Report of the Industrial Inquiry Commission into bargaining patterns in the Construction Industry in Ontario

Ontario

Ministry of
Labour

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REPORT OF THE INDUSTRIAL INQUIRY

COMMISSION INTO BARGAINING PATTERNS

IN THE CONSTRUCTION INDUSTRY

MAY, 1976

To: The Minister of Labour

During December 1974, pursuant to s.34 of the Labour Relations Act, R.S.O. 1970 c.232, I was appointed by the Minister of Labour to conduct an industrial inquiry commission into bargaining patterns in the construction industry. I have the honour to submit, herewith, my report.

May 10th, 1976 D.E. Franks

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CHAPTER 1

INTRODUCTION

This Inquiry Commission resulted from one of a series of recommendations made by the Construction Industry Review Panel to the Minister of Labour. The Construction Industry Review Panel is a joint labour-management advisory body which advises the Minister of Labour on matters relating to the construction industry. Its members are all directly involved with the construction industry, and from my experience as vice-chairman of that group, I think it can be said that they are honestly attempting to improve labour relations for the betterment of all those involved in the construction industry, both employees and employers.

The specific recommendation made by the Review Panel, which gave rise to this Inquiry, was that a "system of wider-area bargaining be introduced into the construction industry". The term "wider-area bargaining" has been used in various areas in the United States to refer to the systematic reduction of the number of bargaining situations in the construction industry. The terms of reference given this Inquiry specify the term

"wider-area bargaining" by giving the following directives:

1) to inquire into the existing bargaining areas and bargaining patterns in the construction industry;
2) to define the problems resulting from the present bargaining patterns in the construction industry;
3) to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

Methodology

The three items listed in the terms of reference raise three distinctly different problems, namely, observing, analyzing the problem and recommending a solution. With respect to the first directive I obtained the assistance of the Research Branch of the Ministry of Labour. Collective agreements are filed with that Branch of the Ministry and an analysis of the agreements on file would indicate the existing areas and patterns of bargaining in the industry. I am indebted to Mr. Len Haywood and Mr. Don Reshetnyk for their efforts in obtaining this information.

The second task assigned this Inquiry, namely,

that of defining the problems resulting from the present bargaining patterns, raised a very difficult problem. Upon my appointment I began a series of consultations with various people involved in the bargaining process in the construction industry. This enabled me to obtain an appreciation for the concerns felt by different people involved in the industry. During this same time a large percentage of the construction industry agreements were being renegotiated and this proved to be an opportune time for observing the operation of the bargaining processes and its various strengths and defects.

Throughout the consultation stage it became clear that if this Inquiry was to solve any problems it would need both the cooperation and assistance of those involved in the construction industry. If this Inquiry was to recommend changes, then it was of paramount importance that the parties indicate the sort of changes they were prepared to accept. It was only through the assistance of those in the industry at this consultation stage that various options could be discussed in the light of existing problems.

The consultation stage ended with the issuance of a Background Paper by this Inquiry in October, 1975. The purpose of the Background Paper was to facilitate representations to the Inquiry by those wishing to make

such representations. In effect, the Background Paper responds to the second directive set out in the terms of reference to this Inquiry; that is, it offers a tentative definition of the problems resulting from the existing bargaining patterns in the construction industry. For convenience, I have included the text of the Background Paper as Appendix "A" to this report.

The issuance of the Background Paper paved the way for representations to the Commission on proposals for reducing and rationalizing the number of bargaining patterns in the construction industry. The month of December had been set as the deadline for making representations. However, in response to numerous requests, it was necessary to extend this time to the end of January, 1976. During the month of January I held meetings in various areas of the province. These meetings were very informal, and although some briefs were presented at these meetings, generally they took the form of an open discussion of various concerns about matters before the Inquiry Commission. In Appendix "B" of this report I have listed the various dates and places of these meetings and a list of the newspaper advertisements giving notice of these meetings.

The main response from the construction industry came at the meetings in Toronto on January 27

to January 30. In those four days I received a number of impressive briefs from various interested organizations. In Appendix "C" I have listed the various organizations that have submitted briefs and made representations to the Inquiry.

The overall tone of the various briefs and representations that I have received can only be described as constructive. Most of the organizations concerned took the opportunity to propose realistic and practical changes, conscious of the fact that there are varied concerns for each side in labour-management relations. It is only in such a context of mutual recognition and respect that such difficult problems as those before this Commission can be constructively dealt with, and I am extremely grateful to those who adopted this approach.

CHAPTER 2

THE PRESENT BARGAINING PATTERNS

(1) Some Structural Characteristics of the Construction Industry

Most of us have at one time or another engaged in the wistful art of being a sidewalk superintendent. From such casual encounters with the construction industry most of us feel we have a general idea of what is meant by the broad term "construction industry". This report, however, is not about the construction industry as a whole, but about a very specific part of the industry which few people ever encounter, namely, the labour relations system which operates in the construction industry.

There is no need to present a description of the construction industry in the present report. It is generally acknowledged to be an extremely large and important part of the economy, and in recent years it has been the subject of numerous studies by those both inside and outside of government. Indeed, the complaint was made to the Inquiry that the industry has been studied too

much, and very little has been done to improve matters.

Before we delve into labour relations in the construction industry there are two important characteristics of the industry upon which I would like to place some emphasis. These two structural characteristics can be termed "mobility" and "specialization". There are, no doubt, other characteristics that are of great importance that perhaps ought to be mentioned. However, these two play a pervasive and complicated role with respect to labour relations in the construction industry.

The term "mobility" refers to the fact that construction is done at a job site and the work, in effect, moves from one job site to another job site. Thus, the people in the construction industry, both employees and employers, move from site to site. In some cases the duration of work at the job site is for a short period of time. In other cases it may go on for long periods of time, even years. Further, the shift from job site to job site may in some circumstances be a local shift. In other circumstances considerable distances may be involved. Thus, the mobility of the construction industry is itself a variable and complex phenomenon but, nevertheless, one that permeates all aspects of construction.

The amount of "specialization" in the construction industry is extremely extensive. This characteristic applies to both the employees and the employers in the industry and is in many respects analogous to the division of labour that occurs on the assembly line of a manufacturing plant. The employees specialize as a result of the range of skills they possess, the type of work they are prepared to do, or their previous work experience in construction. On the other hand, employers also specialize in terms of skills and experience. In many instances the specialization amongst employers is related to the specialization amongst the employees, and a substantial aspect of competition in the construction industry is, in effect, competition between different specialties.

These two characteristics which I have referred to as "mobility" and "specialization" operate together to impose limits on what can be done to change matters in the construction industry. Those who suggest the "industrialization" of both trade unions and employers probably make the mistake of ignoring the operation of these basic characteristics. In certain circumstances these characteristics combine to create the tendency towards fragmentation and localization of the construction industry. In other circumstances these characteristics have exactly the opposite effect

requiring centralization to solve the problems they create. One thing, however, is clear. The operation of these two characteristics creates the wide range of different environments in which any system of labour relations in the construction industry must operate.

(2) Labour Relations in the Construction Industry

It is frequently noted that labour relations in the construction industry are considerably different from labour relations in other industries, such as manufacturing. Unfortunately, little emphasis is placed on understanding these differences. In fact, both the trade unions in the construction industry and the employers in this industry, play essentially different roles from their industrial counterparts.

Perhaps the best insight into this difference can be obtained by considering the stable or long-term relationship in the construction industry. Whereas, in other industries the stable relationship is between an employee and an employer, in the construction industry the stable relationship is between the individual and the work he is capable of performing, that is, his trade. The shift from job site to job site frequently involves working for different employers. Thus, the individual

becomes identified by his skills or experience rather than by his employer. This, in turn, translates into a stable relationship between the individual and the trade union of which he is a member. Thus, the essential difference between the construction industry and other industries for labour relations purposes is that the individual employee identifies himself as a member of a particular trade union, rather than an employee of a particular employer. This has significant implications when one considers the role of a trade union and the role of an employer in the construction industry.

