Building Trust in the Workplace

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BUILDING TRUST IN THE WORKPLACE

Carlton J. Snow*

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I. INTRODUCTION

The thesis of this article is that a relationship of trust best serves the interests of parties in collective bargaining. Little scholarly attention has been given to the role of trust in collective bargaining.¹ There has been an implicit acceptance of the notion that par-
ties who negotiate and administer collective bargaining agreements generally are intent on manipulating and controlling each other. This article rejects that stereotypical description of a collective bargaining relationship and also assumes that the parties have not dis-


There has been a strange silence on the topic of trust in the tradition of moral philosophy with which I am familiar. Psychologists and sociologists have discussed it, lawyers have worked out the requirements of equity on legal trusts, political philosophers have discussed trust in governments, and there has been some discussion of trust when philosophers address the assurance problem in Prisoner’s Dilemma contexts. But we, or at least I, search in vain for any general account of the morality of trust relationships.


2. See THOMAS A. KOCHAN, COLLECTIVE BARGAINING AND INDUSTRIAL RELATIONS 232-33 (1980). One group of firms in this country has clearly adopted a policy of avoiding unions or containing their expansion as aggressively as possible. Managers choosing this strategy apparently see union containment as the means best suited to controlling labor costs, promoting their economic objectives, and protecting their status and power as organizational decision makers. These firms apply a double standard to their employees. They seek to meet as many of the expectations and needs of their nonunion employees as possible in order to maintain the commitment, loyalty, and job satisfaction necessary to reduce the incentives to unionize. Once a group of employees organizes, however top priority shifts from nurturing favorable attitudes to concern for minimizing labor costs, limiting union influence and power, and preserving management prerogatives through hard bargaining.

connected themselves from shared ethical precepts. While traditional relationships have not been hospitable to trust, deceitfulness, manipulation and misrepresentation are not at the heart of collective bargaining.

The article proceeds on an assumption that parties in a collective bargaining relationship are ethical people. While their values and norms are not usually articulated precisely, negotiators and administrators of collective bargaining agreements live by ethical systems. They follow rules and standards that foster their ethical systems. One objective of this article is to study the role of ethical codes in enhancing trust in collective bargaining.

A collective bargaining relationship develops or changes in response to various influences. An important influence on the evolution of the collective bargaining relationship is trust or distrust. This article explores what motivates parties who choose to trust or distrust each other. In the intensified global competition of the 1990s and early 21st century, is trust a rational part of a collective bargaining relationship? In an atmosphere of distrust, what will be the impact on normative beliefs of those in the workplace or on work practices in response to common problems? In fact, is trust more rational than distrust?

Standards of trust in collective bargaining relationships are blurred and there is no freestanding code of ethical behavior for negotiators and administrators of collective bargaining agreements. No ethical code for collective bargaining parties is set forth in the law nor clearly defined by decisions in unfair labor practice complaints. At best, collective bargaining laws and administrative regulations constitute a blunt instrument with regard to ethical behavior and typically focus the parties on honing an adversarial relationship far more than engendering an atmosphere of trust among them.

The first part of this article will explore the ethical role of trust in collective bargaining. The purpose is not to assess the compatibility of the concept of trust and collective bargaining laws. If trust in collective bargaining is sensible and workable but incompatible

3. See CHARLES M. FARKAS & PHILIPPE DE BACKER, MAXIMUM LEADERSHIP 132 (1996) (describing the “box approach” to organizational values: “every company has procedural, financial, and cultural control systems”).

4. See, e.g., CODES OF PROFESSIONAL RESPONSIBILITY (Rena A. Gorlin ed., 1986) (revealing the exclusion of a code of ethical behavior for negotiators and administrators).
with the law, it is reasonable to assume that the law eventually will catch up with the needs of the parties and society.\(^5\) The search in this article is for an ethical basis for a trusting relationship in collective bargaining. The second part of the article will examine motivations for developing and evolving a relationship of trust. The third part of the article will inquire about the impact of trust on communication and cooperation in a collective bargaining context. The final part of the article will study the practical problems of entering into a relationship of trust between parties to a collective bargaining agreement.

II. ETHICS OF TRUST IN COLLECTIVE BARGAINING

A system of ethics helps people choose values and determine the difference between right and wrong. Ethics help people make judgments and decide how to act. A theory of ethics can provide values that clarify solutions to a problem. To speak meaningfully about values, there need to be criteria by which rationally to test them. For example, a value has coherence when it produces systematic consistency or conduces to the well-being of society or produces a

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5. See Benjamin N. Cardozo, The Nature of the Judicial Process 166-67 (1921). Describing the Judicial Process Cardozo said,

I have grown to see that the process in its highest reaches is not discovery but creation; and that the doubts and misgivings, the hopes and fears, are part of the travail of mind, the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born.

Id.; see also K.N. Llewellyn, The Bramble Brush 107-18 (1930) (discussing how the law is influenced by the outside world and how the law changes and remodels itself where, for example, “the ordinary processes of bargain . . . fails to produce a workable result,” the law will borrow from the “practices, standards, ethics that make up the social, economic and religious phases of society”); Sir Maurice Sheldon Amos, Roscoe Pound, in Modern Theories of Law 92 (W. Ivor Jennings ed., 1933)

The view which we propound is that general views of jurisprudence, of the nature, sources, and place of law, exercise, through their effect upon the legal outlook of the general profession, and particularly of the judges, a commanding influence upon the course of development of the law from generation to generation.

Id.; see also Oliver Wendell Holmes, The Common Law 1 (1963)

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

Id.; see also Melvin Aron Eisenberg, The Nature of the Common Law 82 (1988) (“Ultimately, the career of a principle rests on its congruence with applicable social propositions.”).
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contented response from the psyche. A system of ethics helps a community find a coherent pattern of meaning in life.6

There is reason to be cynical about efforts to find an ethical basis for trust in a collective bargaining relationship.7 Downsizing has characterized the 1990s. Corporations have exported hundreds of thousands of jobs to other countries. Loyalty to employees has not been a hallmark of the times.8 Add to downsizing the viciousness and triviality of American public life, especially state and federal politics, and it is understandable why cynicism abounds. Columnist Joe Klein justified months of lying about his authorship of the book, Primary Colors, by statements such as he “wanted the book to be judged on its own merits, not on my reputation as a journalist” or he “didn’t want to be embarrassed” or it was comparable to “times when I had to lie to protect a source.”9

6. See generally Approaches to Ethics (W.T. Jones et al. eds., 3d ed. 1977) (discussing various philosophers views on ethics).

7. Distrust of corporate leaders runs deep. See James M. Kouzes & Barry Z. Posner, Credibility 43 (1993) ("The low ratings of management’s integrity by office workers in Canada, the European Economic Community countries, and Japan suggest that suspicion of power is not exclusively an American phenomenon."). Such cynicism may well extend to evaluating the utility of an article such as this one. Moreover, some think collective bargaining in the United States is doomed and might view an article on trust formation as irrelevant. See Reinhold Fahlbeck, The Demise of Collective Bargaining in the USA: Reflections on the Un-American Character of American Labor Law, 15 Berkeley J. Emp. & Lab. L. 307, 311 (1994).

8. See Robert E. Allen, The Anxiety Epidemic, Newsweek, Apr. 8, 1996, at 15 (reporting that the CEO for AT&T believes that "[f]or the present, downsizing is inevitable"). But see Tracy E. Benson, In Trust We Manage, Industry Wk., Mar. 4, 1991, at 26; Louis Uchitelle, The Risks of Keeping a Promise, N.Y. Times, July 4, 1996, at D1 (reporting on Aaron Feuerstein, who could have shut down Malden Mills Industries and kept millions of dollars in fire insurance but, instead, chose to rebuild and guarantee 3,200 workers their jobs, paying them full wages during the rebuilding process).

Lack of trust and cynicism are closely related. See Carol R. Ember & Melvin Ember, Resource Unpredictability, Mistrust, and War, 36 J. Conflict Resol. 242 (1992) (discussing the interplay between resource unpredictability and cynicism); Joan E. Rigdon, Lack of Communication Burdens Restructurings, Wall St. J., Nov. 2, 1992, at B1 (reporting that in a 1992 poll, two-thirds of employees who survived their corporate restructuring stated that they lost trust in the company); see also David G. Carnevale, Trustworthy Government 3 (1995) ("People are cynical about the effectiveness of public institutions, which they see as broken and in dire need of repair."); F. Robert Reilly, The Erosion of Trust, 58 Vital Speeches of the Day 696, 697 (1992) ("Our collective cynicism has occurred, in part, at the cost of the collective trust.").

Despite the perversity of many relationships, a universal quest for trusting relationships refuses to be subdued. There is a deep-seated desire to believe that promises will be kept. Without such a belief, the social and economic system in the United States would not function. This fact helps advance trust as a moral imperative.

We know that many lies are trivial. But since we, when lied to, have no way to judge which lies are the trivial ones, and since we have no confidence that liars will restrict themselves to just such trivial lies, the perspective of the deceived leads us to be wary of all deception.

Id. Bok concludes that liars generally do not consider the damage of deception within a community. See id. at 28.

These practices clearly do not affect only isolated individuals. The veneer of social trust is often thin. As lies spread—by imitation, or in retaliation, or to forestall suspected deception—trust is damaged. Yet trust is a social good to be protected just as much as the air we breathe or the water we drink. When it is damaged, the community as a whole suffers; and when it is destroyed, societies falter and collapse.

Id. Others agree with Bok. See Francis Fukuyama, Trust: The Social Virtues and the Creation of Prosperity 25 (1995) ("Communities depend on mutual trust and will not arise spontaneously without it."); see also Hannah Arendt, The Human Condition 324 (1958) (stressing the negative impact on the "web of human relationships" of conduct that undermines social trust); Paul Ekman, Telling Lies 26-27 (1985) ("The person who lies could choose to lie or to be truthful, and knows the difference between the two. Pathological liars who know they are being untruthful but cannot control their behavior do not meet my requirement."); Thomas L. Shaffer, On Lying For Clients, 71 Notre Dame L. Rev. 195, 211 (1996) ("Lying destroys character. It destroys relationships. It destroys communities.").

10. See Roderick M. Kramer, Intergroup Relations and Organizational Dilemmas, 13 Res. & Organizational Behav. 191, 207 (1991) (concluding that workers are motivated by more than merely self interest); see also James B. Atleson, Values and Assumptions and American Labor Law (1983) (challenging, especially in Chapter 11, the assumption of most courts that workers have no investment in a company beyond receiving wages); Jon Elster, The Cement of Society 251 (1989) (discussing credibility as one of the "cements of society"); John Rawls, A Theory of Justice 342-47 (1971) (advancing that promises are more than just words, and allow people to have dealings with one another); Laurence Thomas, Trust, Affirmation, and Moral Character: A Critique of Kantian Morality, in Identity, Character, and Morality 235, 249 (Owen Flanagan & Amelie Oksenberg Rorty eds., 1990) ("In a basically moral society, trust is an integral part of the social and moral fabric of life.").

11. See generally Kenneth J. Arrow, The Limits of Organization 23 (1974) ("Now trust has a very important pragmatic value, if nothing else. Trust is an important lubricant of a social system. It is extremely efficient; it saves a lot of trouble to have a fair degree of reliance on other people's word."); Phillip Selznick, Law, Society, and Industrial Justice 19 (1969) (proposing that at one phase of human development people are infused with a "common conscience," part of which believes that a person is to be held at his or her word).

12. See Ernest Gellner, Trust, Cohesion, and the Social Order, in Trust: Making and Breaking Cooperative Relations 142 (Diego Gambetta ed., 1988); see also Kenneth J. Arrow, The Limits of Organization 26 (1974) ("Among the properties of many societies whose economic development is backward is a lack of mutual trust.").
What does it mean to “trust”? While “[t]rust is a process, [and] not a thing,” it can be defined in terms of risk and interdependence. First, trust involves various levels of risk-taking, depending on the degree of trust. Each party in a collective bargaining relationship risks some loss. There must be a willingness to endure the risk of loss as a consequence of misjudging someone while trusting that the vulnerability inherent in the risk will not be abused. When a union official or an employer takes the risk of being vulnerable, such an act has a limiting effect. Each party’s choice limits the other because a choice has been made not to abuse the other. At the
same time, there is freedom in the limitation because it releases the other's resources that, otherwise, might be needed to combat abuse.

A second element of trust is interdependence. For parties to a labor contract to receive the greatest benefit of their relationship, they need to cooperate with each other. By choosing to trust, however, there is a risk that the other party may try to maximize its individual benefits at the expense of the one who trusted. A few shared values within the collective bargaining community help reduce the risk of opportunism and heighten an awareness of interdependence.\(^{18}\)

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The more one distrusts one's own processes, the more one requires a technique, a leader, a guide, a cookbook, a structure, a plan, a timetable, a reservation at the hotel, a life insurance policy, a no-cut contract, a no-risk agreement, a money-back guarantee, a buffer zone, a warning, a warm-up period, a non-title fight, a trial run, a road map, a friend in court—any hedge against the normal risks of living.

**Jack R. Gibb,** *Trust: A New View of Personal and Organizational Development* 117 (1978); *see also* Elizabeth Willem, *Adult Commitment: An Ethics of Trust* 180 (1990) (studying trust in adults shows that it is crucial to relationships); Jack R. Gibb, *Climate for Trust Formation, in T-Group Theory and Laboratory Method* 279 (Leland P. Bradford et al. eds., 1964) (creating a healthy environment free from strong feelings of defensiveness allows one to grow); Jack R. Gibb, *Defense Level and Influence Potential in Small Groups, in Leadership and Interpersonal Behavior* 66-81 (Luigi Petrullo & Bernard M. Bass eds., 1961) (studying small groups has shown that certain actions can sway others into varying levels of defensiveness); Jack R. Gibb, *Defensive Communication, 11 J. Comm.* 141 (1961) (arguing that reducing the degree of defensiveness in communication improves “interpersonal relationships”).

18. “[I]nterdependence doesn’t mean compromise, self-denial, or surrender of basic values, but . . . it does mean cooperation, enrichment of personal lives, and transcendence, taking away much of the fear of groups, of society, and of dependence on others.” Gibb, *supra* note 17, at 281; *see also* Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* 26 (1995) (“While contract and self-interest are important sources of association, the most effective organizations are based on communities of shared ethical values.”); Diego Gambetta, *Can We Trust Trust?, in Trust: Making and Breaking Cooperative Relations* 213, 219 (Diego Gambetta ed., 1988) (“[T]rusting a person means believing that when offered the chance, he or she is not likely to behave in a way that is damaging to us . . . ”); Lawrence E. Mitchell, *Fairness and Trust in Corporate Law, 43 Duke L.J.* 425, 430 (1993) (“Fiduciary relationships are, characteristically, relationships of trust and dependency in which the dependent party (the beneficiary) has ceded control over some portion of her life to the power-holding party (the fiduciary) with the expectation that the power-holding party will exercise that control for her benefit.”).

