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Management Rights

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Article abstract

Some months ago (December 5th, 1957), the Employee Relations Section of THE MONTREAL BOARD OF TRADE sponsored a panel discussion on the very important and much debated question of MANAGEMENT RIGHTS. Here follow the VERBATIM contributions of three of the four participating panelists: Mr. W.F. Norcott (Personnel Manager, Gillette of Canada Limited), Mr. R.M. Bennett (Secretary-Treasurer, Montreal Typographical Union, No. 176), and Mr. C.-Marc Robert (Personnel Manager, Canadian General Electric Co., Ltd).

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W.F. NORCOTT

When we examine the economic definition of « production », we find that it consists of three components — land, labour and capital; and that one cannot exist without the other. The most successful of all enterprises are those in which there is a harmonious relationship between the labour force and management, and this has usually been brought about by a mutual understanding and respect for each other's rights. When the owners of a corporation, that is, the shareholders, elect their directors who, in turn, for the owners, employ managers, they pass along their rights, with their responsibilities, to these managers. One of the essential rights passed along is covered under the ancient law of the right of property which goes with it — the right to manage for the benefit of the owners and the community. Therefore, by virtue of this law, it is the right and duty of the management, through their skill and experience, to run the business in such a way as to make profit; that is, within the limits of both civil and criminal law. In our particular society, we seem to have grown to great heights through this system which, over a long period of time, has created a reasonably high standard of living and a high rate of employment for all. By the same token, however, management also has a responsibility to its employees. It must concern itself with the employee's welfare, his dignity, his rights, his health, etc., and, by so doing, it will be creating a harmonious relationship which is so necessary for the successful continuation of the business. It is a two-way street.

Now, as far as management rights are concerned, there seems to be no well-defined set of rules which are enforceable by law on a legal basis, but jurisprudence would dictate that it is the right of management to hire and assign the work forces, to set standards (and to change them when conditions or methods change), to decide matters of discipline and, generally speaking, to run the business. More spe-

cifically, I have listed sixteen points which, I feel, are undeniable rights. They have been encroached upon and are somewhat eroded. As a matter of fact, some of these rights have ceased to exist in certain enterprises. I will attempt, after each one, to try to give slight examples of just where this encroachment has been.

1) Management has the rights of the determination of products to be manufactured or services to be rendered. This is elementary.

2) The location of the business, including the establishing of new units and the re-locating or closing of old units, depending on whether they are productive or whether they are profitable to operate.

3) The determination of layout and equipment to be used, which is always a bone of contention where labour unions are concerned. Much furore has been created by this business of automation. I would like to point out to you the present dispute over the operating crews of Diesel engines on the railways.

4) Processes, techniques, methods and means of manufacturing and distribution.

5) The material to be used, subject to the proper health and safety measures where dangerous materials are utilized.

6) The size and character of inventories. This may seem very elementary, but it is not so long ago that the coal miners were in dispute with the mine operators over how big the inventory should be and calling holidays and strikes to control the size of inventories.

7) The determination of financial policies, the general accounting procedures, particularly the internal accounting necessary to make reports for owners and to government bodies requiring these financial reports.

8) The prices of goods or services rendered to a customer which, I am sure, everyone assumes is the right of management but, again, Mr. Walter Reuther (president of the United Automobile Workers of America) suggested to the car manufacturers a decrease in the price of automobiles for which he, in turn, would go easy on negotiations. What he is suggesting is that pricing is not completely a right of management.

9) Customer relations; the determining of the management organization of each producing or distributing unit; the selecting of employees for promotions. Again I point to seniority clauses in labour contracts and to the contentious point of whether the senior man or the most efficient man should be promoted. I think, in unionized offices, certainly in the railways, this is something which has almost been taken away from management: that is, they do not have the right to promote or transfer employees on the merit of their work.

10) The determining of job content. This refers to the establishing of duties required in the performance of any given job and not to wages.

- 11) The determining of the size of the work-force.
- 12) The determining of policies affecting the selection of employees.
- 13) The establishment of quality standards and of workmanship required.
- 14) The maintenance of discipline and control in use of plant property.
- 15) The scheduling of operations in the number of shifts.
- 16) The determining of safety, health, and proper protection matters when a legal responsibility of the employer is involved.

