Reforming the Structure of Collective Bargaining: Lessons from the Construction Industry

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1. INTRODUCTION

One of the reforms proposed for Ontario’s broader public sector by the Drummond Report is the establishment of centralized bargaining structures. As Chaykowski and Hickey have argued, such a reform “must consider whether, how, and in what context, alternative bargaining structures and enhanced coordination could yield outcomes which promote efficiencies and improve value.”¹ In this regard, the transformation of bargaining structures in the Canadian construction industry offers some lessons on structural realignment.

2. BARGAINING STRUCTURES IN CONSTRUCTION

There was a consensus across Canada in the 1960s that collective bargaining had become dysfunctional in major building construction sectors, including the industrial, commercial and institutional sectors. Strong economic expansion and fragmented bargaining structures had led to a major increase in strike activity and to higher wage settlements:

During this period, construction accounted for 17 percent of the person-days lost due to strikes, even though the industry only represented about seven percent of the nonagricultural labor force. Further, person-days lost due to strikes rose by nearly 200 percent between 1960-64 and 1965-69 and the construction-manufacturing wage differential more than doubled in the second half of the decade.²

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¹ Richard P Chaykowski & Robert S Hickey, Reform of the Conduct and Structure of Labour Relations in the Ontario Broader Public Service: Report to the Commission on the Reform of Ontario’s Public Services (Kingston, Ont: Queen’s University School of Policy Studies Industrial Relations Series, 2012) at 64.

Employer associations lacked the legal cohesion to bargain collectively, and were vulnerable to union divide-and-conquer tactics.\(^3\) Depending on the location, bargaining might involve fifteen or more building trades or subtrades. Unions’ strike leverage was enhanced by highly decentralized bargaining structures (local area and single craft union structures), and by the fact that tradespersons could mitigate their loss of pay by working in nearby geographic areas where there was no strike.

Beginning in the 1960s and continuing into the 1970s, bargaining structures in the construction industry underwent a transformation. Policy-makers were persuaded that centralized bargaining was the key to industrial relations stability. Legislation to promote stronger employer associations and centralized bargaining was introduced in every province but Manitoba.\(^4\) The magnitude of the change in bargaining structures was profound. In Ontario, for example, the number of bargaining units in major building construction declined from 250 to 25 during the 1970s.

The first of the two broad objectives of those legal reforms was to strengthen employer association bargaining by introducing a system of employer accreditation. This allowed employer associations to acquire the exclusive bargaining rights in relation to all union contractors in an appropriate bargaining unit. The second objective was to introduce centralized bargaining. Local area bargaining on a single-trade basis was replaced by province-wide bargaining on either a single-trade or multi-trade basis. The extent to which centralized bargaining is coordinated varies. Where there is multi-trade bargaining, formal coordination is practised by both parties. Where there is single-trade bargaining, coordination occurs only on the employer side and only in some provinces, where it is done informally by employer associations. In other jurisdictions, single-trade bargaining is not coordinated.

3. **THE EARLY EXPERIENCE WITH CENTRALIZED BARGAINING**

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Despite the establishment of stronger employer associations and centralized bargaining in the construction industry, the goal of labour relations stability remained elusive. Bargaining outcomes did not improve; to the contrary, the situation actually deteriorated. The continuing instability was associated with stiff union resistance to centralized bargaining and with favourable economic conditions:

Fierce union opposition to centralized bargaining in the 1970s led to larger and more protracted disputes, reflecting concerns that structural changes would alter the balance of power in the industry. Person-days lost due to construction work stoppages more than doubled. Additionally, economic expansion and high rates of inflation contributed to double-digit wage increases.\(^5\)

There was considerable disillusionment with centralized bargaining in the wake of the turbulent 1982 bargaining round and a subsequent economic slowdown. Wage settlements which were driven by high rates of inflation, and were negotiated before the onset of the slowdown, were sharply criticized by construction purchasers. Specifically, purchasers complained that the settlements had not attained significant labour cost savings or improvements in work rules and practices, and had not brought labour relations stability.\(^6\) Shrinking markets and rising competition forced unionized contractors to explore ways to improve their competitive position. Where non-union competition was more intense, some contractors placed their own short-term economic interests above a long-run commitment to their employer associations. This was reflected in legal changes that modified restrictions on “double-breasting,” allowing contractors to operate on both a union and non-union basis and permitting non-union tradespersons to work on major construction projects.\(^7\)

By the mid-1980s, there was some improvement in bargaining outcomes, as strike activity and wage settlements became more moderate. These changes were due to several factors: the recession of the early 1980s, a decline in demand for new construction, lower inflation, and (especially in western Canada) the rise of non-union competition. At that point, the significance

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of these changes was uncertain. Did they represent a temporary adjustment to economic conditions or an improvement that would be sustained in the future?

