# Roundtable

# *THE CHURCH AND COLLECTIVE BARGAINING IN AMERICAN SOCIETY*

*Participants: Garth L. Mangum*
*Vernon H. Jensen*
*H. George Frederickson and Alden J. Stevens*
*Richard B. Wirthlin and Bruce D. Merrill*

*This Roundtable explores certain aspects of the relationship between the Church and the labor movement, together with some political effects of that relationship. Garth L. Mangum, a member of* DIALOGUE'S *Board of Editors, was formerly executive secretary of the National Commission of Technology, Automation, and Economic Progress, and is currently Research Professor of Economics and Director, Manpower Policy Evaluation Project, at George Washington University. Vernon H. Jensen is Professor and Associate Dean of the New York State School of Industrial and Labor Relations at Cornell University. H. George Frederickson is an Assistant Professor of Political Science in the Maxwell Graduate School of Syracuse University. Alden Jay Stevens is working on a Ph.D. in political science at the University of Maryland and has been a National Science Foundation Trainee in Government and Politics. Richard B. Wirthlin and Bruce D. Merrill, an economist and a political scientist are both members of the faculty at Arizona State University at Tempe.*

## THE CHURCH AND COLLECTIVE BARGAINING IN AMERICAN SOCIETY

*Garth L. Mangum*

The attempt to repeal Section 14(b) of the Taft-Hartley Act was overshadowed nationally by other issues of the 1965 legislative session, but many Latter-day Saints were intensely interested. The reason was the unusual action of the First Presidency of the Church of Jesus Christ of Latter-day Saints in regard to it.

On June 22, 1965, the following letter was addressed to all Mormon members of the Senate and House of Representatives, seven Democrats and four Republicans from Utah, Idaho, Nevada, and California:

Dear Senators and Representatives:

We are informed that the Congress of the United States is seriously considering introducing legislation which, if passed, would result in the repeal of Section 14(b) of the Taft-Hartley Law, thus making it compulsory throughout the states of the Union that persons remain or become members of a labor union as a condition of employment or continuation of employment where an organized union is recognized as the bargaining agent.

That you may be informed of our attitude regarding this matter we reiterate a statement heretofore made by President McKay and published at his request to the following effect:

> "We stand for the Constitution of the United States, and for all rights secured thereby to both sovereign states of the Union and to the individual citizen.
> We believe it is fundamental that the right to voluntary unionism should once again be reestablished in this nation and that State Right-to-Work laws should be maintained inviolate. At the very basis of all of our doctrine stands the right to the free agency of man. We are in favor of maintaining this free agency to the greatest extent possible. We look adversely upon any infringement thereof not essential to the proper exercise of police power of the state."

We respectfully express the hope that no action will be taken by the Congress of the United States that would in any way interfere with the God-given rights of men to exercise free agency in seeking and maintaining work privileges.

Sincerely yours,
David O. McKay
Hugh B. Brown
N. Eldon Tanner

A brief history of the legislation and the "Right-to-Work" controversy which it involves is necessary background for a Roundtable on some of the economic and political issues raised by the letter.

## *THE UNION SECURITY ISSUE*

The repeal of 14(b) is but the latest round in one of the oldest controversies in American industrial relations. Historically, U.S. employers have fought unionism more consistently and more violently than the employers of any other nation. The resulting concern for union security is peculiar to labor-management relations in this country. The first concession sought by U.S. unions is recognition; the recognition by the employer of the union as representative of his employees and the willingness of the employer to negotiate with the union over the rules of the workplace. The second is closely allied: some guarantee of permanence for collective bargaining and for the union as agent of the employees. Since the ultimate weapon of the employer

against unionism is to replace union with non-union employees, the guarantee at its strongest consists of limiting employment to union members.

The employer, in turn, has reacted to the search for union security with opposition to compulsory unionism. The names have changed but the goal is the same: the Open Shop campaign prior to the First World War, the American Plan between the wars, and the Right-to-Work movement after World War II. Though each has promised to protect the right not to join unions, simple opposition to the concept of collective bargaining has always been involved.

Gradually, the country as a whole has adopted the philosophy that, in an industrial society, democracy requires broad participation in making the rules of the workplace as well as the rules of the political government. But this doctrine of industrial democracy still clashes with the opposing right of the property owner to unhampered freedom in decisions regarding his property. The advent of the corporation, with its separation of ownership and control, has challenged the realism but not the attractiveness of this concept. Adherents of the Right-to-Work movement are not necessarily partisans of untrammelled property rights; they are unlikely to be strongly devoted to industrial democracy.