In other words, the rights of management are the making of all decisions necessary to insure the success of an enterprise and the protection of the owner's investment, and should only be limited by the expressed conditions of a labour contract, if one exists.

It goes without saying that these rights have been invested in the management by the owners and that, therefore, they cannot be delegated to anyone not responsible for the continuation of the business. They cannot be surrendered to a union or to anyone else.

As I have pointed out, there have been, in the past, many Court decisions which seem to have supported and to have built up these rights. However, in later years, we seem to have embarked upon a course which has started an erosion of these rights and soon we will reach the point, unless we stand firm, where these rights will be denied, and then good management will disintegrate into anarchy. There is a point, I believe, beyond which a union cannot go without seriously damaging the whole industrial machine.

Even our high Courts have recently upheld an encroachment on what are normally considered management rights. I would like to quote from the United Electrical Workers News of November 1st, 1957, which commented upon a decision of Mr. Justice J.O. McLennan of the Supreme Court in a dispute between Studebaker-Packard of Canada and the local United Automobile Workers of America: «The gist of the dispute seems to be that the company contracted its office cleaning with an outside firm and absorbed their office cleaners in other divisions within the company. There was no loss of wages and no one was laid off. The union objected that, under the existing collective agreement, the company could not, under the guise of a function of management, be allowed to change the nature of the bargaining unit unless, of course, it wished to do away with the job altogether. In other words, it could do away with the job; that is, it could lay off the people but it could not change the nature of the bargaining unit. The union's point was upheld by the Court, and the company had to

break its contract with the cleaning company, re-located the maintenance staff in their old jobs, even though no one was laid off, and the company could have benefitted by contracting this work out ».

Must management, then, consult with all its employees before making all decisions? If that is the case, then we are doomed to a very slowmoving and inefficient system under which no one will gain, and certainly no one will progress. Therefore, it is in the interest of labour and labour leaders to recognize that management has rights and must make decisions quickly — without interference — so that these decisions may be translated into accomplishment, resulting in the betterment of all.

The realistic acceptance of management rights applies also to the acceptance of management's responsibility for their achievement.

What are the solutions to the problem of maintaining these rights? There are three courses which I suggest we could take.

1) All case studies seem to point to the middle course. That is, management usually gains by being willing to discuss anything at all with their employees — by being honest and frank, by laying the cards on the table, but by firmly insisting upon its responsibility to the owners for the conduct of the business. This can only be done with an enlightened and strong management and an enlightened labour union.

2) Call on all management to realize the fact of what is going on; to realize that their rights are being eroded; and to insist on strong, well-defined, management clauses in their contract and, of course, upon a well-defined arbitration clause.

3) Through the Courts, call for the re-establishment of the legal rights of an owner limited only by the expressed conditions of the contract.

In closing, I would like to point out that management must be aware and insist upon its rights but, at the same time, they must accept their responsibilities to their employees, and respect *their* rights and *their* dignity.

R.M. BENNETT

Until management commences to negotiate its first contract with a union, it has enjoyed almost unrestricted rights in deciding all matters concerning wages, hours and working conditions of its employees.

In agreeing to negotiate a labour contract with a union, management must be prepared to cede some of these previously-enjoyed rights to the union or to share the exercise of them with the union.

The number of rights and their nature which are to be negotiated will depend, of course, on the type of proposals submitted by the union

seeking the contract. In simple form, the proposals may call for negotiations on comparatively few matters; such as wages, hours, grievance procedure, and so-called « fringe » benefits. Some of these items will break down under separate sub-heads. Negotiation of wage rates will include the establishment not only of hourly or piece rates, but also penalty rates for overtime, premium rates for less preferred shifts, as well as schedules for various types of work performed. The agreement on hours will set the number of hours in a week's work, as well as the distribution of these hours among the days of the week, and the difference in the unit of hours constituting a day's work or a night's work.

