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The Reform of Bargaining Structure in the Canadian Construction Industry

Richard M. Brown†

Single-craft, local bargaining in the North American construction industry cannot address on a national scale such problems as unemployment, jurisdictional disputes, unequal bargaining power, and often-inflationary patterns of uneven wage increases. While province-wide, multi-trade bargaining units such as those recently inaugurated in Canada may alleviate these problems and others, the new structure may also impair the ability of the wage/price system to signal new areas of need and to allocate efficiently labor and resources. The author examines the history and potential of the Canadian reforms, evaluates the criticisms that have been and may be made, and discusses the advisability and likely effect of instituting such a structure in an area as important and multifaceted as the North American construction industry.

I

INTRODUCTION

Negotiators for a council of nineteen construction trade unions recently concluded a collective agreement with spokesmen for an association of construction employers from across British Columbia. This single settlement determined the terms and conditions of employment for the vast majority of construction workers engaged in nonresidential building construction in the province. Industry-wide bargaining is a new departure in the North American construction industry. Traditionally, each union bargained separately, often on a local basis and occasionally with a single contractor. “Whipsawing” and “leapfrogging” have been rampant; construction settlements exceeded all others during the wage spiral of the early 1970's.¹

The union successes in this favourable economic climate were facilitated by the industry's fragmented bargaining structure.² Each

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agreement built upon earlier ones; in the absence of centralized direction, the general trend defied control by any of the participants. Construction wage gains strongly influenced settlements in other industries and contributed to the inflationary pressures which brought about wage and price controls. The industry's fragmented bargaining structure posed a major impediment to the successful management of the economy.

The previously local structure of bargaining also created problems within the construction industry itself. Since contractors and workers in all trades are employed at a common worksite, a strike by any single union usually deprived of work those engaged in other crafts. Moreover, single-craft, local bargaining is ineffective against problems which have long plagued labour relations in the industry: unemployment, jurisdictional disputes, and other nation-wide difficulties. Local bargaining also could not address the serious competitive challenge from construction firms employing nonunion labour. These firms were making rapid gains and were performing a substantial amount of nonresidential building work in the United States; open-shop construction was also growing in Canada, but at a slower rate.3

Bargaining structure has seldom been directly regulated in North America. Labour relations boards have long determined appropriate bargaining units, but these determinations have been made primarily to set electoral boundaries for union certification campaigns and to establish the scope of the employer's obligation to recognize the union. Typically, these units have been quite limited in size. Small electoral districts facilitate union representation campaigns; they allow a firm to refuse to engage in collective bargaining on the grounds that a majority of its employees do not support a union, even when most workers in the industry or trade have chosen union representation. Although factors relating to the negotiation of agreements receive some consideration, certified units are often too small for collective bargaining to be successful. Labour relations laws have generally ignored the distinction between certification units and bargaining units, making no attempt to join electoral districts together for the purpose of bargaining.

Recent construction industry legislation in Canada takes direct aim at this problem. In British Columbia, the bargaining structure has been consolidated, granting the employers' association exclusive bargaining rights for contractors employing the vast majority of unionized tradesman in the province and requiring the unions to conduct joint

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3. Several of the leading firms in industrial construction operate open shop. See Foster, supra note 1, at 6-8; H. Northrup, Open Shop Construction (1975).
negotiations. Similar legislation designed to regulate the structure of bargaining has been introduced in most provinces.4

The Canadian construction industry offers a case study for the evaluation of structural reforms in action. The pertinence of such a study goes beyond Canadian national borders; similar structural reforms have been advocated in the United States. There, the ill-fated Construction Industry Collective Bargaining Act of 1975 sought to increase central direction by allowing the international unions final authority in local contract disputes. President Ford vetoed the act, leaving the problem of fragmented local bargaining unresolved.5

In Canada, the most significant changes have occurred in the non-residential building sector, which includes industrial, commercial, and institutional construction and constitutes the major portion of the industry. The next part of this article will examine the characteristics of this type of construction and the historical pattern of bargaining in the industry.6 The article will then outline the laws creating province-wide bargaining structure in the industry before turning to a more detailed account of the British Columbia experience. Finally, the relative merits of the provincial schemes and the challenges of centralized bargaining will be examined.

II

THE NATURE OF THE CANADIAN CONSTRUCTION INDUSTRY

Construction projects are largely custom-made on location. This mode of production determines the operational patterns of construction firms, the organization of workers and the structure of collective bargaining. Since mass production is generally not possible, capital requirements are low, allowing twenty thousand contractors to enter the industry. Most of these contractors have assets of less than two hundred and fifty thousand dollars, although there are two hundred firms valued at over five million dollars.7

4. Provincial rather than national labour relations acts govern most construction in Canada.
5. Foster, supra note 1, at 9-10.
6. The detailed information presented here, which relates primarily to the Canadian industry, has only recently become available. The most comprehensive source is a series of reports published by the Economic Council of Canada. B. Keys & D. Caskie, The Structure and Operation of the Construction Industry in Canada (1975); L. Auer, Construction Instability in Canada (1975); P. Malles, Employment Insecurity and Industrial Relations in Canada (1975); N. Swan, Government and Construction Instability (1975); R. Jenness, Manpower in Construction (1975); and Economic Council of Canada, supra note 1. Although the information relates primarily to the Canadian industry, the American industry is largely similar.
On-site production requires a high degree of specialization. The coordination of the work on a project is usually the responsibility of a general contractor, who typically subcontracts most of the work to firms engaged in one of more than twenty trades. Some trades are further divided into specialties. Trade contractors marginally outnumber general contractors, but are smaller in size. General contractors work usually throughout a province or region and occasionally nationwide, but firms engaged in trade work more often restrict their operations to a metropolitan area. A few specialty firms which require expensive equipment or serve a widely dispersed clientele operate throughout the country.

Competition among contractors is intense. The bidding system lends itself to stiff rivalry; because of the differentiated nature of the product, quality of service is a significant factor in the competition. Cyclical instability, with swings of twice the magnitude that exist in manufacturing industries, compounds the financial difficulties of construction firms; profits fluctuate wildly.

Construction is a labour-intensive industry, with a wage bill one-third larger in relation to total costs than that of the economy generally. The skills of construction workers closely correspond to the lines of contractor specialization. General contractors normally hire labourers, carpenters, operating engineers and members of one or two other trades, whereas subcontractors generally employ only a single trade. The majority of contractors engage fewer than fifteen workers.

Trade unions have been established institutions in this sector of the building industry for three-quarters of a century. The difficulty of replacing skilled tradesmen, the financial weakness of small employers, and the limited geographical scope of product markets fostered organization. In the industrial, commercial and institutional construction sector between seventy and ninety percent of the workforce is organized.