Trust has been defined as “a state involving confident, positive expectations about another’s motives with respect to oneself in situations entailing risk.” Susan D. Boon & John G. Holmes, *The Dynamics of Interpersonal Trust: Resolving Uncertainty in the Face of Risk, in Cooperation and Prosocial Behavior* 190, 194 (Robert A. Hind & Jo Groebel eds., 1991); *see* Anilk K. Mishra, *Organizational Responses to Crisis: The Centrality of Trust, in Trust in Organizations: Frontiers of Theory and Research* 261, 265 (Roderick M. Kramer & Tom R. Tyler eds., 1996) (“Trust is one party's willingness to be vulnerable to another party based on the belief that the latter party is (a) competent, (b) open, (c)
An important aspect of trust focuses negotiators and contract administrators on acts. They rely on a mutual intent not to act in a way inimical to their relationship of vulnerability. Trust requires relinquishing a degree of control over the collective bargaining relationship.19 "In granting trust to another, or to institutions, we forego some of the control that we might otherwise exercise, not only over the entrusted aspect of our lives but over the trusted party as well."20 Parties typically base the decision to trust each

19. Speaking with considerable idealism, Gibb observed that:

The distrusting processes (manipulating, controlling, covering, depersonalizing) are self-defeating and self-perpetuating. People who resort to control and manipulations inevitably discover that controls and manipulations become necessary. Controls and manipulations are time-consuming and costly, and they seldom work as well as had been hoped. When they don't work (the death penalty, penalties for tardiness, fines for errors, or safety rules) the tendency is to assume that the controls need to be tightened and shored up. It is very difficult and seemingly irrational to reduce the controls and supervision when the procedures don't work. It is difficult to get free of the assumption that the rules and controls are necessary.

JACK R. GIBB, TRUST: A NEW VIEW OF PERSONAL AND ORGANIZATIONAL DEVELOPMENT 118 (1978). Employees prefer to work at companies where management attempts to promote trust. See ROBERT LEVERING & MILTON MOSKOWITZ, THE 100 BEST COMPANIES TO WORK FOR IN AMERICA at xv (1994).


The development of our own trusting behavior hinges very closely on our self-concept and self-awareness. Our interaction with others gives us opportunities to affirm our view of ourselves. Thus, my trust of another is a function of my own self-concept and my own self-trust, as well as my acceptance of the other.

Id. "Trust is a condition that can result from insights and perceptions of ourselves and each other." Id. at 82; see also ANTHONY GIDDENS, MODERNITY AND SELF-IDENTITY: SELF AND SOCIETY IN THE LATE MODERN AGE 38 (1991) ("Trust in the existential anchorings of reality in an emotional, and to some degree in a cognitive, sense rests on confidence in the reliability of persons, acquired in the early experiences of the infant.")
other on a host of subjective factors, some of which may constitute a subterfuge designed to fabricate an appearance of sharing control. Trust in the wrong persons or organizations can be foolhardy.\textsuperscript{21}

In the presence of such ambiguity, trust is encouraged to grow if members of the collective bargaining community share some common norms and values.\textsuperscript{22} For example, if there is a shared commitment to truth-telling and to expressing honest intentions, a relationship of trust has more of a chance.\textsuperscript{23} Such communal values enhance an atmosphere of risk-taking and help negotiators and contract administrators find the courage to act on their interdependence.\textsuperscript{24} Collective bargaining is an arena where, because of interdependence, risk taking can increase the prospect of economic success for both parties.\textsuperscript{25}

\begin{enumerate}
\item See Charles F. Sabel, \textit{Studied Trust: Building New Forms of Cooperation in a Volatile Economy}, \textit{46} \textit{Hum. Rel.} 1133, 1150 (1993) (discussing the development of "vigilant trust" in the Commonwealth of Pennsylvania, despite the belief that such trust would be unlikely in the declining industry of "individualistic America").
\item See \textit{John Elster, The Cement of Society: A Study of Social Order} 101 (1989) ("[S]ocial norms differ from legal norms. For one thing, obedience to the law is often rational on purely outcome-oriented grounds."); see also Cass R. Sunstein, \textit{Social Norms and Social Roles}, \textit{96} \textit{Colum. L. Rev.} 903, 967 (1996) ("Many of the most severe problems in current societies are a product of unfortunate norms, meanings, and roles."). Some people believe it is unnatural to seek to develop a relationship of trust in the workplace. See \textit{Robert Levering, A Great Place to Work} 45 (1988).
\item Trust does not exist naturally in the workplace. Where it does take root and grow, it is a highly perishable commodity, requiring constant attention and care. Part of the reason for this difficulty in establishing trust is that human beings naturally question the motives and intentions of others. We are all afraid of being taken advantage of. So we are very careful about whom we trust. Managements of good workplaces seem to acknowledge the fact that everyone inevitably has doubts about the company's credibility and reliability.
\end{enumerate}

\textit{Id.}

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\item See Joann Horai et al., \textit{The Effects of Conflict Intensity and Promisor Credibility on a Target's Behavior}, \textit{14 Psychonomic Sc.} 73 (1969).
\item See Seymour Martin Lipset & Marcella Ridlen Ray, \textit{Technology, Work, and Social Change}, \textit{17} \textit{J. Lab. Res.} 613, 623 (1996) (arguing that core values exist in and stabilize American society). "These values, culturally embedded and persistent across the barriers of socioeconomic class, ethnicity, race, religious belief, and political ideology, stress individual achievement and egalitarianism in social relationships." \textit{Id.}
\item There are, of course, varying levels of trust. According to Peter Block, "[t]o trust individuals in the organization is to believe they tell us the truth and are totally honest about what they see happening, including their own actions." \textit{Peter Block, The Empowered Manager} 133 (1990).
\end{enumerate}

Trust means: "I know that you will not—deliberately or accidentally, consciously or unconsciously—take unfair advantage of me." It means: "I can put my situation at
There is interdependence in the collective bargaining relationship because it is premised, in part, on an exchange. Collective bargaining consists of an exchange of money and other benefits for work with employees organized into a collective unit of some sort. Generally, elected leaders of employees interact with managers according to prescribed practices and conventions to arrive at a productive relationship. The purpose of the exchange between the parties is to obtain mutually beneficial wages, practices, and regulations that guide the relationship during a stated period of time. As Erich Fromm recognized almost half a century ago, workers are drawn to more than economic advantages but to a community as well. Embedded in the collective bargaining relationship is the potential for trust. As one scholar observed, "trust is an ingredient found in most commercial transactions." In the view of another, "[t]rust is central to all transactions and yet economists

the moment, my status and self-esteem in this group, our relationship, my job, my career, even my life, in your hands with complete confidence."

DOUGLAS MCGREGOR, THE PROFESSIONAL MANAGER 163 (Caroline McGregor & Warren G. Bennis eds., 1967); see also NIKLAS LUMMANN, TRUST AND POWER 86 (1979) ("In ethics, it must therefore be assumed that whether in particular instances one should trust, or not, follows from the objective features of the situation, from common human understanding.").


When the union and employer sit down to bargain collectively, a variety of issues is open to discussion. Some of these are purely economic, and some deal with such mundane issues as the work duties of shop stewards, the timing of the coffee break, or even the color of paint in the engineering shop.

Id.


Trust is the binding force in most productive buyer/seller relationships. No amount of detail in a formal written contract, no abundance of legal staff to fight for recompense, no form of recourse can provide the buyer with such a high
Collective bargaining agreements customarily are quite long because they often are created in an atmosphere of distrust.

Economists and legal scholars sometimes treat the concept of trust as irrelevant to commercial exchanges. Trust may not even be considered as a legal factor in analyzing commercial transactions. Participants in an exchange may be seen as relatively equal trading partners who ostensibly do business primarily on the basis of price. The law theoretically may be indifferent to a relationship of trust between the parties. The notion of relational contracts had not yet become the focus of scholarly examination when these notions first took shape.

expectation of a satisfying exchange relationship as a simple, basic trust of the salesperson and the company that he or she represents.

Id.


31. See Mark Casson, The Economics of Business Culture 15 (1991) ("Most economists reject the idea that trust can be a significant factor. Social anthropologists, on the other hand, regard trust as one of the most important factors that bind primitive groups of people together.").

32. See Stewart Macaulay, Organic Transactions: Contract, Frank Lloyd Wright and the Johnson Building, 1996 Wis. L. Rev. 75, 121 (1996) ("We know relatively little about when contract law serves to support the trust needed to make business relations possible.").


There generally is an unexpressed expectation on both sides in collective bargaining that the other party is not misrepresenting facts and will act in good faith to implement a bargain once the parties reach an agreement. There is a shared norm, if made and accepted, that promises will be kept. Such values help the parties by increasing the range of flexibility available to them, both at the bargaining table and in managing their contract. Trusting each other reduces the parties’ proclivity toward workplace rigidity and inflexible work regulations. Numerous work practices develop in an ongoing relationship and there is less need to codify them in a contract if parties trust each other. There is not the same need for contractual rigidity because of a decision to be vulnerable to each other. Developing a trusting relationship reduces the complexity of the parties’ ongoing involvement.

Shared values of truth-telling and information reciprocity yield action-guiding principles for the negotiation and administration of collective bargaining agreements. Starting with the premise that an act is virtuous if it expresses a virtuous intent, it follows that collective bargaining agreements which intend to rationalize workplace relationships and help a community pursue prosperity ought to be encouraged. The function of a theory of trust in a collective bar-


[Even though it may be irrational from the standpoint of normative models of bargaining, individuals may sometimes care more about the fairness and equality of their outcomes than about how pareto-optimal or efficient they are. For example, when a common social identity is salient and/or self-presentational concerns are high, negotiators may be willing to forfeit some personal gain in favor of other goals such as preservation of their relationship or maintaining the appearance of being a fair or cooperative person.

Id.

36. See NIKLAS LUNDBNAM, TRUST AND POWER 25 (1979) ("[T]rust, by the reduction of complexity, discloses possibilities for action which would have remained improbable and unattractive without trust—which would not, in other words, have been pursued.")
gaining relationship is to help specify the content of the trusting relationship and to provide a framework for advancing shared values. A theory of trust helps parties better understand how to adopt aims that advance the shared goal of a collective bargaining relationship.37 Trust in a collective bargaining context is intrinsically good because it can give rise to more meaningful relationships and because it helps humanize the workplace. It enhances the probability of keeping individual and institutional commitments. Trust is extrinsically good because it manifests an expression of respect for an agreement that advances civility and prosperity in society.38

The law permits parties to enter into a collective bargaining agreement. By developing and evolving a relationship of trust in collective bargaining, the parties show their regard for legislative rights and offer respect for the rule of law. Collective bargaining advances aspects of democracy in the workplace.39 Jefferson believed that, “if the government would just get out of the way, people’s inherent sociability and moral instinct would create a natural ordering of the society—a civil society that would be free of the

37. See WILLIAM GELLERMANN ET AL., VALUES AND ETHICS IN ORGANIZATION AND HUMAN SYSTEMS DEVELOPMENT 144 (1990) (“At the moment that any conflict or competition is recognized, the presence or absence of trust determines whether people will direct their energy and attention to working with one another to solve the problem in whole-win ways or against one another in win-lose ways.”).

38. See FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 26-27 (1995) (“Acquisition of social capital . . . requires habituation to the moral norms of a community and, in its context, the acquisition of virtues like loyalty, honesty, and dependability. The group, moreover, has to adopt common norms as a whole before trust can become generalized among its members.”); see also James S. Coleman, Norms as Social Capital, in ECONOMIC IMPERIALISM 135 (Gerard Radnitzky & Peter Bernholz eds., 1987). Coleman defines “shared values” as:

 expectations about action—one’s own action, that of others, or both—which express what action is right or what action is wrong. A norm may prescribe certain actions such as the norm that an athlete on a team should play his best. Or it may proscribe certain actions, such as the norm among observant Jews and Muslims of not eating pork, or the norm once held among observant Catholics of not eating meat on Friday.

Id.

confusion and contentions of the past." Collective bargaining pushes government aside and enables people to influence decisions directly affecting their lives, fostering democratic civility. Ethical criteria for testing whether collective bargaining is an important goal, such as treating people as an end in themselves and encouraging people to help each other, reveal it to be a rational basis for action.

Developing a relationship of trust in collective bargaining is a legitimate means of endorsing an ethically sound value. A commitment to collective bargaining does not occur in a cultural vacuum. It is insufficient to be implicitly committed to collective bargaining. One needs an explicit expression of such a commitment. Assuming our acceptance of the social and economic utility of collectively bargained promises, there is an obligation to act in ways that advance promise-keeping. It is highly rational to express that commitment by acts designed to generate trust in the negotiation and administration of collective bargaining agreements.


[Most business ethics issues faced by managers today can be addressed by asking the question "What does the law provide?" Underlying this assumption is the belief that a dispassionate review of the relevant law will likely provide the answer (or more likely a range of acceptable answers) which comports with sound moral and ethical principles.]

*Id.* But see Thomas L. Shaffer & Robert F. Cochran, Jr., *Lawyers, Clients, and Moral Responsibility* 57 (1994) ("The law often merely covers over moral controversy. Where there is relevant law, it is often the product of judges or legislators who disagreed on the moral values they brought to their governmental tasks.").
If there is a commitment to the rule of law, especially after a collective bargaining agreement has come into existence, a relationship of trust is a rational manifestation of that commitment. Many negotiators in the United States attempt to conceal their true intent and to keep important thoughts about the negotiation to themselves. Such strategies are designed to hide reactions to proposals and to control the flow of information. These competitive approaches to bargaining and administering a collective bargaining agreement are behaviors that generate distrust. They detract from an effective collective bargaining relationship and encourage ethical inconsistency by challenging shared norms and possibly thwarting the rule of law. They generate suspicions about a commitment to telling the truth and keeping promises.

Developing a relationship of trust in collective bargaining is an idea that withstands ethical scrutiny. It is a rational approach to collective bargaining because (1) shared values are more easily

44. As one author stated:

Many see the negotiation dance in terms of the size and timing of concessions elicited and the varied techniques of strategic misrepresentation used. Under this view, strategic considerations are merely multiple options for manipulating the facts, the law, the situation, and the relationships involved to gain incremental benefit in the negotiation. Each option or technique suggests a way of ordering or presenting information or conducting yourself that will lure the other side into an agreement more favorable to you than otherwise would be possible.

JOHN S. MURRAY ET AL., PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS 144-45 (2d ed. 1996) (citations omitted); see also JAMES GRAY, JR., THE WINNING IMAGE 72 (1982) ("[M]ore important is the use of gestures and movement to appear more sincere and confident, and to open or close communication."); DEAN G. PRUITT, NEGOTIATION BEHAVIOR 20 (1981) ("[I]f agreement is reached, a bargainer who makes larger initial demands and smaller concessions will achieve a larger outcome (and the other party a correspondingly smaller outcome).")


