Is Coalition Bargaining Legal

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NOTES

Is Coalition Bargaining Legal?

Labor leaders throughout the country may soon be echoing an Al Capp cartoon character’s slogan, “What’s good for General Bullmoose is good for the U.S.A.” In real life it is one of Bullmoose’s economic counterparts, the General Electric Company, which may inadvertently be determining what’s “good for the country” or at least what’s good for labor. Of course, in the eyes of labor leaders, the two are synonymous.

General Electric (GE), which traditionally has its share of labor problems, is currently embroiled in a bitter dispute with several labor unions over the legality of a phenomenon new to the labor scene and known as “coalition” bargaining. In simplest terms, “coalition” bargaining means a type of negotiation where all unions which bargain with a particular employer or group of employers present identical demands in unison, negotiating for a common contract for all. This type of bargaining is concededly legal when the

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1 Most prominent among GE’s problems has been labor’s attack on the alleged “take it or leave it” attitude of GE negotiators. This refers to the company policy of determining the best possible package it can afford to offer its workers, then setting this offer on the contract table with nothing held back in reserve for “concessions.” The company has also followed the practice of communicating its contract offers directly to the workers in hopes that they will influence the union leadership to accept them. In 1960, officials of the IUE challenged this practice by charging that GE had refused to bargain within the meaning of § 8(a) (5) of the Labor Management Relations Act (Taft-Hartley Act), 61 Stat. 140 (1947), 29 U.S.C. § 158(a) (5) (1964) [hereinafter cited as LMRA]. In a hearing before the National Labor Relations Board, General Elec. Co., 57 L.R.R.M. 1491 (1964), counsel for the IUE argued that the practice amounted to an undermining of the union leadership through by-passing it with an offer made directly to the employees and through a refusal to bargain about wages, hours, and conditions of employment — all “mandatory” subjects of bargaining under the act. Id. at 1498, 1501. The NLRB found that the company’s bargaining tactics were tantamount to bad faith and therefore amounted to a refusal to bargain. Id. at 1500. On appeal to the District of Columbia Court of Appeals it was determined that the action should be heard by the Second Circuit. IUE v. NLRB, 343 F.2d 327 (D.C. Cir. 1965). The Second Circuit granted GE’s motion to intervene and dismissed a union petition for review in a series of unreported motions. These determinations, subsequently appealed to the Supreme Court, were vacated and remanded. IUE v. NLRB, 582 U.S. 366 (1966). On remand the Second Circuit consolidated two of the three cases, dismissing the third. NLRB v. General Elec. Co., 358 F.2d 292 (2d Cir.), cert. denied, 35 U.S.L. WEEK 3138 (U.S. Oct. 18, 1966) (No. 341). It should be noted that throughout this protracted litigation there has yet to be a decision on the merits. Pending disposition on appeal, however, the company has adhered to its policy of holding nothing back for “concessions,” although some modifications of company proposals were made in the 1966 GE-IUE negotiations.
company agrees to it. The question which has never been conclusively decided, however, is whether such bargaining is legal when the company refuses to meet with a coalition committee and the unions attempt to force the issue. It is precisely this question which arose in *McLeod v. General Elec. Co.*, a test case involving GE and the International Union of Electrical Workers (IUE). It is the purpose of this Note to analyze the *McLeod* case, the legal arguments of both sides, the economic factors underlying this new attempt at collectivization, and to present some tentative conclusions as to the legality of coalition bargaining in varying factual contexts.


In recent years, leaders of the many unions dealing with GE have become increasingly concerned over what they consider to be a disparity of bargaining power between the company and the representatives of its employees. GE bargains on a national scale with only three of the eighty-odd unions with which it maintains contracts, the IUE, the United Electrical, Radio, and Machine Workers (UE), and the Pattern Makers' League. The practice has been to negotiate national contracts with these three unions, supplemented by local agreements designed to cover special local problems and conditions. For this purpose, the IUE traditionally elects a national conference board, comprised of members of both the international and local unions, which in turn elects a negotiating committee of from ten to fifteen members to meet with GE representatives and establish the national contract.

General Electric bargains on a decentralized basis with all the remaining unions, executing only local contracts based upon a program formulated by the central New York office. Although local employee relations managers are empowered to make minor adjustments in company proposals to cope with local situations, the basic "package" is dictated and closely controlled by the central office, and serious deviations are forbidden. The final result is almost

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4 Id. at 693.

5 Ibid.

6 *Id.* at 694.
complete uniformity in the proposals offered to the various local unions throughout the country, a result made feasible due to the fact that almost all union contracts with GE terminate on the same date.7

Union leaders have severely criticized GE's bargaining policy, claiming that the disparity in bargaining power between a closely-supervised industrial giant and a small local union leads to one-sided bargaining and a virtual dictation of the terms of employment by GE. To alleviate the situation and to adopt a coordinated approach in the impending 1966 negotiations with GE and Westinghouse, AFL-CIO President George Meaney in October 1965, called a meeting of representatives of the eight most prominent unions in the electrical products field.8 This conference produced the Committee on Collective Bargaining which in turn named a Steering Committee9 to study existing contracts and formulate a set of unified national goals on wages and working conditions.10 At the annual AFL-CIO convention in December, a resolution was adopted pledging the unions' full support to the efforts of the Committee on Collective Bargaining.

On March 15, 1966, the eight cooperating unions produced a pamphlet entitled "Program for Progress," which set forth a unified

7 Ibid.
8 Ibid. The eight unions were the IUE, the International Association of Machinists (IAM), the United Automobile, Aerospace, and Agricultural Implement Workers (UAW), the International Brotherhood of Electrical Workers (IBEW), the American Federation of Technical Employees (AFTE), the Sheet Metal Workers International Alliance (SMWIA), the Allied Industrial Workers (AIW), and the American Flint Glass Workers (AFGW). Of these, the IUE was by far the dominant union, representing approximately 80,000 of the company's total worker complement of 290,000. Post-Hearing Brief for Respondent, p. 10, McLeod v. General Elec. Co., 257 F. Supp. 690 (S.D.N.Y. 1966). By contrast the IAM, the next most prominent union in terms of number of employees represented, was certified as bargaining agent for only 12,900 employees. At least one commentator has hinted, however, that the coalition was really dominated by the UAW, with whom the IUE has contemplated a merger. Northrup, Boulwarism v. Coalitionism — The 1966 GE Negotiations, 5 MANAGEMENT PERSONNEL Q. 2 (1966).
9 257 F. Supp. at 694-95.
10 Post-Hearing Brief for Respondent, supra note 8, at 12-13. Although GE stated in its brief that this was the first time the AFL-CIO had ever formed such a committee, Mr. Northrup indicates the coalition committee was formed for the 1960 negotiations, under the leadership of IUE President Phillip Carey. This coalition fell apart, however, when it became obvious that Mr. Carey was determined to call a strike against GE. All the other members signed individual contracts with the company, and only a few locals of the IAM and the AFTE followed the IUE out on strike. See Northrup, supra note 8. The 1966 coalition, on the other hand, was highly publicized as was the work of the committee on collective bargaining, and the eight unions constantly stressed the unity concept.
demand for improvements in nine specific contract clauses. The
document ended with a "Resolution on Unity," which attacked the
divide-and-conquer policies of the GE and Westinghouse bargaining
leaders and resolved to meet the companies with a unified bargain-
ing front of the eight member unions. At the same time, the first
of a series of publications entitled "Unity" was distributed to GE
and Westinghouse workers, with a promise that more issues would
be published from time to time to keep workers informed of progress
in the eight-union bargaining drive. Later, during the course of
"grass roots" strategy meetings between local union leaders and
members of the committee, GE charged that several prominent
persons affiliated with the Committee had specifically pledged that
"no union [of the eight] would sign a contract unless all signed." 14