Broadly speaking, a trade union in construction represents people who have certain skills or are prepared to do a certain type of work. The range of these skills is referred to as the jurisdiction of the trade union. The goal of a construction trade union is, not simply to represent the employees of an employer, but rather to represent all of the people within its jurisdiction, and thus to serve as a source of supply of such employees for any prospective employer. The result is that the trade unions in construction are prepared to, and frequently do, perform the personnel function for the employer.

Some employers in construction run their own personnel offices and hire their own employees. This

is limited by the fact that many employers are not in a position to offer all their employees continuous employment throughout the year. Although some employers keep a nucleus of employees for long periods of time, the total number of employees is dependent upon the level of activity at various job sites and is thus subject to large fluctuations. In order to cope with this fluctuation the employer frequently turns to the union to supply men from its hiring hall.

The construction trade union, therefore, performs two distinct functions in the representation of its members. First, it negotiates wage rates and working conditions on behalf of its members; secondly, it allocates its available members to various employers at various work sites on the terms and conditions negotiated. This report deals only with the first of these functions, namely, the negotiation of collective agreements.

(3) The Characters Involved

Throughout this report reference will be made to a number of different institutions. Since many people are not familiar with the role played by these various institutions, it might be helpful to set out a brief description of those involved in labour relations in the construction industry.

The Trade Union Side:

The largest and most important trade unions that represent employees in the construction industry are referred to as the "Building Trades Unions". There are other independent unions that organize in construction such as the Christian Labour Association of Canada. Further, some of the industrial trade unions perform "in house" construction for their employers. However, these other trade unions are not a significant presence in the construction industry in terms of collective bargaining. Building trade unions are craft unions whose principal membership is in construction, although some also represent employees in manufacturing or in the fabricating of construction materials.

The unions which make up the building trades are frequently referred to as "International" unions because they represent tradesmen in both the United States and Canada. Generally, these organizations have been in existence for long periods of time, in many cases over 100 years. Although one should be cautious of generalizations in most instances these International unions were formed from various local trade unions and their constitutions reflect their composition from local trade unions. More will be said of this later, but for our present purposes these Internationals can also be

referred to as "Parent" trade unions since the various locals in the various trades are chartered by these parent trade unions.

Each of the International Unions claims jurisdiction over portions of construction activity. Taken together, the various Internationals cover the whole field of construction activity. A number of such unions have affiliated to form a group called the "Building Trades Department" of the AFL/CIO. One other trade union which also represents some construction employees, namely, the Teamsters, is a former affiliate of the Building Trades Department. The following is a list of the various organizations affiliated with the Building Trades Department which are active in Ontario:

- International Association of Heat and Frost Insulators and Asbestos Workers
- International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers
- Bricklayers, Masons and Plasterers International Union of America
- United Brotherhood of Carpenters and Joiners of America
- International Brotherhood of Electrical Workers
- International Union of Elevator Constructors
- Laborers' International Union of North America
- Wood, Wire and Metal Lathers' International Union

- International Union of Operating Engineers
- Brotherhood of Painters, Decorators and Paperhangers of America
- Operative Plasterers' and Cement Masons International Association of the United States and Canada
- United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada
- Sheet Metal Workers International Association
- International Association of Bridge, Structural and Ornamental Iron Workers

The general role of the Building Trades Department is to deal with relations between the various affiliated unions. It is, however, very important to understand that each of the trade unions which makes up the Building Trades Department is in itself an independent and autonomous body. Each International, in turn, has the power to deal with relations between various locals chartered by that body.

As noted above, each local trade union, although chartered by a parent trade union is in itself a separate entity which frequently has significant powers under the constitution and bylaws of its International. In most instances, in Ontario, the local is responsible for negotiating the collective agreement on behalf of its members and the general administration of the hiring halls. Generally, the day-to-day affairs of the local

are looked after by a business agent or business manager elected by the members of the local.

In some instances locals of the same trade union have joined together to form a district or provincial council. Some councils engage in collective bargaining; however, in other cases, the council deals only with matters of general concern to the various member local trade unions. These councils are quite different from Building Trade Councils. There are numerous local Building Trades Councils, and there is also in Ontario a Provincial Building Trades Council. These councils are chartered by the Building Trades Department and deal with matters of concern to the various building trades locals which are affiliated with such councils.

There are also examples of councils of trade unions which have been formed specifically for the purposes of collective bargaining. In some cases, these are multi-trade councils; in other cases, they are councils made up of locals within a single trade.

The Employer Side:

Distinctions between contractors are made in a number of ways. Perhaps the commonest distinction is between the general contractors and subcontractors. The

general contractor, as the term implies, usually has control over the building project. He is thus the construction employer who deals directly with the owner or purchaser of construction. The general contractor, however, will frequently subcontract portions of the work on a job site to other contractors who are known generally as subcontractors. Most subcontractors are basically trade contractors in that they perform work which is defined by one or two specific construction trades. There are, however, contractors which are more accurately described as "specialty" contractors since they limit their activity to very specific work, frequently falling within the scope of one trade.

The distinction between general contractors and subcontractors reflects the degree of specialization in the construction industry. The system allows for extensive division of labour and frequently a subcontractor will, in turn, subcontract to another contractor specific portions of his subcontract. The matter has been confused in recent times by the development of certain businesses which are frequently described as "contract brokers" where the contractor will have few, if any, employees of his own, but will subcontract all of the work in his contract to various other contractors who employ the tradesmen on the job site.

Contractors have, in turn, formed various associations. Although the origins of many of these associations were for general purposes, over the years these associations have become involved in labour relations. The reasons for this development are important and will be dealt with later in this report. The employer associations, by and large, reflect the differences in the various types of contractors. Thus, general contractors have associations of general contractors and trade contractors have trade contractor associations, and there are also specialty associations of specialty contractors. Some associations are local in scope; others are provincial or national.

Recently there has been a tendency for all associations dealing with labour relations to form an overall association. Thus for a time the Ontario Federation of Construction Associations (OFCA) was a confederation of various construction associations. In recent years the Construction Labour Relations Association of Ontario (CLRAO) has been an association of direct contractor members dealing with labour relations on their behalf.

The Purchasers:

Another recent development has been a tendency for the purchasers of construction to develop associations.

In some municipalities various owners have formed associations which directly or indirectly get involved with labour relations in the construction industry. On a province-wide basis, a number of the purchasers of large industrial construction have also formed an association called the Owner Client Council of Ontario. The role played by such groups is of considerable importance since they are the people who ultimately pay the costs resulting from construction industry negotiations.

(4) Bargaining

As noted above, the construction local trade union performs two distinct and separate roles, i.e., bargaining for a collective agreement and the administration of the collective agreement and the hiring hall. Whereas, the administration of the hiring hall is a day-to-day affair, bargaining for a collective agreement is an event which only occurs every few years.

It is imperative to understand just what the parties are doing when they negotiate a construction industry collective agreement. To say simply that they are determining the wages and working conditions for those employees affected by that agreement is to over-simplify the process to the point of distorting it. To

understand what is going on we need to examine how the agreement they are negotiating operates in more detail.

The most important characteristic of the construction industry collective agreement is that it is a "standard area" collective agreement; that is, it is the only collective agreement available to an employer from that union and covering those employees. The coverage of the collective agreement may or may not be spelled out in the agreement, but basically coverage is determined in terms of a geographical area, a particular trade, and on occasion, a particular type of work. Certain elements of this coverage may be implicit because of the scope of operation of the particular local trade union; that is, a local trade union may only represent a certain trade in a certain area for employees performing a certain type of work. The point that is frequently missed, however, is that there is a very strong ethic in the construction industry that the agreement applies equally to all employees and all employers within its defined or implicit scope.

The importance and reason for this ethic is frequently not understood. On the surface it appears as though this simply removes wage costs as an element of competition amongst contractors bidding on a particular job. Each employer would have to pay the same wage rates

and provide the same working conditions as any other employer. However, if the union were to offer different agreements to different employers, the obvious result would be that certain employers would have an unfair advantage in the matter of wage costs. That would put the trade union in the position of determining which contractors would remain competitive and which contractors would be forced out of business because they could not compete. This is not a power which the unions have sought, nor is it apparently a power which they might want. Indeed, it is generally regarded as unethical for a trade union to allow one employer such a competitive advantage over other employers.