## *TAFT-HARTLEY AND THE RIGHT TO WORK*

It was the National Labor Relations Act of 1935 (better known as the Wagner Act) which declared it to be public policy of the United States to guarantee to employees the right to bargain collectively through representatives of their own choosing. More than anything else it was World War II labor shortages which made the policy into reality. During this period the stronger forms of union security became widespread. Craft unions in industries where the relationship between the employee and any particular employer tended to be of short duration won "closed shops." Only members of the union could be hired. In industrial plants where the employment relationship was more permanent, the prevailing practice was the "union shop." The employer controlled hiring but agreed to require the employee to join the union as a condition of continued employment.

The Taft-Hartley Act (The Labor-Management Relations Act of 1947) resulted from the widespread feeling that the Wagner Act had tipped the balance too far in the unions' favor. One effort at redress was to outlaw the closed shop but retain the union shop under prescribed conditions. In addition to elections to choose an authorized bargaining agent, an employee could vote for or against the union shop. Only when a majority had voted for it could a union include the union shop among its bargaining demands. The employer was still free to refuse that, like any other demand. If the employer agreed, and his agreement became part of the contractual relationship, employees could be required to become union members within thirty days after the date of employment.

The union shop election requirement remained in the law only four years. When employees voted for the union shop in ninety-seven percent of the

cases (ninety-one percent of all votes cast were pro-union shop), the requirement was removed by amendment. Elections supervised by the National Labor Relations Board remain the usual means by which a collective bargaining representative, if any, is certified. This collective bargaining representative can demand of the employer that he agree to a union shop. The employer can agree or refuse but he must bargain over this issue just as he must on other conditions of employment. But any union membership requirement which results is a product of collective bargaining, not of law.[1]

The union shop remains the strongest union security (or compulsory unionism) provision admissible under federal law. However, as the result of the language of the Taft-Hartley Act and subsequent judicial decisions, the form of union membership which can be required under a union shop agreement, and the degree of internal discipline and control a union can exercise over its members, is considerably restricted. The majority can vote to decertify a union as bargaining agent just as they voted to certify it; dues and initiation fees must be "reasonable" in the eyes of the courts; membership must be available to any particular employee on the same basis as to all other members of the union. Most important, the prospective member can be required only to tender his initiation fee and dues. He cannot be required to take an oath of membership, submit to an initiation ceremony, attend a meeting, pay a fine or assessment, or in any other way participate in the union, contribute to it, or submit to union discipline. The allegiance required is strictly monetary.

The Taft-Hartley Act contained another unusual provision and this was the focus of the 1965 controversy. Typically, when Congress chooses to regulate matters related to interstate commerce, federal law supersedes state law. Section 14(b) of the Taft-Hartley Act provides that, in regard to union security, state law shall supersede federal law, as long as the state law imposes greater restrictions on the union. In other words, whenever a state legislature passes a law making the union shop inadmissible in that state, the union shop becomes inadmissible in interstate as well as intrastate commerce.

On the basis of this provision, nineteen states have anti-union security or "Right-to-Work" laws. Others have passed Right-to-Work laws and later rescinded them. Right-to-Work legislation has been actively promoted throughout the country by the National Right-to-Work Committee, of whom Dr. Ernest L. Wilkinson, President of Brigham Young University, is best-known to Mormon readers.

## *OBJECTIVES OF THE ROUNDTABLE*

Opposition to Right-to-Work laws has been focused within the AFL-CIO but with allegiance from other politically liberal groups. In 1965, the issue was brought to a head by a concerted attempt, with the blessing of the President of the United States, to repeal Section 14(b) of the Taft-Hartley Act.

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[1]The First Presidency's letter contains a legal inaccuracy upon this point. Repeal of 14(b) would *allow* an employer and a union to negotiate a contract requiring union membership as a condition of employment in the nineteen Right-to-Work states, just as is presently the case in all other states.

Three years later, the Congressional decision against repeal appears to have been accepted by the country in general and the issue has been dethroned from any important place in political discussions. Interest has remained high in Mormon circles, however, probably because of all the numerous political issues of the past few years, no other has merited such specific attention from the First Presidency. Having figured in subsequent "Mormon country" political campaigns, the issue also serves as an interesting case study for Mormon political scientists.