9. ECONOMIC COUNCIL OF CANADA, supra note 1, at 14, 15.
11. ECONOMIC COUNCIL OF CANADA, supra note 1, at 20, 57; R. JENNESS, supra note 6, at 11, 23.
12. ECONOMIC COUNCIL OF CANADA, supra note 1, at 62.
13. This is based upon employment by members of the Construction Labour Relations Association in British Columbia. Rose, Construction Labour Relations Associations in Canada, 32 INDUS. REL. INDUSTRIELLES 38 (1977).
15. P. MALLES, supra note 6, at 16.
The seventeen international craft unions affiliated with the Canadian Labour Congress (CLC) and AFL-CIO are dominant. The carpenters' union, with over fifty-five thousand Canadian members, is by far the largest organization. The plumbers', electricians' and labourers' unions each have approximately thirty thousand members. The operating engineers', bricklayers' and boilermakers' unions are the only others with more than three thousand members. The members of each union generally perform the same type of work, although several unions represent two or more closely-related specialty trades. The concept of work jurisdiction is fundamental to craft unionism, and the unions are obliged to respect each other's jurisdictional charter, although borderline disputes frequently arise.

Job crews are formed and liquidated as the employer begins and completes projects. Workmen are generally hired for a single project; only a nucleus of key personnel enjoy permanent employment. Employers are generally obliged to engage only union members, referred by the union hiring halls. The unions act as employment agencies aiding workers in their moves from job to job. In this way the craft unions permit flexible employment relationships while minimizing instability in the labour market as a whole. Employment insecurity is increased by seasonal and cyclical changes, so that average annual employment ranges from thirty to fifty weeks.

There are significant differences among contractors and workers engaged in the various trades, especially between the firms performing mechanical work and those engaged in more basic tasks. Within the mechanical group fall plumbing, electrical, sheet metal, boiler, insulation, and elevator work. The basic trades include carpentry, bricklaying, masonry, painting, plastering, and excavation operations. In recent years, the mechanical crafts, particularly the plumbing and electrical trades, have enjoyed by far the most rapid growth in work, while demand in some of the basic trades has actually dropped. The work of many of the basic trades is twice as labour-intensive as the jobs performed by the mechanical group. Wages constitute a particularly small share of the total costs of plumbing, electrical, and a few specialty crafts. Since mechanical work requires great skill, workers in those trades must complete lengthy apprenticeship programs. Finally, the

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16. Also active in the field are the Teamsters and, in Quebec, the CNTU and other syndicates.
18. A recent survey of 485 agreements found that 80% contained a closed shop clause and 75% provided for a union hiring hall. P. Malles, supra note 6, at 42-48.
19. R. Jenness, supra note 6, at 19-23; Economic Council of Canada, supra note 1, at 54, 56.
20. D. Mills, supra note 2, at 73.
21. Id. at 12.
extent of union organization is almost fifty per cent greater among the highly-skilled trades than in the basic crafts.\textsuperscript{22}

\section*{III

\textbf{Construction Industry Bargaining Structure}}

The industry's complexity and diversity are reflected in its traditional bargaining structure. Until recently, three features characterized that structure in most of North America: employers joined associations which conducted negotiations; agreements applied to a local area; and each trade negotiated separately.

Contractors employing workers belonging to the same trade bargained jointly with each local union. This propensity of construction firms to join employers' associations for the purpose of collective bargaining is in striking contrast to the general pattern of single-plant or single-employer negotiations on this continent.\textsuperscript{23} Collective action by contractors was a response to the tactical strength enjoyed by unions which negotiated with a large number of small employers, each having high wage costs and each engaged in a very competitive business.\textsuperscript{24} The unions could obtain favourable settlements by striking the most vulnerable firms and then demanding that other contractors settle on the same terms. Selective strike action could be sustained for some time through assessments upon the wages of working members. A contractors' association could counter these union tactics by threatening to lock out all union members whenever one firm was struck. Association bargaining also introduced economies of scale, and facilitated labour relations expertise beyond the reach of small employers. However, the unions continued to occupy a position of strength; only approximately one-half of all employers joined associations, although those which took joint action had large work forces and employed the vast majority of unionized workers.\textsuperscript{25}

\textsuperscript{22} G. Haythorne, \textit{supra} note 17, at 87.


\textsuperscript{25} See \textit{Ontario Ministry of Labour, Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario} (1976); Crispo \& Arthurs, \textit{Countervailing Employer Power: Accreditation of Contractor Association}, in \textit{Con-
Employers’ associations initially negotiated local agreements. When collective bargaining first began unions were formed to represent tradesmen in each geographic area. After these bodies joined together to form international organizations, the local unions continued to bargain their own contracts. The area of bargaining soon expanded, however, due to increased employee and contractor mobility as well as the wage demands and organizational objectives of the union movement. It is not surprising that the unions provided the impetus to widen the area of bargaining, since they sought to take wages out of competition and to obtain equal pay for equal work. Contractors initially opposed the expansion of bargaining areas beyond their base of operation because the interests of contractors operating in other localities frequently conflicted with their own due to disparities in construction demand or local wage rates. The industry’s long history of strong local unions was another retarding influence. Despite these impediments, the area of bargaining grew as local unions in many trades merged or joined to form district councils. However, collective agreements generally did not extend beyond single metropolitan areas and were narrower than the existing labour markets. There have been, however, exceptions to this pattern. In a few trades in which a small number of contractors operated on a provincial or national basis, the area covered by collective agreements has for some time been of corresponding scope.

The structure of bargaining in Ontario is illustrative. Until 1976, the unions with the largest memberships negotiated area agreements. The carpenters, labourers, electricians, plumbers, and sheet metal workers fell under twelve local contracts. Wider-area bargaining prevailed only in the smaller crafts, while province-wide or nearly province-wide agreements set the terms and conditions of employment for several kinds of speciality workers including bricklayers, painters, lathers, asbestos workers, and iron workers. Boilermakers and elevator mechanics were employed under national or nearly national collective agreements. The predominance of local bargaining was reflected in the wage structure; in three trades, wages differed by almost two dollars per hour between areas, and for most crafts the differential exceeded one
In the western provinces, however, very different configurations emerged. The area covered by collective agreements for most trades grew during the 1950's and 1960's to encompass entire provinces or large parts of them. The evolution of regional bargaining was facilitated by population settlement patterns. In the more densely populated eastern provinces, there are a large number of nearly contiguous metropolitan areas, each with a long history of local union bargaining. In the West, there often was only a single local union or one dominant local in each large city. Negotiations for Vancouver and the surrounding lower mainland, for example, had always set the provincial pattern in British Columbia. It was only a small step for the basic trades to begin negotiating province-wide agreements in the early 1960's. The twenty-seven local carpenters' unions formed a bargaining council. In several other basic crafts there was only one local in the province. Three plumbers' locals and two local sheet metal unions negotiated regional agreements at that time. By the late 1960's, most trades had formed provincial bargaining councils.33