Shortly after the formation of the Committee on Collective Bar-
gaining, the Steering Committee sent a telegram to GE's bargaining
chairman, Phillip D. Moore, raising certain pension and social se-
curity issues. The response to this telegram indicated the approach
GE was going to adopt toward the eight-union unified effort. Mr.
Moore replied:

We note that your telegram listed the names of several repre-
sentatives of other unions. However, this telegram is addressed to

11 The nine clauses included three economic clauses dealing with wages, holidays
and vacations, and income and employment security. The other improvements de-
manded were a full arbitration clause without restrictions, a full union shop, an anti-
discrimination clause, an improved pension and insurance program, and continuity of
service and automation security provisions. 257 F. Supp. at 696 n.4 & 5.
12 Id. at 696-97.
13 Id. at 697.
14 Ibid. GE made two specific accusations along this line. The first was that Local
320 of the IUE had distributed a handbill with the following message for its mem-
bership: "Despite the Company's efforts to confuse you, the eight unions dealing with
General Electric still are abiding and will abide by their unity resolution, and that is
for no one to sign a contract with General Electric until all parties sign." Post-Hearing
Brief for Respondent, supra note 8, at 27.

During the hearing, GE also called as a witness a reporter for a Ft. Wayne, Indiana
newspaper, who attributed a similar oral statement to John Callahan, chairman of the
at 697. Despite this evidence, however, Judge Frankel found that there never was any
agreement, express or implied, among the cooperating unions that none would sign a
contract unless all signed. He further stated:

It was tacitly understood that before any of [the unions] . . . abandoned
any of the agreed "national goals," they would inform and consult with each
other. The cooperative arrangements were instinct with the objective of ap-
proaching, as nearly as possible, the kind of unitary stance respondent regu-
larly took vis-a-vis the several unions. But each union retained the "au-
tonous" status affirmed in the AFL-CIO resolution of December 1965, so
that each was free at all times to sign with respondent on terms it deemed
acceptable for its members. Ibid.
you as a representative of the IUE since we do not bargain with their unions at the national level. We assume, of course, that these gentlemen will continue to be in touch with their respective local union officials who in turn are always free to discuss appropriate matters covered by their local contracts with local management.¹⁵

Further correspondence between Mr. Moore and Mr. Callahan, the IUE representative, discussed the feasibility of preliminary bargaining meetings to ascertain the aims of both sides prior to the onset of formal negotiations in August 1966. One of these letters from GE was answered by the eight-union coalition proposing pre-negotiation meetings between GE and the Steering Committee. GE remained firm, however, and replied that it would talk only with the IUE and did not want to foster the “illusion” that it would bargain jointly and nationally with the other seven unions.¹⁶ On March 25, 1966, GE’s President, Fred J. Borch, telegraphed a flat rejection of the Committee’s request for a meeting with the coalition.¹⁷

Thereafter the IUE demonstrated a marked change in its attitude toward coalition bargaining. In a letter to Mr. Moore dated April 13, 1966, Mr. Callahan expressed disappointment that the company would not meet with the joint Committee, but he announced that the IUE was ready for informal meetings between its own negotiating committee and the GE team. The company readily agreed, and an IUE-GE conference was scheduled for 10 a.m. on May 4 at the company’s offices.

When the GE committee entered the conference room, it was confronted with an IUE committee which included one member from each of the other seven unions with which GE had specifically refused to meet. IUE spokesmen later stated that although none of these seven “members” had voting power, their presence was necessary “to give the benefit of their experience in negotiating with [GE to the IUE] . . . and to supply adequate inter-union communication as a means of avoiding the ‘whipsawing’ [GE] was thought to have accomplished in the past.”¹⁸

¹⁵ Id. at 698.
¹⁶ Id. at 699. A second letter was sent to David Lasser, Chairman of the Steering Committee, in which Mr. Moore protested the coalition approach of the unions and stated: “We are not responding to your Steering Committee’s two recent letters because by doing so it might create the mistaken impression that national bargaining with local bargaining units is in effect; this is clearly not the case nor do we believe it should be.” Ibid. ¹⁷ Id. at 700.
¹⁸ Ibid.
According to a hastily conceived plan, Mr. Moore stated that he "must have come to the wrong meeting," that he "would not be a party to 'coalition bargaining,'" and announced that the meeting was adjourned until 2 p.m., at which time he would meet with the IUE committee if it would expunge itself of the seven objectionable members. As the union insisted it had a right to choose the members of its own bargaining committee, no further meetings were held.

Both GE and the IUE thereafter filed unfair labor practice charges with the National Labor Relations Board (NLRB). The IUE charged that GE had violated sections 7, 8(a)(1), and 8(a)(5) of the Labor-Management Relations Act (LMRA) by refusing to bargain with the IUE committee after May 4, 1966. After rejecting GE's complaint and largely because of the complexity of the charges, the NLRB decided to petition under section 10(j) of the LMRA for a temporary injunction requiring GE to bargain.

The injunction hearing before Judge Frankel of the United States District Court for the Southern District of New York lasted four days. At the close of the evidence, Judge Frankel granted the injunction, holding that the company had no lawful basis in fact for refusing to bargain. After a special session of the Second Circuit Court of Appeals reversed the decision of Judge Frankel, the

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19 Some of the members of the IUE committee appeared at the meeting prominently displaying lapel buttons which identified them as members of other unions. When this was reported to Mr. Moore, he held a quick strategy meeting with his committee, which decided that it should not meet with a union committee which included the seven outsiders. The committee was advised by counsel that this maneuver by the unions was a blatant attempt to take advantage of the NLRB’s recent ruling in American Radiator & Standard Sanitary Corp., 60 L.R.R.M. 1385 (1965) (appeal to 6th Cir. pending), discussed in text accompanying notes 45-51 infra. The committee apparently concluded it should disregard the decision, which was deemed unsound by GE’s counsel. 257 F. Supp. at 700-01.

20 Id. at 701.

21 Ibid.

22 Id. at 703.


24 257 F. Supp. at 692.


26 257 F. Supp. at 690.

27 Id. at 706.

Supreme Court in a per curiam opinion reversed the decision of the Second Circuit.\(^{29}\)

Although the basic question of the legality of coalition bargaining in the GE-IUE case must now be decided by the NLRB, Judge Frankel did much of the spadework in formulating the issues and unearthing prior case law on the subject. One basic problem, however, left unanswered by the opinion was whether, and on what basis, coalition bargaining could ever be illegal. The court never discussed this problem, except to explain briefly the actions the unions could have taken which would have been concededly lawful.\(^{30}\) Judge Frankel stated that even if the court could assume coalition bargaining would be illegal under certain circumstances, the GE committee had not remained at the bargaining table long enough to gain any evidence of an illegal union conspiracy to force coalition bargaining on the company. Judge Frankel stated that the union had the right to choose its own committee members, and that the company could not object except under exceptional circumstances\(^{31}\) not present in the instant case. He also asserted that the law welcomes repentance\(^{32}\) and would uphold the right of the IUE to change its mind as to the propriety of coalition bargaining and that the "change of heart"\(^{33}\) by the IUE must be accepted as sincere at the outset. The presence of other union members on the IUE committee was not considered to be sufficient to dispell the belief that the union had abandoned its earlier position on coalition bargaining; the walkout by the GE negotiators was "premature"\(^{34}\) and amounted to a refusal to bargain.


\(^{30}\) See 257 F. Supp. at 704, where Judge Frankel stated the following:

Thus, there is no contention that it was wrong for the several unions dealing with a single enterprise to consult together. Nor is it intimated that the unions offended the law — or behaved questionably in any pertinent sense — when they succeeded in formulating and unanimously endorsing a set of common goals . . . on matters like wages, seniority, holidays, and the like. . . . It is no less permissible for unions so situated to share research, personnel, ideas, and information. They are allowed, in short, to assist each other and discover if possible areas of agreement, of "unity," and of mutual support in dealing with the unified, unitary, centralized management they confront.