What people cannot talk about can hurt the organization in a big way. We believe that understanding and identifying undiscussables is the fastest way to figure out what people are afraid of in an organization. Getting rid of undiscussables is a primary step in reducing the presence and impact of fear on organizational success.

Id.

46. See GIBB, supra note 45, at 117.

The distrusting can be expressed in the formal structure of rules and contracts, or it can be expressed in the informal messages conveyed by the behavior of people. It is not possible to fool troops for long. At some level the feigners are sensed as unreal. Genuine trust is sensed, known.

Id.
developed that advance the mission of an enterprise, (2) trust helps humanize the workplace and fosters truth telling, (3) it enhances the probability of promise keeping and (4) a relationship of trust expresses respect for a contract that can nurture justice, civility and prosperity in the workplace and society generally. Such an approach has internal ethical consistency and also shows respect for the rule of law. To the extent that the law contains disincentives to establishing such a relationship, it is appropriate to work to change the law.

There is another ethical basis for pursuing a trusting relationship in collective bargaining. Attitudes and intentions of parties who negotiate and administer collective bargaining agreements are communicated to rank and file workers as well as supervisors. The workplace is the primary community for many employees.47 As trust develops in the labor-management relationship, there is the prospect of more harmony and cooperation between not only the parties who create and oversee the agreement but also between managers and workers.48 Such an atmosphere should result in more productive employees and in workplace camaraderie and friendship. These are elemental human needs that connect us as a people and promote civility.49 As workplace violence draws more attention, there needs to be more focus on encouraging a healthier approach to workplace relationships.50

48. See Allan Briskin, The Stirring of Soul in the Workplace 186 (1996) ("There is even an effort to talk about the workplace as a setting for an individual's spiritual journey. The question remains, however, whether the emphases on learning and spiritual reward, proposed as outcomes of the future workplace, are real or simply convenient.").

It probably is not prudent to look to the field of organizational development for guidance in developing a relationship of trust. See Allan H. Church & W. Warner Burke, Practitioner
Personal feelings of adequacy as well as problem-solving behaviors more easily flow from a keener awareness of relational interdependence. There is less conflict and violence in the workplace as suspicions and poor communication are reduced among employees and managers. Such outcomes strengthen a society and should be goals that are fostered by shared norms. Developing a relationship of trust is a rational way of enabling the parties to turn the workplace into a healthier community with organizational vitality.  

As flawed, fallible human beings, people bring fear and distrust to relationships, professional and otherwise. Contract negotiators and administrators reveal their fears and distrust, for example, by

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*Attitudes about the Field of Organization Development, in 8 RES. ORGANIZATIONAL CHANGE & Dev. 1, 39 (1995)* ("It seems that, while there will always be champions of human dignity, there will be fewer and fewer emerging in the future in the field of OD."). Church and Burke conclude that:

The new practitioners [in organizational development] conversely, see the need for specializing in certain skills and techniques so that they can build a marketable business niche for themselves within the framework of planning a career in consulting, while being focused on quantifiable business processes and outcomes in their results oriented intervention approach.

Id.  


The practice of collective bargaining has another important effect for a democracy as well: It encourages employees actively to form themselves into free associations which in turn function as mediating groups in society on at least two levels. They act . . . to mediate between the individual employee and the entity that employs them. Such groups also afford employees an organized voice in political decisionmaking where they otherwise would have, at best, a diffuse and unclear one.

Id. There is a school of philosophy called intuitionism which teaches that ethical judgments cannot be justified by rationality or empirical observation and can be known only by intuition. Trust, as a value, might be rooted in the nature of things but, according to intuitionists, cannot be logically derived from propositions about the world. See, e.g., Henry Sidowick, *Outlines of the History of Ethics* 224 (1931).

Even the eminent Professor Lon L. Fuller of Harvard Law School suggested that there are some assumptions resting on intuition and introspection which people "just know." See Lon L. Fuller & Melvin Aron Eisenberg, *Basic Contract Law* 701 (5th ed. 1990); see also Sheldon B. Kopp, *If You Meet the Buddha on the Road, Kill Him!* 139 (1972); John M.A. DiPippa, *Lon L. Fuller The Model Code, and The Model Rules*, 37 S. Tex. L. Rev. 303 (1996).

While seeking to be taught the Truth (or something), the disciple learns only that there is nothing that anyone else can teach him. He learns, once he is willing to give up being taught, that he already knows how to live, that it is implied in his own tale. The secret is that there is no secret.

Kopp, supra at 139.

trying to shape perceptions of their public image, rejecting or not dealing with an interior life, attempting to control others by molding their beliefs and adopting a cynical attitude toward life and the collective bargaining process. Amid such defensiveness, distrust flourishes. There remains, however, a personal responsibility to determine what is right.

Developing trust in the midst of flawed human nature reduces relational complexities and permits healthy risk-taking. Trusting the other party means that some relational strategies can be ignored. Some potentially disruptive approaches to the labor-management relationship can be dismissed. By combating the fear of opportunism with trust, there is more openness to risk-taking and less concern with defensive behaviors. Strategies of distrust and fear act like a high level “sun block” and keep out overtures of trust that might otherwise permeate the relationship. As Professor Gibb concluded, fear and distrust cause thinking and problem solving to be unfocused, displaced, defensive and ineffective; and it is a manifestation of common sense to develop a relationship of trust in collective bargaining.53 Common sense ethical thinking, an evaluative system developed by philosopher Elizabeth Anderson which describes how people know things to be good, provides a useful source of guidance.54

It is by choice that parties decide to pursue or maintain a relationship of trust or distrust. Ironically, either choice becomes a self-fulfilling prophecy.55 Trust within the context of collective bargaining is a process that does not proceed with the logical inevitability

53. See id. at 28 (creating a table which demonstrates how fear impairs the life force in a person).

54. See Elizabeth Anderson, Value in Ethics and Economics 218 (1993) (“I have shown how all the forms of critical thinking worth caring about are accessible to commonsense ethical thought. If we dismiss commonsense ethical thinking, we disable the most important methods of self-criticism.”); Niklas Luhmann, Familiarity, Confidence, Trust: Problems and Alternatives, in Trust: Making and Breaking Cooperative Relations 94 (Diego Gambetta ed., 1988).

of a mathematical theorem. A relationship of trust touches human feelings in all their frailty and ambiguity. Just as fingernails on a blackboard almost universally chill the spine, by contrast there is a compelling, responsive quality to a trusting relationship. Like good music, a satisfying rendering of a relationship of trust requires practice. Music helps organize emotions and trust helps organize relationships. Those who make the choice to commit deeply to such a relationship bring light into the shadows and allows the workplace to become creative and, perhaps, even revelatory. They heighten the prospect of experiencing movement toward a goal, releasing an openness to change, a fresh ability to resolve problems and a discovery of new operational patterns. Trust helps the parties make sense of the world and their role in it, as well as provide a source of organizational reconciliation and hope. Like diamond-cutting, trust allows labor and management to cut and polish themes of their relationship into facets that refract and illuminate.

III. PRACTICAL INCENTIVES TO BUILD TRUST

There is a moral basis for a trusting relationship in collective bargaining, but there are less abstract bases for such a relationship as well. From a moral standpoint, trust adds dignity to the human connection. Trust has the ability to facilitate friendship at the bargain-

Leaders who trust their co-workers are, in turn, trusted by them. Trust, of course, cannot be acquired, but can only be given. Leadership without mutual trust is a contradiction in terms. Trust resides squarely between faith and doubt. The leader always has faith in himself, his abilities, his co-workers, and their mutual possibilities. But he also has sufficient doubt to question, challenge, probe, and thereby progress. In the same way, his co-workers must believe in him, themselves, and their combined strength, but they must feel sufficiently confident to question, challenge, probe, and test, too. Maintaining that vital balance between faith and doubt, preserving that mutual trust, is a primary task for any leader.

56. See Charles J. Fombrun, Turning Points: Creating Strategic Change in Corporations 204 (1992) ("Few ethical guidelines, however, are likely to prove more beneficial than the famous 'sunshine test' adopted by IBM, a rule that simply requires asking of any action whether it can be fully disclosed without embarrassment.").

57. See Alex C. Michalos, The Impact of Trust on Business, International Security and The Quality of Life, 9 J. Bus. ETHICS 619 (1990) ("[T]rust is a necessary but certainly not a sufficient condition of a high quality of life, international peace and security, and a market for exchange-based economy.").
ing table as well as in the work force, and these human connections make life fuller and more meaningful.\(^{58}\)

A practical incentive for labor-management parties to develop a relationship of trust is that it makes more sense economically than distrust.\(^ {59}\) Both parties want the business entity of which they are a part to flourish and the ability of a business to compete successfully is enhanced by a relationship of trust. One scholar, Francis Fukuyama, concluded that "[a] nation's well-being, as well as its ability to compete economically, is conditioned by a single, pervasive cultural characteristic: the level of trust inherent in the society."\(^ {60}\) He argued, for example, that, in part because of lingering class divisions in France, a low-trust society has existed which impeded workplace flexibility and hampered organizational success.\(^ {61}\) Without relationships of trust in the workplace, the long-term prosperity of a business entity maybe imperiled by a resistance

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An individual's worth, in organizational terms, is not measured by the quality of his or her relationship with others. When has friendship ever been considered a standard in wage and salary administration? Instead, worth is measured quantitatively, wherever possible, by the level of one's specialized performance relative to the achievement of organizational goals.

Id.

59. See G. Richard Shell, Opportunism and Trust in the Negotiation of Commercial Contracts: Toward a New Cause of Action, 44 Vand. L. Rev. 221, 255-56 (1991) ("The cost savings that trust can yield are too great to ignore when evaluating potential contracting partners during the negotiation process. It becomes vitally important, therefore, for parties to signal their willingness and ability to foster trust.").


These class divisions in French society, combined with traditional attitudes towards authority, have created a system of legalistic and inflexible shop floor relations. Observers of the French political system have noted that the dislike of
to change, a lack of employee ideas about the most efficient changes and sensibilities that reject a strong commitment to workplace solidarity. The concrete economic value of trust reveals itself in a variety of ways.

A relationship of trust enables employees to do their job more effectively. People think and work better, not within a context of fear, but where trust abounds. There is no research showing that fear is a positive motivator and intuition teaches that it undermines motivation. As one manager concluded, "relationships lacking in trust interfere with and distort team members' perceptions of the problem and divert energy and creativity from the search for comprehensive, realistic solutions." Trust helps release workers from the grip of fear and enables them to think more carefully and insightfully.

Trust in the workplace has a direct impact on problem-solving behavior. Empirical research suggests that:

One who does not trust others will conceal or distort relevant information and avoid stating or will disguise facts, ideas, and conclusions and feelings that he believes will increase his exposure to others, so that the information he provides will be low in accuracy, comprehensiveness, and timeliness; and therefore have low congruence with reality.

Trust among employees encourages a worker to be more vulnerable to colleagues whose behavior cannot be controlled, but an absence of trust causes an individual to minimize dependence on other workers. Without trust, work procedures become riddled more with expediency and inconsistency than with effective joint problem-solving procedures and information-sharing. Under conditions of

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62. See Richard E. Walton & Robert B. McKersie, A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System 141 (1965) ("A supportive and trusting climate facilitates joint problem solving. Defensive and low-trust atmospheres inhibit the process."). This is one of the few sources in collective bargaining literature to consider the concept of trust in the workplace. See id. at 159, 182, 210, 275.
65. See Marvin R. Weisbord, Productive Workplaces 306 (1987) ("Commitment is built on a foundation of mutual trust, and everybody knows it. Trusting one another is the most secure way to manage through tough times.").
mutual trust, management and labor better understand organizational goals and the interdependence of the parties. Research has shown that "[t]rust lubricates the smooth, harmonious functioning of the organization by eliminating friction and minimizing the need for bureaucratic structures that specify the behavior of participants who do not trust each other."\(^6\)

Research suggests that a relationship of trust within the workplace contributes to the success of the business.\(^6\) There is better health,\(^6\) less absenteeism\(^9\) and a more spirited commitment to the mission of the enterprise.\(^7\) Where parties to a collective bargaining

\(^6\) See Francis Fukuyama, Trust: The Social Virtues and The Creation of Prosperity 27 (1995) ("If people who have to work together in an enterprise trust one another because they are all operating according to a common set of ethical norms, doing business costs less."); see also Cynthia L. Estlund, Economic Rationality and Union Avoidance: Misunderstanding the National Labor Relations Act, 71 Tex. L. Rev. 921, 960 (1993) ("[A]s long as management regards employees as expendable factors of production and gives them no real voice in the governance of the enterprise, employees will justifiably regard every technological improvement, every improvement in efficiency, every change in the direction of the enterprise as a potential threat to their livelihood.").


agreement develop a relationship of trust, it has a direct impact on business costs and product quality "by improving flexibility, by supporting highly skilled workers who can develop and use leading-edge technology, and by fostering lean management systems which use decentralized decision-making and intense employee involvement." Adversarial, highly competitive staffing designs generally foster suspicion and distrust and undermine employee teamwork and interdependence.

By contrast, a relationship of distrust between parties to a collective bargaining agreement can have dire economic consequences. A distrustful, antagonistic relationship between negotiators and administrators of a collective bargaining agreement typically is communicated to workers and it affects the enthusiasm and attitude of bargaining-unit members. If the relationship is sufficiently dysfunctional to culminate in a work stoppage, the impact of distrust may be felt for a long time. As Professors Getman and Marshall observed:

Feelings of anger and resentment, which inevitably develop during a strike, once flamed are not likely to be quenched easily. Indeed, they are likely to spread. Anger will be directed toward managers to share information, workers will produce under compulsion, and the rules of the worksite—originating from conflict—will be used to assert or limit control rather than improve output. In contrast, in environments in which there is high trust, where employees and their unions are integrated into the decision process, and in which the parties accept the legitimacy of one another's goals, productivity gains and cost reduction can be realized through creative bargaining, cooperation and development of better production techniques, and a reduction in the use of restrictive work practices and monitoring.

Id.; see also DAVID G. CARNEVALE, TRUSTWORTHY GOVERNMENT: LEADERSHIP AND MANAGEMENT STRATEGIES FOR BUILDING TRUST AND HIGH PERFORMANCE 179 (1995) ("In the public sector, the issue of how labor relations is conducted is meaningful for employee trust and organizational performance."); Paul Jarley & Jack Fiorito, UNIONISM AND CHANGING EMPLOYEE VIEWS TOWARD WORK, 12 J. LAB. RES. 223 (1991) (suggesting that paying attention to issues such as job satisfaction may strengthen an exclusive marketing representative).