Negotiation of a grievance procedure section of the contract for the first time will entail discussion on what sequence of steps must be taken in giving an aggrieved worker an opportunity to have his complaint heard and his grievance, if well-founded, corrected.

In the negotiation of this type of labour agreement, it is evident that, although the matters covered are very important to both parties, it cannot be said that management has been called upon to completely surrender any of its rights to the union; rather, it has agreed, in effect, to share its rights with the union. The previously enjoyed right to establish wages, hours and working conditions at its own discretion, subject only to limitations applied by the law of supply and demand in the labour market or by civil law governing such matters, is now shared by the union. Negotiation of such a type of contract cannot in any sense be construed as a complete surrender of any right by management.

However, where management is being called upon for the first time to negotiate a labour agreement, it is perhaps natural that there should be resentment, and even some resistance, to what might appear to it to be an attempt to wrest from management rights that, in the past, have been recognized as exclusively its own. This resentment and resistance will be stronger if management believes the union involved has a poor record in the industrial relations field, or that it is led by irresponsible officers.

In such circumstances, the union faces a most formidable task in its attempt to create an atmosphere free of distrust and fear and in which negotiations may be carried through to a mutually satisfactory conclusion. It is absolutely necessary that negotiations be carried on under such an atmosphere, for any resentment remaining at the conclusion of negotiations is likely to influence the attitude of each party to the other during the term of the contract — this, to the detriment of good industrial relations which are necessary to the sound operation of any enterprise.

If negotiations in such a simple form can be concluded successfully and good relations established, management should feel that it has not

made too great a sacrifice in giving up the arbitrary exercise of a few of its rights in the interest of improved relations with its employees. There are still many rights remaining to management that should not be open to question under the provisions of such a labour agreement.

Management will continue to have unrestricted rights in the hiring, placement, training, and promotion of its employees. It will continue to exercise all other rights previously enjoyed — such as the discipline and discharge of employees — subject only to the fairness of its acts being open to question through whatever grievance procedure has been established.

In short, under such a contract, management has not surrendered any of its rights to the union. It has agreed to spell out, in short form, in an agreement, what conditions of employment will prevail for the term of the contract, and management will retain the right to decide all questions not so covered.

The extent to which management rights are affected in negotiations will vary according to the type of union proposal submitted as the basis of a labour agreement. In the simple form just referred to, it is evident that only a few of management's rights are involved and, in this day and age of almost universal recognition of the right of workers to bargain collectively, it is generally accepted that these few rights do not, in any case, belong to management to be exercised unilaterally by the latter.

The number of management rights involved in collective bargaining increases as unions submit additional proposals which would result in the consummation of a more complex agreement. Perhaps the ultimate impact on rights traditionally recognized as belonging exclusively to management will be found in contracts negotiated by some craft unions representing highly-skilled workers in relatively small units. Under this type of agreement, it is not uncommon for management to forego its right to select its employees, the union undertaking to supply the demands of the employer. In fact, under some conditions, union members make themselves available for work without even the knowledge of management, and are employed on a day-to-day basis as the work-load demands extra workers, or they replace permanent employees who absent themselves from work for any reason.

Under this arrangement, such extra employees are known as «spares» in the railway-running trades, and as «substitutes» in certain branches of the printing trades, and management retains the right, of course, to judge the competency of such workers, to discharge for cause, and to assign them to the classes of work in which they claim competency.

Also, under the provisions of this type of contract, these workers transfer automatically, according to seniority or priority standing, from

temporary employment to permanent situations when an increase in the workforce is required, or as replacements for permanent workers who discontinue their employment for any reason. Here, again, management does not have the right to choose among the extra workers who shall fill permanent jobs; it being understood that a worker who is competent as an extra shall be deemed to be competent as a regular. It is the man's competency, rather than the degree of his competency, that assures him of work.

Although this may appear to be a cession to the union of a considerable number of management rights, it must be remembered that these practices are the result of experience going back many years and the advantages are not all on the side of the union.

Where management's prime concern is the hiring and retention on its payroll of an adequate number of highly-skilled workers, and where the majority of such workers are organized, it is only natural that the union should be regarded as the source of supply of such workers.