\(^{31}\) Id. at 703-04.

\(^{32}\) Id. at 706.

\(^{33}\) Ibid.

\(^{34}\) Ibid.
II. THE MCLEOD CASE IN RETROSPECT

Aside from the basic question of whether coalition bargaining can ever be illegal, the McLeod case seems to present two main issues: (1) Was the company relieved of its duty to bargain by virtue of the fact that it found the composition of the union's committee highly objectionable? and (2) Do the facts of the case present a situation in which the courts can infer a conspiracy that would have the unions "locked in" so as to force coalition bargaining on an unwilling company?

A. Objection to Union Committee Members

Ostensibly, the right of a bargaining party to choose its own committee members would seem to be absolute. Section 7 of the LMRA states:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining . . . .

Its counterpart, section 8(b)(1)(B) provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce "an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." Based on the language of these sections, it is the general rule that a party to collective bargaining is free to select the members of its own bargaining committee, the other party being unable to object or refuse to meet with such duly selected members.

Like most general rules, however, this one is not truly "absolute

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35 The McLeod decision did not deal with the question of whether coalition bargaining would be illegal had the unions, in fact, been "locked in" in an agreement to force coalition bargaining upon the company. The court's opinion that labor unions are free to discuss contract matters among themselves and to assist each other in the formulation of common goals, has led at least one authority to conclude that there is nothing illegal about coalition bargaining. See News & Background Information, 62 LAB. REL. REP. 343 (Aug. 22, 1966). This analysis of the opinion is unfortunate, as the court never decided whether forced coalition bargaining would be unlawful.

39 Standard Oil Co. v. NLRB, 322 F.2d 40 (6th Cir. 1963); NLRB v. Roscoe Skipper, Inc., 213 F.2d 793 (5th Cir. 1954); American Radiator & Standard Sanitary Corp., 60 L.R.R.M. 1385 (1965).
or immutable. The first case to fashion an exception was *NLRB v. Kentucky Util. Co.*, wherein the company refused to bargain with a former employee, fired by the company, and now working for the union. The employee had openly expressed deep hostility toward the company, and, in addition, had expressed the hope that the Tennessee Valley Authority would run it out of business; furthermore, his testimony before the NLRB in a previous unfair labor practice charge had been completely discredited. The union had in fact promised the company that their ex-employee, Braswell, would not be on its negotiating committee. The court felt that under these circumstances, the company was relieved of its duty to bargain upon finding Braswell a member of the union negotiating team. The court stated that the presence of Braswell in the negotiations would reduce them to mere "sham" or "surface" bargaining with a feeling of deep distrust on both sides and cited several previous decisions as illustrative of the fact that the LMRA does not require useless bargaining with no possibility of reaching an agreement.

Another switch in loyalties, this time by a former union employee, led the Third Circuit to sanction a refusal to bargain by the union in *NLRB v. International Ladies' Garment Workers*. The employee arriving at the bargaining table to represent management was a former union man with considerable inside knowledge of union bargaining tactics and policies. He was introduced by the employer's association "tauntingly and laughingly," as if the association had in fact promised the company that their ex-employee, Braswell, would not be on its negotiating committee.

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40 *NLRB v. International Ladies' Garment Workers*, 274 F.2d 376, 378 (3d Cir. 1960).
41 182 F.2d 810 (6th Cir. 1950).
42 *Id.* at 812.
45 The court cited *Timken Roller Bearing Co. v. NLRB*, 161 F.2d 949 (6th Cir. 1947) and *NLRB v. Sands Mfg. Co.*, 306 U.S. 332 (1939) as standing for the proposition that the statutes do not require useless bargaining and that an employer may be relieved of the duty to continue negotiating with the union when conditions indicate that future negotiations will be useless. *But see NLRB v. Sunrise Lumber & Trim Corp.*, 241 F.2d 620 (2d Cir.), *cert. denied*, 355 U.S. 818 (1957) and *NLRB v. Jacobs Mfg. Co.*, 196 F.2d 680 (2d Cir. 1952) which, when read together, hold, in effect, that a certainty on the employer's part that bargaining will become futile or lawless is no excuse for refusing to bargain.
46 274 F.2d 376 (3d Cir. 1960). The case turned on the point that an offer to bargain through such a patently objectionable representative was not an offer to bargain in good faith.
47 *Id.* at 379.
cation, by hiring him, had "put one over" on the union. The court reversed an NLRB order to the contrary and held that under such circumstances, the union was relieved of its duty to bargain since it would be "in form only without good faith negotiating on the other side."

These decisions must be contrasted with the later decision of the Sixth Circuit in Standard Oil Co. v. NLRB and the NLRB decision in American Radiator & Standard Sanitary Corp. In Standard Oil the company was negotiating new contracts at each of four separate Ohio refineries. In order to insure greater uniformity in negotiations, the international union included on its bargaining team at each refinery representatives who were neither the regular international representatives nor members of the local union. The company negotiators objected to the inclusion of these "outsiders" in the union committee and refused to bargain until they left. The court held that the company committed an unfair labor practice by refusing to meet with the union committee and rejected a company argument that this was nothing more than a clandestine attempt to achieve centralized industry-wide bargaining, a proposal the company had previously rejected. The general rule that a party has the right to choose its own bargaining representatives was held to control, since there was no evidence that the union was trying to achieve anything other than plant-by-plant bargaining. The court declined to express any opinion on whether or not a delegation of bargaining authority by the local to the international union would be an unfair labor practice.

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48 Ibid.
50 274 F.2d at 379.
51 322 F.2d 40 (6th Cir. 1965).
52 60 L.R.R.M. 1385 (1965).
53 The Oil, Chemical, and Atomic Workers International Union. Petitioner in the action was Local 11-395 of this union.
54 322 F.2d at 42.
55 Id. at 44.
56 Ibid.
57 Ibid.
58 The case actually involved two charges — one against Standard Oil Co. and one against the union. The basis of the charge against the union was that it had failed to bargain by refusing to sign a contract at one plant after agreement had been reached. The trial examiner found that the local union was acting on orders from the international, that it had therefore ceded its bargaining authority to an organization which was not the statutory bargaining representative of the employees, and that such action was a refusal to bargain on the part of the local union. The NLRB affirmed, but on the grounds that a delay in signing a contract until negotiations were successfully con-
The ink had scarcely dried on the *Standard Oil* opinion before the NLRB extended it to justify a union's inclusion of members of other unions in its bargaining committee. In *American Radiator & Standard Sanitary Corp.*, several unions, in an attempt to gain solidarity in negotiations with a multi-plant employer, formed a steering committee to conduct negotiations for all of them. When the company refused to meet with this committee, the most prominent union in the "coalition" announced that it would meet separately with the employer to discuss individual contracts at each plant. As in *McLeod*, however, the union's bargaining committee included representatives from the other unions, with whom the employer again refused to meet.

The NLRB found that the refusal to meet with the union committee was an unlawful refusal to bargain. The *Standard Oil* case was held to control, absent any "bad faith or ulterior motive" or "unusual or exceptional circumstances," the same two exceptions recognized in the earlier case. The Board could find no such exceptions in *American Radiator* which would transcend the union's right to choose its own bargaining representatives.