71. Julius G. Getman & F. Ray Marshall, INDUSTRIAL RELATIONS IN TRANSITION: THE PAPER INDUSTRY EXAMPLE, 102 YALE L.J. 1803, 1814 (1993); see also MARVIN R. WEISBORD, PRODUCTIVE WORKPLACES: ORGANIZING AND MANAGING FOR DIGNITY, MEANING, AND COMMUNITY 121 (1988) ("Union members, as I would rediscover years later, would cooperate on productivity, cost reduction, and equipment improvement under conditions of mutual trust."); John J. Sweeney, LABOR AND MANAGEMENT SHOULD BE BUILDERS NOT BRAWLERS, 62 VITAL SPEECHES OF THE DAY 167 (1996) ("I believe in building bridges anytime the shelling stops long enough for us to start pouring concrete and putting up steel. We need to build these bridges because we want to be full partners with our employers, full participants in the economy, and full citizens of our society.").
supervisors, replacement workers, and any other entity thought to represent the company. Similar feelings may be directed toward fellow employees or toward the leadership of the local or international union. Such angry feelings are likely to insure a divided, hostile work force, a long battle over the status of the union and ongoing subtle sabotage by angry, defeated employees who hate their job and who want to see their employer punished.72

What trust among negotiators and contract administrators does is to help provide a sense of predictability in the workplace. In a world of global competition and rapidly changing technology, there are immense pressures on the desire of workers for security and predictability.73 To be responsive to worldwide competition and new technology, management seeks flexibility to make frequent operational changes in an effort to remain highly competitive. Employees, whether in a union or non-union setting,74 respond by distrusting change, as well as management, and management is frustrated by their seemingly intractable resistance. As Professor Paul Strebel concluded:

Top-level managers see change as an opportunity to strengthen the business by aligning operations with strategy, to take on new professional challenges and risks, and to advance their careers. For many employees, however, including middle managers, change is neither sought after nor welcomed. It is disruptive and intrusive. It upsets the balance.75

73. See Calvin Morrill, The Private Ordering of Professional Relations, in HIDDEN CONFLICT IN ORGANIZATIONS 92 (Deborah M. Kolb & Jean M. Bartunek eds., 1992) (“A central tension in organizational life is that between the search for certainty, the maintenance of routines—in short, the preservation of organizational order—on the one hand, and the necessity of organizational change on the other.”); see also Lee G. Bolman & Terrence E. Deal, LEADING WITH SOUL 105 (1995) (“Despite efforts across corporate America to increase employee participation and enhance the quality of work, tens of thousands of people see their work as just a job—they put in time, go through the motions, and collect a paycheck. Around the world, employees have developed similar levels of cynicism.”).
74. See CHARLES J. FOMBRUN, TURNING POINTS: CREATING STRATEGIC CHANGE IN CORPORATIONS 66 (1992); see also JEFFREY PFEFFER, COMPETITIVE ADVANTAGE THROUGH PEOPLE: UNLEASHING THE POWER OF THE WORK FORCE 159-60 (1994) (“There is little evidence that unions have harmful effects on factors that would affect an organization’s competitiveness, and indeed, there is some evidence that union effects may be positive.”).
75. Paul Strebel, Why Do Employees Resist Change?, HARV. BUS. REV., May-Aug. 1996, at 86; see also NOEL M. TICHY, MANAGING STRATEGIC CHANGE 283 (1983); Susan R. Brown, NEW TECHNOLOGY: HOW DOES IT AFFECT THE WORKPLACE?, 44 ARB. J. 32 (1989) (discussing the changes new technology brings to the workplace); Howard Wial, NEW BARGAINING STRUCTURES
Indications are that global competition and rapid technological change will continue for some time.\textsuperscript{76} These two forces combine to reinforce organizational change and there are no definitive answers regarding how best to manage such substantial change. It is within a relationship of trust that the parties will experience the most effective management of change in an organization. Knowing how to manage organizational change may determine a company's survival.\textsuperscript{77} "The data are consistent across diverse industries and countries . . . .\textsuperscript{78} Some commentators have concluded that "an executive team's ability to proactively initiate and implement frame-breaking
change and to manage convergent change seem to be important factors which discriminate between organizational renewal and greatness versus complacency and eventual decline.\(^7\)

Another practical consideration is that a relationship of trust produces a higher level of organizational effectiveness and it is reasonable to presume that an efficient, smoother running internal structure will enable an organization more easily to achieve its mission. Trust is an essential element of organizational effectiveness. "Without trust and confidence, people don't take risks. Without risks, there's no change. Without change, organizations and movements die."\(^8\)

Parties in a collective bargaining relationship who view themselves as engaged in a game of competition may inadvertently threaten their own goals of better conditions for employees as well as prosperity for the organization. Competitors too easily assume that those on the other side of the relationship will not help them because they either are focused solely on attaining their own goal or they are the enemy or both.\(^8\) As a consequence, competitors "are reluctant to discuss their needs and feelings or to ask for or offer assistance."\(^8\) A relationship of trust in collective bargaining allows negotiators and contract administrators more easily to share information, to explore ideas with each other and to enjoy positive interdependence. It takes less time to negotiate agreements when parties trust each other.\(^8\)

In the absence of trust between negotiators and contract administrators, there exists an invisible wall of resistance. In distrust there is a tendency to ignore or misperceive facts and to be unconscious of or ignore feelings that might increase vulnerability.\(^8\) The level of trust achieved by the parties, on the other hand, provides a useful particularly heavy reliance on self-managed workgroups and a greater willingness to view organizational boundaries and membership as highly flexible.\(^8\)

\(^7\) Michael L. Tushman et al., Convergence and Upheaval: Managing the Unsteady Pace of Organizational Evolution, 29 CAL. MGMT. REV. 29, 43 (1986).


\(^8\) See Leigh Thompson, "They Saw a Negotiation": Partisanship and Involvement, 68 J. PERSONALITY & SOC. PSYCHOL. 839 (1995) (describing the incompatibility perception as "the belief that the other party's interests are completely opposed to one's own interests").

\(^8\) Dean Tjosvold, Working Together to Get Things Done 25 (1986).


\(^8\) See R. Wayne Boss, Trust and Managerial Problem Solving Revisited, 3 GROUP & ORGANIZATIONAL STUD. 331, 342 (1978); see also, Trust Traps, 48 TRAINING & DEV. J. 11, 12
predictor of group accomplishment. Moreover, the level of trust attained by parties is a significant factor in predicting the degree of satisfaction an individual feels within an organization.

Even as trust enhances organizational effectiveness, distrust undermines it. Social psychologists long have been aware of the benefits of trust in organizations. Negotiators and contract administrators who tend to view their counterparts as trustworthy more often than not are themselves viewed by others as being trustworthy. A lack of trust leads to heavy reliance on managerial control and a reliance on control in negotiation or contract administration perpetuates an atmosphere of distrust. A party’s decision to distrust creates a self-fulfilling prophecy. One commentator concluded:

Highly controlling behavior communicates a lack of trust. When individuals demonstrate that they don’t trust us, we reciprocate—we don’t trust them either. And since trustworthiness is the crucial ingredient in the credibility formula, controlling managers lose personal credibility every time they closely watch over

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88. See R. Wayne Boss, *Trust and Managerial Problem-Solving Revisited*, 3 GROUP & ORGANIZATIONAL STUD. 331, 332-42 (1978); see also Robyn M. Dawes & John M. Orbell, *The Benefit of Optional Play in Anonymous One-Shot Prisoner's Dilemma Games, in Barriers to Conflict Resolution* 84 (Kenneth J. Barrow et al. eds., 1995) (“Our whole model is based on the premise that people who are untrustworthy themselves tend to not trust others, and vice versa.”).

others, check up on others, or don’t let others make their own decisions.90

It is a paradox that reliance on a relationship of trust is counterintuitive. Many have acted as though the more tightly they control their negotiator or the more rigidly they administer a collective bargaining agreement, the more efficiently the organization will accomplish its objectives. The paradox is that heavy reliance on control will have the unintended consequence of producing a collective bargaining agreement which hinders the ultimate goal of both parties or may encourage an approach to contract administration that undermines organizational effectiveness. A high predictor of the quality of the agreement itself or the efficiency of administering the agreement is the level of trust enjoyed by the parties. Predictability in the workplace generally is an important goal, but the parties are better served by predictability that encourages a spirited commitment to productivity rather than a reluctance to take healthy risks.91 A relationship of trust encourages parties to be creative in drafting and administering an agreement and encourages workers to perform their duties as effectively as possible.92 Where


Monitoring causes negotiators to be less influenced by and less responsive to information from the opponents than those who are not monitored. This monitoring leads to lower rates of compromise, fewer deviations from initial positions, and more concern for satisfying constituents than does the absence of monitoring. Generally, negotiators behave rigidly and competitively when they are monitored by constituents; this rigidity, in turn, often leads to deadlocks or lower quality decisions.

Id. (citations omitted).


The evidence on both employee involvement diffusion and effectiveness shows that no differences exist between union and nonunion firms. The critical factors in determining the success of an employee involvement program appear to be the type of employee involvement chosen and the conditions in the organization. When a powerful form of employee involvement is chosen, the clear suggestion is that employee involvement can lead to an improvement in organizational performance.

Id at 72.

there is trust, workers are more inclined to seek the most productive way of doing a job.93

IV. THE "COOPERATION" MOVEMENT

During the last decade and a half, there has been an effort, especially among labor mediators, to promote interest-based bargaining and cooperation between parties to a collective bargaining agreement.94 The effort emerged in part from the Fisher-Ury book, Get-

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93. See Manfred F.R. Ket de Vries, Organizations on the Couch 333 (1991); see also Chris Argyris et al., Action Science 61, 62 (1985); Laurence S. Wrightsman, Personality and Attitudinal Correlates of Trusting and Trustworthy Behaviors in a Two-Person Game, 4 J. Personality & Soc. Psychol. 328 (1966) (finding that participants in his study who believe human nature to trustworthy behaved in more trusting ways than those with unfavorable attitudes about human nature).


The more you know about your own interests, the more you know about the other party's interests, and the more information you share with each other about your respective interests, the better deal you will create in the end. This flies right in the face of everything the tough, power negotiators teach in their books, articles and training seminars.


Viewing a situation from the other side's perspective helps to understand the differences and mutual interests between the parties. It is typical for negotiators to focus on their own perceptions and ignore the views of the other side. It is critical for negotiators to overcome this self-centered perspective and make an effort to understand the other side's position.

Id.; see also Gavin Kennedy, Field Guide to Negotiation: A Glossary of Essential Tools and Concepts for Today's Manager 111 (1994) ("interest-based negotiations take a different approach from POSITIONAL BARGAINING. In the former, 'interests' become translated into 'concerns'—objectives related to the particular issue at hand—which are not to be confused with 'positions'."); Lavinia Hall, Negotiation: Strategies For Mutual Gain 103 (1993).

[A] growing number of companies have initiated efforts to involve workers in shop floor decision making, further developing the sense of participation in the total life of the enterprise. The labor movement, which is closely bound to its constituencies, is beginning to reflect these shifts, and as it does, it has started to develop more frequently the mechanisms of decentralized discussion and planning that, I have argued, are crucial to the success of mutual gains bargaining.

This book adopted an approach described as "principled negotiation" and was among the first less academically structured works to urge parties in negotiation to "focus on interests, not positions." As Fisher and Ury described it, "the purpose of negotiating is to serve your interests. The chance of that happening increases when you communicate them. The other side may not know what your interests are, and you may not know theirs." It probably is difficult for rational people to accept the Fisher-Ury description of people in any substantial negotiation not knowing the other party's interest, but experience as a neutral in hundreds of mediations has confirmed the reality of their description. Interest-based bargaining calls on parties in a collective bargaining arena to focus on their respective interests in an effort to advance a cooperative spirit among them.

There also have been a number of efforts to harmonize labor-management cooperation with federal labor law. Models of negoti-
tiating and administering collective bargaining agreements that call for a less adversarial approach concern some scholars as being violative of federal labor policy. One scholar concluded that "[p]articipatory schemes simply are not intended to serve the same ends as collective bargaining. They are incomparables, and it is a mistake to think of them otherwise." The focus of cooperative programs between management and labor needs to be on trust formation and not on using such programs as a disguise for reducing the role of unions in decision-making.

It is not the purpose of this article to assess the legal and historical background of the movement toward cooperation in labor-management relations. Although the Dunlop Commission found considerable support for labor-management cooperation among workers, significant questions remain about the legality of such joint efforts. Nor have unions been enthusiastic about "coopera-

management to achieve a system of arms length negotiation"); Thomas C. Kohler, Models of Worker Participation: The Uncertain Significance of Section 8(a)(2), 27 B.C. L. Rev. 499, 518 (1986) ("Section 8(a)(2) of the National Labor Relations Act forbids employers to 'dominate or interfere with the formation or administration of any labor organizations, or contribute any financial or other support to it.'").


http://scholarlycommons.law.hofstra.edu/hlelj/vol14/iss2/3
tion” programs and, generally speaking, have opted to continue a traditional adversarial relationship.\textsuperscript{103} The pragmatic reality is that, whatever the appropriate interpretation of the law, the real world of work requires a substantial degree of aid and cooperation between the parties; and the issue is where should the line be drawn.\textsuperscript{104} What level of trust should the parties seek?

\textit{Reform}, 12 LAB. LAW. 117 (1996) ("America's labor laws are based on a view of the employment relationship that emphasizes the conflict of interest between labor and capital . . . . The model no longer works."); Jonathan B. Goldin, \textit{Labor-Management Cooperation: Bath Iron Work's Bold New Approach}, 47 Me. L. REV. 415, 429 (1995) ("Cooperative workplaces and employee participation plans have become prevalent throughout the American economy. Many exist, however, in a state of legal uncertainty."); Gregory E. Huszczo & Denise Tanguay Hoyer, \textit{Factors Involved in Constructive Union-Management Relationships}, 47 Hum. Rel. 847, 864 (1994) ("We believe 'cooperation' sells relationships short and puts union leaders in jeopardy with their members, or managers in jeopardy with their boards of directors. A constructive union-management relationship recognizes the responsibility of both parties to be advocates as well as problem solvers."); Richard B. Peterson & Lane Tracy, \textit{Assessing Effectiveness of Joint Committees in a Labor-Management Cooperation Program}, 45 Hum. Rel. 467, 484 (1992) ("Labor-management cooperation is certainly a major contributor to the improved labor relations climate at the firm and, indirectly, the company's improved performance.").