The geographical scope of bargaining in the United States is similar to the structure which existed in Canada until the recent reforms. The influence of population distribution is evident once again: in densely populated upper New York state, for example, local area bargaining persists,34 while the regional negotiations of dominant locals have determined bargaining agreements in the western states for several decades.35

In Canada, as in the United States, and the certification practices of labour relations boards have had little effect on the area of bargaining. The usual method of union certification, which establishes the union's bargaining rights only at the present location of the employer's business, is poorly suited to ambulatory construction workers and work sites. Ontario first introduced certifications which granted bargaining rights throughout a defined area.36 A number of other provinces have taken similar steps.37 Over a period of years, the Ontario Labour Rela-
tions Board divided the province into thirty-two areas; however, area boundaries reflected the geographical coverage of existing collective agreements. Similarly, province-wide certificates were granted in British Columbia only after the geographical base of bargaining encompassed the same territory. In the United States, bargaining rights are still restricted to individual projects.

Traditionally, each trade negotiated separately throughout North America. As the number of specialties continually increased, unions which represented more than one specialty craft usually negotiated an agreement for each. Construction workers who lacked any permanent employment link strongly supported single-trade bargaining. They had deep loyalties to the trade union which was the only constant in their working lives and administered such things as hiring halls and health and welfare plans. However, the attraction of single-trade bargaining was not solely based upon history and sentiment. There can be little doubt that the members of several trades believed that solo negotiations enhanced their economic leverage.

There are large differences in wage levels among the trades. Workers in the highest-paid trade earned over two dollars more than the lowest-paid construction employees in most North American cities in 1975. The impact of increased labour costs upon prices and profits is directly proportional to the labour-intensity of the work and, in turn, accelerates wage gains. The ease with which labour costs can be reduced by substituting new equipment or materials or by employing nonunion labour produces a contrary tendency. Both these factors have their greatest effect on wage settlements during upswings in the volatile construction business cycle, as employers compete for labour and strive to avoid work stoppages. Significant differences exist among the trades with respect to labour-intensity, nonunion competition, and demand growth. Thus, on all counts the mechanical crafts have recently been better situated than the basic trades. Similarly, plumbers and electricians have displaced carpenters and bricklayers from their position at the top of the wage hierarchy which they held in

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39. Dunlop, supra note 10, at 270.


41. A. MARSHALL, PRINCIPLES OF ECONOMICS 385-86 (1930).

42. J. DUNLOP, THEORY OF WAGE DETERMINATION 20-22 (1944).
the 1950's.\textsuperscript{43}

Those at the top of the pay scale have generally refused to engage in joint action with the other trades. From the perspective of the stronger unions, joint bargaining would require them to negotiate with contractors who are more resistant to wage gains than their own employers. Many contractors employing the wage-leading trades were able to bear or to pass on the impact of increased labour costs and were not willing to risk work stoppages for the benefit of other contractors. Finally, for the mechanical unions, which have much smaller memberships than the basic trades, joint bargaining raised the strong possibility of becoming a voiceless minority.

The structure of bargaining in the construction industry was extremely fragmented. Work on a single project often fell under more than twenty different trade agreements. Even in British Columbia, where province-wide bargaining prevailed, sixty-five separate agreements were negotiated in 1977. Localized bargaining in Ontario produced two hundred collective agreements. These numbers are far greater when contracts with individual firms are added to the collective agreements negotiated with employers' associations.

The refusal of a substantial number of employers to join associations posed a serious problem for collective bargaining. Construction firms negotiating separately are easy prey for the divide-and-conquer tactics of labour. However, the cost of participation in lockouts to curtail selective strikes is high.\textsuperscript{44} Contractors cannot draw on large inventories to meet customer demand and may incur penalties for late completion. One-time clients do not want their site to become the battleground upon which wage increases are fought, and will exert pressure for work to continue. The limited resources of small contractors further shorten their time horizons, magnifying the cost of a strike and discounting future labour costs.\textsuperscript{45}

On the other side of the balance sheet, participation in joint negotiations by a single firm will improve the situation only marginally, and even that gain may be wiped out if other firms break ranks. It is not surprising that many contractors decided that association bargaining was not profitable. The safest course was to deal directly with the union and hope to take a “free ride” on the benefits of collective action by others.

Agreements between international unions and firms which operate throughout the country further impeded the quest for employer unity at

\textsuperscript{43} Bertram, \textit{Wage Structure and Wage Changes}, in \textit{Construction Labour Relations} 520, 548 (Goldenberg & Crispo eds. 1968).

\textsuperscript{44} For a general discussion of this type of organizational problem, see M. Olson, \textit{The Logic of Collective Action} (1966).

\textsuperscript{45} Crispo & Arthurs, supra note 25, at 379.
the local level. These "national agreements" permit contractors to work during local strikes in exchange for union recognition across the country and payment of local wage rates. Employment under national contracts has allowed the unions to prolong strike action. Most resource development projects also have had an unsettling effect on local unity. Many of the firms which are engaged on these sites refuse to participate in joint bargaining because they must attract large numbers of workers to the area and have no long-term local interest.

Local, single-trade bargaining, even by strong employers' associations, presents other difficulties. Agreements reached in each area, often in response to local conditions, will influence negotiations elsewhere as each union local seeks to match or exceed earlier settlements. Although wage gains spread geographically in all industries, this phenomenon is particularly significant in construction because of the large number of bargaining situations. Similarly, negotiations by one trade influence settlements for the other crafts. The common worksite increases the force of this coercive comparison. The wage gains won by the mechanical trades exceed other settlements, and have spilled over to the benefit of the weaker trades. Empirical studies reinforce the conclusion that inter-trade and inter-area wage comparisons have a substantial impact on pay increases.

Rapid increases in construction wage rates have been detrimental to the national economy in both Canada and the United States. The competitive advantage which union wage gains give to open-shop construction concerns organized construction employers and their workers. Labour also risks losing more jobs to technological change as a result of higher pay scales. These concerns are felt most strongly in the basic trades, in which demand has grown most slowly and mechanization and nonunion labour are most readily available.