In recognizing the right of the union member to hire another union member to cover his job when he is absent for any reason without consultation with management at any level, management benefits by the fact that such extra workers will make themselves available for this type of temporary employment and will also be available when the employer wishes to employ them on a temporary basis.

When management foregoes its right to pick and choose among extra workers in favour of placing such workers on permanent jobs according to priority, this also is a factor in encouraging such workers to continue to make themselves available; thus assuring the employer of a surplus of help when conditions of a temporary nature require the use of an enlarged work-face on a day-to-day basis.

On consideration of the two types of negotiation here referred to, it will be recognized that the concept of what constitutes « management rights » will be much different according to the individual case. Where management is faced with the necessity of negotiating its first contract, it is only natural that any union proposal will be regarded as a demand on the employer to surrender certain rights in the exercise of authority long held to be its exclusive prerogative. After some years of experience with this type of negotiation, it will be considered quite appropriate that matters covered by the agreement be subject to negotiation, more especially if they are of a nature generally regarded to be matters outside the exclusive jurisdiction of management.

As management becomes accustomed to exercising its rights within the limits imposed by the terms of the labour agreement, there should

be less resistance on its part to additional similar proposals in future negotiations.

Where management is in the habit of negotiating closed shop agreements such as here referred to, it will have learned that the surrender of rights naturally, and normally considered to be those of management, has its compensations and, after a time, this type of operation will come to be regarded as an accepted trade practice.

In the negotiation of any part of a contract which involves what are ordinarily considered to be management rights, it is not always easy to agree on a formula readily acceptable to both parties. It is essential, therefore, that the negotiators first find agreement in principle, rather than endeavour, to reduce the agreement to writing in legal language, and an attempt should be made to place the new procedures into effect in the same spirit of good-will that enabled the parties to reach agreement on the matter.

When it is at all possible, and where management rights are involved in matters covered by contract provisions, it is preferable that some latitude be provided for discussions during the term of the agreement. If, however, either party finds that the other adopts an attitude that the provisions of the contract must be applied according to the terms as spelled out in the agreement, and refuses to make any concession in the interests of harmony, subsequent negotiations will probably prove difficult.

While it is always desirable that the negotiation of any provisions of a labour agreement be carried on in a spirit of good-will, it is especially important that negotiations involving the transfer to the union of what management regards as its rights should be carried on in such an atmosphere. If this is possible, the chances of arriving at a mutually-satisfactory agreement that will assure continued, good, human relations are enhanced. This should be the objective in all negotiations in the industrial field.

C.-MARC ROBERT

I will discuss with you the subject of the negotiating of management rights from the management's viewpoint. We can obviously touch only some of the highlights of this broad, fundamental, and most difficult question. It will not be my role to present a study of management rights as such; Mr. Norcott has done this. I will simply attempt to focus your attention on some of the more significant points which should be kept in mind by management during the collective bargaining process.

This may surprise some of you but, as far as I am concerned, management rights means the freedom and authority necessary to operate the business efficiently in the balanced best interests of all the participants in, and claimants on, its output. This is the theory that some of you have probably heard of — that management is the «clearing house» for these claims of the participants in the business. This is the main role of management, I believe. I also hold no brief for the retention of «sacred prerogatives», as such, if they are unrelated to the economic performance of the enterprise. I would just like to point out, in passing, that the dictionary definition of «prerogative» is — this is quoting from a dictionary — «a divinely-given advantage». I hope that none of us in management here will contend that our rights or prerogatives were handed to us on Mose' Tables. I will, therefore, instead of using the term «management rights», or «management prerogatives», use, instead, the expression «management functions» throughout the balance of this presentation.

As we all know, this freedom and authority to manage all aspects of the enterprise have been considerably eroded, or changed, during the last ten years through, on the one hand, aggressive union negotiations and, as the effects of the recent labour merger become felt in the years ahead and the social climate or content surrounding us changes, we can expect increased pressures to dilute and to reduce these freedoms still further. Therefore, it is imperative that a clear and realistic view be taken by management and, I would suggest, by labour as well, of the types of protections and functions needed to operate business successfully in the balanced best interests of all the contributors to, and all claimants upon, its output of goods and services.