Nevertheless, situations arise when for perfectly valid reasons distinctions in wages, for instance, are made between different types of construction. The result is that there are circumstances in which an argument arises as to which wage rate, etc., applies. This occurs between what might be termed "parallel collective agreements", and when it occurs it usually gives rise to a bitter conflict. More will be said about parallel agreements later in this report since they constitute a serious problem when examining the overall bargaining patterns in the construction industry.

The fact that construction industry collective

agreements are standard agreements helps to explain the rise of, and the role played by, construction associations in collective bargaining. As was noted in the Background Paper, bargaining originally developed between a local trade union and the various employers hiring members from that local. In those bargaining sessions the problem was to set the wage rate for tradesmen and other terms of employment and working conditions. This then became the standard area agreement. As employer associations developed one of the functions of the association, or a branch of the association, was to bargain with the trade union to set the standard area agreement. As the industry grew in size and complexity, the role of the association became more formal until a number of associations emerged as full-fledged bargaining agents for employers dealing with a specific trade union.

In recent years there has been a tendency to develop the status of such employer organizations as bargaining agents. Thus, in 1971, legislation in Ontario was introduced to accredit employer organizations as bargaining agents. This legislation is very analagous to certification of trade unions under the Labour Relations Act. It makes the accredited employers' organization the bargaining agent for all employers in a defined group whether or not they are members of the association. The purpose in introducing such a protected status for

employer associations was not so much to give them a new status or increased power but to protect associations from a tactical device open to trade unions during bargaining. If a trade union, during the course of bargaining with an association, was having difficulty in obtaining its demands, it could sign a collective agreement with individual employers meeting a certain demand and containing an agreement to be bound by the results of subsequent negotiations between the trade union and the association. However, once an association is accredited such individual bargaining is prohibited under the Labour Relations Act. Thus, the association is protected from the tactic of interim agreements. It is, however, important to note that whether the association is accredited or not, the net result of bargaining between the trade union and the association is a standard collective agreement. In this sense the accreditation legislation simply recognizes what construction associations, whether formal or informal, have been doing for a number of years.

The above paragraph also serves to illustrate the most difficult problem faced by this Inquiry Commission. Frequently, the union's tactic of signing interim agreements resulted in the destruction of an association as part of the bargaining structure in the construction industry. This is an example of the

difference between the structure of bargaining and the content of bargaining. Simply put, matters which start out as part of the content of bargaining can end up affecting the structure of bargaining itself. It is important to keep in mind throughout this report that our concern is with the structure of bargaining rather than with the content of bargaining. However, unless the structure of bargaining can be protected from matters which arise from the content of bargaining, any attempt to restructure bargaining will ultimately prove futile.

The question which we posed at the beginning of this section is still not answered. What are the parties doing when they are bargaining for a collective agreement? A distinguished commentator on labour relations in the construction industry makes the point

> "There are, of course, no generally accepted standards by which to measure how high wages should be, or how many strikes are too many."[1]

Nevertheless, it can be said that the content of the collective agreement is not isolated from the construction marketplace. If wage costs are too high, then construction may become too expensive and the amount of work for the

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[1] Mills, D.Q.
1972: Industrial Relations and Manpower in Construction; The M.I.T. Press, Cambridge, Massachusetts, and London, England, p. 26.

construction tradesmen decreases. On the other hand, if wages are not high enough, the skilled tradesmen will work in other industries and there will not be enough people to build construction projects. These are fine and sophisticated balances and the measure of any system of labour relations in construction is the ability of that system to ensure that such decisions are properly made.

(5) The Present Bargaining Patterns

When one examines the standard construction industry agreements operating in the province, the only generalization that can be made is that no patterns emerge from the present situation. In some instances bargaining is done on a provincial basis; in other instances it is done locally. Although the majority of agreements are local agreements, about half of the various agreements, by trade, are province wide in scope. Although most of the province-wide agreements are a result of mobility of tradesmen and employers throughout the province, there are examples of primarily local employment which are also bargained for on a province-wide basis. Although most bargaining situations relate to clearly defined construction trades covering clearly defined areas, there are a number of other agreements

which relate to specific employees (subsections of a trade) or specific agreements relating to specific sectors or types of construction.

The following is a brief description of the standard area collective agreements for the various trades:

Asbestos Workers

Asbestos Workers have two collective agreements for insulation mechanics. The agreement by Local 95 covers the province of Ontario except the eastern portion. The eastern portion for the province is covered by an agreement with Local 58.

Boilermakers

One collective agreement by the International covering eight provinces and the North West Territories.

Bricklayers

Two province-wide collective agreements, one covering bricklayers and stonemasons, and in some areas plasterers; the other agreement covering marble, tile and terrazzo mechanics, and in some areas cement masons and resilient floor mechanics. In addition, there are six local collective agreements covering residential construction.

Carpenters

Two province-wide agreements for millwrights, one province wide covering drywall and thirty-two various local collective agreements.

Electrical Workers (IBEW)

Fourteen local collective agreements.

Elevator Constructors

One Canada-wide collective agreement.

Labourers

Two province-wide agreements relating to pipeline and utility construction. Thirty-nine various collective agreements involving sixteen different locals for various local areas and various sectors.

Lathers

One province-wide agreement.

Operating Engineers

Six province-wide collective agreements and twenty-five agreements covering various local areas and sectors.

Painters

There are three province-wide collective agreements and two residential collective agreements. This union also has fourteen local collective agreements covering glaziers, one local agreement covering floor layers and one local agreement for plasterers.

Plasterers

Two province-wide agreements for steeplejacks and waterproofing and fifteen local collective agreements, nine of which are for plasterers and six for cement finishers.

Plumbers

There are four Canada-wide agreements involving sprinkler fitters, pipelines, lead burners and pneumatic controls. One province-wide agreement involving refrigeration mechanics. There are also twenty local collective agreements by seventeen locals.

Sheet Metal Workers

With respect to sheet metal workers there are sixteen agreements for various local areas and sectors. With respect to roofers, there are twelve local collective agreements.

Iron Workers

For structural iron workers there is one collective agreement by five locals for the province of Ontario except the Thunder Bay area and one separate local agreement covering the Thunder Bay area. There are nine local collective agreements covering rodmen and five miscellaneous collective agreements.

Teamsters

One Canada-wide agreement covering pipelines and twelve various local collective agreements.

In addition to the foregoing collective agreements, there are five local collective agreements by various independent trade unions outside the building trades. There are also a number of multi-union agreements affecting various sectors of the construction industry.

From the above descriptions it is clear that there is substantial variation in the present bargaining patterns from trade to trade. Although a considerable number of collective agreements are province wide, the majority of bargaining situations in the province are local situations covering a specific trade.

CHAPTER 3

PROBLEMS ARISING OUT OF THE PRESENT BARGAINING STRUCTURE

The second of the terms of reference given this Inquiry Commission was to define the problems resulting from the present bargaining patterns in the construction industry. This is perhaps the most crucial of the tasks assigned this Inquiry. In a situation as complex as the collective bargaining in the construction industry it is of paramount importance to identify the proper problems; otherwise, we will likely deal with the wrong thing. Let me again emphasize that in this report we are dealing with bargaining for collective agreements and not the administration of such agreements. Further, we are dealing with the structures of bargaining and not with the specific contents of bargaining.

In the Background Paper a tentative formulation of the problem was set out to assist those making representations to the Commission. The problem was stated as follows:

> "The problem we are confronted with is how the structure of collective bargaining in

> the construction industry can be changed so that those who affect bargaining and are affected by it actually do the bargaining."

This is not to say that bargaining in the construction industry is not representative, but rather that it is affected, i.e. influenced, by other bargaining situations and each bargaining situation affects other situations.