Work stoppages have further disrupted the national economy. Single-trade bargaining can lead to recurring strikes as the unions take economic action in succession. A strike in one trade eventually halts work by those engaged in the later stages of construction. Picket lines more quickly stop other work. The Canadian courts have generally refused to restrict picketing which affects the operations of a firm who

46. D. Mills, supra note 2, at 35.
47. Alberta and New Brunswick have enacted special legislation to deal with collective bargaining on these projects. Alta. Stat. c. 33, §§ 93.1-.6 (1973); N.B. Rev. Stat. c. 1-4, §§ 144-46.
48. Interunion whipsawing has also been observed in the maritime industry. See H. Levinson, Determining Forces in Collective Bargaining 133-214 (1966); A. Ross, Trade Union Wage Policy 45-74 (1948).
49. A detailed analysis of 500 settlements by ten trades during the 1960's found that these factors were each responsible for between 7% and 33% of wage increases. D. Williamson, supra note 2, at 188-91, 207-08. As to the impact of area comparisons, see Foster, supra note 1, at 8-9.
50. See the material cited at note 1 supra.
shares the struck employer's work site.\textsuperscript{51} In British Columbia, the only province where picketing is governed by statute, the Labour Relations Board has the discretion to allow or restrict common-situs picketing depending upon the interests at stake.\textsuperscript{52} Picketing has been prohibited upon the application of a general contractor on condition that the applicant cease dealing with the struck subcontractor for the duration of the work stoppage.\textsuperscript{53} In the United States, the broad prohibition against secondary economic action limits picketing at construction sites.\textsuperscript{54}

Contractors and workers throughout the industry are linked tightly together in the same way as the parts of a building are joined. Any action creates reverberations which are felt by all components. Decentralized bargaining allows contractors and unions engaged in one part of the industry to implement decisions which will critically affect the interests of those who have taken no part in the decisions. Firms which operate during a work stoppage weaken the position of other contractors. Wage gains arrived at in one trade or area have a substantial impact upon pay scales, profits and employment in other crafts and other places. Strikes in one trade prevent those engaged in the remaining crafts from working. These consequences are not adequately weighted in the decision-making process because those affected are not represented.

IV

PROVINCIAL STATUTORY TREATMENT OF CONSTRUCTION INDUSTRY BARGAINING

Eight Canadian provinces enacted legislation to consolidate the structure of bargaining in the construction industry in the late 1960's and early 1970's.\textsuperscript{55} The governments of British Columbia,\textsuperscript{56} Ontario,\textsuperscript{57}

\begin{itemize}
\item \textsuperscript{51} Tenen Investments Ltd. v. Wueller [1966] Canadian Labour Law Cas. (CCH) 14, 151 (Ont. H. Ct.); Falconbridge Nickel Mines Ltd. v. Tye [1971] Canadian Labour Law Cas. (CCH) 14, 100 (Ont. Sup. Ct.).
\item \textsuperscript{52} B.C. Stat. c. 122, §§ 84-89 (1973).
\item \textsuperscript{53} J.R. Benzanson Ltd. [1975] 2 C.L.R.B.R. (Canadian Labour Relations Board Reports) 374(B.C.). Conditional relief of this nature would be of little value to a subcontractor who could not carry on without a struck general contractor. The Board's general policy in these cases is to restrict picketing to the primary employer's operation unless the impact of extended picketing upon the primary employer interests is sufficiently large to justify the costs to the secondary employer and its workforce. Dillingham Corp. [1976] 1 C.L.R.B.R. 129(B.C.). This calculus seems to favor common-situs picketing, which creates an awkward situation in which the legality of common-situs picketing at the same site may depend upon which employer is struck. In the future the Board may well permit all common-situs picketing, to ensure that picketing regulation meshes with the multitrade scope of the new bargaining structure.
\item \textsuperscript{54} NLRB v. Denver Building & Constr. Trades Council, 341 U.S. 675 (1951).
\item \textsuperscript{55} A discussion of the legislation in all provinces but Quebec may be found in J. DORSEY, ACCREDITATION IN CONSTRUCTION LABOUR RELATIONS (Institute of Public Affairs 1974); Rose,
Nova Scotia, and Alberta took different approaches to the problem. Legislation in three other provinces closely copied one or the other of these schemes. Although these enactments apply to all types of construction, none sought to merge negotiations for nonresidential building work with bargaining for other types of construction. A new scheme, which applies only to the nonresidential building sector, was introduced in Ontario in 1977. Saskatchewan enacted legislation in 1979. Construction labour relations in Quebec have long been unique and the laws of that province cannot be adequately considered here.

The general objectives of these reforms were to increase the strength of employers' associations, to broaden the geographic base of negotiations and to foster multitrade bargaining. The provincial governments took different approaches to these concerns; in some provinces the measures adopted did not encompass all of these goals.

The concept of exclusive bargaining rights, a distinctive feature of


64. For a detailed account of labour relations laws in the Quebec construction industry, see G. Herbert, 2 LABOUR RELATIONS IN THE QUEBEC CONSTRUCTION INDUSTRY 5-64 (1978).
union certification in North America, was drawn upon in all provinces
to strengthen contractor alliances. An association may be “accredited”
by the labour relations board. After an accreditation is issued, only the
designated association may bargain on behalf of the unionized contrac-
tors which it represents.  

Most provinces grant accreditation to a bargaining agent only if it
enjoys broad support among the employers in the unit. Applications to
terminate bargaining rights are governed by the same principle. The
dissenting minority must accept representation by an accredited associ-
ation, just as the employees who do not support a union must bow to
the will of the majority of their fellows. The great variation in the size
of firms makes the precise application of democratic principles difficult.
The Alberta government adopted a simple majority-of-firms standard.
Nova Scotia will grant accreditation to an applicant supported by a
majority of contractors or by thirty-five percent of the firms so long as
those firms employ one-half of the workers in the unit. The wishes of
large contractors carry special weight only if they support an applica-
tion for accreditation. A majority of contractors who employ a major-
ity of employees must support an application to terminate bargaining
rights, again giving a greater voice to large firms which favour joint
action. The legislation adopted in Ontario in 1977 vests exclusive bar-
gaining rights for all employers in each craft in provincial trade as-
sociations. It was not required that any level of contractor membership
be demonstrated, but the designated trade associations were widely
supported. A majority of firms which employ a majority of the em-
ployees in the unit may choose new bargaining agents; however, it is
not possible to completely abolish provincial bargaining rights and re-
turn to negotiating on a local or individual basis. The Saskatchewan
Act is similar to the Ontario legislation.

In contrast to the other provinces, a bargaining agent in British
Columbia represents only those contractors who have voluntarily be-
come members. One reason for the adoption of this more conservative
scheme is that accreditation in this province is available to employers
in all industries. Although entry into an accredited unit is voluntary,
a prohibition against withdrawals during negotiations and a require-
ment that all membership terminations be approved by the Labour Re-
lations Board provide a degree of solidarity.