It is readily apparent that if the *American Radiator* decision is upheld on appeal, it will be decisive precedent in a situation such as that presented by *McLeod*. Indeed, GE made no attempt to distinguish *American Radiator*, but attacked it as an unsound extension of the *Standard Oil* case. There are factual differences in the two

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58 60 L.R.R.M. 1385 (1965).
59 Id. at 1386.
60 Ibid.
61 Ibid.
62 Ibid.
63 Id. at 1386-87.
64 Ibid.
65 Ibid.
67 60 L.R.R.M. at 1386-87.
68 The case is now pending review in the Sixth Circuit Court of Appeals.
cases, the most obvious being that in Standard Oil the outsiders sitting in on negotiations were only the representatives of the parent international union, whereas in American Radiator they were members of other unions. Nevertheless, Judge Frankel found that in both previous cases the courts had rejected an employer’s position “indistinguishable in principle from the one pressed here.” Cases such as NLRB v. Kentucky Util. Co. were rejected as being “quaint” or “extreme.”

If all the cases which have condoned an employer’s refusal to bargain with an objectionably constituted union committee can be classified as unusual or extreme cases, then that would appear to be the end of GE’s argument. There is, however, a thread of reasoning running throughout Kentucky Util. and NLRB v. International Ladies’ Garment Workers that appears to have been ignored by the courts which later distinguished the cases as being “extreme.” Granted that the fact situations were extreme, the decisions in these cases turned not upon whether a party has a right to choose its own representatives but upon the effect that forcing the company representatives to bargain with a contemporary they found patently obnoxious would have upon the bargaining process. If such a meeting would result only in mutual distrust and a frustration of the basic policy of the LMRA to promote meaningful contract negotiation, then the company would be relieved of its duty to bargain. Thus in Kentucky Util. the rights of the parties to choose their own representatives were subordinated to the policy of the act to promote meaningful bargaining. The same reasoning was used to uphold a refusal to bargain by the union in the Garment Workers’ decision.

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71 182 F.2d 810 (6th Cir. 1950).
72 257 F. Supp. at 704.
73 274 F.2d 376 (3d Cir. 1960).
75 NLRB v. Kentucky Util. Co., supra note 74. The pertinent language of the court is as follows:
Collective bargaining is a two-sided proposition; it does not exist unless both parties enter the negotiations in a good faith effort to reach a satisfactory agreement. Mere lip service to the obligation on the part of the employer has been condemned often by the Courts. ... Just as collective bargaining in form only and lacking in substance has been condemned, certainly collective bargaining in form only without good faith negotiating on the other side should not be required. Id. at 813.
76 The court in Garment Workers quoted and emphasized the language of the Kentucky Util. court. See 274 F.2d at 378.
The reasoning of these cases has been considered by the courts in situations where the objection to bargaining was for reasons other than distaste for the personal representatives. Thus, in *Bausch & Lomb Optical Co.* the NLRB held that an employer could lawfully refuse to bargain with a union conducting a rival business, because the very existence of such a dual relationship on the part of the union created a situation which would drastically change the climate at the bargaining table from one where there would be reasoned discussion in a background of balanced bargaining relations upon which good faith bargaining must rest to one in which, at best, intensified distrust of the Union's motives would be engendered.

Again, it was the effect that requiring negotiation in such an atmosphere would have upon the bargaining process rather than the union's conducting a rival business which relieved the company of its duty to bargain. The *Bausch & Lomb* story also has a sequel. In *NLRB v. David Buttrick Co.*, the company's objection to bargaining was that union pension funds had been utilized to finance a rival manufacturer. The court felt that it was not the connection of the local union agent with the pension fund which gave rise to the difficulty, contrary to what the NLRB had said, but the "inter-relationship of powers and temptations created by the Fund's loans to a competitor ... which gives rise to the problem, without regard to the circumstances leading to the existence of the loans." A situation was thus presented in which the employer's refusal to bargain might be justified.

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78 Id. at 1561. (Footnotes omitted.) (Emphasis added.) Even though there was no evidence of unfair advantage being taken by the union in negotiations prior to their disruption, the court held that the temptation to do so relieved the employer of his duty to bargain. *Id.* at 1562.
79 361 F.2d 300 (1st Cir. 1966).
80 David Buttrick Co., 60 L.R.R.M. 1181 (1965), remanded, 361 F.2d 300 (1st Cir. 1966).
81 361 F.2d at 304. (Emphasis added.) The court reached the following pertinent conclusions with regard to the conflicts of interest question:

(1) [I]t is the innate danger to be guarded against; ... (3) Such a danger, if proximate enough, without evidence of present abuse, can poison the collective bargaining process by subjecting every issue to the questioning of ulterior motives ... (5) The keystone freedom required on the part of a local union seeking to become an exclusive collective bargaining agent is the freedom to conclude such bargaining negotiations free of the suspicion that it is motivated by any purpose other than its loyalty to the employees it represents. *Id.* at 307.
82 *Id.* at 308-09. The case was remanded to the NLRB for further fact-finding as to the potential for conflict of interest.
Viewed in this light, the facts of the McLeod case take on a new hue. If the overriding principle is not so much the rights of the parties to choose their own representatives as it is the promotion of meaningful bargaining, the facts of the GE-IUE dispute would seem to place it more within the ambit of Kentucky Util. than that of Standard Oil and the other cases relied on by the union. There is a very real danger that an order forcing an unwilling company to bargain with a coalition of unions which it opposed would foster a spirit of mistrust on the company's part and would tempt the company to engage in "sham" or "surface" bargaining while attempting to gain additional evidence that the unions were in fact "locked in" by an agreement to force coalition bargaining. Such an atmosphere could not conceivably be conducive to a meaningful settlement of disputes over contract terms. Although a breakdown in negotiations is not an inevitable result of the McLeod situation, it is the temptation to engage in surface bargaining which thwarts the policy of the LMRA. Since the right of a party to collective bargaining to choose its own negotiators has never been held to be absolute, it would seem logical that this right should give way to the LMRA's overriding policy of promoting meaningful bargaining and agreements. Nor are the IUE's reasons for including the "outer seven" in its bargaining committee particularly impressive. The IUE had many capable negotiators of its own, and it is doubtful that the experience and consultation of bargainers from other unions would substantially aid the IUE committee if it was truly engaged in bargaining only for an IUE contract. If outside consultation was necessary, it could, as the court suggested, readily be obtained by comparing notes away from the bargaining table.

Furthermore, the presence of eight separate unions in one committee presents a substantial danger of a conflict of interests. One

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84 In fact, the IUE and GE successfully concluded their negotiations with a contract in October 1966. News & Background Information, 63 LAB. REL. REP. 163 (Oct. 24, 1966). The meetings were fraught throughout with mistrust, however, and final agreement was not reached until the negotiators were brought to Washington to bargain under the surveillance of federal mediation. There were also isolated strikes such as the one at GE's jet-engine plant in Evandale, Ohio, which was halted by an eighty-day Taft-Hartley injunction. Ibid.

85 Cf. NLRB v. David Buttrick Co., 361 F.2d 300 (1st Cir. 1966); NLRB v. Kentucky Util. Co., 182 F.2d 810 (6th Cir. 1950).


group of workers may seek more in wages and benefits than another, particularly if the disparity in working skills between the two groups is substantial. Representation disputes and inter-union rivalries and disputes could conceivably replace contract negotiation as the chief issue at the bargaining table. In short, there was simply no valid reason for including members of other unions in the IUE committee except for the bare collective bargaining right of a party to choose its own committee members. When this right conflicts with the development of an atmosphere of mutual trust and confidence necessary in any meaningful bargaining arrangement, it should give way. It is this policy of the LMRA which seems to have been forgotten in American Radiator & Standard Sanitary Corp., and McLeod v. General Elec. Co., and it is for this reason that the results reached in both cases are questionable. Both will be watched with great interest on appeal.

