

## Mitchell's Musings 1-26-15: Have We Forgotten Negotiations?

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The latest Bureau of Labor Statistics media release on unionization was recently released. It shows the union representation rate down from 11.3% in 2013 to 11.1% last year. The private sector rate was down from an already paltry 7.5% to 7.4%.<sup>1</sup> Rather than focus on the significance of the long-term decline of unionization for the labor market, it struck me that - as a byproduct of the downward trend - folks have forgotten about negotiating more generally. Yes, I know. You can cite all kinds of negotiations that go on apart from traditional union-management negotiations. Buyers haggle every day with car dealers over the price, etc. Professional athletes and movie stars (or their agents) negotiate their pay. In many higher level occupations, there is significant negotiating over pay and conditions.

However, there used to be very prominent labor negotiations regularly in the news. Strikes in particular focused attention on the negotiation process because of the drama of conflict involved. Traditional labor disputes still occur, but at much lower frequencies than was once the case. We don't yet have the data for 2014. However, in 2013, BLS reported only 15 "major" stoppages (where major means 1,000 or more workers were involved). You have to go back to the early 1980s to find a year where there were more than 100 such stoppages. In the 1970s, the annual totals varied from 219 to 424.<sup>2</sup>

It is sometimes said that familiarity breeds contempt. But it can also breed knowledge. My sense is that when events occur nowadays (apart from those in the remaining union sector), folks - including news reporters - often don't think about them as negotiations. Let me take an example. I have no inside information on presidential thinking. But I did hear these words in President Obama's recent State of the Union address:

*Twenty-first century businesses need 21st century infrastructure: modern ports, and stronger bridges, faster trains and the fastest Internet.*

*(APPLAUSE)*

*Democrats and Republicans used to agree on this. So let's set our sights higher than a single oil pipeline; let's pass a bipartisan...*

*(APPLAUSE)*

*...infrastructure plan that could create more than 30 times as many jobs per year and make this country stronger for decades to come.*

*Let's do it. Let's get it done.*

*(APPLAUSE)*

*Let's get it done.*<sup>3</sup> [Underline added.]

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<sup>1</sup><http://www.bls.gov/news.release/union2.htm>

<sup>2</sup>[http://www.bls.gov/news.release/archives/wkstp\\_02122014.htm](http://www.bls.gov/news.release/archives/wkstp_02122014.htm)

<sup>3</sup>[http://www.washingtonpost.com/politics/transcript-state-of-the-union-address-2015-remarks-as-prepared-for-delivery/2015/01/20/fd803c4c-a0ef-11e4-b146-577832eafcb4\\_story.html](http://www.washingtonpost.com/politics/transcript-state-of-the-union-address-2015-remarks-as-prepared-for-delivery/2015/01/20/fd803c4c-a0ef-11e4-b146-577832eafcb4_story.html)

The reference to an oil pipeline was understood by the audience and the news media to refer to the proposed Keystone pipeline which has now taken on symbolism so that Republicans are generally in favor of it and Democrats are against it. Obama's remarks were generally interpreted to mean that he was saying that he was against building the pipeline. But a literal reading of the remarks doesn't say that. If you think about the matter from a negotiations viewpoint, you might well interpret the statement to mean that "you Republicans want a pipeline and I want a wider deal on infrastructure, so maybe we can negotiate something that would include the pipeline but also include other projects." Again, I have no inside knowledge as to whether that was what was meant and no knowledge of the merits or demerits of pipelines. But since I think from a negotiating framework, I can say with authority that the interpretation above is what I immediately thought.

Let me take another situation closer to home (for me) and about which I do know something. The University of California (UC) suffered budget cuts during the Great Recession and its aftermath as part of the California state budget crisis. Governor Jerry Brown was elected in 2010 and eventually put on the ballot a proposition that raised taxes on a temporary basis. The university received some gains as a result, but less funding than the Board of Regents had hoped to obtain. For a couple of years, the university went along with a demand of the governor that it freeze tuition in exchange for his schedule of annual increases. It never signed off on a formal deal; it just went along, year by year.

The Board hired a former governor of Arizona, Janet Napolitano, as the UC president with the thought that political expertise was needed to deal with the funding situation. She subsequently got the Board to propose a schedule of tuition hikes along with the governor's annual funding increases. That is, the Board wanted the state money without any tuition freeze. Its proposal contained both tuition increases and funding increases in opposition to Governor Brown's wishes. If the governor wanted a tuition freeze, according to Napolitano, he would have to buy out the scheduled tuition hikes with still more state funding.

Commentary on the Napolitano/Regents plan assumed that the proposal was a bottom line position. Take it or leave it. That is, it often didn't view the proposal as a starting demand in a negotiations process. Yet, if you were to view the proposal as a starting demand, you wouldn't assume that the bottom line for Napolitano/Regents is the formal demand. One commentator who did view the demand as part of a negotiation was a former Berkeley chancellor. But he wrote an op ed indicating that there would eventually be a compromise between Napolitano and Brown and laid out what that compromise might be.<sup>4</sup>

There is a problem with such an op ed, however, if you think in negotiating terms. Folks in Governor Brown's office might well assume that the former Berkeley chancellor has some inside information concerning what Napolitano is actually seeking. He isn't some random outsider expressing a viewpoint, but rather a former high level person within the university administrative set up. They might even assume he was acting as an official leaker. So making such statements in a public forum potentially undermined the Napolitano/Regents position – again, if you think in negotiations terms.

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<sup>4</sup>The *Los Angeles Times* asked various individuals to prognosticate about things that would happen in 2015. The former Berkeley chancellor included his view of the eventual deal in his segment. You can find the commentary at <http://www.latimes.com/opinion/op-ed/la-oe-0101-predictions-20150101-story.html>.

Of course, I have no way to prove that the lack of frequent and prominent labor negotiations nowadays has tended to reduce general understanding of what a negotiation means and entails. But I am not the only one to whom the thought that the decline in union-management relations in the US has an effect beyond such traditional labor market measures such as pay levels. The thought has occurred to others.

I recently attended a talk by Judge Marsha Berzon of the US ninth circuit court of appeals.<sup>5</sup> Her talk dealt with the decisions of the former Supreme Court Justice William J. Brennan, Jr. The theme of her talk was that Brennan, because of his personal and legal background, had an understanding of labor and the workplace more generally, an understanding that is now lacking in the judiciary. There are fewer union workers and therefore fewer labor-management cases coming up before judges. Judges are thus less likely to have a background in the field based on legal experience or personal background.

You could argue that the loss of a negotiating viewpoint outside the specific union-management context is perhaps of interest as an academic matter but not especially important. However, there has been much attention to political polarization in Congress, legislatures, and elsewhere and much lamenting over an inability to compromise. There are undoubtedly deep underlying reasons for such political gridlock. But if folks (news reporters or gridlocked politicians themselves) can't recognize a negotiating situation when one occurs, that failure surely doesn't help achieve a compromise solution.

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<sup>5</sup>The talk was sponsored by the Los Angeles County Bar Association Labor and Employment Law Section and the UCLA Institute for Research on Labor and Employment as the latest of the annual Benjamin Aaron lecture sponsored by the latter