Central to the notion of accreditation is the authority of the associ-

65. The idea of applying this concept to employer bargaining was proposed in Crispo &
Arthur, supra note 25.

66. Eighteen associations have been accredited. Among these are associations of employers
engaged in the forest, paper, metal, trucking, and hotel industries, as well as municipal and hospita-
tal employers.

67. See the discussion in text at note 89 infra.
BARGAINING STRUCTURE REFORM

...ation to enter into contracts binding upon all employers in the unit and a corresponding prohibition of settlements by individual contractors. The analogy to union bargaining rights is obvious. However, uniform terms do not prevent divide-and-conquer strategies, since the union may obtain more favourable standard terms through selective strikes than could be obtained otherwise. Because these tactics can only be countered if all contractors lock out the union whenever some employers are struck, some argue that accredited bargaining agents should be granted the power to direct their membership to stop working. Labour law in North America has usually shunned coercion of this nature. Union members are not prohibited by law from working during a strike, although private sanctions may be imposed. Similarly, most provinces do not empower an employers’ association to enforce a lock-out unless the members agree to grant this power to their bargaining agent. The legislation in Ontario and Nova Scotia has, however, placed some restraints upon the operations of contractors during a work stoppage. There is a proscription against agreements between an employer and a union for the supply of workers while other contractors are struck. Contractors may continue to employ union members, but they may not exchange for these services an undertaking to the union to adopt the terms obtained from struck firms. In practice, it is difficult to distinguish between these two situations. Alberta has taken stronger measures to ensure solidarity. The law there bans selective strikes during the first sixty days of a work stoppage. While all contractors must join in lockouts invoked by the association during this period, individual contractors are free to settle with the union after this time.

Accreditation schemes generally provide greater protection for contractors against abuse of the association’s exclusive authority than is extended to employees with respect to a union. The Ontario and British Columbia legislation permits membership to be denied or terminated only on reasonable grounds. In Alberta a hearing is required before disciplinary action can be taken for any reason other than a failure to pay dues. Neglect of the financial obligations of membership is the only ground upon which membership may be withheld or cancelled in Nova Scotia, where it is also required that the association be controlled by its members. Several other provinces have enacted a duty of fair representation.

Most provinces designed accreditation not only to strengthen existing employer alliances but also to consolidate the geographic and trade base of negotiations. British Columbia and Nova Scotia have

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68. Crispo, Ontario’s Bill 67: Reform or the Status Quo, 26 INDUS. REL. INDUSTRIELLES 853, 861 (1971).
70. See Alberni Eng’ring & Shipyard Ltd. [1977] 1 C.L.R.B.R. 190 (B.C.).
created a highly consolidated bargaining structure. Both provinces have accredited single employers' associations to represent contractors in all trades. The British Columbian unit encompasses the entire province; Nova Scotia excluded only Cape Breton from coverage. Bargaining rights in Alberta may span the province, but are restricted to a single trade. Employers who deal with two or more unions may be represented by one association when the union's members perform the same work. Multitrade coordinating agencies for both labour and management were designated recently, but these agencies have no bargaining rights. The Saskatchewan Act allows the Minister of Labour to designate trade divisions encompassing employers in all or part of a trade throughout the province or in a smaller territory.

In Ontario, the original scheme did not alter the craft or area base of negotiations. An employers' association could be accredited to represent only those firms which already bargained with the same union or council of unions. Although provision was made for the legal recognition of councils of trade unions, in hopes of fostering wide-area and multitrade bargaining, locals in only a few trades formed councils. Consequently, the bargaining rights of the employers' associations, which were accredited to represent contractors employing one-quarter of the organized work force, were generally restricted to a narrow trade and geographic base. Proponents of the restrictions hoped that these accreditations would facilitate centralized bargaining. The strengthening of local employers' associations might have provided the leverage necessary to support employer demands for wider-area or multitrade bargaining. However, only in the iron-working trade, in which a small number of employers made joint action possible, did accredited associations merge.

Decentralized negotiations continued. The legislation passed in Ontario in 1977 vested all bargaining rights in a provincial employers' association for each craft, and a common biennial expiration date was set for all agreements. The designation of an agency to coordinate the activities of the contractors' associations foreshadowed eventual multitrade bargaining, although all bargaining rights are held at the trade level. The scope of negotiations is not required to be as broad as the geographic and trade base of contractors' associations in most provinces. Although all labour organizations must deal only with an accredited agent, each local union or craft may insist upon bargaining

74. Ont. Rev. Stat. c. 232, §§ 9, 43 (1970). The bricklayers' union and carpenters' union formed provincial councils. A few other local councils were also created.
separately, and the employers’ association can rely only upon its economic strength to achieve joint negotiations. Joint action by the unions is required by law in only three provinces. In British Columbia, most unions endorsed joint bargaining. Consequently, the Labour Relations Board stated that it would order the formation of a central council to represent all unions in negotiations unless the unions quickly formed one. This the unions did. The bargaining rights of the council are approximately coextensive with the unit represented by the province-wide, multitrade employers’ association. Since most unions also supported province-wide, single-trade bargaining in Ontario, the new scheme designated each international union as the agency to bargain on behalf of all local bodies. Once again the scope of bargaining rights for both labour and management are the same. In Saskatchewan, two or more locals of a union which deal with a single accredited association must bargain through a council. The law which requires joint bargaining in Ontario and British Columbia does not prohibit strikes by individual unions. However, the unions may grant to their bargaining agent the authority to control strike action in the same way as contractors may allow their association to enforce lockouts.

V

THE BRITISH COLUMBIA EXPERIENCE

A short case study of labour relations in the British Columbia construction industry provides insights into the process of consolidation, the relative merits of the provincial schemes and the challenges of centralization. By the late 1960’s many trades negotiated province-wide agreements. Wage increases were the largest in the country, and both construction purchasers and large employers in other industries determined that multitrade bargaining was desirable to contain inflationary pressures. The Construction Labour Relations Association of British Columbia (CLRA) was formed in 1969 in hopes of attracting to membership firms engaged in all trades throughout the province. Two years earlier, a similar organizational attempt had failed to win the allegiance of a number of trade associations and of contractors in

75. See the discussion in text at note 87 infra. The Board may, upon a reference from the minister, order that a council of trade unions be formed. B.C. Stat. c. 122, § 57 (1973). The leading case under this section is British Columbia Ry. Co. [1977] 1 C.L.R.B.R. 289 (B.C.).