B. Applicability of Conspiracy Doctrine

Although the facts of the McLeod case may relieve the company of its duty to bargain with the coalition committee, they do not, in the writer's opinion, present a situation in which the courts should resort to a conspiracy doctrine applicable to criminal and antitrust cases in order to infer an illegal agreement on the part of the unions to force coalition bargaining on an unwilling company. Again, the overwhelming argument against hasty resort to conspiracy doctrines is the policy of the LMRA to encourage meaningful collective agreements in a spirit of mutual trust and confidence. In the McLeod case, GE argued that the extensive pre-negotiation activities of the eight unions promoting "Unity," the inclusion of other union members on the IUE committee after the coalition position had ostensibly been abandoned, and the fact that the unions continued to publicize the unity concept after they had supposedly abandoned the coalition approach, all showed a continuing conspiracy by the unions to force coalition bargaining on the company. The company claimed that direct proof of a lock-in agreement was unnecessary. Instead, it

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88 60 L.R.R.M. 1385 (1965).
90 As already mentioned, the American Radiator case is now pending review in the Sixth Circuit. McLeod, on the other hand, was remanded to the NLRB for a decision and will in all probability ultimately return to the Supreme Court.
92 Id. at 61.
relied upon the teachings of antitrust cases to assert that an illegal agreement could be inferred from the actions of the unions both prior to and during the single meeting. GE quoted from Eastern States Retail Lumber Ass'n v. United States that "conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done." It also cited Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, an antitrust case in which the Supreme Court found that a price-fixing arrangement existed between distillers by virtue of the fact that all liquor manufacturers had refused to sell their products to plaintiff unless a floor was placed under retail sales and that all the manufacturers had simultaneously imposed maximum resale price restrictions on purchasers of their products. Finally, the company emphasized the recent lockout case of American Ship Bldg. Co. v. NLRB as standing for the proposition that an employer contemplating a lockout to combat an impending strike was not bound to rely upon assertions by union officials that no strike would be called until all work on ships in drydock had been completed.

The reliance on antitrust conspiracy doctrines seems both unfortunate and misplaced. The conspiracy doctrines are utilized to infer agreements between parties engaged in violating the law where

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84 234 U.S. 600 (1914).

85 Id. at 612.


87 380 U.S. 300 (1965).

88 GE emphasized only the concurring opinion by Mr. Justice Goldberg, Brief for Respondent-Appellant, pp. 51-54, McLeod v. General Elec. Co., 2 LAB. REL. REP. (63 L.R.R.M.) 2065 (2d Cir. Sept. 8, 1966); and its attempt to bring its own situation within the teaching of this case by analogy is not persuasive. The analogy used is obvious: if the employer in American Ship Bldg. did not have to heed the reassurances of union officials that a strike would not be called, likewise GE officials did not have to listen to the IUE's assurances that it was only going to negotiate for its own contract. However, the distinctions between the two cases are too great to allow for such far-reaching analogies. For instance, the tactic used by the employer in the American Ship Bldg. case was a lock-out, a legitimate economic weapon which is not inconsistent with the duty to bargain; GE, on the other hand, broke off talks completely — a clearly unfair labor practice unless justified by some illegal union action. Secondly, the employer in American Ship Bldg. was motivated in his actions by the threat of severe economic loss if the strike was called while ships were in his yards for repair. GE had no such economic reasons for refusing to bargain.
there is no direct evidence of the agreement. To carry these doctrines over into the field of labor relations, where so much depends on the mutual trust and confidence of the parties, would be disastrous to the policy of the LMRA. Collective bargaining laws are geared to cooperation, not prohibition. It is true that the unfair labor practice sections of the LMRA\textsuperscript{99} prohibit certain activities on the part of both labor and management, but there are no criminal or monetary penalties for violations of these sections; the only sanction is a cease and desist order.\textsuperscript{100} It is readily apparent that the purpose of the unfair labor practice sections is to remove impediments in the way of meaningful bargaining, not to punish violations of laws which express public policy. To afford the bargaining parties the right to infer a conspiracy from the other's actions could hopelessly mire the bargaining process in a series of charges and counter-charges.

Moreover, from the facts of the McLeod case, there would appear to be nothing clandestine about the activities of the eight unions or the Committee on Collective Bargaining. Their goals and activities were widely publicized. As Judge Frankel stated, the unions could have carried out a conspiracy much more effectively by not insisting upon each other's presence at the bargaining table, and "conspirators are normally more conspiratorial."\textsuperscript{101} The judge found that, in light of the professed desire of the IUE to abandon its position on coalition bargaining, the background events concerning unity of the unions faded into obscurity, and there was simply not enough evidence to show a lock-in agreement or infer a conspiracy.\textsuperscript{102} The decision effectively foreclosed the company's conspiracy argument, but the overriding factor would seem to be that judges should be slow to speculate with conspiracy doctrines in such a delicate area of public concern and national interest as collective bargaining.


\textsuperscript{102} Id. at 706.
III. SOME UNANSWERED QUESTIONS IN COALITION BARGAINING

If the facts of the GE-IUE dispute were scrambled a bit, some interesting questions, likely to remain unanswered by the ultimate decision in the McLeod case, would appear. For instance, what would be the result had the union insisted, as a bargaining condition, that GE recognize and negotiate with the eight-union committee? If the company had remained to bargain, are there any theories under which coalition bargaining might be held to be illegal? And assuming for a moment that it is legal, what would happen if one of the unions tried to withdraw from the coalition either before or after the onset of negotiations?

A. The Effect of an Insistence Upon Coalition Bargaining

In McLeod, Judge Frankel seemed to accept the hypothesis that if the coalition had insisted that the company meet with it as the representative of the unions, the unions would have committed an unfair labor practice by refusing to bargain. Two cases were cited as authority for this proposition — NLRB v. Borg-Warner Corp. and NLRB v. International Bhd. of Elec. Workers. The rationale of both decisions was that certain subjects are "mandatory" subjects of collective bargaining as defined in section 8(d) of the LMRA. As to these subjects, a party is free to insist that its proposals be adopted, so long as there is no refusal to discuss them. As to other subjects, not "mandatory" as defined in section 8(d) or by court interpretation, a party cannot insist that the other side adopt its proposals as a condition of bargaining, since to do so would be a refusal to bargain about the mandatory subjects. In Borg-Warner, the company insisted that any negotiated contract must

103 Id. at 705, wherein the Judge said: "It is a minimum consensus in the case that a party may seek such joint bargaining, and that the two sides could agree to have it, though it may be unlawful to insist adamantly upon it or use coercion to achieve it after the point of impasse."
104 Id. at 705 n.13.
106 266 F.2d 349 (5th Cir. 1959).
107 LMRA § 8(d), 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158(d) (1964) defines the duty to bargain collectively as follows: "[T]he 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 . . . ." From the language, the terms, wages, hours, and conditions of employment are referred to as mandatory subjects of bargaining.
include a "ballot" clause calling for a secret pre-strike vote by all employees on whether to accept the company's last offer, and a "recognition" clause calling for substitution of uncertified local affiliates for the NLRB-certified international union as parties to the contract. The Supreme Court found that neither item was a mandatory subject of bargaining as defined in section 8(d) of the LMRA; hence, insistence on their inclusion in the contract was an unlawful refusal to bargain on the part of the company.

In the IBEW case, the situation was quite different. For several years there had been a running feud between the IBEW and the United Auto Workers (UAW) over certification as bargaining agent for certain groups of workers within the employer's unit. The UAW had traditionally won the battle, and the workers in question were covered by the UAW contract with the employer, Texlite, Inc. When it undertook to negotiate a new contract with Texlite, the IBEW insisted that its contract should cover the workers already included in the UAW contract. When the employer refused, the IBEW negotiators discontinued talks. The Court of Appeals for the Fifth Circuit upheld an NLRB order deeming such action an unlawful refusal to bargain.\textsuperscript{110} Refusing to bargain unless the employer recognized an improper unit was held to be a refusal to discuss the mandatory subjects outlined in section 8(d) of the act and therefore constituted a refusal to bargain under section 8(b)(3).