The most common example of this situation occurs in those trades where bargaining takes place with a number of locals across the province. In any particular locality bargaining in that locality is often unable to respond to local conditions because of pressures from other localities. Thus, the size of a settlement in a neighbouring locality may be a more important pressure at the bargaining table than the fact that there is little construction activity in the locality where bargaining is taking place. The proper response in such a situation might be to stimulate construction activity by reducing construction costs. Thus, we are faced with a conundrum. Although the bargaining appears to be local, it has actually been determined by bargaining elsewhere.

Further, although a particular locality may think that during its collective bargaining it is only dealing with its own problems, there is frequently no way that it can prevent its bargaining from affecting

bargaining in other localities. These effects on neighbouring areas are not in themselves wrong. Indeed, no one ever bargains in isolation from others and it would be impossible to try to bargain in a vacuum. The problem arises when the present bargaining structures prevent those involved in collective bargaining from responding to the problems they are faced with in making a good collective agreement.

One of the major difficulties in examining collective bargaining in the construction industry is that people often think that structural problems affect only one side of the collective bargaining process. This is a mistake. Both sides, labour and management, are affected by this problem and those who formulate the problem as an "imbalance of power" or who lay the failure of the present system on one side or the other, address the wrong problem. If the collective bargaining system is responsive to both local and provincial conditions, then such responsiveness will be of benefit to both labour and management.

In the Background Paper two additional problems arising out of the current structure of bargaining were raised, namely, the problem of the "upsetting project" and the necessity for flexibility in the system. The problem raised by the upsetting project is particularly

important. In recent years, in this province, there have been an increased number of enormous projects that, because of their size and duration, have a profound effect on bargaining in their vicinity. Attempts are sometimes made to isolate such projects from the ordinary course of bargaining. Apart from the difficult question of whether this could ever really be accomplished, the general tendency has been to create more problems than are solved by such an approach. It would seem that a more fruitful direction in dealing with such projects would be to include them in the bargaining process so that the specific problems raised by such projects can be dealt with directly at the bargaining table.

The other problem, that is, the need to maintain flexibility in the system, is far more difficult. Although it is fashionable for people in the construction industry to complain about the extent of fragmentation in the industry, the solution to a new problem is frequently to create a new bargaining situation. In some cases this results in further fragmentation of the trades or in the development of new "sectors". Such solutions run the risk of creating parallel collective agreements to cover the same work and they increase the number of bargaining situations. On the other hand, it must be acknowledged that there are circumstances in which a separate bargaining situation can be justified. The

problem thus becomes one of developing suitable criteria by which such separate bargaining situations can be justified.

In its broadest sense the problem faced by this Inquiry Commission is to make collective bargaining in the construction industry more responsive to the needs of that industry. The present complex arrangements for collective bargaining prevent the present system from being responsive to the problems. The point of reducing the number of bargaining situations is basically to create a simpler context for collective bargaining so that those involved can get down to the business of making the best possible agreement for the side they represent rather than being misled by what has happened in some other bargaining situation.

It is important to understand that these problems arise from the structure of bargaining and not the content of bargaining. The suggestion is sometimes made that the parties to collective bargaining could improve the bargaining structures if they really tried. This is probably not so. An attempt by the parties to restructure bargaining would itself be an agreement, and what can be reached by agreement can also be destroyed by disagreement. From time to time attempts have been made to restructure bargaining in the construction industry.

Some such attempts last for a long time and are of great benefit to both sides. However, there are numerous examples of situations where in the course of bargaining a disagreement over the content of bargaining, e.g. wages, has led one party or the other to attack the structure of bargaining itself. In the absence of some form of protection the bargaining structure is usually destroyed.

CHAPTER 4

REPRESENTATIONS TO THE COMMISSION

The Inquiry Commission was very fortunate in having a constructive response from those involved in collective bargaining in the construction industry. Most representations from both sides were made having regard to the fact that there was another side to the construction industry and that the Inquiry Commission has to deal with both sides of the industry.

It is impossible to go into detail concerning all of the briefs and representations received by the Commission. Rather than deal with the briefs individually, I will deal with the most significant proposals or directions which were urged on the Commission.

(1) No Problem Arising from Present Bargaining Structures

There were some groups who suggested that the Inquiry Commission ought not to propose any changes in the bargaining structure because there are no problems. It was suggested that there are no problems because construction projects, in spite of frequent complaints,

always get finished. Further, the Commission was cautioned that changes usually create more problems than they solve.

I must confess to a certain sympathy to this position since I would certainly agree that one should not propose change simply for the sake of change. However, the argument that the present system is without problems is quite untenable. In the last round of bargaining there were instances of strikes which simply should not have occurred. Further, although there were some examples of highly successful bargaining, the real question arises as to whether the bargaining was too successful and that it led to subsequent cutbacks or slowdowns in construction activity. The last round of bargaining has left a significant number of problems for various upsetting projects throughout the province. If bargaining in the construction industry was adequately responsive, it would have addressed some of the problems which presently face the industry on these projects.

(2) Multi-Trade Bargaining

Some groups made representations to the Commission that a system of multi-trade bargaining should, at least, be partially introduced. This suggestion,

however, met with opposition from other groups. Multi-trade bargaining is frequently suggested as the ideal solution to problems in the construction industry and is really part of the broader recommendation that an industrial approach to construction trade unions is the best approach to labour relations in the construction industry.

The major difficulty with such a proposal is that it requires extensive structural changes for both labour and management in the construction industry. Both the employers and the trade unions are currently divided along various trade lines as a result of specialization in the construction industry. Multi-trade bargaining would not only require significant restructuring of trade unions, it would also require significant modification of various construction businesses. There is no practical way in which such moves can be proposed.

This type of proposal has another serious defect which is frequently ignored. Notwithstanding the wide range of types of employees covered by certain of the construction trades, the employees in that trade have a certain common set of goals or interests. The introduction of multi-trade bargaining would require larger and more varied groups to bargain together. This would invariably lead to internal conflicts within the group of

trade unions. Unless some method for resolving such internal conflicts can be developed, it is difficult to see how the multi-trade bargaining agency can adequately and fairly represent all its constituent members. On the employer's side it is even more complicated. Such multi-trade arrangements would mean that, in the course of bargaining, certain employers would lose all, or portions, of their present businesses depending on how the collective agreement operated. Again, it is difficult to see how such internal disputes on the employer's side could ever be resolved.

Thus, the Commission rejects completely such proposals as multi-trade bargaining. However, in rejecting moves towards multi-trade bargaining we must not lose sight of the fact that although a job site may have a multiplicity of trades at work at any given time, it is, after all, one job site. The trades must work together and recognize that they are interdependent on a job site. Thus, for instance, there is ample ground for developing better relationships between trades such as that developed by certain building trades councils which provide that members will not picket the construction site during a strike unless someone attempts to do the work of the striking employees.

(3) The Three Consensual Briefs

The Commission received three major briefs from labour, management and a group of purchasers of construction. The importance of these briefs cannot be overstated. Each brief is the result of a consensus of views within each of the respective constituencies. Because of the significance of these briefs I have included them as appendices to this report. Thus, the brief of the Provincial Building and Construction Trades Council of Ontario is Appendix "D"; the brief of the Construction Labour Relations Association of Ontario is Appendix "E", and the brief of the Owner Client Council of Ontario is Appendix "F". Each of these briefs represents a substantial amount of work on the part of those submitting them. However, the most important thing about these briefs is that although they contain some differences, they are in many respects compatible with each other.

All three briefs recommend the introduction of province-wide bargaining by trade for the construction industry. Both the CLRAO and the Owner Client brief request that such a change be the subject of legislation. The Building Trades brief does not specifically request legislation but does recognize the necessity of government action in implementing their request for province-wide bargaining by trade.

The brief by the Provincial Building Trades Council requests certain other changes in the construction industry. These will be dealt with at the end of this report. The briefs by CLRAO and the Owner Client Council recommend that some form of coordination be added to the proposed province-wide bargaining scheme. In addition, these two briefs suggest that all collective bargaining in the industrial and commercial sector of the industry should be part of the same process and propose a specific mechanism for dealing with upsetting projects.

Clearly these briefs received a broad range of support in the construction industry. However, it must be recognized that there were a few dissenting or partially dissenting voices amongst various groups in labour, management and purchasers. Nevertheless, there was a clear indication from the preponderance of people in the construction industry that province-wide bargaining by trade was the proper direction for the Inquiry to adopt in reducing the number of bargaining patterns in the construction industry.