\textsuperscript{103} See \textsc{David G. Carnevale, Trustworthy Government: Leadership and Management Strategies for Building Trust and High Performance} 179 (1995) ("Getting unions to cooperate is not easy, and issues of trust are the core of the problem."); \textsuperscript{104} see also Douglas A. Fraser, \textit{Is the Labor Movement on the Right Course?}, in \textsc{Arbitration 1989: The Arbitrator's Discretion During and After the Hearing} 15 (1989) ("You can't force-feed union people on a program like this [of cooperation]; neither can you force management into it. In any human relationship between two persons or between two groups, the relationship is fragile and must be based on mutual respect and mutual trust. When one side or the other loses that trust and respect, the program is in jeopardy."); \textsc{William B. Gould IV, Agenda for Reform} 109 (1993); \textsc{Tom Juravich et al., Mutual Gains? Labor and Management Evaluate Their Employee Involvement Programs}, 14 J. Lab. Res. 165 (1992); \textsc{Michael H. Leroy, Can TEAM Work? Implications of an Electromation and Dupont Compliance Analysis for the TEAM Act}, 71 Notre Dame L. Rev. 215, 259 (1996) ("Unless employers share more productivity gains from teamwork with employees in the form of improved pay and job security, they appear to increase the risk that employees will withdraw from, or withhold themselves from, participative programs."); \textsc{Arthur J. Martin, Company Sponsored Employee Involvement: A Union Perspective}, 40 St. Louis U. L.J. 119 (1996); \textsc{Wilson McLeod, Labor-Management Cooperation: Competing Visions and Labor's Challenge}, 12 INDUS. REL. L.J. 233 (1990); \textsc{Marley S. Weiss, Innovations in Collective Bargaining: Nummi—Driven to Excellence}, 13 Hofstra Lab. L.J. 433, 489-90 (1996) ("Overall labor policy, then, should not be predicated on the mirage that either labor-management cooperation or job security will become the dominant approach to labor-management relations in the manufacturing sector, absent much broader changes in U.S. labor law."); \textsc{Timothy D.W. Williams, Making Cooperative Negotiations Work}, 10 ARB. Q. NORTHWEST 1 (1990).

\textsuperscript{104} See \textsc{Annette Baier, Trust and Antitrust}, 96 ETHICS 231, 245 (1986) ("We take it for granted that people will perform their role-related duties and trust any individual worker to look after whatever her job requires her to. The very existence of that job, as a standard
Whether the model used by contract negotiators and administrators is cooperative or adversarial, the issue of trust remains a fundamental concern. Even if the choice is one of competition between the parties, the option of trust remains viable. The parties may decide to advance their independent interests competitively. This is not at all unusual in the world of collective bargaining. At the same time, the parties should be able to trust the intent of the other party even within the context of competitively negotiating and while trying to advance independent interests. Principles of trust should permit a party to rely on the accuracy of information, on the intent of the other party to keep promises once they are bargained into existence and on a commitment to administer an agreement in good faith according to the contractual intent of the parties.


106. See Jerold H. Rekosh & Kenneth D. Feigenbaum, The Necessity of Mutual Trust for Cooperative Behavior in a Two-Person Game, 69 J. SOC. PSYCHOL. 149, 154 (1966); see also Arthur J. Martin, Company Sponsored Employee Involvement: A Union Perspective, 40 Sr. Louis U. L.J. 119, 137 (1996) ("[T]he labor movement will always encourage and participate in joint workplace decision making where the employees are represented by their own organizations working with management as equals to achieve a common goal.").
Resolving disputes in arbitration can be completely consistent with a relationship of trust. It is entirely possible to trust the integrity of an opponent while advocating vigorously against him or her. Although in an arena where parties are advancing competing theories about the truth before a neutral decision-maker, it is quite possible to enjoy a relationship of trust with the other side in the sense that one party trusts the other not to misrepresent facts, to disclose relevant information and to conduct one’s self according to high standards of integrity. Even though parties at an arbitration hearing may be vigorously competing against the goals of one another, they should be able to trust the other to abide by written and unwritten rules of the process. In a competitive environment, advocates often respect the integrity of their opposing advocate or contract administrators, especially if they have developed an enduring relationship. Trust and competition are not necessarily mutually exclusive. As one commentator insightfully noted:


While trust can have only a limited role, it still plays an absolutely essential part in distributive bargaining. It enables the parties to agree upon and enforce the rules of play of the game. Two parties will evolve a language of symbols and a book of rules regarding which conflict tactics can be used under which conditions.


While the case data suggest that the number of grievances and arbitration cases generally decline [in a cooperative relationship], the magnitude and stability of the decline depend on whether or not management and labor representatives change their collective bargaining processes and their strategic interactions in ways that reinforce the climate of trust and cooperation emanating from the workplace.

109. See Stephen L. Carter, (Integrity) 7 (1996) (“Integrity, as I will use the term, requires three steps: (1) discerning what is right and what is wrong; (2) acting on what you have discerned, even at personal cost; and (3) saying openly that you are acting on your understanding of right from wrong.”).

110. See Svenn Lindskold, Trust Development, the GRIT Proposal, and the Effects of Conciliatory Acts on Conflict and Cooperation, 85 Psychol. Bull. 772, 773 (1978) (“[A] person may not always act the way he says he will (there may be competing demands or circumstances beyond his control), but he will be trusted if his actions and intentions are perceived as benevolent with respect to the perceiver.”).
Trust, the phenomenon we are so familiar with that we scarcely notice its presence and its variety, is shown by us and responded to by us not only with intimates but with strangers, and even with declared enemies. We trust our enemies not to fire at us when we lay down our arms and put out a white flag.\textsuperscript{111}

Trust as a moral, economic or psychological concept is not a frequent topic of conversation among lawyers or in legal journals.\textsuperscript{112} Lawyers spend considerable time working in an arena of adversarial cooperation and one wonders if their experience might provide a useful model for labor-management relations. Is adversarial cooperation a model to be encouraged in collective bargaining?\textsuperscript{113}

In adversarial cooperation, lawyers exchange information, discuss issues and engage in what they believe to be an expeditious, cost-efficient resolution of problems. Experience suggests that “labor-management” lawyers sometimes impede and sometimes assist the process of negotiation and contract administration. If lawyers take a traditional adversarial approach to bargaining or advising on negotiated grievances, they help undermine any relationship of trust between the parties.\textsuperscript{114} On the other hand, if lawyers are trained in labor-management relations and have an historical sense of the cooperation program could be successful.”). See also Morton Deutsch, \textit{Trust and Suspicion}, 2 CONFLICT RESOL. 265, 279 (1957) (“Mutual trust can occur even under circumstances where the people involved are overtly unconcerned with each other’s welfare, provided that the characteristics of the situation are such as to lead one to expect one’s trust to be fulfilled.”).

\textsuperscript{111.} Annette Baler, \textit{Trust and Antitrust}, 96 ETHICS 231, 233-34 (1986).

\textsuperscript{112.} For a rare exception, see Dean S. Kaufman, \textit{In Drain We Trust: A Reflection on the Deterioration of Trust}, 56 OR. ST. B. BULL. 39 (1996), where the author reviews Francis Fukuyama’s work \textit{Trust: The Social Virtues and the Creation of Prosperity} (1995) and espouses the romantic but unverified notion of higher trust among residents in rural areas than is found in big cities, a notion rooted in American literature from Samuel Clemens to John Grisham.

\textsuperscript{113.} See Stephen W. Sessums, \textit{Adversarial Cooperation: A Concept That Works}, 9 J. AM. ACAD. MATRIMONIAL L. 61 (1992) (discussing adversarial cooperation as a new approach to matrimonial litigation and as a more efficient way to resolve disputes).

\textsuperscript{114.} See Charles Fried, \textit{The Lawyer As Friend, in Ethics and the Legal Profession} 135 (Michael Davis & Frederick A. Elliston eds., 1986) (“[It is not only legally but also morally right that a lawyer adopt as his dominant purpose the furthering of his client’s interests—that it is right that a professional put the interests of his client above some idea, however valid, of the collective interest.”); see also Rosemary Nidiry, \textit{Restraining Adversarial Excess in Closing Argument}, 96 COLUM. L. REV. 1259, 1302-03 (1996) (suggesting that truth is only a by-product of an adversarial system which can “threaten[ ] the system’s integrity”).
continuing relationship between the parties, they can be among the best problem-solvers in collective bargaining.\textsuperscript{115}

The potential incompatibility between developing a relationship of trust in collective bargaining and using a lawyer as a representative is caused by the fact that developing trust in the relationship may not be any part of a lawyer's objective. A lawyer may use as a primary source of guidance a commitment to advocacy that shows little or no concern for a continuing relationship between the parties.\textsuperscript{116} One scholar described lawyer-negotiators in the following terms:

Effectiveness in negotiations is central to the business of lawyering and a willingness to lie is central to one's effectiveness in negotiations. Within a wide range of circumstances, well-told lies are highly effective. Moreover, the temptation to lie is great not just because lies are effective, but also because the world in which most of us live is one that honors instrumental effectiveness above all other things. Most lawyers are paid not for their virtues but for the results they produce. Our clients, our partners and employees, and our families are all counting on us to deliver the goods. Accordingly, and regretfully, lying is not the province of a few "unethical lawyers" who operate on the margins of the profession. It is a permanent feature of advocacy and thus of almost the entire province of law.\textsuperscript{117}

Some also argue that lawyers are disadvantaged by an absence of useful ethical guidelines in the legal profession.\textsuperscript{118} Professor Geof-

\textsuperscript{115} See Ronald J. Gilson & Robert H. Mnookin, \textit{Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation}, 94 Colum. L. Rev. 509, 564 (1994) (stating that a lawyer's reputation "for being a cooperative problem-solver may be a valuable asset"); see also Robert H. Mnookin, \textit{Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict}, 8 Osnabrueck St. J. Disp. Resol. 235, 248 (1992) (suggesting that mediators, as neutral third parties, can "facilitate the efficient resolution of disputes by overcoming . . . specific barriers").

\textsuperscript{116} See David Luban, \textit{The Social Responsibilities of Lawyers: A Green Perspective}, 63 Geo. Wash. L. Rev. 955, 983 (1995) ("[T]he adversary ethic is only as good as the adversary system, and the adversary system is particularly likely to lead us astray when we are confronted with collective action problems.").

\textsuperscript{117} Gerald B. Wettlaufer, \textit{The Ethics of Lying in Negotiations}, 75 Iowa L. Rev. 1219, 1272 (1990); see Geoffrey M. Peters, \textit{The Use of Lies in Negotiation}, 48 Osnabrueck St. J. Int. L. Int. 1, 50 (1987) ("[T]he negotiating convention that permits all deceptions but lying is both inefficient and a matter over which society . . . has a great deal of control—more than the scientific notions of truth would allow us to believe.").

frey Hazard observed that “within the legal profession an ethically exemplary lawyer is probably taken to be an idealization rather than a descriptive category.”¹¹⁹ Legal negotiators are even more disadvantaged by a paucity of ethical guidelines. “In negotiation, where there is only the sparsest written guidance, the parties must decide for themselves what is legal, what is factual, and what is ethical.”¹²⁰ Part of the problem may be the system of legal education to which all lawyers are exposed.¹²¹ “Lawyers’ training may incline them to respond to statutes with technocratic analysis rather than ethical deliberation even when the statute is written in unusually sentimental language.”¹²² Whatever the cause, there is a belief is never quite the same again—is never able to look at problem solving or even social and political issues, free from his or her legal habits or beliefs.”).


¹²¹. See Eleanor W. Myers, “Simple Truths” About Moral Education, 45 AM. U. L. REV. 823, 824 (1996) (“For the past twenty years or so, professional concern for declining values has prompted repeated calls for increased attention to teaching professional responsibility in law schools. The object of these calls is to restore ethical behavior in legal practice.”); see also Robert F. Cochrane, Jr., Lawyers and Virtues, 71 NOTRE DAME L. REV. 707, 728 (1996) (“One of the underlying assumptions of the adversary system (and the recent lawyer codes) is that lawyers are not responsible for what they do.”); Thomas L. Shaffer, On Teaching Legal Ethics in the Law Office, 71 NOTRE DAME L. REV. 605, 606 (1996) (“Americans in the late twentieth century evade moral discussion of what they are about. My impression is that this is true of law students in ‘professional responsibility’ courses, as it is of law faculties and lawyers in practice.”); John W. Teeter, Jr., Into the Thicket: Pursuing Moral and Political Visions in Labor Law, 46 J. LEGAL EDUC 252 (1996).

A problem in legal education is that we tend to shove ethical discourse into the ghetto of Professional Responsibility, a required course many students endure simply to prepare for the MPRE. That is myopic, for moral and political thickets pervade all subjects we teach. This is particularly true in labor law, where both the thistles of ethical uncertainty and the fruits of self-discovery are ever abundant.

Id. at 929. But see JACK L. SAMMONS, JR., LAWYER PROFESSIONALISM 62 (1988).

I have argued that the good ethical deliberator possesses at least three features: willingness to consider but question established moral precepts, thereby displaying both humility and a sense of personal moral responsibility; willingness and ability to recognize ethical dilemmas; and capacity to respond to specific features with warranted sentiments and to be guided by these sentiments in making ethical judgments.

Id. at 929. But see JACK L. SAMMONS, JR., LAWYER PROFESSIONALISM 62 (1988).

The point is that professionalism and good lawyering are one and the same and that good lawyering means, in part, being a good person. People who write about the practice of law often ask if it is possible to be a good lawyer and a good person. I want you to see that it is not only possible; it is difficult to avoid it.
among many lawyers that modern lawyers do not exhibit the high standard of professionalism found in an earlier era.123

Many lawyers learn to negotiate in a competitive way that undermines a relationship of trust. With so much of modern law consumed with the practice of criminal law, much negotiation takes place between prosecutors and defense attorneys, more often than not in courthouse hallways. This is where many young lawyers learn the rudiments of negotiation and may assume that such highly competitive skills are transferable to the collective bargaining arena.124 Like criminal cases, it is not unusual for collective bargaining negotiations to be resolved at the last minute, close to a deadline. In explaining the "last minute" nature of negotiation among lawyers, one scholar offered the following description:

Why does so much agreement take place at the last possible moment? Basically, because the negotiator using predominantly competitive tactics sees bargaining as the proverbial game of "chicken." The longer the negotiator holds out in the face of possible negotiation breakdown, the more likely it is that the other negotiator will yield and come closer to her position. Also, if both negotiators use predominantly competitive tactics, information about the parties' true underlying interests will be exchanged slowly, grudgingly, and incompletely throughout the bargaining process. As a result, the negotiator never knows what constitutes the best agreement she can obtain for her client.125

Id.

123. See Teaching and Learning Professionalism, 1996 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 4-5 ("In the Committee's view, the bottom line is that lawyer professionalism has declined in recent years and increasing the level of professionalism will require significant changes in the way professionalism ideals are taught and structural changes in the way law firms operate and legal services are delivered.").