As you no doubt realize, considerable stress has been placed on the value of a management function clause in a collective bargaining contract. There are, generally speaking, two schools of thought in this matter. Some companies like to spell out the functions of management with respect to sales, production, finance, selection of materials, processes and products to be manufactured, plant location, research and all other functions which, it is claimed, belong exclusively to management. Other companies feel this is a dangerous procedure, lest one function be omitted. They prefer to say, for example, quoting from one particular agreement, «except as provided in this agreement, all rights are vested in the company». Regardless of the type of management functions clause you or your company may prefer, such clauses are, on the whole, helpful to management to delineating its areas of discretionary action and in the daily administration of the contract, including arbitration.

Once a management-functions clause is included in the agreement, management cannot, and should not, take the view that these functions are now inviolate and sacred. Necessary management control and freedom of action can still be undermined or surrendered by poor or

loose drafting of, and agreement to, other clauses of the contract. Real care and considerable action should be given to the language used in such collective bargaining areas as discipline, changes in job content, work schedules and work loads, establishment of production standards, incentive plans, assignment of employees to various jobs, and other areas. Since these are highly sensitive areas, it is important that management resist such demands which, if granted, would take decision-making out of management's hands on key matters directly related to the efficient conduct of the business.

In the few remaining minutes, I would like to comment briefly on two matters only which I believe to be of utmost importance to the protection of necessary management functions. These are arbitration and mutual consent clauses.

The rapid growth of arbitration in recent years, with many decisions affecting management control of the enterprise, has raised serious questions for consideration by management. When a contract provides for arbitration as the final step in the settlement of disputes, there is danger that fundamental management functions will be lost unless extreme care be taken, first of all to limit the powers of the arbitrator. Normally, the arbitrator is not supposed to add to, to take away, or to change, any of the provisions of the written agreement; rather, his role is to decide a dispute as to questions of fact or to interpret the meaning of the contract. Secondly, to specifically define the term «grievance», so that it signifies any controversy between the company and the union as to the interpretation or the application of the contract, or as to a charge of violation of the contract.

Then, being unorthodox again, I would like to suggest, in passing, that a good look be taken at our grievance procedure to insure that it is worded in such a way as to allow our management to submit grievances in cases where the union has, itself, violated the agreement.

If these protective measures are not taken, management may find, too late, that it has transferred to a third person rights which it thought it had reserved for itself. In other words, it may end up with a condition of management by third parties in many areas of its enterprise.

In addition to the need to limit the authority of the arbitrator to the interpretation and application of the contract as written, it is important for management to understand that company practice, primarily supervisors' day-to-day practices in dealing with employees — jobs, production problems, etc. — has become increasingly important because arbitrators give considerable weight to such matters where the contract language is not absolutely clear, and those of you who are engaged in the practice of industrial relations realize only too well, probably, that any collective agreement has a lot of ambiguous language.

As we all know, some unions often demand that certain decisions be made by mutual « consent » or « joint agreement ». This may sound innocent but, in reality, it means that management cannot make the decisions unless, and until, the union agrees to it. In effect, this gives the union a veto power which can, in certain cases, prevent management from taking action necessary for, and directly related to, the economic performance of the enterprise — which is its main function and reason for existence.

« Mutual consent has a ring of fairness about it that is often misleading. Even if a company feels that the bargaining representatives it is presently dealing with are reasonable, it may find that, with the substitution of new faces at the bargaining table, the sweet reasonableness has changed to heated controversy.

In short, any proposals involving joint action should be most carefully reviewed because they involve simultaneously the sharing of rights and responsibilities and the restricting of management's ability to solve a situation and leaving management saddled with the risks.

In closing these very broad remarks, ladies and gentlemen, I would like to leave but one further thought with you. In the long run, regardless of what the rights of management may be necessary for the efficient conduct of the enterprise, they will be retained only if management exercises them with responsibility, wisdom and real care for human and social values, otherwise society will, in one way or another, through coercive legislation, remove from the hands of management the freedom and the discretion it claims it needs to operate its business.