(4) The Proposal

We have been requested to implement a system of province-wide bargaining by trade and to develop

coordinated bargaining and deal with large projects. We now turn to examine in some detail the nature of this request.

The first part of the request is to consolidate bargaining to province-wide bargaining. According to the proposal each trade would be a separate bargaining situation which would cover the whole province. As noted earlier, approximately half of the trades in construction currently bargain on a province-wide basis. It is important, however, to note that the term "trade" is not synonymous with trade union. Thus, for instance, while some trade unions bargain for only one trade, other trade unions bargain for a number of trades, often in different collective agreements. This raises an extremely difficult problem, namely, what constitutes a separate trade? In most cases the distinctions between trades are old and well established. However, the problem becomes difficult when one gets to certain specialty trades. In such cases the question arises as to whether we are dealing with a separate and distinct trade or simply with a particular job classification. The request to bargain by trade would indicate that collective agreements which involve only a particular occupation or classification of tradesmen should be dealt with under the collective agreement for that trade. On the other hand, if the employees covered by the separate agreement are not covered by the trade

agreement, this would tend to indicate the existence of a separate "trade" for these employees.

The main thrust of the proposal is that bargaining should be province wide. The proposal envisages the situation where for each trade the collective agreement for the whole province is settled at one bargaining table. In this regard the Commission received a great deal of assistance from the Provincial Conference of the Bricklayer's Union. This union has engaged in consolidated province-wide bargaining since 1972 and was most helpful in explaining the system used at bargaining and their experiences under such a system. The Bricklayer's system is a model system and more will be said about their method of province-wide bargaining later in the report.

For our present purposes the significant thing about the Bricklayer's experience has been the operating relationship between the various locals during the bargaining process. The Bricklayers have 25 local unions in the province, and obviously representatives of all 25 cannot be present at a bargaining table. However, the experience has been that during bargaining the problems of each local are kept in mind by members of the bargaining committee. These problems of each local are faced directly and are dealt with consciously during the bargaining process.

It can be seen that the move towards province-wide bargaining, therefore, solves one of the major problems arising out of the present system of bargaining. The situation in a particular area is dealt with in relation to other areas at the bargaining table. This is the proper context for dealing with such problems. This, of course, requires the bargaining agents to be more responsible. They will be faced with the problems of each particular local and will have to consciously attempt to resolve these problems. There is no "built in" excuse such as referring to an agreement by a neighbouring local as justification for a failure to respond to local conditions.

Similarly, on the employer's side, provincial bargaining should be more responsive to the basic problem than the present system of localized bargaining. Frequently, under localized bargaining, the pressures resulting from jobs that are in progress override the fact that the most important aspect of collective bargaining is that it sets the construction wage rates and costs for the next few years.

One disadvantage of province-wide bargaining is that when a work stoppage does occur it will be province wide. This, however, is offset by the fact that parties are not likely to take such a drastic step without careful consideration. Further, in such a consolidated

bargaining arrangement, each side will have more resources at its disposal during bargaining. This should substantially increase the quality of collective bargaining in the industry.

Another concern that is often expressed is that province-wide bargaining will lead to a single wage rate across the province. This is not necessarily the case. Those trades which experience a great deal of mobility across the province have already tended in this direction to protect and encourage such mobility. However, where there is a low level of mobility, responsible bargaining would create the opposite pressure, reflecting local conditions rather than province-wide rates.

The second part of the proposal deals with the introduction of coordination into construction industry bargaining. This was recommended by two of the three major briefs. The subject was not raised or discussed in the brief submitted by the Provincial Building Trades Council. However, it is of some importance to note that no opposition to coordination was registered by the Provincial Building Trades Council brief.

It is also important to recognize that coordination of bargaining is quite distinct from multi-trade bargaining. Multi-trade bargaining indicates that

a number of trades are bargaining together at one session of bargaining. Coordination, on the other hand, deals with the relationship between separate bargaining sessions. It must be recognized from the outset that whether we like it or not there are relationships between bargaining sessions. The proposal here is simply a matter of formalizing relationships which frequently exist on an informal basis during bargaining.

Coordination contains two different elements, namely, timing and defined relationships. With respect to timing, the introduction of coordination is neither a major nor a difficult problem. Approximately 70 percent of the construction agreements currently expire on the same day. This, in effect, sets the time for the start of bargaining in the construction industry. The timing aspect of coordination can, therefore, be effectively dealt with by making it a requirement that all collective agreements expire upon the same date. It is interesting to note that the Owner Client brief includes the recommendation that all collective agreements should start on the same date. This would, however, effectively introduce multi-trade bargaining since no trade would have a collective agreement until all of the trades had signed a collective agreement.

A substantial portion of the brief by CLRAO

consists of an explanation of the reasons why coordinated bargaining must be introduced. Indeed, Pages 129 to 140 in Appendix "E" form a catalogue of the frustrations felt by those attempting to bargain on behalf of employers in the construction industry. It is clear from the presentation of the CLRAO that, if province-wide bargaining is to respond to the needs of the construction industry as a whole, the relationship between bargaining agencies will have to be dealt with by this Commission.

This presents something of a problem. The Building Trades have not addressed this topic and have not requested a coordinating mechanism on the trade union's side. This is understandable in that the formalization of powers in this area may very well cause constitutional problems for the Building Trades unions. Further, it is probably the case that the present formal relationships between trades which currently exist are satisfactory. I think it is a mistake at this point to be misled by notions of symmetry. This is a situation where the problems that arise for the bargaining agents on one side do not arise for the bargaining agents on the other side. The fact that something needs to be done on one side and not on the other is not justification for concluding that nothing should be done in this area. It is clear that this is a significant problem area and steps must be taken to deal with the relationship between employer

bargaining agencies. However, if the unions feel that similar steps should be taken on the union side, then they should be given an opportunity to coordinate bargaining agencies in an appropriate manner.

The brief presented by the CLRAO makes two proposals in this area. First, that CLRAO should be established as a body directed by representatives from each of the associations engaging in province-wide bargaining. This group of directors would then develop various tactics for bargaining and would have the legislated right to vet proposed settlements in any of the trades. The CLRAO obtained a great deal of support from across the province for this concept. However, it was perhaps the most contentious proposal contained in their brief. Indeed, certain groups spoke strongly against this specific proposal. It is indeed an extensive power and there is, no doubt, some concern about how such power would be exercised. I am of the opinion that much of the concern about this request is due to a misunderstanding of both the request and the bargaining process. The power requested is not the power of a veto. What is requested is a power to pre-clear a proposed settlement. The dynamics of bargaining are such that the activities of such a coordinating body must be exercised prior to the offer being made to the other side. In fact, once the offer is made, the function of the coordinating body

has been effectively destroyed and a veto of such an offer will not remedy the harm done to the coordinating body. It is, however, difficult to see how a remedy can be developed to protect the coordinating association in such circumstances. Any conceivable remedy would involve making invalid the proposed settlement and that is tantamount to a veto of the settlement which is, as pointed out, ineffectual.

At the heart of any proposal to coordinate bargaining is the problem of protecting the coordinating agency from various attempts to undermine or destroy its function with respect to the separate bargaining agency being coordinated. What is needed is not simply a power to coordinate, but an effective remedy to ensure that those involved really keep their word. It is, therefore, imperative that an effective remedy be developed in this difficult area.

Rather than accept the proposal by CLRAO, that all the provincial bargaining associations be forced to accept CLRAO as a coordinating agency, the Inquiry Commission proposes to move in the direction of developing such a remedy. It is necessary to recognize under the legislation that the various province-wide bargaining agencies can execute a coordinating agreement with CLRAO. However, once such an agreement is made, the bargaining

agency should be required to abide by that agreement for a specific round of negotiations. Thus, should the bargaining agency attempt or purport to make a collective agreement without the prior approval of the coordinating agency, the legislation should provide that the bargaining agency loses its separate status and that only the coordinating agency, and only the coordinating agency, has the power to execute the provincial agreement.