77. A study of the Association’s formation is presented id. For a description of similar associations in other provinces modeled after their British Columbia predecessor, see Rose, Construction Labour Relations Associations in Canada, 31 INDUS. REL. INDUSTRIELLES 35 (1977).
outlying regions.\textsuperscript{78} CLRA designed its constitution to overcome these obstacles. All contractors and trades, regardless of size, have an equal voice in the election of the eighty-member governing council. Firms in each trade or specialty division elect two representatives. Two delegates are also chosen from each of eight regions, although the vast majority of members are located in the lower mainland region. The council, in turn, elects the association's executive officers. The members of each trade division make ratification decisions, but either the council or the executive may authorize lockouts. The association soon attracted more than five hundred members.

CLRA lobbied for the enactment of a majority-rule accreditation scheme. When the province's more conservative variety of accreditation was introduced in 1970, CLRA was the first association to be accredited. Although the Labour Relations Board defined the appropriate unit to include all construction work except roadbuilding, members have voluntarily assigned bargaining rights only for the non-residential building sector. Province-wide bargaining had already been achieved in most trades. The primary objective of CLRA was to bring together firms from all trades to ensure that no one union obtained special concessions which would unsettle the wage hierarchy and set off "catch up" demands by others. CLRA insisted that monetary issues be discussed at a central table and maintained strong central control even over the negotiation of trade matters with individual unions. This stance was backed by a constitutional provision allowing CLRA to enforce industry-wide lockouts to prevent individual unions from striking to win special concessions.

The first six years were the most difficult for CLRA and the most tumultuous in the history of British Columbia construction. Only one major dispute had occurred in the preceding fifteen years. Although some unions demanded individual treatment, CLRA insisted on dealing with all of them together. Both sides held to their positions through lengthy shutdowns. CLRA invoked three-month lockouts in response to selective strike action by plumbers, electricians, and others in 1970 and 1972. The settlements reached for all trades were uniform or nearly so.

When most unions struck for two months in 1974, CLRA was forced to settle separately with five groups, ranging in size from one local of the electricians to a pact of ten basic trades. All settlements were for the same amount but each provided improvements over earlier agreements in the timing of increases or in fringe benefits. When the boilermakers struck several months later, their demand for parity

\textsuperscript{78} British Columbia Ministry of Labour, First Report of the Special Inquiry Commission into British Columbia Construction 11-12 (1975).
with the plumbers was voluntarily submitted to an industrial inquiry commissioner. A similar submission had earlier been made on cost-of-living increases for all trades. The boilermakers won their claim for parity, and cost-of-living increases were granted to the unions in differing amounts, further unsettling the wage hierarchy.\textsuperscript{79}

Faced with "catch up" demands by those trades which had fallen behind in the last round of negotiations, in 1976 CLRA refused for the first time to conclude agreements with any trade until all had settled.\textsuperscript{80} Strikes by the cement masons and carpenters were met by a CLRA lockout that lasted six weeks. Federal anti-inflation guidelines set the maximum permissible increase, but the mechanical trades wanted the increases distributed so that each trade received the same percentage gain, while a uniform absolute increase was sought by the basic trades. Mediation efforts produced a return to work, which was soon shattered when the plumbers struck over demands for downtown parking and a hot lunch. The industry ground to a halt for another month.\textsuperscript{81}

The consolidation of bargaining had reached a critical stage. CLRA membership had grown to eight hundred and fifty contractors. Although a substantially larger number of contractors continued to deal directly with the unions, most were small operators; it was estimated that they performed only twenty percent of all non-residential building work. During work stoppages, these independent contractors and firms working under national agreements provided employment for union members and gained a competitive edge on CLRA firms. One electricians' local, sustained by work on a pulp mill under a national agreement, won an extra fifteen cents per hour over the industry settlement by remaining on strike for a month after others had returned to work. The continued operation of firms not affiliated with CLRA increased the already substantial temptation for members to abandon industry-wide bargaining. Dissatisfaction ran deepest among mechanical firms which derived the least benefit from joint bargaining.

Some CLRA members broke ranks. The Association was forced during each round of negotiations to take court action against firms which disregarded lockout directives. The Association obtained injunctions against eight contractors in 1976. A few firms resorted to the subterfuge of working through related corporations to escape CLRA's grasp. Provincial labour laws provide that two or more related businesses operated under common control may be treated as a single employer. Further, the purchaser of a business may be bound by the

\textsuperscript{79} For a detailed account of negotiations between 1970 and 1974, see \textit{id.} at 13-22.

\textsuperscript{80} This practice was upheld by the Labour Relations Board, although it found the CLRA to be bargaining in bad faith because it failed to clearly announce its new practice at an early date. Construction Lab. Rel. Ass'n [1975] 1 C.L.R.B.R. 203(B.C.).

\textsuperscript{81} \textit{id.}
seller's collective bargaining obligations. CLRA sought to apply these provisions to prevent one contractor from continuing to operate under a new corporate name during a work stoppage. A larger number of CLRA members sought in addition to withdraw from the Association's accreditation. Twenty-six applied to the Labour Relations Board but only six were granted permission. It is not sufficient to claim dissatisfaction with the bargaining agent's representation; the applicant must demonstrate both that its interests are so different from the interests of other employers that joint bargaining is not practical and that withdrawal would not crucially weaken the Association.

Despite these fractures, CLRA maintained sufficient support to enforce a lockout and to impose an industry-wide settlement in 1976. However, recurring shutdowns caused some members to begin to doubt the wisdom of attempting to force the unions to bargain together. It appeared that CLRA's support would begin to erode unless the unions soon accepted multitrade bargaining. The unions began to accept joint bargaining, in order to end the succession of lengthy lockouts. Union support of joint bargaining was not purely a defensive response, however. A few union leaders, mostly in the basic trades, saw multitrade bargaining as the logical extension of trade unionism. Consolidation would allow the force of numbers to be turned to the advantage of all. Some believed that industry-wide bargaining provided the only hope of meeting the challenge of open-shop construction and solving such problems as unemployment and jurisdictional disputes.

Twelve unions endorsed coordinated bargaining shortly after the first CLRA lockout. However, half of these supporters settled separately in the next round of contract talks. A pact of ten unions negotiated together in 1974, but the plumbers, electricians and boilermakers predictably refused to participate. In 1976, the unions formed two pacts of mechanical and basic trades, but each union was free to withdraw when coordinated bargaining no longer suited its purpose. The plumbers' strike over downtown parking and hot lunch demands demonstrated that voluntary pacts were likely to disintegrate.