4. **THE PERIOD FROM 1989 TO 2008**

A recent study by this author examined whether centralization has contributed to long-run construction labour relations stability. The twenty-year period preceding the global financial crisis — the period from 1989 to 2008 — was marked by a major economic recession followed by a slow recovery and a sustained period of economic growth. Although economic growth is often associated with a rise in strike activity and wage settlements, low and stable inflation rates appear to have mediated the impact of economic expansion. An analysis of strike activity and wage settlements over that twenty-year period indicates that stability became the norm in construction labour relations. Even though total strike activity in Canada had decreased since the 1980s, it is significant that the decline was greater in the construction industry. That industry’s share of the number of strikes, workers involved and person-days lost decreased from 1989 to 2008. For example, person-days lost in construction were 5.3 percent of the national total in 2008, or about one-third of the level recorded in the three preceding decades. As well, construction wage settlements were broadly consistent with settlements in the private sector through most of the 1989-2008 period. Increases in construction wage settlements averaged 3.7 percent annually, or about half of what they had been during the 1980s and well below the double-digit increases that prevailed in the 1970s.

Although there was no consistent relationship between bargaining outcomes and the extent of centralized and coordinated collective bargaining, there were two noteworthy developments. First, strike activity in construction was significantly below the national average in western Canada, where bargaining is coordinated on a multi-trade basis and non-union

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9 The author’s study did not extend to the period after 2008. The global economic crisis created such a unique and far-reaching economic upheaval that results for the period after 2008 would likely be anomalous.
competition is prevalent. Second, strike activity was significantly above the national average in Ontario, where there is no formal coordination of province-wide bargaining across trades.\(^\text{12}\)

Trends in strike activity and wage settlements reflect the emergence of stability in construction labour relations. The evidence is that strike activity had declined in absolute and relative terms, and that wage settlements were more moderate and broadly consistent with those in other industries. As a result, the construction industry is no longer a source of instability or a collective bargaining outlier.\(^\text{13}\)

5. FACTORS CONTRIBUTING TO LABOUR RELATIONS STABILITY

The emergence of construction labour relations stability is associated with environmental factors as well as with pressures for change from within the industry. Macroeconomic conditions, competitive pressures, declining union density and additional legal reforms to centralized bargaining systems have combined to alter bargaining power in the industry in favour of employers and to stabilize labour relations. Additionally, centralized bargaining has matured:

\[\text{While the tradition of adversarial and confrontational bargaining has not withered away, there is increased evidence of accommodation and labour-management cooperation. This has not only contributed to wage moderation and reduced strike activity, but [to] the adoption of flexible work rules and new forms of dispute resolution.}\(^\text{14}\)

Three particularly significant changes in construction labour relations took place over the period from 1989 to 2008. First, although statistical data is limited, there was a further erosion of the dominant position of the building trades unions, most notably in western Canada. Again, while there are no comprehensive time series data on union density in construction, the increase in non-union penetration contributed to a decline in union density in the industry. Union density fell from 44.5 percent in 1981 to 30.9 percent in 1996, then levelled off at about 30 percent through 2008.\(^\text{15}\) The position of the building trades unions was also undermined by the

\(^{12}\) Ibid.
\(^{13}\) Ibid.
\(^{14}\) Ibid.
emergence and growth of wall-to-wall unions (non-craft unions), such as the Christian Labour Association of Canada.