It is only through the threat of such drastic consequences that those who agree to coordinate their bargaining can be prevented from breaking such an agreement when it is convenient to do so.

In summary, the proposal with respect to coordination so far is as follows:

Agreements should expire on a common date. The CLRAO should be established and recognized by law as the coordinating agency for bargaining by employer associations. This organization would have the right to participate in all bargaining. That agency must have some effective remedy over possible settlements by the individual employer bargaining agencies for each trade where they attempt to renege on a prior agreement to coordinate bargaining.

The briefs by both the CLRAO and the Owner Client Council also dealt extensively with what in the Background Paper were termed "upsetting projects". Both briefs take the position that these projects should not be isolated from construction bargaining by such devices as are currently used. Thus, they would not fall into a separate sector, such as the electrical power systems sector, nor would national agreements in the sense of being "no strike" agreements be allowed. This would effectively integrate such projects into construction bargaining which, if done on a province-wide basis, would mean that they would close down like any other project during a strike. To keep them isolated would effectively prevent bargaining from dealing directly with the problems raised by such projects. It is, therefore, crucial that they be included.

It is, however, important to recognize that the track record of collective bargaining in the construction industry has not been very good when it comes to dealing with such upsetting projects. This, no doubt, accounts for the concern expressed by EPSCA in the use of the electrical power systems sector to isolate very large projects from local bargaining. There are numerous examples where local bargaining has plain and simply discriminated against such projects. Terms in collective agreements which, really, only apply to large projects

and which unduly increase the cost of such projects as well as inhibit the effective operation of such large sites, are a prime example of the present system's inability to cope with the real problems of collective bargaining.

However, in a system of province-wide bargaining the justification for keeping such projects separate from bargaining disappears. This is precisely the context in which such projects must be viewed and, if province-wide bargaining is to accomplish the goal of resolving the problems of the industry through collective bargaining, then such projects must be included as a topic of bargaining. Indeed, the proposal by both CLRAO and the Owner Client Council recommends that such projects be the subject of a mandatory provision in the collective bargaining agreement. There would be a specific group within CLRAO charged with negotiating an upsetting project appendix to each of the province-wide agreements. Such an appendix would not be separate from the province-wide collective agreement but would aim for consistency across the trades in dealing with such matters as hours of work, travelling pay, and other concerns on projects which have a large work force.

CHAPTER 5

IMPLEMENTING THE PROPOSAL

We turn now to the most difficult problem faced by this Inquiry Commission. How can the present fragmented system of collective bargaining in the construction industry be restructured in accordance with the proposal made by labour and management to this Inquiry? In the briefs submitted to the Commission certain suggestions were made with respect to the bargaining agencies in the restructured system but the problem of restructuring bargaining itself was not addressed. This is not surprising since this problem is a difficult technical problem in labour relations law.

Earlier in this report we noted that there are severe limitations on how much a bargaining structure can be changed by agreement of the parties. There have been attempts to restructure bargaining by agreement, but too often these new structures are destroyed by disagreement. We must, therefore, focus on the structure of bargaining and not the content of collective bargaining. One of the major requirements of any attempt to implement the proposal is to provide protection for the proposed

new structure from the collective bargaining process.

By definition, a restructuring requires change. However, since the proposal to restructure bargaining has been requested by a broad cross-section of those involved on both sides of the industry, we can draw two conclusions from their representations. First, a complete restructuring of bargaining is not something that the parties can fully accomplish on their own. Secondly, they are prepared to make some accommodations in implementing change from the present structures to the proposed restructured system of bargaining.

From the point of view of the Inquiry Commission there is a further problem in that there is no available body of expert knowledge of how to change bargaining structures. This probably results from the fact that the origins of bargaining structures are not that well understood. In recent years there have been some attempts to change collective bargaining systems in the construction industry. In Canada, the Province of Quebec has changed its system of bargaining in the construction industry. In British Columbia, the recent Kinnaird Report proposes changes to the bargaining structures in that province. In addition, there was a recent unsuccessful legislative attempt in the United States to provide a mechanism for the future restructuring of collective bargaining in the

construction industry. For various reasons none of these attempts can be readily applied in Ontario, nor do they really provide much assistance in terms of implementing the proposal before this Inquiry Commission.

Without going into detail about these other attempts to restructure bargaining, it is sufficient to point out that the emphasis in these attempts to restructure bargaining has been directed at the creation of new bargaining agencies. In Quebec, British Columbia and in the proposed legislation in the United States, the concern expressed has been that of the creation by legislation of bargaining agencies capable of bargaining in the restructured system. This appears to be a drastic step which is quite uncharacteristic of labour relations legislation in North America generally. Indeed, in the brief presented to this Inquiry by the Provincial Building and Construction Trades Council of Ontario the following cautious statement appears:

> "Each International union in Ontario should form, where more than one local union exists, a provincial council that represents all the local unions in its organization, and should be governed by an appropriate set of bylaws. Each provincial council should have full authority to bargain on behalf of all its construction members and be able to conclude agreements, subject to ratification by

> the membership. The council would recommend, even though it is not in favour of compulsion, that each international union be urged to merge on a voluntary basis into a provincial council of sister local unions within a specified time."

(emphasis added)

The requirement by legislation compelling the formation of bargaining agencies would appear to be form of coercion not typically found in labour relations legislation.

With the greatest respect, I think the emphasis on the establishment of bargaining agencies misses the root of the problem. It is not the bargaining agencies and changes in these bargaining agencies that are the central problem but the establishment of a restructured system of collective bargaining. We know what the restructured system should be. The question is, how can the restructured system be established? Specifically, how can we establish a collective bargaining structure made up only of province-wide collective agreements for each trade?

To establish this proposed system we must return to an examination of the construction industry collective agreement. Earlier in this report we noted that these agreements have two important characteristics. First, they are multi-employer agreements and secondly, they are

standard agreements. Thus, the present structure of collective bargaining is made up of a large number of standard area collective agreements which operate for a defined group of employees and a defined group of employers. Further, we referred earlier to the recognized ethic of bargaining in the construction industry, that for these defined groups the standard area collective agreement is the only available collective agreement. In these terms the proposal placed before this Inquiry Commission becomes a request to change this large number of standard area collective agreements into a system where there is only one collective agreement covering the whole province for each of the construction trades.

It would thus seem that the proposal can be implemented by a very simple and not very radical device. What is required is legislative recognition of the way that collective agreements in construction currently operate; that is, the labour legislation relating to the construction industry should recognize that construction industry collective agreements currently operate as standard multi-employer agreements. Once this is recognized by law, it then becomes a matter of legislatively qualifying which types of agreements are allowable as valid collective agreements in construction. Thus, the only allowable agreements would be those which are province-wide and affecting a particular trade. In order

to restructure bargaining in the construction industry, we must first recognize the way the bargaining structure presently operates. However, once this is done, the restructuring of bargaining becomes quite simple.

We noted that labour relations in construction are quite different from labour relations in other industries. This was due in large part to the differences between the activities of construction trade unions and other trade unions. It has often been suggested that the labour legislation, as it currently exists, doesn't effectively apply to the construction industry. The point is that the legislation does not recognize the basic characteristics of a construction industry collective agreement. It is further suggested that only by recognizing these basic characteristics can bargaining in the construction industry be effectively restructured. Once it is recognized that all collective agreements in construction are multi-employer agreements, and that they are standard agreements over a defined group of employees and employers, we are then in a position to change the structure of bargaining.

It is important to note that the emphasis in this procedure is on establishing the appropriate bargaining structure and not on establishing the appropriate bargaining agencies. In order to conduct

collective bargaining under this proposed restructuring, parties would have to establish bargaining agencies capable of making the required agreement. This task is neither insurmountable nor, indeed, is there any reason why it should be a difficult requirement. Trade unions are capable of forming councils of trade unions which can bargain on behalf of a number of locals. Indeed, in this province, they have the example of the model system of provincial bargaining established by the Bricklayer's Provincial Conference. For the employers there are currently in existence a number of provincial associations for each of the various trades, and it is simply a matter of these associations assuming the collective bargaining responsibility currently exercised by local associations.