The Building Trades Council then proposed a "common-front" bargaining structure that would be binding until negotiations were suc-

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cessfully concluded. Initially, fourteen unions supported this proposal, but only ten participated in common-front bargaining in 1977. Once again the plumbers, electricians and boilermakers rejected joint action.

With the imminent end of price and wage controls, the Minister asked the Labour Relations Board to consider the wisdom of compelling the unions to form a bargaining council. The Board waited while the unions attempted to arrange a coalition, and finally directed that a council would be imposed unless the unions soon reached agreement.85 Shortly before the contract expiration date in 1978, the Board drafted a constitutional proposal and mediated its acceptance for a four-year term.

All unions agreed that strike action should not be allowed without the council's approval. There was strong disagreement, however, concerning the extent of bargaining to be permitted at the trade level. A number of crafts including the electricians, plumbers, and boilermakers wanted to continue to conduct their own negotiations. Supporters of the common-front proposed that the council determine joint demands to be negotiated at a central table, leaving only matters not adopted as common demands to be pursued at the trade level. They also suggested that the council be able to break trade impasses by submitting proposals for ratification. The provisions of the constitution fell between these two positions. Common demands would be negotiated at a central table, but they might also be negotiated at the trade level so long as no "concessions" were made. The council would control ratification submissions.

The application of democratic principles in a manner that would allow the majority of tradesmen and the unions representing them to make decisions while still respecting the autonomy of those trades with small memberships was problematic. Each union was given an equal voice in determining common bargaining demands and in deciding to hold strike or ratification votes. To ensure that the larger unions were not dominated by those with a few members, a decision to hold a membership vote requires a two-thirds majority. The standards for determining the outcome of employee ballots reflect similar concerns. Two-thirds of the membership must support a proposal before it can be ratified. A provision requiring the support of a majority of all tradesmen gives further protection to the larger unions. The Labour Code governs worker participation in strike votes.86

It was necessary to define the types of projects for which the un-

86. Under British Columbia law, B.C. Stat. c. 122, § 81 (1973), the support of a majority of the employees in the unit affected is required. This vote may be conducted in the consolidated unit, and in some cases it may be mandatory to poll the larger unit. See *Beverage Dispensers*
ions must bargain jointly. The Board's original order required joint negotiations for the industrial, commercial and institutional sector, but did not define exact sectoral boundaries. The bargaining rights ceded to CLRA by its members extended to some work on the periphery of this sector, the association demanded that these projects be included in joint bargaining. The electricians applied to the Labour Relations Board for a declaration that negotiations for work on power lines need not be conducted through the council. Historically, separate agreements had been negotiated for these projects, but several recent settlements with CLRA had brought the terms of employment close to those prevailing for other work. Separate bargaining was permitted on two grounds: first, tradesmen engaged in line projects did little work on other sites; second, a work stoppage on power lines would not affect other kinds of projects, and picketing at these sites could be prohibited.87 More applications to delineate the boundaries of the unit are pending.

The council negotiated on behalf of all nineteen unions in 1978. When over twelve hundred trade demands were presented, CLRA refused to engage in negotiations at the trade level and insisted that common demands and trade issues be resolved at the central table. This effectively limited the trade autonomy permitted by the council's constitution. The final settlement provided for a uniform absolute wage increase for all crafts, although such trade items as tool allowances and training funds were settled with individual unions.

VI

A COMPARISON OF PROVINCIAL STATUTES

Sufficient time has passed since the introduction of legislative regulation of the structure of bargaining to allow a preliminary evaluation of the successes of the various provincial schemes in overcoming the problems of decentralized negotiations. It would appear that employers' associations will lack the strength necessary to withstand selective strikes unless they are granted the authority to represent not only voluntary members but also firms which will not participate freely. An accredited association which holds bargaining rights only for contractors who voluntarily become members will have difficulty attracting enough support to withstand union divide-and-conquer strategies. There are too many employers for voluntary coalitions to succeed; CLRA barely survived until the unions accepted joint action.

Majority-rule accreditation, like union certification, is logically the employer counterpart of collective action. It can be criticized as an infringement upon individual liberty; alternatively, it can be applauded as a device which facilitates the exercise of free will. The truth is that it is capable of doing either. Consider those firms which resist association bargaining prior to accreditation. Some of these contractors will continue to prefer individual action. Only democratic theory can justify the restriction of their freedom posed by accreditation. Other firms will be eager to participate in joint negotiations once they are assured that no contractors will be allowed to frustrate the association’s objectives by dealing directly with the union. Accreditation offers to firms in this second category a means of achieving an end which cannot be attained through individual action.

Strong employer associations are not enough. An extended geographic base is necessary to prevent “inter-area” wage comparisons from inflating settlements. The Ontario experience with local accreditation was highly unsatisfactory. Although local accreditations might provide a basis for building broader coalitions, employer associations there did not join together.

Province-wide, single-trade negotiations eliminate the problems of inter-area wage comparisons. However, the effect of wider-area bargaining upon inter-trade comparisons depends upon the strategy adopted by labour and management. As the geographic scope of negotiations is expanded, the number of bargaining situations is reduced. This numerical reduction may facilitate multitrade coalitions, since the success of collective action varies inversely with the number of participants. On the other hand, attention may be more sharply focused upon the few settlements remaining, increasing inter-trade rivalries. The latter occurrence could offset the advantages gained through the elimination of inter-area comparisons; this was the experience in British Columbia. Multitrade bargaining resolves this problem. In addition, only multitrade coalitions can deal effectively with the problem of work stoppages by individual unions.

As it probably is not possible to move directly from a decentralized system to industry-wide bargaining, wide-area, single-trade negotiations may be a necessary transitional stage. The present Ontario structure is a case in point.

The consolidation of the geographic and trade base of negotiations involves two measures. Legislation may seek only to broaden the bargaining rights of employers’ associations in the hope that a central contractors’ association will be able to bring the unions together through persuasion and lockouts. This was the approach taken initially in British Columbia. Although CLRA experienced considerable success, the
large number of man-days lost in the process was an inevitable consequence of the imbalance that occurs when bargaining rights are more consolidated on the management side than on the side of labour.

The final step, then, is to constitute a central agency to represent labour. This measure will be required to bring the last few dissenting unions into joint bargaining. A complete industry-wide structure was not achieved in British Columbia until the central council was formed under legal compulsion.

In most provinces, strikes and lockouts have not been legally regulated, except through picketing laws, and are subject only to the authority of bargaining agents. Both labour and management can adopt measures to control work stoppages as they have done in British Columbia. Since these private arrangements have been effective, there appears to be little need for legislative intervention.