124. See Rodney J. Uphoff, The Criminal Defense Lawyer As Effective Negotiator: A Systemic Approach, 2 CLINICAL L. REV. 73, 95-98 (1995) (describing the negotiation process within the context of plea bargaining); see also Abraham S. Blumberg, The Practice of Law As a Confidence Game, 1 L. & Soc'y Rev. 15, 23-24 (1967) (describing how negotiations often become more about the lawyers' relationships with one another than about the relationship between the lawyer and the client, and how it is therefore impractical for an attorney to hone his relationship as well as his negotiating tactics); Donald G. Gifford, A Context-Based Theory of Strategy Selection in Legal Negotiation, 46 OSU ST. L.J. 41, 82 (1985) ("In summary, negotiation theory suggests that the plea bargaining strategy most likely to succeed in a typical case is one which begins with a competitive approach and progresses to a cooperative approach as negotiations continue.").

125. DONALD G. GIFFORD, LEGAL NEGOTIATION: THEORY AND APPLICATIONS 164 (1989). Choosing whether to be a competitive negotiator is described by the author as a tactical issue, and he does not explore the terms of trust or the requirement of ethics in a
Generally, lawyers do not view their function as assisting parties in developing a relationship of trust and it would be no surprise to see a movement develop that sought a role for non-lawyers in traditional legal transactions steeped in relational needs. As one prominent law school casebook noted:

[Many lawyers view their role primarily as advocate, and this affects the way they see the world—what they notice and what they ignore. The basic problem here is that the adversarial perspective, so valuable in some settings, often constrains the way lawyers function in settings where a problem-solving approach might be more appropriate.]

Lawyers in a collective bargaining arena using traditional adversarial skills may well exacerbate differences between parties and severely undermine the prospect of a trusting relationship at the same time. Lawyers, however, who are knowledgeable about nuances of a collective bargaining relationship can be among the most effective dispute resolvers and often are able to lead parties away from divisiveness and frustration. Lawyers who understand labor-management relations enjoy training that equips them to represent the past effectively while helping to solve problems that look to the future.
To the extent that any professional group engenders cooperation in a collective bargaining relationship, it encourages a relationship of trust between the parties. Acts designed to promote a continuation of the relationship or to urge reciprocity in information-sharing encourage cooperation and, ultimately, increase the prospect of trust between the parties. If a party is inclined to cooperate, it is inherently destructive of trust for a professional advisor to undermine such cooperation. A negotiator or contract administrator advances the process of trust by learning to be sensitive to signals of responsiveness and even by exploring cooperative signals as a response to an initially recalcitrant party.\textsuperscript{129}

The importance of a trusting relationship in commercial transactions, of course, extends far beyond the boundaries of collective bargaining. Some large companies have seen the wisdom of foregoing an adversarial involvement with external suppliers of parts or materials and, instead, are actively promoting a relationship of trust.\textsuperscript{130} Chrysler Corporation, for example, has begun employing resident engineers, that is, engineers from external suppliers “who work side by side with Chrysler’s employees.”\textsuperscript{131} Approximately 300 engineers have been brought to the company from suppliers of Chrysler.\textsuperscript{132} Executives of the suppliers and managers at Chrysler “claim that this practice has resulted in greater trust and more reliable and timely communication of important information.”\textsuperscript{133}


\textsuperscript{131} \textit{Id.} at 55.

\textsuperscript{132} \textit{Id.}

\textsuperscript{133} \textit{Id.} at 55; see also Mark Dodgson, \textit{Learning, Trust, and Technological Collaboration}, 46 \textit{Hum. Rel.} 77 (1993) (“A number of studies reveal the importance for successful collaboration of high levels of inter-personal trust between scientists, engineers, and managers in the different partners.”); W.I. Urey, Jr., \textit{New Industrial Relations and Industrial Justice, in Arbitration 1991: Hanging Face of Arbitration in Theory and Practice} 170 (Gladys W. Gruenberg ed., 1991) (discussing how the change in word politics and the global market has impeded collective bargaining and dispute resolution).
During the 1980s, approximately half of all large, publicly held United States companies sought a cooperative relationship with their employees without regard to collective bargaining agreements.\textsuperscript{134} W. Edwards Deming, the American organizational development specialist who is highly regarded in Japan, noted several decades ago that large companies, such as Chrysler Corporation, should end the practice of awarding business solely on the basis of competitive practices and should use a single supplier "in a long term relationship of loyalty and trust."\textsuperscript{135} He also observed that management should strive to "[d]rive out fear, so that everyone may work effectively for the company."\textsuperscript{136} Even if not engaged in collective bargaining, management has many opportunities to develop a relationship of trust. Such opportunities extend far beyond boundaries of a company and can include suppliers or even governmental agencies. By thoughtfully pursuing a relationship of trust in an effort to maintain cooperation, parties heighten the prospect of increasing dignity, meaning and a sense of community in the workplace; and not only do the parties benefit from a more productive transaction, but also society generally enjoys a more effective use of resources.\textsuperscript{137}

A relationship of trust is not essential to negotiating and administering a collective bargaining agreement. Parties may enter into a labor contract without trusting each other or even without enjoying a high degree of cooperation. They may keep their promises to each


\textsuperscript{135} W. Edwards Deming, Out of the Crisis 23, 43 (1986).

\textsuperscript{136} Id.; see also Janet Tai Landa, Trust, Ethnicity and Identity 15 (1994) (arguing that it is rational for parties to develop a social norm based on trust which emphasizes the importance of an exchange network in economic transactions).

\textsuperscript{137} See Marvin R. Weisbord, Productive Workplaces 368 (1987).

We are in the midst of an unstoppable historic shift from global competition to cooperation. You can approach it as a war of the workplace to be fought by firing and laying off to cut costs (economics), imposing innovations unilaterally (technology), and manipulating decisions already made to "make people feel involved" (human relations). That's the old paradigm in action, making things worse every time we invoke it.

\textit{Id.}; see also Robert E. Allen & Kathleen L. Van Norman, Employee Involvement Programs: The Noninvolvement of Unions Revisited, 17 J. Lab. Res. 479 (1996) ("[U]nion leaders should resolve their uncertainty about involvement in the EL process in favor of participation."); Bernd Lahno, Trust, Reputation, and Exit in Exchange Relationships, 39 J. Conflict Resol. 495, 509 (1995) ("The value of a trustworthy reputation may be so high that it becomes rational to resist temptations to seize short-run advantages.").
other and resolve disputes with integrity throughout the life of an agreement, even in a spirit of distrust. The impact of such a choice in the workplace, however, may be devastating.

Intolerable disorder often accompanies a choice of a distrusting relationship and natural impulses toward cooperation and spirited commitment may be branded as corrupt as workers and managers struggle to live by beliefs they may not actually hold. Uncertainty pervades a relationship of distrust and with uncertainty comes disequilibrium. One can be both fiercely competitive and principled at the same time, but the ruthless pursuit of victory in a competitive relationship may undermine workplace morality and may help create an atmosphere more conducive to violence and white collar crime. By depriving themselves of a relationship of trust, the parties also deprive themselves of the morality in the workplace such a relationship supports. The effect begins to resemble its cause. Developing trust, on the other hand, holds out the prospect of encouraging enduring human values that are inherent in the act of living itself.

V. Communicating Trust

Effective communication is essential to developing a relationship of trust, but such skills typically are not taught to parties in the collective bargaining arena. Understanding communication styles as well as what to communicate facilitates trust formation. Scholars

138. A poll of 1,016 human resources professionals released on June 24, 1996, showed that approximately half those polled experienced at least one violent incident or threat within their respective organizations during the previous eighteen months. See Workplace Violence Threats Common, SHRM Survey Finds, Lab. Rel. Rep. (BNA) 3 (July 2, 1996).

139. See, e.g., INDUSTRIAL RELATIONS IN A NEW AGE (Clark Kerr & Paul D. Stau dohar eds., 1986) (describing industrial relations in a wide-ranging anthology on labor-management relations in which there is no interaction with the concept of trust as explored in the literature of organizational development, moral philosophy, behavioral psychology or economics); E. WENDY TRACHT-HUBER & STEPHEN K. HUBER, ALTERNATIVE DISPUTE RESOLUTION: STRATEGIES FOR LAW AND BUSINESS (1996) (failing to touch upon the “trust” literature in a text of almost 1,300 pages).

140. Four conditions are essential for the establishment of a cooperative relationship based on trust: (1) individual commitment to reaching some goal; (2) individual awareness of the need for help from others to reach the goal; (3) individual awareness that others are dependant on yourself; and (4) each individual’s awareness that others are mutually interdependent. See James L. Loomis, Communication, The Development of Trust, and Cooperative Behavior, 12 HUM. REL. 305 (1959); see also Pamela Gibbons et al., The Role of Language in Negotiations: Threats and Promises, in 20 COMMUNICATION AND NEGOTIATION 156 (Linda L. Putnam & Michael E. Roloff eds., 1992) (“[L]anguage has its own unique force
and practitioners in collective bargaining have devoted little attention to how to communicate trust.\textsuperscript{141} Trust formation is an elusive process that does not easily yield to a modern yearning for precisely quantifiable measurements.\textsuperscript{142}

An individual's ability to communicate effectively at the bargaining table or in grievance meetings can foster a relationship of trust.\textsuperscript{143} Ineffective communication risks producing hostility and suspicion, a fertile environment for pervasive distrust. Ideological differences become even more pronounced amid ineffective communication.\textsuperscript{144}

in the negotiation process and understanding the role of language is critical to a complete understanding of negotiation.\textsuperscript{145}

141. Some take the position that parties should make no effort to communicate values and shared norms except through their acts. See T.J. Larkin & Sandar Larkin, \textit{Reaching and Changing Frontline Employees}, HARV. BUS. REV., May-June 1996, at 95-96. "[P]eople reveal their values through their actions, not through their words. Talking about values signals that fraud is near." \textit{Id}. The authors believe it is best to communicate only the facts. See \textit{id}. "If you break the rule that values are best communicated through actions, employees will punish you." "Id.


142. See ROGER FISHER & SCOTT BROWN, \textit{GETTING TOGETHER: BUILDING A RELATIONSHIP THAT GETS TO YES} 98 (1988) ("If we want to improve our communication process in ways that enhance our ability to solve problems, we ... need to think about why we want to communicate in the first place, what we need to learn or transmit, which channels or forums to use, and how we ... communicate.").

143. See DAVID A. DILTZ & WILLIAM J. WALSH, \textit{COLLECTIVE BARGAINING AND IMPASSE RESOLUTION IN THE PUBLIC SECTOR} 71 (1988). Diltz and Walsh categorize negotiation tactics as follows:

In table bargaining there are four basic style categories of tactics, these are aggressive, nonaggressive, debate, and irrational. These tactics should be appropriately mixed to avoid predictability and selected for the best chance of success in the attainment of goals given the climate of negotiations, bargaining history, and bargaining relation. \textit{Id}. Surely, there is little room for trust in such a description.

144. See Mark Barenberg, \textit{Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production}, 94 COLUM. L. REV. 753, 775 (1994) ("The problem of intersubjective interpretation of others' meanings, beliefs and motives is ubiquitous.").
Learning how to communicate trust deserves considerable attention from labor and management representatives.\textsuperscript{145} Because they spend their workdays communicating with others, representatives of the parties may have a different perception of their communicative skills from the view held by their counterparts. It is exceedingly difficult to gain a realistic sense of how others really view us. One suspects that most labor-management negotiators and contract administrators view themselves as trustworthy and, equally important, believe that others share this impression of their trustworthiness.\textsuperscript{146} As one linguistics expert concluded:

Communication isn’t as simple as saying what you mean. How you say what you mean is crucial, and differs from one person to the next, because using language is learned social behavior. How we talk and listen are deeply influenced by cultural experience. Although we might think that our ways of saying what we mean are natural, we can run into trouble if we interpret and evaluate others as if they necessarily felt the same way we’d feel if we spoke the way they did.\textsuperscript{147}

Gender and regional differences in communication often are ignored by labor-management representatives. “[G]ender seems to play a role in whether and when people ask questions.”\textsuperscript{148} There are numerous factors affecting the persuasiveness and credibility of speakers and it is essential for parties in a collective bargaining setting to be knowledgeable about such factors if they are to develop a relationship of trust.\textsuperscript{149}

\textsuperscript{145} See John K. Butler, Jr. & R. Stephen Cantrell, Communication Factors and Trust: An Exploratory Study, 74 PSYCHOL. REP. 33, 34 (1994) (“Our study suggests strong relations between trust and communication between employees in a workplace setting.”).

\textsuperscript{146} Some believe that inadequate communication skills account for much of the suspicion of the legal profession. See Janet Stidman Eveleth, Perception is Reality, 27 Mo. B.J. 7 (1994) (“Poor public perception is largely based on unmet client expectations and poor attorney/client relations.”).


\textsuperscript{148} Tannen, supra note 147, at 142; see also Kathleen Kelley Reardon, They Don’t Get It, Do They? Communication in the Workplace—Closing the Gap Between Women and Men 43 (1995).

\textsuperscript{149} See Daniel J. O’Keefe, Persuasion: Theory and Research 133 (1990). Although a variety of factors influence judgments about a person’s trustworthiness,
A relationship of trust represents a highly sophisticated level of human interaction. The kind of language used in communication can signal the level of trust enjoyed or sought by the parties.\textsuperscript{150} Where there is little trust, parties tend to speak in legalistic jargon and rigidly qualify most commitments.\textsuperscript{151} Where there is trust, language used by the parties communicates respect and genuineness. One commentator described relationships with little trust as those characterized by defensive, protective language, while communication in a relationship of trust includes straightforward communication that is not angry and manipulative.\textsuperscript{152}

Experience suggests that collective bargaining negotiators and contract administrators spend little time reflecting on the complexity of human communication. Parties usually think they understand each other and, more often than not, do not account for the possibility of distorted messages or an inaccurate understanding of the meaning of the message they received from one another.\textsuperscript{153} Distortions occur verbally and in writing and parties spend little time decoding messages of others in order to understand the total meaning of messages from their counterparts. "Meanings are the facts, ideas, feelings, reactions, or thoughts that exist within individuals, and act as a set of ‘filters’ through which the decoded messages are

\textit{Id.}

\textsuperscript{150} See generally Bruce Fraser, \textit{The Role of Language in Arbitration, in Decisional Thinking of Arbitrators and Judges} 42 (1980) ("[A] more critical sensitivity to language and its role in the arbitration process will have immediate payoff.").


\textsuperscript{152} See Stephen R. Covey, \textit{The Seven Habits of Highly Effective People} 262-63, 284 (1989); see also Paul R. TMM, \textit{Managerial Communication} at vii (1980) (discussing how to reorganize and remedy problems in communication caused by ourselves and others); Stephen L. Carter, \textit{The Power of Integrity}, \textit{Utne Reader}, July-Aug. 1996, at 47 ("Too many of us nowadays neither mean what we say nor say what we mean. Moreover, we hardly expect anybody else to mean what they say either.").