Second, several provinces further centralized their construction bargaining systems. These changes recognized the interdependent nature of construction work and the adverse effect of “minority strikes” — i.e., individual disputes that can potentially shut down the whole industry:

Building construction is a single integrated industry in which negotiations between one trade and its contractors inevitably affect everyone else. The terms of negotiations settled in one trade set a target for other unions to match, even to surpass. The failure to settle in that trade produces strikes that eventually escalate into shutdowns of the entire industry.16

To facilitate multi-trade bargaining in British Columbia, that province’s Labour Relations Board imposed a multi-trade bargaining council to represent the building trades unions in collective bargaining. The council’s constitution requires double majority support for a strike — i.e., majorities among both unions and tradespersons. Alberta and Nova Scotia limit minority strikes by requiring binding interest arbitration once the vast majority of unions have concluded collective agreements.17

Third, in addition to the influence of economic, competitive and legal constraints, there is evidence of the maturation of labour-management relations in the construction industry. Although local issues and personalities were a focal point of labour disputes in the past, this is no longer the case. In the face of non-union competition, the focus has shifted to maintaining market share, to a greater emphasis on long-term interests, and to a commitment to centralized bargaining. This has led to more flexibility, more pragmatism, and more accommodation. Alternative dispute resolution procedures — notably binding interest arbitration — have been adopted by agreement.18 In addition, there has been a trend toward collective agreements that are longer in duration (four years or more) and more flexible. In response to non-union competition, collective agreement provisions (e.g. hours of work and overtime) can be modified to enhance

16 Paul Weiler, Reconcilable Differences (Toronto: Carswell, 1980) at 203.
17 Alberta requires interest arbitration when 75 percent of the unions have entered into settlements. Nova Scotia requires it when all but two or fewer unions have entered into settlements.
the ability of union contractors to bid successfully on specific projects.\textsuperscript{19} Finally, some attempts have been made to transform labour-management relations and to build strategic alliances at the industry level. These have included identifying common interests and goals, improving relationships, and enhancing centralized bargaining processes. Given the history of mistrust and confrontational relationships in the construction industry, progress in this area has often been slow and arduous.

6. CONCLUSION

A number of lessons can be taken from the experience in the construction industry. The first is that expectations for structural change must be realistic. The expectation driving the consolidation of bargaining in construction was that more centralized bargaining structures would reduce labour strife and establish a foundation for stability. But things turned out not to be so simple. Legal reform had to overcome entrenched traditions, especially the industry’s craft structure. Craft autonomy and inter-trade competition have been an integral part of construction bargaining since the nineteenth century. It is hardly surprising that the formative years of centralized bargaining, which was aimed at giving employers countervailing bargaining power, saw intense conflict:

Efforts to change a bargaining structure increase the probability of a strike because change may affect the long-run balance of power in the bargaining relationship. Therefore, there is something worth fighting for. Because of the longer-run strategic importance, these strikes tend to last well beyond what any model would estimate, solely on the basis of short-run gains and savings achieved by either party.\textsuperscript{20}

The second lesson is that structural realignment should be done with input from the parties. Even though legislation was the principal means of effecting structural change in construction labour relations, the parties were usually consulted. In many instances, legal reforms were based on the recommendations of provincial commissions of inquiry, but that did


not always result in a consensus for legislative change generally, or in support for specific reforms. This would help to explain the variation in the extent of legal reforms undertaken across Canada: for example, a few provinces require multi-trade bargaining, but most provinces support single-trade bargaining. Where single-trade bargaining is the norm, craft autonomy and industry tradition have been impediments to coordinating province-wide bargaining for both employer and union bargaining agencies.

The third lesson is that centralized bargaining has indeed contributed to labour relations stability. This is evidenced not only by reduced conflict and wage moderation but also by other bargaining outcomes, including longer-term and more flexible collective agreements. For example, enabling clauses allow union contractors to modify collective agreements in order to be able to bid more competitively against non-union firms. Centralized bargaining has also led to the standardization of many terms, both monetary (such as premiums and allowances) and non-monetary (such as hours of work). In the past, leapfrogging on these issues contributed to unstable labour relations in the construction industry.

The fourth lesson is that structural reform requires the commitment of the parties to continuous change. Although construction labour relations have become significantly more stable since the end of the 1980s, the transition from the traditional system to the new one is by no means complete. Future challenges are to reconcile competing trade interests, identify and coordinate common interests, and sustain and improve relationships at the collective bargaining level and the strategic level. At times, reconciling the parties’ interests has proven to be difficult. This is shown by the failure to formally coordinate single-trade bargaining, and by difficulties in resolving bargaining format issues in multi-trade negotiations — for example, in delineating the matters that will be dealt with at the central level and at the trade level.

These sobering conclusions make it clear that even after more than thirty years of experience, centralized bargaining in the construction industry continues to be a work in progress.