It must not be forgotten that it is contractors and unions who will make legislative reforms succeed or reduce them to chaos. To introduce these changes without broad support in the industrial relations community would be foolhardy. Disagreements within labour or management groups could produce industry-wide stoppages. Just as more limited strikes which contravene public law or private constitutional arrangements might occur, some employers may refuse to participate in lockouts. The role of the British Columbia Labour Relations Board in winning acceptance of joint union bargaining sets an example to be followed.

VII
THE CHALLENGES OF CENTRALIZED BARGAINING

The consolidation of negotiations has expanded the opportunity for contractors and unions to participate in the determination of the industrial relations climate in the construction industry. However, centralized bargaining, like most reforms, is attained only at a cost. The work stoppages which occur during the consolidation process are the most obvious detriment.

There are other, more subtle challenges presented by industry-wide bargaining. Some argue that centralized bargaining increases wage gains because competitors who are assured of uniform labour costs have little incentive to resist union wage demands.\(^8\)\(^8\) However, one can argue just as cogently that centralization has the opposite effect merely by introducing the equally plausible assumption that decentralized bargaining will foster divide-and-conquer tactics and inter-

\(^{88}\). See Pollak, Social Implications of Industry-Wide Bargaining, in INDUSTRY-WIDE BARGAINING SERIES 56 (Taylor ed. 1948). This series contains some of the best writing on industry-wide bargaining.
area and inter-trade comparisons. The latter assumption more accu-
rately reflects the reality of the construction industry.

A more important concern is that industry-wide bargaining may
force management and labour to seek a consensus so broad that mat-
ters of vital concern to small groups are ignored. Construction workers
may be expected to demand attention to the concerns of their particular
trade and to strive to defend or improve their position in the wage hier-
archy. Employers too have different needs, especially in an industry as
diversified as construction. Contractors employing the most highly-
skilled trades may wish to offer better terms of employment than other
firms in order to attract a sufficient number of competent workers.

The problem of divergent interests may also be viewed from the
perspective of the efficient allocation of labour resources. While en-
tirely free competition among employers is undesirable, there is little
point in carrying uniformity to the point where wage differentials no
longer function to signal shortages and to draw workers to meet them.

These difficulties should be kept in mind in determining the scope
of the industry-wide unit. Small groups with special needs may be ex-
cluded where their absence would not weaken the central structure.
Power line construction is a case in point. But it should also be recog-
nized that decentralized bargaining is not entirely free of the problems
created by divergent interests. One set of negotiations cannot be iso-
lated from other settlements; indeed, centralized bargaining, properly
conducted, may be even more responsive to special interests than is
fragmented pattern bargaining. Under local, single-trade negotiations,
unions and contractors must accept terms of employment which are
largely determined by settlements reached without consideration of
their interests in other parts of the industry. A consolidated structure
provides a central forum in which all may seek consideration of their
particular circumstances.89

A variety of strategies may be developed to maximize the repre-
sentation of all interests in industry-wide bargaining.90 For instance,
all groups might be allowed to participate in the negotiation process.
Collective bargaining always requires labour and management to de-
termine their respective priorities and to resolve differences within their
own organizations;91 as the unit expands in size, internal bargaining
becomes increasingly important. Provision has been made in British
Columbia for trade participation in the formulation of demands, in rat-

89. Pierson, supra note 24, at 345-46; Kerr & Fisher, Multiple-Employer Bargaining: The San
Francisco Experience, in INSIGHTS INTO LABOUR ISSUES 25, 50-58 (Lester & Shister eds. 1948).
90. See Weber, Stability and Change in the Structure of Collective Bargaining, in CHAL-
LENGES TO COLLECTIVE BARGAINING 13, 31-36 (Ulman ed. 1967); Taylor, Collective Bargaining in
ification votes and, on the labour side, votes concerning work stop-
pages.

Another strategy is to divide the consideration of issues among the
various levels of the bargaining structure. 92 For example, each trade
might be allowed to decide how it wishes to distribute total compensa-
tion among wages and fringe benefits. In British Columbia since
CLRA has sought to deal with trade demands at the central table, a
trend to uniformity in such matters as holidays and living allowances is
evident in recent negotiations. Nonetheless, some matters continue to
be negotiated on a single-trade basis.

Not all of the tensions generated by conflicting interests will be
easily resolved. The most tenacious will be the wage hierarchy. Indus-
try-wide bargaining tends to produce wage uniformity. 93 In British Co-
lumbia consolidated bargaining has already substantially eroded wage
differentials. The relative wage position of the trades has changed in
the past in response to market forces. 94 Consolidated bargaining could
blunt these forces and seriously impair the efficient allocation of work-
ners by creating shortages in skilled labour markets. The firms which
experienced difficulty in recruiting workers would then become dissatis-
fied. Deep hostilities might also be engendered among those workers
who previously enjoyed the highest rates of pay; open-shop construc-
tion would acquire new vigour.

Such pressures would soon fracture the bargaining structure. A
method of periodically rationalizing the wage hierarchy must be de-
vised if multitrade bargaining is to continue. A job evaluation scheme
might be utilized, as well as an adjustment of the relative wages of each
trade to correspond to its position in a composite wage hierarchy for
the nation or for North America. 95 CLRA has offered to participate
with labour in a review of this problem.

Legislative reform of bargaining structure is a new benchmark in
the continuous expansion of government regulation. Majority-rule
schemes, a limited form of government intervention, have long gov-
erned union certification. However, once the constituency is extended
to an entire industry, majority-rule begins to appear slightly less like
self-determination and the role of government expands accordingly.

Centralized bargaining poses another, more serious threat to free
collective bargaining. The scope and importance of the unit may be-

92. Id. at 351-54.
93. Wage differentials were narrowed under regional bargaining in California. G. Bertram & S. Maisel, supra note 35, at 37-38. This has not always been the case in all industries. R. Lester & E. Robie, Wages Under National and Regional Collective Bargaining 89 (1946).
94. D. Mills, supra note 2, at 52-54.
95. Collingwood, supra note 40.
come so large that effective bargaining, including the right to strike and the right of management to vigourously resist union demands, may be precluded. When an impasse is reached the government is likely to pressure both sides to modify their positions or to order strikers back to work. Over time, where government intervention is anticipated in the formulation of bargaining strategies, serious bargaining may be delayed until the government acts. As a small number of key negotiators begin to shape the wage pattern, a powerful temptation is created for more systematic public intervention in the form of compulsory arbitration or wage and price controls. In the construction industry, that scenario is probably of less concern than the threat of renewed government action to control a wage spiral produced by fragmented bargaining.

96. P. Weiler, Fragmented or Centralized Bargaining (Address to the International Conference on Trends in Industrial and Labour Relations) (Montreal, 1976).