\textsuperscript{153} See Carter, \textit{supra} note 152, at 47.
interpreted" and parties usually do not reflect on inadequate communication skills on either side of the transaction that might distort the message. It is not uncommon for disputes to arise between parties to a collective bargaining agreement because either they never talked at all or they honestly perceived words in different ways and then conclude that others are being perverse or dishonorable for espousing a different interpretation. In response to such misunderstandings, a host of interpretive principles have been absorbed into the common law of arbitration from contract law.155


155. See Richard Heyman, Why Didn't You Say That in the First Place? How to Be Understood at Work 133 (1994) ("We may think we're expressing ourselves very clearly and directly. But everyone listening will be making their own interpretations, which may or may not be what we intended. If we want people to understand clearly, then what we say can't be separated from how we say it."); see also Charles J. Fombrun, Turning Points: Creating Strategic Change in Corporations 73 (1992).

Most managers noticeably favor news that confirms their beliefs and enhances their self-concepts—and ignore self-deprecating and contradictory data. Not surprisingly, then, we find that chief executives tend to consistently claim positive corporate performance as a result of their own efforts, while they blame negative results on uncontrollable factors like the weather.

Id.

Negotiators and contract administrators may possess highly developed speaking skills, but they often exhibit far less competence in listening. There is a tendency not to view listening as a communication skill.\textsuperscript{157} In arbitration, parties often review notes or arrange exhibits while the other advocate gives an opening statement. Parties in the collective bargaining arena would be well advised to ask their peers to evaluate them in terms of their competence in listening.\textsuperscript{158} Their goal ought to be that of becoming more effective as a listener than they are as a speaker.

As the number of people involved in the contract negotiation or administration process expands, listening skills become more crucial. The traditional form of line and staff in many organizations has begun yielding to more active participation between managers and bargaining unit members. For example, a state agency might centralize collective bargaining negotiations into a single administrative agency, but those affected by the agreement, for example, a prison superintendent, will closely scrutinize the process and want direct involvement in the outcome. The same holds true for bargaining unit members who want their negotiators to advance a diversity of proposals. Listening skills are essential to the success of the collective bargaining process and in the ability of the parties to develop trust. Instead of insufficient information, the parties now often work within the context of an information overload; and listening to too much data without relief can lower the quality of the parties’ communication.\textsuperscript{159}


\textsuperscript{157} \textit{See} \textit{JANE HODGSON, THINKING ON YOUR FEET IN NEGOTIATIONS} 125-26 (1996) ("People listen superficially, hearing the first part of what the speaker says, then switching off for the rest."); \textit{see also} \textit{JUDITH E. FISHER, NEGOTIATING FOR BUSINESS RESULTS} 46 (1994) ("Active listening implies more than simply hearing what the other party says. When you listen actively, you are thinking, analyzing, and considering the other side's comments or questions."); \textit{THOMAS F. GUERNSEY, A PRACTICAL GUIDE TO NEGOTIATION} 80 (1996) (instructing lawyers in the skill of active and passive listening).

\textsuperscript{158} \textit{See} \textit{JEFFREY Z. RUBIN, CONFLICT FROM A PSYCHOLOGICAL PERSPECTIVE IN NEGOTIATION STRATEGIES FOR MUTUAL GAIN} 135 (Lavinia Hall ed., 1993) ("Listening is more important than talking, and listening between the lines is necessary to understand fully what the other person is saying."); \textit{see also} \textit{FRANCES G. WICKES, THE INNER WORLD OF CHOICE} 97 (1963) ("No matter how objectively we attempt to see another person, the unconscious enters into the formation of the image and determines the inner relation.").

\textsuperscript{159} \textit{See} \textit{JAMES M. KOUZES & BARRY Z. POSNER, CREDIBILITY} 100 (1993).

As the lines increasingly become blurred about who's inside and who's outside the corporate boundaries, the simple requirement for increased trust is greater
A relationship of trust helps simplify communication processes. It does so by allowing the parties to disengage from institutional positions and by helping create an atmosphere where they do not communicate with threatening language. Experience also suggests that communication can become snarled in an attitude of distrust if efforts at trust formation are misperceived as a sign of weakness. Believing victory is imminent, a negotiator or contract administrator, then, might demand even more concessions. To be clear that an effort at trust formation is not weakness, a negotiator must be sensitive to expressing a genuine commitment to a specific position. There is more prospect for a relationship of trust in the midst of a firm commitment to satisfying one's organizational needs while also expressing an honest interest in a cooperative resolution to the communication with those constituencies critical to our success. This means listening everywhere and to everyone. It means regularly walking the halls and plant floors, meeting often with small groups below the managerial level, and hitting the road for frequent visits with the troops, key suppliers, and customers. It may even mean learning another language if a large portion of your work force or customer base speak it. Building trust begins by building a personal relationship through listening.

Id.

160. See Melvin J. Kimmel et al., Effects of Trust, Aspiration, and Gender on Negotiation Tactics, 38 J. PERSONALITY & SOC. PSYCHOL. 9, 10 (1980); see also Niklas Luhmann, Familiarity, Confidence, Trust: Problems and Alternatives, in TRUST: MAKING AND BREAKING COOPERATIVE RELATIONS 94 (Diego Gambetta ed., 1988).

161. See Dean G. Pruitt & D. Leasely Smith, Impression Management in Bargaining: Images of Firmness and Trustworthiness, in IMPRESSION MANAGEMENT THEORY AND SOCIAL PSYCHOLOGICAL RESEARCH 361 (James T. Tedeschi ed., 1981); see also Steven R. Wilson, Face and Face Work in Negotiation, in COMMUNICATION AND NEGOTIATION 176, 178-79 (Linda L. Putnam & Michael E. Roloff eds., 1992) ("Negotiators have strong incentives to defend their face. Those who appear weak, for example, inadvertently encourage their opponent to make aggressive demands . . . and risk losing the trust of their constituents, who in turn may constrain their latitude to search for integrative agreements.").

162. See J.A. Wall, Intergroup Bargaining, 21 J. CONFLICT RESOL. 459 (1977). Some labor-management lawyers may misperceive efforts at trust formation expressed in casual conversation as an opportunity to gather information to be used against one's counterpart. See LARRY L. TEPLY, LEGAL NEGOTIATION IN A NUTSHELL 168 (1992).

A negotiator can gain valuable information through casual conversation about the opposing party, the opposing negotiator's time deadlines, the opposing party's needs, and so forth. Casual conversation is also a useful means of establishing rapport and open communication. When attempting to get to know the opposing negotiator through casual conversation, however, it is widely recommended that a negotiator should carefully avoid discussing subjects unrelated to the negotiation, such as religion, politics, food, dress, and other items of personal preference.

Id. at 168. Using casual conversation as an intentional tool of discovery probably will doom trust formation.
Mediators often encounter parties who approach collective bargaining as war and those sounding the voice of reason risk enduring the perception of being weak and ineffectual. Most negotiators in the collective bargaining arena deal with each other more than once and the “personality” factor tends to become an important one. Learning how to communicate their needs and to be certain they have been understood can be practiced over a series of negotiations. Training in communication skills may be useful, but understanding how to express one’s self in terms of another’s personality will be invaluable. Communication that is personalized in terms of psychological nuances of the other party makes trust formation more effective.


164. See Chet Bridger, Carriers Have No Confidence in PMG, FED. TIMES, Aug. 26, 1996, at 10 (“City carriers dug deeper trenches in their war against U.S. Postal Service management as 8,100 convention delegates applauded their leader’s pledge to block proposed changes in the way carriers are managed and paid.”); see also Michael E. Roloff & Douglas E. Campion, On Alleviating the Debilitating Effects of Accountability on Bargaining: Authority and Self-Monitoring, 54 COMM. MONOGRAPHS 145 (1987); Steven R. Wilson, Face and Facework in Negotiation, in COMMUNICATION AND NEGOTIATION 176, 179 (Linda L. Putnam & Michael E. Roloff eds., 1992) (“[N]egotiators who appear weak subsequently will sacrifice tangible monetary gains to regain face.”).

165. See Timothy R. Levine & Steven A. McCormack, The Dark Side of Trust: Conceptualizing and Measuring Types of Communicative Suspicion, 39 COMM. Q. 325, 326 (1991) (“[I]ndividuals systematically differ not only in whether they are generally ‘trusting,’ but also in whether or not they are suspicious of the communication of others.”).


Personal relationships may be pivotal. Even with respect to entirely professional negotiators, the factor of personality influence is often not inconsequential. While it may not be possible to adjudge the quantitative impact of the personality and the interaction of the principal negotiators, a careful observer or mediator will carefully appraise it and take it into account. The reference to this factor may not be analytically neat, but it does reflect a principle of practical import in many instances. Id.; see also Roger Fisher & Scott Brown, Getting Together 84 (1988) (“Many people measure the quality of a relationship by the quality of the communication.”); Ellen Earle
VI. TRUST FORMATION SKILLS

There are both principled and pragmatic reasons for entering a relationship of trust. Some do so in response to the ethics of trust, others in response to an optimistic view of human nature, and still others primarily for economic reasons. While it seems clear that a relationship of trust produces lower transaction costs than does mutual distrust, there is no infallible method of building trust. However, there are a number of relevant skills and processes that merit consideration for those interested in trust formation.

As a general rule, trust formation may be easier for extraverts. It is a complex relational process requiring considerable accessibil-

Chaffee & Jack Y. Krakower, The Impact of Resource Predictability and Management Strategy on Performance, in MANAGING AMBIGUITY AND CHANGE 157, 172 (Louis R. Pondy et al. eds., 1988) ("The major message for administrators is that satisfying multiple constituents regarding organizational performance (and, to a lesser extent, obtaining important resources for the organization) may be primarily a matter of improved management and improved communication, rather than one of changing the products or services of the organization."); Doug Wallace, Southern Discomfort, BUS. ETHICS, Mar.-Apr. 1996, at 52 (reporting that when a CEO responded to an ethical dilemma by discussing the problem openly with union leaders, the problem was resolved at the local level).

167. See Francis Fukuyama, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 27-28 (1995) ("Widespread distrust in a society, in other words, imposes a kind of tax on all forms of economic activity, a tax that high-trust societies do not have to pay.").

168. See Sugato Lahiry, Building Commitment Through Organizational Culture, 48 TRAINING & DEV. 50, 52 (1994) ("[R]esearchers have largely overlooked how feelings of obligation can form the basis of organizational commitment.").

169. See Isabel Briggs Myers, Gifts Differing 7 (1980) ("The introvert's main interests are in the inner world of concepts and ideas, while the extravert is more involved with the outer world of people and things."); see also David Keirsey & Marilyn Bates, PLEASE UNDERSTAND ME: CHARACTER AND TEMPERAMENT TYPES 14 (1978) ("The person who chooses people as a source of energy probably prefers extraversion, while the person who prefers solitude to recover energy may tend toward introversion."); Sandra Hersh & Jean Kummerow, Lifetypes 17 (1989) ("Extraverts enjoy a work setting that is activity oriented, has variety, and allows for frequent interactions with others. Introverts enjoy a work setting that is quiet and private, and that allows for concentration on the task. "); Paul D. Tief & Barbara Barron-Tieger, Do WHAT YOU ARE 14 (2d ed. 1995) ("Because [extraverts] like to be at the center of the action and are approachable, they tend to meet new people frequently and with ease . . . Introverts focus their attention and energy on the world inside of themselves."); The PORTABLE JUNG 179 (Joseph Campbell ed., 1982).

In describing psychological types, Carl G. Jung stated that:

The introvert's attitude is an abstracting one; at bottom, he is always intent on withdrawing libido from the object, as though he had to prevent the object from gaining power over him. The extravert, on the contrary, has a positive relation to the object. He affirms its importance to such an extent that his subjective attitude is constantly related to and oriented by the object.

Id.
ity, dialogue and social involvement. Trust formation involves a rational decision to make one's self vulnerable to others, perhaps in varying degrees at first. "Trust is much easier to maintain than it is to get started and is never hard to destroy."

Diverse groups have shown an interest in methods of trust formation. No certification process, of course, exists for management-labor negotiators and administrators of collective bargaining agreements. There is little or no discussion in most material on collec-


[Ep]arning credibility is a retail activity, a factory floor activity, a person-to-person one. It is gained in small quantities through physical presence. Leaders who are inaccessible cannot possibly expect to be trusted just because they have a title. Credibility is earned via the physical acts of shaking a hand, touching a shoulder, leaning forward to listen. By sharing personal experiences, telling their own stories, and joining in dialogue, leaders become people, not just holders of positions.

Id.; see also Rachel E. Kranton, The Formation of Cooperative Relationships, 12 J.L. Econ. & Org. 214, 226 (1996) ("Trust thus develops by first extending small favors and then greater ones within a small group and by creating a bond within this group that causes its members to recognize a common identity separating themselves from others in their immediate environment.").


To be trusted, we have to extend ourselves by being available, by volunteering information, by sharing our personal experiences, and by making connections with the experiences and aspirations of our constituents. . . . [W]e must allow our constituents to know us. Becoming trusted requires reciprocity, a willingness on the part of both parties to enter into dialogue and conversations. It also takes time because, although trust may sometimes be forged in moments of great drama, it is more likely to be formed by many small, moment-to-moment, encounters.

Id.


173. See Peter Economy, Business Negotiating Basics 10-12 (1994); see also U.S. Secretary of Labor, Working Together for Public Service 3-12 (1996) (discussing the many techniques for building trusts, as observed in the subsequent section, "How to Begin.") The task force, co-chaired by Governor James J. Florio and Mayor Jerry Abramson, cited four prevalent approaches as (1) service improvement projects, (2) improved bargaining, (3) better conflict resolution, and (4) cultural change; Roger S. Haydock et al., Lawyering: Practice and Planning 46-51 (1996) (instructing lawyers in how to build trust with clients. "Faith in the lawyer's fidelity, belief in the lawyer's competence, and comfort when dealing with the lawyer all are part of the client's trust in the lawyer."); Mark H. McCormack, On Selling 28 (1996) (instructing sales personnel in how to gain a customer's trust).

174. Certification for parties in the collective bargaining arena probably would be most unwieldy because the cast of characters is constantly changing and there is a long history of people learning relevant skills incrementally "on-the-job." Professor Deborah Rhode has written an interesting article calling for moral character as a more pronounced aspect of the certification process for attorneys. Deborah L. Rhode, Moral Character as a Professional
tive bargaining analyzing the ethics or importance of or how to
develop a relationship of trust.175

Years ago Professor Dean Pruitt insightfully described categories
of negotiation behavior which easily can be applied to negotiators
and administrators of collective bargaining agreements. He set
forth three categories: (1) high-risk coordinative behavior, (2) mod-
erate-risk coordinative behavior, and (3) low-risk coordinative
behavior.176 The categories help identify the degree to which one's
counterpart at the bargaining table or in a grievance negotiation
might be trusted.177 If there were a high level of trust, a party would
be willing to make a large concession in anticipation that there
would be a corresponding response from the other side.178 In a
moderate-risk coordinative move, acts by a party would be “more
reversible, disavowable and covert . . . .”179 As before, the negotia-
tor would expect a similar concession from the other side.180 Simi-
larly, in low-risk coordinative behavior, a negotiator might propose
a minor concession in an effort to signal an interest in negotiating a
more substantial change in the same topical area.181 For example, a
union’s proposal to renumber sections of a contract so that all bar-

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175. Lawyers who, of course, play an important role in the collective bargaining arena receive little professional instruction in ethics generally and almost none in the ethics of trust or how to develop such a relationship. See, e.g., Deborah L. Rhode, Ethics by the Pervasive Method, 42 J. Legal Educ. 31 (1994).