Thus, the proposal put to the Commission for a system of province-wide bargaining can be established by the introduction of legislation providing that the only valid enforceable collective agreement is a standard multi-employer agreement covering all the employees and employers in the province in a given trade. This would prevent attempts to break up the new bargaining structure by negotiating a separate agreement for a smaller area, or for part of the trade, or for any individual employer.

CHAPTER 6

SPECIFIC RECOMMENDATIONS

On the basis of the briefs presented to this Commission and discussion with those most directly involved in collective bargaining in the construction industry, it is clear that changes must be made in the collective bargaining structure and that both sides of the industry recognize that such changes are necessary. We have examined in some detail the proposals for change made to this Inquiry by a broad cross-section of the construction industry. The mechanism for implementing this proposal was developed in the previous chapter. We are now in a position to deal with the final task assigned this Inquiry Commission; that is, to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

(1) Scope of the Specific Recommendations

The recommendations made by this Inquiry Commission deal only with a very specific and well-defined segment of the overall construction industry.

This segment, however, is perhaps the most important segment of collective bargaining in the construction industry and, indeed, the results of collective bargaining in this segment of the industry indirectly affect all of the construction industry. Let me again emphasize that the subject matter we are concerned with is the making of collective agreements and not the day-to-day administration of such collective agreements. The scope of these recommendations covers the building trades unions in what was at one time referred to as building construction. Presently, that term is seldom used and has been replaced by terms such as the industrial, commercial and institutional sector of the construction industry, and the electrical power systems sector. These recommendations do not relate to non-union construction, nor do they relate to the various independent unions that operate in the construction industry, and they do not relate to other sectors or bargaining patterns outside the expanded industrial, commercial and institutional sector of the industry.

The various sectors of the construction industry raise a difficult problem. As we pointed out earlier in this report, there is a strong feeling in the industry that there is no real difference between the industrial, commercial and institutional sector and the electrical power systems sector. Such situations where there is no real difference only serve to fragment

the industry and create additional problems rather than solve problems. This Inquiry Commission realizes that those who participated in the activities of this Inquiry speak mainly for industrial, commercial and institutional construction and, therefore, these recommendations should not be construed to cover bargaining outside this segment of the industry. Nevertheless, serious consideration should be given to the discussion in the CLRAO brief concerning reduction in the number of sectors. Thus, residential construction and pipeline construction are established sectors of the construction industry. However, a difficult problem arises with respect to civil engineering projects which, under the present legislation, might fall within three different sectors presently set out in Section 106(e) of the Labour Relations Act.

One further matter concerning the scope of these recommendations must also be dealt with. A number of the building trades have collective agreements which cover maintenance work. Under these collective agreements members of building trades unions work for employers engaged in general maintenance and repair work, usually on industrial sites. Such operations are really service operations rather than construction operations. As service operations they are outside the construction industry and thus outside of the recommendations made by

this Commission. There is, however, a concern by those in the construction industry that construction work might be done under the guise of such a maintenance collective agreement. This is a valid concern, and where the work done under a maintenance agreement involves new construction or substantial reconstruction of premises, then that work is clearly within the construction industry and thus covered by the recommendations made in this report.

(2) General Recommendations Concerning Collective Bargaining in the Construction Industry

For collective bargaining falling within the segment of the industry defined in the previous section, the Labour Relations Act should be amended to recognize the basic characteristic of a construction industry collective agreement. Such an agreement must be a standard multi-employer collective agreement; that is, there must be only one collective agreement affecting a defined group of employees and employers in the construction industry. Collective agreements which are not multi-employer and which do not apply to the defined group of employees and employers, should be invalid. Further, it should be a prohibited activity under the Labour Relations Act to bargain for, or purport to enter into, an agreement which does not meet these requirements.

In addition to legal recognition of these characteristics of the construction industry collective agreement, the legislation should provide for the setting by regulation under the Labour Relations Act of the allowable collective agreements for building construction. These would be the only valid collective agreements which can be made covering employees and employers in the expanded industrial, commercial and institutional sector of the construction industry. By such regulation the allowable agreements would be required to cover a group of employees defined by a trade. The group of employers would be defined as the employers of such tradesmen, and the required geographic scope of the collective agreement would be the whole of the province of Ontario.

The effect of such a regulation would be to require those attempting to make collective agreements in the relevant section of the construction industry, agreements which are province wide and by trade. Attempts to destroy or alter the bargaining structure by making separate agreements for part of the province or part of the trade or with individual employers would be invalid and a prohibited activity under the Act.

(3) Specific Recommendations Relating to the Consolidation of Bargaining

The Trade Union Side:

As noted earlier in this report the current bargaining structures on the trade union side vary considerably. For some trades one local has bargaining rights throughout the whole of the province; in other trades province-wide bargaining is done by groups of locals which may or may not be councils of trade unions. In other trades, where bargaining is local, the number of locals varies from a few to as many as twenty-one.

Clearly, for some trades the mechanism for province-wide bargaining already exists; for other trades, it will be necessary for the trade unions to develop agencies capable of negotiating the collective agreements allowable under the proposed legislation. It is, therefore, recommended that those trades which have a multiplicity of locals in the province, and which do not have a mechanism for province-wide bargaining, establish as soon as possible a council of trade unions, including all of the locals having jurisdiction over the particular trade in the province. In this regard, the council established by the Bricklayer's Provincial Conference should be used as a model for establishing such a council. It is recommended that for each trade in the construction industry the documents establishing the appropriate council be filed with the Ministry of Labour before the end of the present year.

To facilitate the establishment of these bargaining agencies the Inquiry Commission makes the following suggestions:

For each of the construction trades the International or parent trade union should take steps to establish a Provincial Council. This council should be composed of all of the local trade unions that have members in that trade, together with a representative of the International or parent trade unions. This would require an appropriate set of constitutional documents and bylaws. Further, the bylaws of each constituent local would have to be amended to vest the authority to bargain on behalf of the local in the Provincial Council. The International should also be involved as part of the council since one of the main functions of these parent bodies is to deal with matters concerning the relationship between locals. Further, since Internationals on occasion also make agreements, for that reason alone they should be involved in these Provincial Councils.

Since the primary function of these Provincial Councils will be collective bargaining, it is clear that the major thrust of its constitution and bylaws would be the procedures to be adopted by the council and the locals in collective bargaining. The first major problem is the development of an appropriate bargaining committee. In the case where the council involves only a few locals,

such a committee could be drawn up from representatives from each local. However, in situations where this would result in a bargaining committee that is too large and unwieldy, then the representatives from each local could constitute a steering committee from which a separate bargaining committee could be struck. The first function of the steering committee, or the bargaining committee, would be to study the demands of the various locals and develop a strategy for bargaining.

Once bargaining commences, negotiations would be completely in the hands of the bargaining committee. If a Memorandum of Agreement is arrived at by the bargaining committee, that memorandum should then be dealt with by the overall committee of the locals (i.e., either the steering committee or the bargaining committee). The steering committee should be capable of accepting the Memorandum of Agreement on the basis of a weighted vote of its members; that is, each constituent trade union would have a vote in proportion to its size. Acceptance by the steering committee of a Memorandum of Agreement would complete the bargaining process, i.e., it would constitute a collective agreement.

If the steering committee recommends rejection of the memorandum, or if the bargaining committee is unable to arrive at a Memorandum of Agreement, then the

decision whether or not to strike would be referred back to the membership of the various locals. The vote to strike would be conducted concurrently by all of the locals in the council and the decision would be based on the overall result of all members in the province. Alternatively, the vote could be conducted by a referendum vote conducted by the Provincial Council of all of the members of each local in the council.

In establishing such bargaining agencies it is important to keep in mind the fundamental problem that we are dealing with, namely, the necessity to improve the present system to make it more responsive to the needs of those involved. The purpose of these procedures is to clearly outline the responsibility of those involved in bargaining, and to ensure that they carry out their duties in a responsible manner. Since the main thrust of this proposal is to increase the size of the group involved in any collective bargaining situation, it is in the best interests of everyone that the procedures used fix such responsibility.