To be sure, there are distinctions between the situations presented in the above cases and union insistence upon employer recognition of a coalition of unions as a bargaining unit. Recognition of the coalition is not a subject of collective bargaining as were the ballot and recognition clauses in Borg-Warner, nor was the coalition insisting that the recognition be incorporated as a contract clause. The Texlite dispute may be distinguishable on the grounds that the IBEW was deliberately flouting the authority of the NLRB, since the Board had already certified the UAW as bargaining agent for the disputed workers, and the IBEW was attempting to force Texlite to disregard the Board's certification. If, on the other hand, the coalition had insisted on recognition by GE as a prerequisite to bargaining, it would neither have been insisting on a non-mandatory subject of bargaining, nor, if each union retained its autonomy, would it have been insisting on the recognition of an inappropriate


\textsuperscript{110} NLRB v. International Bhd. of Elec. Workers, 266 F.2d 349 (5th Cir. 1959), enforcing 119 N.L.R.B. 1792 (1958).
unit, although this is somewhat debatable.\textsuperscript{111} In principle, however, the discussion in \textit{Borg-Warner} would seem to control the question of insistence on coalition bargaining. Insistence on anything which would prevent the discussion of mandatory subjects is probably within the scope of that decision wherein the Supreme Court said: "[I]t is lawful to insist upon matters within the scope of mandatory bargaining and unlawful to insist upon matters without . . . ."\textsuperscript{112} Insistence on recognition of the coalition as a prerequisite to bargaining would effectively foreclose any negotiations if the company was unwilling to grant recognition and it is unlikely that any court would find that recognition of the coalition is a "mandatory" subject of bargaining within the meaning of section 8(d).

\textbf{B. The Theories of Illegality}

In \textit{McLeod v. General Elec. Co.},\textsuperscript{113} Judge Frankel specifically found that GE's abandonment of bargaining was premature, so that no conspiracy to force coalition bargaining was proven up to the time of walkout by the company representatives. He also mentioned in passing that common consultation and formulation of a common set of goals was a lawful right of cooperating unions, so that "many of the things . . . [GE] stresses about the 'coalition' are not suggested even remotely to have been unlawful or in any sense improper."\textsuperscript{114} Since the decision turned entirely upon the premature walkout, however, Judge Frankel never reached the larger issue of whether or not the coalition would have been illegal if GE had been able to prove the conspiracy and the lock-in agreement.

The question of whether or not true coalition bargaining is illegal is one of statutory construction, as the LMRA nowhere expressly authorizes or forbids the activity. However, there are a number of provisions in the act which might operate in an employer's favor if the coalition and the lock-in agreement were proven facts.

\textit{(1) Illegality Under Section 7.} — Section 7 of the LMRA\textsuperscript{115} provides that employees "shall have the right . . . to bargain collec-

\textsuperscript{111} It is difficult to understand how a union could be bound in with others in \textit{true} coalition bargaining and still retain any semblance of autonomy. See the discussion of this possibility in text accompanying notes 114-17 infra.


\textsuperscript{113} 257 F. Supp. 690 (S.D.N.Y. 1966).

\textsuperscript{114} Id. at 704.

COALITION BARGAINING

tively through representatives of their own choosing . . . "116 If, in a given fact situation, it becomes obvious that the coalition committee is not bargaining for a contract for the particular union represented but for a common contract for all the unions represented on the committee, then it would seem that the employees are no longer bargaining through representatives of their own choosing. The will of the individual unions would be subordinated to the will of the coalition. The individual union representatives would no longer be free to accept an offer from management which they found acceptable if any member of the coalition objected, and in effect the employees would no longer be bargaining through representatives of their own choosing. They would be bargaining through a representative — the coalition committee — which they had not chosen and with which they had had no dealings. Such a result would be a circumvention of the rights of employees to choose their own representatives under section 7 of the act. And, since section 8(b)(1)(A)117 provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in their exercise of the rights guaranteed in section 7, a proven coalition would probably be directly prohibited by the LMRA. This appears to be the theory relied upon by GE in its unfair labor practice charge against the IUE which was rejected by the NLRB as being without merit.118

(2) Illegality Under Section 8(b)(3).—The LMRA presents another possible weapon for a frontal assault upon the use of coalition bargaining by the unions. Section 8(b)(3)119 provides that it is an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer, assuming that it is the representative of his employees. All of the unions represented on the disputed IUE coalition in McLeod were certified, either nationally or locally, by the NLRB. It is quite possible that an agreement, either express or implied, by these unions to delegate their bargaining authority to a central coalition committee could be construed

116 Ibid.
118 The GE charge was based on the theory that by binding employees to an agreement that none would sign a contract with the company until all had signed, the unions had coerced and restrained the employees in the exercise of their rights under § 7 of the LMRA. On July 13, 1966, petitioner McLeod wrote to GE that there was no evidence on which to ground such a charge. 257 F. Supp. at 701.
as a refusal to meet and negotiate with the employer in their individual, certified capacity. Since section 9(a)\textsuperscript{120} of the act provides that representatives elected or selected by the majority of employees shall be their exclusive agents for bargaining with respect to rates of pay, wages, hours, and other conditions of employment, it seems that evidence to the effect that the selected representatives had delegated their authority to another body would be viewed in a dim light by the NLRB. The facts in the \textit{McLeod} case were not conclusive, but the refusal-to-bargain section should be available to employers in a more concrete situation.

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  \item[(3)] \textbf{Illegality Under Section 9.}—Closely analogous to the section 8 (b) (3) question, is the prospect of illegality under section 9\textsuperscript{121} of the act. Although this section deals with representation and elections and its violation is not an unfair labor practice as such, union activities inconsistent with the requirements of the section would probably relieve an employer of his duty to bargain. Section 9(a) provides that bargaining representatives must be chosen by the majority of the employees in a unit appropriate for such purposes.\textsuperscript{122} Whenever an employer disputes the representatives so selected, either on the grounds they do not represent a majority of the employees or because of irregularities in procedure, an election hearing is held, which is usually followed by a Board-supervised election; and the Board has exclusive authority to decide in each case which unit to designate and certify as the exclusive bargaining agent of a group of employees.\textsuperscript{123} These provisions relate to the coalition problem in the following manner: at some point during negotiations, it will become obvious that the union committee members are not in fact representing their own unions, but the coalition. With the coalition thus substituted as bargaining representative, the employer could probably suspend bargaining on two grounds: (1) The coalition was never certified by the NLRB as the "unit appropriate for the purposes of collective bargaining" as provided in section 9(a); and (2) The coalition may not represent a majority of the employees of the company, necessitating a Board-supervised election to determine the coalition's majority status.

In such a situation, the Third Circuit's decision in \textit{NLRB v. Air}

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Master Corp.\textsuperscript{124} is persuasive. The case held, in effect, that where there is a good faith doubt as to whether or not a union has been repudiated by a majority of the employees, management does not have to recognize it as bargaining agent, since to do so would have an improperly coercive effect on the employees’ right to bargain collectively through representatives of their own choosing.\textsuperscript{126} Indeed, it has been held that if an employer errs in his judgment of the factual situation and affords recognition to the wrong union, he will be guilty of committing an unfair labor practice.\textsuperscript{128} Common sense dictates that it is only fair to suspend the employer’s duty to bargain until such time as his good-faith doubt as to the union’s majority status has been resolved.\textsuperscript{127} And the same suspension of duty would be appropriate where an employer might entertain good-faith doubts as to the majority status of a coalition, it having become apparent that the coalition has in fact replaced the individual unions as bargaining agent for the employees.