176. Historically, advocates of greater ethical instruction in professional schools have both overstated its likely effect and understated its necessary scope. Contrary to proponents’ expectations, a class in ethics cannot of itself instill integrity, insure virtue, or prevent the proverbial decline of a profession into a business. Nor is a single required course likely to achieve even the more modest goals of sharpening moral perceptions, assisting moral analysis, and reinforcing moral commitments.

178. See id. at 92.
179. “The likelihood that a bargainer who desires coordination will take a high-risk move is a function of the degree to which the other bargainer is trusted.” Id.
180. Id. at 93.
181. Id.
gaining units of an employer could use the same numbering system might signal an interest in a larger substantive restructuring of an agreement.

Where there is little or no trust, even low-risk coordinative behavior is improbable. The difficult question, of course, is how to generate coordinative behavior. Parties in a collective bargaining context could initiate trust formation by implementing any of Professor Pruitt's categories. Highest-risk coordinative behavior might involve sharing respective "bottom lines" early on in the negotiation process, whether it be about wages at the bargaining table or final conditions for the potential return of a discharged employee. It generally requires a long-term relationship of trust in order to engage in such high-risk behavior.

An example of moderate-risk coordinative behavior might involve implementing a contractual provision on which the parties had reached tentative agreement before ratification and approval of the agreement. Such action would require considerable trust in the ability of the other party to meet tentative agreements. Low-risk coordinative behavior might involve weak signals from the parties regarding potential areas of compromise in their proposals. Such low-risk behavior would not jeopardize either party's reputation or hinder a return to positional bargaining at a later time. This behavior, however, would enable either party to signal the other of an interest in exploring a relationship of trust.

As often as there are discussion of the weather, parties in the collective bargaining arena constantly evaluate one another for signs of trustworthiness. Many are sensitive to factual distortions or outraged by lies and ever alert to promise-keeping, at least as it affects their side of the relationship. They are aware of perceptions about the other person's competence and failure to prepare for meetings at the bargaining table or grievance negotiations can pre-

182. See id. at 101-31 (setting forth a theory for producing coordinative behavior). Trust is consistent with, and hence can be derived from, a number of other perceptions of the adversary. One is that the adversary has abandoned competitive initiatives. Another is that there is a small divergence of interest with the adversary. A third is that he or she shares a normative framework with one's self such that it is reasonable to expect the same alternatives to be prominent to both parties.

Id. at 124-25.

183. See id. at 92.

vent or erode a relationship of trust. The collective bargaining arena is unique in that there is an expectation of passion about the subject matter, except from third-party neutrals who are perceived to be more detached. It is generally expected that an advocate is philosophically committed either to labor or management and is not able randomly to serve either side. There generally is a desire to know that the other party is committed to a relationship of collective bargaining. Management wants the unions to be sensitive to needs of operating complex organizations, while unions want employers to see employees as more than a commodity and wants them to care about workers. A relationship of trust could result in new, creative roles for each party.

A relationship of trust is among the most mature forms of human involvement and there is no formula for achieving such an achievement which flows with logical inevitability. A commitment to such a relationship may be tested by a person’s willingness to be the first to explore such a possibility. For example, knowing that a party desires particular information, perhaps it is offered unilaterally, while announcing a desire to work cooperatively with the other side. It is helpful in a relationship of trust to express an interest in exploring values and seeking shared norms. Listening attentively to responses is crucial; it is a substantial signal that a party seeks a relationship of trust instead of distrust.

185. See William H. Ross & Carole Wieland, *Effects of Interpersonal Trust and Time Pressure on Managerial Mediation Strategy in a Simulated Organizational Dispute*, 81 J. APPLIED PSYCHOL. 228, 244 (1996). Credibility-enhancing activities, serve a doubly useful purpose: not only do such activities give mediators the credibility to offer suggestions designed to resolve the dispute, they may also create a climate where the parties trust the mediator, allowing the mediator to attempt relationship building between the parties if that is seen as necessary.

186. See, e.g., Charles J. Fombrun, *Turning Points: Creating Strategic Change in Corporations* 239 (1992). Fombrun observed that in the 21st century, unions might play a more useful role, not as managerial adversaries, but as productivity coordinators—a role more closely resembling that of an ombudsman than a negotiator. As such, they would shoulder equal responsibility with management for coping with environmental challenges, formulating strategies, and devising viable means for executing them.

At the same time, it would be foolhardy not to be vigilant and to observe closely the evolution of the relationship. By seeking a relationship of trust, one should not expect to avoid embarrassing or threatening problems that exist within an organization. The hope is that a relationship of trust will enable parties to investigate their underlying problems and, in trust, to speak with each other even about their distrust. This requires a system that permits constant contacts between the parties. Parties to a labor contract benefit from a better agreement and less divisive dispute resolution if they displace distrust and fear with a relationship of trust that encourages positive risk-taking.

Researchers have known for years that most effective problem-solving requires a high level of trust. Whether at the bargaining table or in contract administration, parties benefit from interactive relationships that generate productive problem-solving. In efforts to solve problems where there is a low level of trust, "[e]nergy and creativity are diverted from finding comprehensive, realistic solutions, and members use the problem as an instrument to minimize their vulnerability." Distrust, however, can be overcome, and a relationship of distrust gradually can be supplanted with trust if there is a more trusting view initiated by one of the parties and a display of reasonably supportive behavior. The

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188. See Robert L. Swinth, The Establishment of the Trust Relationship, 11 J. CONFLICT RESOL. 335, 343 (1967) ("Whether it be in interpersonal relations or international relations, the participants cannot be expected ever to trust each other in critical moments if these constitute their only opportunity to interact. They need a period in which they can carry out the coordinating process of exposure and acceptance.").

189. See T. LOWE & G. MCBEAN, HONESTY WITHOUT FEAR: QUALITY PROGRESS 30-34 (1989) (urging the eradication of fear of reprisal, fear of failure, fear of providing information, fear of not knowing, fear of giving up control and fear of change).

190. See Leland P. Bradford et al., Two Educational Innovations, in T-GROUP THEORY AND LABORATORY METHOD 9 (Leland P. Bradford et al. eds., 1964); see also Jack Gibb, Defensive Communication, 11 J. COMM. 141, 142 (1961) ("[I]ncreases in defensive behavior were correlated positively with losses in efficiency in communication.").


192. See Rensis Likert, The Human Organization: Its Management and Value (1967); see also Warren Bennis, On Becoming a Leader 160 (1989) (offering as the ingredients of trust (1) constancy, (2) congruity, (3) reliability, and (4) integrity); George Fuller, The Negotiator's Handbook 64-65 (1991) (suggesting that one way of advancing trust formation is to raise anticipated objections and "to agree with something your opponent suggests early on in the negotiations"); Charles Handy, Trust and the Virtual Organization, HARV. BUS. REV., May-June 1995, at 44, 46-47 (setting forth what he views as seven cardinal principles of trust: (1) trust is not blind, (2) trust needs boundaries, (3) trust demands
V. Learning, (4) trust is tough, (5) trust needs bonding, (6) trust needs touch, and (7) trust requires leaders.

193. See Niklas Luhmann, Trust and Power 79, 80 (1979) ("The problem of readiness to trust, accordingly, does not consist in an increase of security with a corresponding decrease in insecurity; it lies conversely in an increase of bearable insecurity at the expense of security.").

194. See Warren Bennis, On Becoming a Leader 165 (1989) ("This corporate ethical decline is a direct result of the bottom-line mentality.").

195. See Julian B. Rotter, Interpersonal Trust, Trustworthiness, and Gullibility, 35 Am. Psychologist 1 (1980) (reporting that people with high scholastic aptitude test scores are not less willing to trust than those with lower scores).

often than not, such an approach has engendered a relationship of distrust between the parties. It is time for the parties to review their relational approach to collective bargaining. Even if a competitive relationship is deemed effective for some parties, it does not mean that one’s counterpart in the process is without integrity and that there is no prospect of building a relationship of trust. The parties need to reject the traditional ideology suggesting an incompatibility between collective bargaining and trust formation. There can be trust even if the parties adopt the model of a competitive relationship. At a minimum, there should be reflection by both labor and management on the model of relationship consciously or unconsciously chosen by the parties.

The kind of relationship chosen by the parties does not remain hermetically sealed at the bargaining table or affect only contract administrators and their counterparts who oversee implementation of an agreement for the parties. There is continual osmosis of the good or the bad from the bargaining relationship into the workplace itself. Virtually no facet of the organization will be untouched. The economic and social ripple-effect of the collective bargaining relationship will impede or advance the overall mission of an organization. The relationship of trust or distrust selected for the bargaining table will have a significant influence on the attitudes of workers and supervisors in the workplace.

There is a moral responsibility inherent in being a contract negotiator or administrator and such an individual needs to reject a description of him/herself as merely a technical adviser. A contract negotiator or administrator is not relieved of personal moral responsibility by relying on competitive or even destructive values of an organization. There is a universal desire to experience trusting relationships and to enjoy a more meaningful life that flows from a supportive community. Even if misrepresentation and “puffing” are not thought to be wrongful acts from an organizational standpoint, individuals still feel guilt when they act on the basis of institutional codes that differ from their personal values. Social ambiguity about the justifiability of stratagems in a competitive relationship might lessen the intensity of such feelings, but there inevitably is guilt.
when negotiators view people and their needs as means to ends, instead of seeing people as ends in themselves. 197

A relationship of trust in collective bargaining is ethically coherent. Moreover, negotiators and contract administrators on both sides are morally responsible for some of what their respective organizations do and there is no "bright line" where they are relieved of their moral commitments. They must not condone action institutionally which their personal moral code would not permit. But a second important observation is that such a relationship of trust makes good sense economically. 198 Whatever the history of relational competition between management and labor during the past half century, a relationship of trust cannot help but improve the daily life of workers and managers and add zest to the workplace experience. Groups who trust each other make better decisions and function more productively.

Adopting the premise that the workplace will be better if, in good faith, the parties seek a relationship of trust, management and labor representatives, then, need training in how to go about the process and how to explore the dynamics of such a relationship. Even principled negotiators and contract administrators misperceive signals from their counterparts or may proceed too quickly in an effort to develop such a relationship. Far more than training in bargaining and contract administration skills, the parties need to be educated in the dance of relationships. They need training in how to take basic steps in the dance, such as (1) tiny steps that seek an initial bond of safety, (2) larger steps that explore the implications of trust, (3) a step backward to the bond of safety for reassurance from time to time and then (4) exploring the large dynamic step of

197. See Leonard Silk & David Vogel, Ethics and Profits: The Crisis of Confidence in American Business 231 (1976) ("The issue of business morality is, and cannot avoid being, both a personal and an institutional matter for every corporate executive and for every employee who does not mean to surrender his individual integrity, his honor, his very soul, to an organization.").


[I]t certainly is possible for unionization to lead to greater profits by maximizing productivity gains while limiting or deferring growth and labor costs. The evidence suggests that this would require a very high level of cooperation and trust among labor and management at all levels of firm decisionmaking, together with a willingness by labor to forgo some potential wage gains in favor of other objectives such as long-term job security, better training, and influence within the enterprise.

Id. (citations omitted).
trusting each other. This is an institutional process which can be taught and one in which most collective bargaining parties need instruction.\footnote{199. See William P. Bottom et al., Getting to the Core: Coalitional Integrity As a Constraint on the Power of Agenda Setters, 40 J. CONFLICT RESOL. 298 (1996) (suggesting that a factor to consider in forming an institutional relationship is a potential partner's coalitional history); see also Jennifer J. Halpern & Judy McLean Parks, Vive La Difference: Differences Between Males and Females in Process and Outcomes in a Low-Conflict Negotiation, 7 INT'L J. CONFLICT MGMT. 45, 63 (1996) (suggesting that much can be taught about gender differences in institutional relationships. “[M]ales mentioned money before females did. Females emphasized interpersonal concerns more than males did, discussing personal information and requesting information with regard to other people’s feelings, and mentioned personal information sooner than males did. Males used more confrontational techniques than females did.”). See generally CAROL GILLIGAN, IN A DIFFERENT VOICE (1982); Julian B. Rotter, A New Scale for the Measurement of Interpersonal Trust, 35 J. PERSONALITY 651 (1967); Lynne G. Zucker, Production of Trust, 8 RES. ORGANIZATIONAL BEHAV. 53 (1986); Michael B. Gurtman, Trust, Distrust, and Interpersonal Problems: A Circumplex Analysis, 62 J. PERSONALITY & SOC. PSYCHOL. 989 (1992) (concluding that trust “was not associated with gullibility or with related interpersonal difficulties, supporting arguments that trust is essentially distinct from gullibility and exploitability”).}

Most parties who bargain collectively are in denial about the destructive nature of their relationship and also about the possibility of a relationship of trust with the other side. Parties must be willing to accept responsibility for their failure to seek a more mature relationship with each other. An absence of reflection on the model of relationship chosen by the parties inhibits consideration of broader societal stakes in the choice.\footnote{200. See BERNARD BARBER, THE LOGIC AND LIMITS OF TRUST 170 (1983) (“Instead of decrying the distrust in our society and cultivating a nostalgic fondness for some perhaps mythical past when all Americans lived in trust, we need to discover and continually rediscover how to foster trust and make it more effective.”).} One commentator described the duty of a lawyer to help clients in terms that apply directly to all parties in a collective bargaining relationship. He stated:

\begin{quote}
[O]ne important part of what [a lawyer] does is to offer advice about ends. An essential aspect of his work, as he and others see it, is to help those on whose behalf he is deliberating come to a better understanding of their own ambitions, interests, and ideals and to guide their choice among alternative goals.\footnote{201. ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 15 (1993).}
\end{quote}

Giving such value-laden advice is at the heart of daily work for labor-management negotiators and contract administrators. The attitude and ethics they bring to their work have a crucial impact on
the nature of the relationship between the parties throughout both organizations. Individuals who negotiate collective bargaining agreements into existence or debate the appropriate interpretation and application of such agreements are at the center of commercial life in the United States. As such, they are key representatives of a nation that has been given enormous economic wealth and social richness of those to whom much is given, much is required.