The Employer Side:

The present structures on the employer's side of collective bargaining in the construction industry

face a completely different set of problems from that faced on the union side. As pointed out earlier in this report, the unions have historically bargained with a group of employers in making area collective agreements rather than individual employers. The result is that there presently exists for every collective agreement a de facto bargaining agent for the employers concerned regardless of how informal that bargaining agency might be. In some instances these bargaining agencies are local; in other instances they are provincial in nature, and many of the local agencies have formal or informal ties with provincial agencies that are only indirectly involved in bargaining.

The present situation is further complicated by the existence of accreditation certificates under the Ontario Labour Relations Act. Some of these certificates are province wide in their coverage; however, the majority are local in scope. The accreditation has two principle effects on collective bargaining in the construction industry. First, it gives the accredited employer association the legal status of exclusive bargaining agent for all employers affected by the order whether or not they are members of the association. In this respect, the legislation simply focuses on a major characteristic of an area collective agreement, namely, that it is the standard agreement in that area, since

it makes it unlawful for the union to bargain for a different collective agreement with other employers. The second effect of the legislation follows as a direct consequence of the exclusive bargaining agency of the employers' association. The association is protected against attempts to break up orderly bargaining by the use of interim agreements by a local trade union.

The accreditation legislation has had two very important side effects in the construction industry. Primarily, it has focused attention on the relationship between trade unions and employers' associations as a normal part of orderly bargaining in the construction industry. In this regard, unions are less prone to regard associations as simply anti-union devices. Further, employer associations, in order to become effective bargaining agencies, have had to become more responsible in their collective bargaining with trade unions. The result has been an increased understanding on both sides of the processes of collective bargaining. The second indirect result of the legislation has been an increased realization that employer associations are a valuable vehicle in creating orderly collective bargaining in the construction industry. When the accreditation legislation was first proposed, the idea of an employers' association as an exclusive bargaining agent was considered by many to be a radical departure

in labour relations law. The basic concern was that there was no experience with such associations as exclusive bargaining agents. The only similar experience was where such exclusivity itself arose from collective bargaining and that frequently came to light as a violation of the anti-combines legislation. The experience with the accreditation provisions has, to some extent, set aside these previous concerns. The accredited associations have, by and large, conducted themselves as responsible bargaining agents and there seems to be no reason to conclude that the status of an exclusive bargaining agency will lead to an abuse of that power, particularly given the safeguards that exist in the legislation.

For most trades province-wide bargaining faces two specific problems on the employer's side. First, how can such province-wide bargaining agencies be formed, and secondly, how do the existing accreditation orders relate to such a proposal? As noted above, bargaining on behalf of employers who are not affected by accreditation orders, is done through de facto bargaining agents. Further, these agents have ties with provincial structures. It would, therefore, seem clear that a transfer of bargaining authority to the appropriate provincial structures would be the least disruptive way to proceed. Although some of these provincial associations

do not currently engage in bargaining, the pooling of local resources and the reconstitution of the provincial agency as a collective bargaining mechanism, is not that radical a step and could be done within the same time as that required to set up the related bargaining agency in the trade union side. It is, therefore, recommended that the various provincial employers' organizations file with the Ministry of Labour the appropriate documents establishing their ability to act as a bargaining agency for the group of employers affected by each of the various trades.

With respect to the existing accreditation orders, it is recommended that these should be repealed insofar as they relate to the sector of the industry concerned. Further, it will not be necessary for the accreditation provisions of the Labour Relations Act to apply to the province-wide employer bargaining agencies. The effect of recognizing the characteristics of the construction industry collective agreement would provide these province-wide associations with the protection currently given to an accredited employers' organization.

(4) Specific Recommendations Relating to the Coordination of Bargaining

For the sector of the industry that we are

concerned with in these recommendations it is imperative that all bargaining be done during one time period. A substantial number of collective agreements affected by these recommendations will expire on April 30, 1977. It is recommended that all collective agreements affected by these recommendations be required to expire on the same day. Further, this day should be set as April 30. It is suggested that agreements be for two year periods commencing April 30, 1977.

In order to formalize the relationship between bargaining agencies, the following recommendations are made with respect to the bargaining agencies acting on behalf of employers. No recommendations have been made in relation to trade unions because none were requested. However, should the unions request some formalized coordinating procedures for the purpose of bargaining, consideration should be given to such a request.

It is recommended that the Construction Labour Relations Association of Ontario be recognized as the coordinating agency for bargaining agents acting on behalf of employers. In this regard the appropriate amendments to the constitution of that organization, as set out in their brief to this Commission, should be made. It is recommended that the governing body of that

organization be composed of members representing all of the province-wide bargaining agencies.

In order to facilitate efforts at coordination, it is recommended that during the course of bargaining the CLRAO be given a statutory right to be present during bargaining and, further, that a duty be imposed upon those negotiating province-wide agreements to notify CLRAO of all negotiating sessions.

It is recommended that statutory recognition be given to agreements between the various bargaining agencies and CLRAO requiring the bargaining agency to obtain the approval of the coordinating agency before communicating a proposal during bargaining. Such agreements would be operative for a particular round of bargaining. It is further recommended that an expeditious remedy for the violation of such an agreement be established in the Labour Relations Act. In this regard it is further recommended that the appropriate remedy for a violation of such an agreement be the replacement of the provincial bargaining agency directly by the CLRAO.

(5) Specific Recommendations Concerning Upsetting Projects

The recommendations made so far have been to

include upsetting projects within the framework of province-wide bargaining by trade. It is, however, necessary to ensure that the parties to collective bargaining will direct their efforts during bargaining to the specific problems faced by such projects. It is, therefore, recommended that each of the allowable collective agreements be required to include an appendix dealing specifically with such projects. Such appendices, however, must not constitute a separate and distinct collective agreement. It is further recommended that a specific group be established within CLRAO charged with responsibility for negotiating all of these upsetting project appendices. Since the objective of such appendices is the resolution of the problems created by the work force present on such upsetting projects, it is suggested that the building trades give serious consideration to establishing a group having a similar responsibility for the negotiation of such appendices.

CHAPTER 7

CONCLUSION

A number of briefs presented to the Inquiry Commission raised matters that have not been dealt with in this report. The brief by the Provincial Building and Construction Trades Council of Ontario, Appendix "D", outlines a number of areas of concern of this bargaining. These include the organization of employees, jurisdictional disputes, tradesmen qualifications, licencing of contractors and cyclical instability. In addition, the brief by the Toronto Building Trades Council, urged the Inquiry Commission to examine the relationship between s.123 of the Labour Relations Act and peaceful picketing. Other briefs suggested that union hiring halls, ratification votes, and the conduct of strikes should be part of the Inquiry.

Many of these requests reflect serious and extensive problems in labour relations in this industry. Although they are not dealt with in this report, I wish to make it clear that I recognize the concerns which gave rise to these requests.

To say that such matters are outside of the terms of reference of this Inquiry, is an accurate, but unsatisfactory answer to these requests. More to the point is the answer that it would be unfair to deal with these issues without giving others an opportunity to express their views on these other matters.

Nevertheless, there remains the significant statement in the Provincial Building and Trades Council brief:

> ".....you cannot separate any of the problems of this industry, they all have to be treated as one single problem, because if one is not working properly it can upset the remainder of the operation. Basically what we are trying to get across to you, Mr. Commissioner, you cannot just treat the symptom of collective bargaining separately and expect to achieve industrial peace in this industry without treating all the symptoms and attempting simultaneously to find solutions to the many other problems....."

In response to this comment I would suggest that the recommendations in this report constitute an important

first step towards the resolution of many of these other problems.

The recommendations in this report are an attempt to reflect the realities of collective bargaining in the construction industry in the applicable legislation. It is only on such a foundation that the solutions to these other problems can be constructed.

At various places in this report reference has been made to the spirit of cooperation that the Inquiry Commission received from those in the construction industry. Although this report recommends various legislative solutions, the importance of these solutions should not be over-estimated. What is infinitely more important is that those in the construction industry continue their cooperative efforts to resolve their problems.