agreement represents a legitimate resort by the carriers to economic self-help, in a manner that is in no way inconsistent with the national labor policy." Statement issued February, 1973.

16. Filed March 20, 1974, in U.S. district court in Washington, D.C.

quotas designed to bring minority representation in *each job classification* in line with the community's population distribution, plus back pay for minority workers who have allegedly been kept out of better-pay jobs.[17]

This lawsuit reflects an increasing tendency of the government to intervene in the hiring, promotion and firing process to further social objectives. For example, employers may no longer test applicants as to their qualifications for jobs if the test is found to discriminate, directly or indirectly, against any minority group. In one recent instance, it was held that a company could not enforce its policy of discharging workers whose pay had been subject to excessive garnishment—on the ground that more blacks than whites had their pay garnisheed. Clearly this is a factor that business is going to have to live with for a long time to come.

In this connection, one other matter warrants mention—the question of a prospective employee's past criminal record as a hiring criterion. Thus far, at least, it has not been suggested that employers should be compelled to hire known criminals; but there are moves afoot which would at least make it much more difficult for an employer to exercise his freedom in this area. The federal government is now developing central, computerized data banks of criminal records—but there are strong pressures, at both the administrative and the legislative level, to permit industry no access whatever to these records. Especially in view of the very considerable attention currently being devoted to the subject of cargo security by both government and private industry, it seems unrealistic to bar management from checking a prospective employee's past criminal record before hiring him and giving him access to cargoes that are susceptible to pilferage and theft.

In conclusion, the outlook for labor, from the management viewpoint, appears to be one of increased pressures in the areas of wages, benefits and working conditions, and a growing level of governmental intervention in the personnel management field. Both the law and its administration will continue to impose sharp restrictions on the freedom of business to deal with its labor problems. The effectiveness of business, and especially the labor-intensive transportation industry, in handling these problems is going to depend in great part to how well it adjusts to the new and increased pressures on it—and how well labor, both organizationally and at the individual-worker level, responds to the increased need for respon-

17. The partial consent decree was signed by Arkansas-Best Freight System, Inc.; Branch Motor Express Co.; Consolidated Freightways, Inc.; I.M.L. Freight, Inc.; Mason-Dixon Lines, Inc.; Pacific Intermountain Express Co., and Smith's Transfer Corp. The carriers did not admit to violations of the law, but agreed to try to meet hiring goals for the future. Back pay was not involved in the decree.

sibility that has been thrust upon *it*. In the final analysis, both labor and management are on the same side; neither one can function if they do not cooperate in striving toward their primary objective of getting the job done. If they ever really lose sight of this fact, this nation is in for probably more serious economic trouble than it has ever before experienced—a disturbing, and, it is to be hoped, unrealistic, prospect.