(4) Illegality Under Section 8(b)(4)(ii)(C).—Probably the most direct language in the LMRA relating to the problem of coalition bargaining is section 8(b)(4)(ii)(C)\textsuperscript{128} which provides that it shall be an unfair labor practice for a labor organization or its agents:

(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . .

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as

\textsuperscript{124} 339 F.2d 553 (3d Cir. 1964). See also NLRB v. Trosch, 321 F.2d 692 (4th Cir. 1963), cert. denied, 375 U.S. 993 (1964).

\textsuperscript{126} The question arose when the majority of the workers at Air Master Corp. ousted the Seafarer’s International Union on the eve of new contract negotiations and chose the Teamsters as their new bargaining agent. The Seafarer’s Union insisted that it represented the employees, however, and when Air Master afforded de facto recognition to the Teamsters, the Seafarer’s Union filed unfair labor practice charges against it. The court held that proof of disaffiliation in the case was clear, and the employer did not have to recognize the ousted union’s assertions in the fact of this evidence. The court disagreed with the NLRB that just because the ousted union was the incumbent, an employer cannot make an independent determination that it has lost support. Incumbency is not an indication that a change of affiliation is false or has been coerced. NLRB v. Indianapolis Newspapers, Inc., 210 F.2d 501 (7th Cir. 1954).


\textsuperscript{127} NLRB v. Signal Oil & Gas Co., 303 F.2d 785 (5th Cir. 1962); St. Louis Independent Packing Co. v. NLRB, 291 F.2d 700 (7th Cir. 1961).

the representative of such employees under the provisions of section 159 of this title.\textsuperscript{129}

Although originally designed to prevent competition and strife between competing unions, the language of this section would seem to readily lend itself to coverage of the coalition situation in any case where the coalition might attempt to force the employer to recognize it through threats or coercion. Here the coalition in effect defeats itself, because most or all of the unions represented by it will be certified as exclusive bargaining representatives, either nationally or locally, by the NLRB. Since the coalition is competing for recognition with its already certified members, it commits an unfair labor practice if it attempts to force recognition through threats or coercion.

The foregoing discussion of theories of illegality assumes that the coalition committee has not taken the proper steps for recognition and certification by the Board. It is entirely possible, of course, that a coalition could be selected as bargaining agent by a majority of a company's employees and be properly certified by the Board as their exclusive bargaining agent. In the absence of such procedures, however, the coalition is running the risk that one or all of the above-mentioned provisions in the LMRA will be brought to bear against it.

C. The Problem of Withdrawal

If coalition bargaining receives legal sanction, problems are bound to arise as to whether, and under what conditions, a union can withdraw from the coalition. The problem parallels that of the withdrawal of an employer or a union from a multi-employer unit, a topic with which the courts and the NLRB have had considerable experience.\textsuperscript{130} Employers have found it to their mutual advantage to bargain together in multi-employer units since the advantages of stabilized wage rates, hours, and conditions of employment throughout an industry or a particular locality readily compensates for any loss of autonomy which the employer might suffer in dealing with his own employees. Unions, however, do not appear to present quite the same solid front of interlocking interests. Truck drivers, steel workers, office employees, guards, and other groups of

\textsuperscript{129} Ibid.

employees present widely varied and occasionally competing goals and demands; indeed, withdrawal could prove to be the biggest "fly in the ointment" for coalition bargaining. Unless some guidelines are laid down by the courts concerning the propriety of individual union withdrawal from coalition bargaining, collective bargaining could be reduced to a shambles, with large unions withdrawing from contract negotiations at will, whenever their individual interests collide with those of the majority. The problem of union withdrawal is intensified by the fact that the provisions of the LMRA specifically outline the procedures to be followed in union certification. Since two units cannot be certified to represent the same group of employees if the coalition objects, withdrawal from a certified coalition would seem to necessitate recertification by the Board before the withdrawing union could legally represent its members in individual bargaining.

In most other cases, however, the problem of union withdrawal is closely analogous to the problem of employer withdrawal, and the principles applicable in the latter situation would appear to be equally applicable in union withdrawals. Accordingly, a brief look at the problems caused by withdrawal from a multi-employer group is appropriate.

The pioneer case establishing the right of a single union to withdraw from multi-employer bargaining was Retail Associates, Inc. There it was held that the union, like any individual employer, can withdraw from a multi-employer bargaining unit by giving timely notice prior to the date on which negotiations for a new contract or modification of an old one are to begin. In the later case of Evening News Ass'n the NLRB reaffirmed the principles of Retail Associates in holding that an employer who refused to bargain with a union which had timely withdrawn from a multi-employer group unless negotiations were conducted on the prior terms committed an unfair labor practice. The Board said

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133 Later cases have held that the same standards govern both employer and union withdrawal from a multi-employer unit. Evening News Ass'n, 60 L.R.R.M. 1149 (1965); Truck Driver's Local 449 v. NLRB, 231 F.2d 110 (2d Cir.), rev'd on other grounds, 353 U.S. 87 (1957). The Supreme Court in the latter case specifically refrained from deciding whether the same freedom to withdraw would be allowed to unions as was allowed employees. Id. at 94 n.22.
134 60 L.R.R.M. 1149 (1965).
135 Id. at 1152.
that the fact that the union had engaged in multi-employer bargaining for twenty-five years and had given no valid reason for its withdrawal was immaterial; withdrawal was held to be an absolute right, if done at an appropriate time.\textsuperscript{136}

Subsequent cases have made it clear, however, that neither party can withdraw from multi-employer negotiations after bargaining for a contract has begun, without consent from the other side.\textsuperscript{137} Nevertheless, consent to withdrawal has been inferred, for example, in the following cases: (1) where the union accepted without objection the employer's notification of withdrawal and attempted to persuade him to sign the collective contract on an individual basis;\textsuperscript{138} (2) where it consented to bargain with the withdrawing employer on an individual basis after an agreement had been reached with the association, failed to present the association contract to him for signature, and bargained freely with the remaining members;\textsuperscript{139} and (3) where the union failed to object to the withdrawal and signed an agreement which omitted the withdrawing employer's name as a party to the contract.\textsuperscript{140} The Board also held in one case that union withdrawal was unequivocal and complete despite the fact that the union, after withdrawal, outlined conditions under which it would continue the multi-unit bargaining.\textsuperscript{141}

Withdrawal is timely if it becomes effective after expiration of the most recent union-employer contract\textsuperscript{142} or before negotiations for a new contract are commenced.\textsuperscript{143} However, withdrawal shortly after a union is certified by the NLRB,\textsuperscript{144} or after filing of an election petition between rival unions,\textsuperscript{145} has been held to be untimely.

The only case in which withdrawal of a union from a coalition committee appears to have been discussed is in the dissenting opinion of Board member Brown in \textit{Evening News Ass'n}.\textsuperscript{146} In that opinion, Mr. Brown stated:

\textsuperscript{136} \textit{Ibid.}
\textsuperscript{137} W. B. Johnson Grain Co., 60 L.R.R.M. 1117 (1965); Spun-Jee Corp., 59 L.R.R.M. 1205 (1965); \textit{The Kroger Co.}, 57 L.R.R.M. 1021 (1964).
\textsuperscript{140} Metke Ford Motors, Inc., 137 N.L.R.B. 950 (1962).
\textsuperscript{141} \textit{Evening News Ass'n}, 60 L.R.R.M. 1149 (1965).
\textsuperscript{142} 20th Century Press, 107 N.L.R.B. 292 (1953).
\textsuperscript{143} Reno Employer's Council, 1962 CCH NLRB 17571.
\textsuperscript{144} Southwestern Colo. Contractor's Ass'n, 59 L.R.R.M. 1600 (1965).
\textsuperscript{145} Dittler Bros., 132 N.L.R.B. 444 (1961).
\textsuperscript{146} 60 L.R.R.M. 1149 (1965).
One could equate an employer participation in multiemployer bargaining with a single union's engagement in multiunion (e.g., through a Council) bargaining. Where a group of unions representing different units of a single employer wish to consolidate, a single combined unit can be achieved only with the employer's agreement. Once a broad unit is established by mutual consent, an employer could not refuse to bargain with the multiunion group as the representative of his employees; and while the question has never been decided, it may be that one of the unions could, under the proper circumstances and with prescribed rules, withdraw from the Council in order to seek an independent course of bargaining with the employer.\textsuperscript{147}