In this Roundtable, Professor Vernon H. Jensen, a prominent labor economist and industrial relations expert provides a political and philosophical background for the issue. Like most students of the labor market, he considers Section 14(b) and the Right-to-Work laws which rest upon it to be of minor importance substantively. Instead, to him, they indicate misunderstanding of the institution of collective bargaining which he considers a basic philosophical underpinning of "Capitalism." Political scientists George Frederickson and Alden J. Stevens assess the reactions of the recipients of the First Presidency's letter and explore the implications for Church-State relations. Professors Richard B. Wirthlin and Bruce D. Merrill, an economist and a political scientist, respectively, and partners in a political polling firm, report on the impact of the First Presidency's position on the political decisions of a sample of Utah voters.

This Roundtable has two serious limitations. First, it should have included a staunch defense of Right-to-Work legislation, but efforts to solicit such a paper were unsuccessful. Secondly, it ignores, except by implication, the most interesting questions of all. Mormons have tended to look upon a letter signed by the full First Presidency as the equivalent of "thus saith the Lord." There are few if any precedents to such a declaration of position on a particular political issue, let alone one addressed to specific legislators. Why that time and that issue as an exception to the long-standing policy of rather remarkable restraint?

Momentous decisions were made in the United States in 1965. It was the year of the largest commitment of federal aid to education in history. The issue of civil rights and race relations permeated almost every legislative question. The year-old antipoverty program was reconsidered and expanded. Most crucial of all, 1965 was the year our Vietnam involvement crossed the divide from economic and advisory support to a full-blown Americanized war.

The 14(b) repeal effort received national attention, not so much as a substantive issue, but because the prestige of the President of the United States and the political power of the AFL-CIO were on the line. Even within the latter there was strong opposition, led by the federation's second in command, to expending the labor movement's waning political capital upon what many union leaders considered a minor, primarily emotional, issue.

The extent to which, in their busy ecclesiastical lives, the First Presidency are able to keep abreast of current political issues, what the processes are, including revelation and inspiration, which identify one issue to be of crucial moral significance and label another minor, what the provisions are for ex-

pert briefings on national affairs, why the letter was apparently never exposed in advance to the critical scrutiny of experts in labor law — these are fascinating questions which cannot be answered from the outside. One who has written letters for the signatures of Senators, Cabinet members and Presidents — some of which they probably signed without careful reading, on subjects upon which they could only trust the expertise and judgment of their staffs — cannot help being curious about the role of staff, friendships, and influence in the making of Church policy. But an exploration of these questions would be purely speculative. The best this Roundtable can do is to describe the exterior setting for this unusual incident.

## PHILOSOPHICAL, LEGAL, AND PRACTICAL CONSIDERATIONS OF COLLECTIVE BARGAINING IN AN ENTERPRISE SOCIETY

*Vernon H. Jensen*

It seems strange to a student of the economic, political, and legal development of our society and its philosophical underpinnings that, in the middle of the twentieth century, so little is understood generally about the institution called collective bargaining. The failure to appreciate its values implies that people may not understand the elements which make up our society, because collective bargaining is integral to the critical tenets and factors basic to an enterprise society.

A serious look at capitalism, or enterprise society, is a necessary prelude to a consideration of collective bargaining. Fully developed capitalism, flowering in mid-nineteenth century, can be conveniently presented by listing a number of its basic characteristics. High on such a list will be *private property* and its corollary the *profit motive*; *commercialization of economic life* under a system of prices; a *free market*; development of *speculation*, or roundaboutness in production; establishment of *predicable law*; acceptance of *rational technology*; the device of *calculation in accounting terms;* and finally, but not least in importance, *freedom of capital* and *freedom of labor.*[1]

Property was not always privately owned. It took centuries for fee simple ownership to evolve and for property to become rid of encumbrances which restricted free use for private gain. It is obvious that ownership on a private basis without encumbrances was essential to the growth of enterprise. Associated with the development are some significant changes in economic and social relationships. It was an agricultural phenomenon no less than a commercial

[1]It is not assumed that these factors or characteristics are exclusively capitalistic, that is, unique to a capitalistic society, but they are all essential, and taken in conjunction with each other, provide a realistic description and analysis of the essential characteristics of a capitalistic society. It should be acknowledged that I am indebted to Professor Melvin M. Knight for giving me this approach to the analysis of capitalism. Economic historians will recognize that it comes, in large part, from Werner Sombart, Max Weber, and Henri See.