Most of the above cases cited by analogy involved \textit{voluntary} bargaining by groups of employers and single unions or councils, in which only the individual unions had power to sign a binding contract. In these situations, the NLRB has been willing to sanction withdrawal on both sides.\textsuperscript{148} What the Board will do if a union attempts to withdraw from a true coalition is a question which is, as yet, undecided.\textsuperscript{149}

\textbf{IV. THE ECONOMIC UNDERPINNING OF COALITION BARGAINING}

Underlying the legal disputes over coalition bargaining, of course, is the familiar struggle between unions and management for more economic leverage in dealing with each other at the bargaining table. It was this struggle which initially gave rise to unionism, when workers realized they could not better their lot individually in the era of the giant trusts. Later, when many of the unions had grown to gargantuan stature, it was management which was forced to band together in multi-employer bargaining groups to achieve bargaining equality in terms of economic strength and weapons.\textsuperscript{140} Coalition bargaining is but the latest development in this twentieth-century power struggle.

As far as the IUE-GE type of coalition bargaining is concerned,\textsuperscript{147} Id. at 1153 (dissenting opinion).\textsuperscript{148} Francis L. Bennett, 139 N.L.R.B. 1422 (1962); Indiana Limestone Co., 136 N.L.R.B. 697 (1962). \textit{Cf.} General Motors Corp., 120 N.L.R.B. 1215 (1958), where the Board found that a long history of multi-plant bargaining between GM and the UAW as exclusive representative militated against severance of the unit into small craft-type units for each plant, which the union wanted. \textit{Contra}, Radio Corp. of America, 121 N.L.R.B. 633 (1958) (allowing the severance).\textsuperscript{149} Evening News Ass'n, 60 L.R.R.M. 1149, 1152-54 (dissenting opinion). For a holding that two or more unions can constitute a "labor organization" within the meaning of the act and be certified as such, see Florida Tile Indus., Inc., 130 N.L.R.B. 897 (1961). Correspondingly, if certified jointly, the employer should be able to insist that they bargain as such.\textsuperscript{140} The LMRA does not expressly allow multi-employer bargaining. However, in
it is questionable whether the economic arguments advanced by the unions in support of their proposal are really sound. The admitted goal of the IUE coalition was more economic power through collectivization, with the "big stick" threat of a national, industry-wide strike that would paralyze GE plants throughout the country. Some commentators believe that another goal of the unions in the coalition tactics is to coerce government intervention. The unions have found that such intervention has worked to their advantage in the past in that increased collective power with the threat of a national strike will cause the government to enter into the disputes more quickly in order to prevent the threatened injury to the public interest and to secure continued production of vital defense supplies. It has also been suggested that the unions have taken advantage of a pro-labor NLRB to time their unfair labor practice charges to opportune stages of negotiations so that the company will appear to be the villain. The writer has no comment on these theories other than to say that it does not seem likely that government intervention will work to the union's advantage in all cases. The union's greatest weapon is the economic strike, and the government's primary interest is to prevent the use of this weapon. Government intervention would thus be contrary to union interests where a strike is contemplated.

As to the unions' basic economic argument, even if the McLeod case is eventually resolved in favor of the IUE, it will do little to increase the unions' advantage, for the end result will be that the unions will only have gained the right to sit in on each other's negotiations. Bargaining will still have to be conducted as a "round robin" affair with the coalition representing each member union in turn. And since GE bargains with the other seven members of the IUE coalition on a local basis, the committee will probably have to bargain for each local of its member unions in turn. It has been indicated that the unions can already achieve their national objectives through activities which are concededly legal. There is nothing illegal about strategy planning and common consultation between unions, nor is it improper for unions to formulate a set of

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152 Ibid.
153 See note 30 supra.
common goals and present identical demands to an employer.\[^{154}\] With these rights already guaranteed, the unions' insistence upon sitting in on each other's negotiations seems to be a mere quibble, at best a bare legal right which should be subordinated to the building of an atmosphere for meaningful collective bargaining under the LMRA.

On the other hand, the insistence upon the right to sit in on each other's negotiations probably represents the first step in a pervasive attempt by the unions to achieve true coalition or industry-wide bargaining. If the unions succeed in this attempt, the next step will undoubtedly be a demand by the "outer seven" that GE bargain with them on a national, rather than a local, scale. The final demand, then, would be insistence by the unions that management recognize the coalition itself as the bargaining agent. The economic implications of such a concentration of power on the union's side of the bargaining table are enormous. Viewed in this light, the resolution of this first step in the eventual climb to true coalition bargaining becomes all-important, and the outcome will probably depend upon the prevailing opinion of Board members and federal judges as to whether coalition bargaining is detrimental to the public interest.

Many commentators would lay the national labor problems at the feet of irresponsible union power and excessive economic demands.\[^{155}\] Most would suggest, as a remedy, some means of harnessing union power through legal action. Some have suggested that the most workable solution is to remove labor's exemption from the antitrust laws\[^{156}\] so that excessive concerted activities may be prohibited as restraints of trade. Others have suggested that the true solution lies in outlawing national unions and confining worker organization to the plant or company level.\[^{157}\] Finally, one group of experts has implored the legislature to recognize the realities of modern-day bargaining and increase government's power as the third seat at the bargaining table.\[^{158}\] None of these proposals seem likely to succeed, if only for the fact that organized labor is probably

\[^{154}\] Ibid.


\[^{158}\] The proposals for increased government supervision usually take the form of augmenting presidential powers of intervention and/or amending the Taft-Hartley
strong enough at the present time to prevent any drastic diminution of its power. Whatever the evils of the power confrontations in collective bargaining, it is likely to remain the dominant method of settling labor differences. However, it would not seem to be in keeping with the public interest to increase labor's collective power at this time by affording legal sanction to coalition bargaining. Collective bargaining seems to work best where the bargaining power on both sides is relatively equal, and a decisive tipping of this balance in labor's favor would be likely to promote the type of inflationary wage and contract settlements which the government has been trying to prevent.

V. CONCLUSION

Coalition bargaining is the newest development in the field of labor relations, one which currently allows other unions to "sit in" with the IUE as part of that union's committee in negotiations with GE. The legality of this new tactic, presently being tested by appellate federal courts and the NLRB in the American Radiator and McLeod cases, is shrouded in doubt. Although there is no provision in the Labor Management Relations Act dealing directly with coalition bargaining, there are a number of sections which theoretically might operate to forbid the practice, unless a coalition is recognized as an appropriate bargaining unit and certified by the NLRB. Economically speaking, a decisive increase in union bargaining power does not seem to be in keeping with governmental goals of halting inflation and sustaining the war effort. If the future of coalition bargaining is uncertain, labor's interest in the outcome is not; according to one estimate, union leaders in seventy-six separate industries are awaiting the outcome in order to institute the practice in their industries. If the right of unions to sit in on each other's negotiations is upheld, coalition bargaining will probably become the pattern for union negotiations with large industry throughout the nation.

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159 News & Background Information, 63 LAB. REL. REP. 183 (Oct. 31, 1966). The IBEW has already begun pressuring Westinghouse Electric Company by demanding a national contract for units that have always bargained locally. Id. at 210 (Nov. 14, 1966).