INDUSTRIAL RELATIONS RESEARCH ASSOCIATION

Proceedings of the
1985 Spring Meeting

April 18-19, 1985

Detroit, Michigan

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Industrial Relations Research Association Spring Meeting

April 18-19, 1985 — Detroit, Michigan

PREFACE

1985 Spring Meeting

Industrial Relations Research Association

Many changes and innovations are being introduced in the workplace and into the relationships between unions and managements as they respond to new technologies and economic pressures—changes in the dimensions of collective bargaining contracts and in the process itsef as well as in day-to-day negotiations, innovations in the training and retraining of workers and in the role of universities in industrial relations training. These topics emerged as the underlying theme of most of the sessions at the Spring Meeting of the Industrial Relations Research Association April 18-19 in Detroit.

Some of the speakers looked at changes in other areas and from a historical perspective—American labor law over a 50-year period, the growth and development of labor federation from the founding of the CIO 50 years ago to the present, and what has happened to the welfare state over the past few decades.

Those attending the meeting also had the privilege of hearing Douglas Fraser's "Reflections on Politics and Contract Negotiations" at the Friday luncheon. Fraser, President Emeritus of the UAW, is presently drawing on his long experience with the union in his new role as University Professor of Labor Studies at Wayne State University.

The Detroit Chapter put together an informative and thought-provoking program, if the subsequent comments and discussion of those attending are accurate measures. The Association is grateful to Mark Kahn, Lou Ferman, Mike Nowakowski, and others from the Detroit Chapter for hosting the meeting and arranging the program. And we are also grateful to the LABOR LAW JOURNAL for again publishing the Proceedings of our Spring Meeting.

BARBARA D. DENNIS
Editor, IRRA

The 1984 Auto Negotiations: A UAW Perspective

By Howard Young

Special Assistant to the President, International Union, UAW

In March of 1984, delegates elected to a UAW Special Convention to set collective bargaining policy adopted a resolution that stated in part: "Employment security is our highest priority bargaining goal."

In statements at General Motors and Ford, opening the 1984 contract negotiations, UAW President Owen Bieber reiterated the employment security goal by stating that "we're primarily concerned about the future of our jobs, and about jobs for those not yet back at work, and for future new hires . . .." He went on to tell the management negotiators that "plants must be kept up-to-date so that they will remain open, and our members' skills must also be kept up-to-date through the Joint Training Program and in other ways. Instead of planning to reduce the number of workers you employ, you must join with us in planning how to keep them at work."

Bieber's comments were made within the framework he had previously identified with the slogan: "1984 isn't 1982". That is, the industry was not in the crisis situation that had forced the union to make substantial concessions in the 1982 contracts. Thus, in the opening day statements, he noted: "[T]he key question in the negotiations we start today is whether management will be willing to cooperate in the development of new and improved arrangements now that the industry is in the black, as you were when the ink was red."

Those negotiations led to contracts with new provisions, which a Bureau of National Affairs (BNA) publication recently stated are "generally acknowledged to be among the most far-reaching employment security programs ever achieved."

Of course, the negotiations dealt with other matters also. Among the most notable of those were: health care, where the union resisted any cost shifting to workers or benefit reductions and new cost control arrangements were developed instead; improved pensions and other benefits for retirees; wage increases and retention of the cost-of-living allowance (COLA) formula; new holidays, including one memorializing Dr. Martin Luther King, Jr.; and improvements in health & safety, supplemental unemployment benefits (SUB), guaranteed income security (GIS), and legal service programs (actually the latter reflects a new program at Ford). Also, the profit sharing programs were retained. That is significant, since the union's previous experience had been that profit sharing was agreed to when the outlook was bleak, but the programs didn't last into high profit periods.

This paper focuses on the employment security provisions, for the reasons indicated at the outset. Some of the other aspects of the contract are discussed in other papers of this conference.

JOBS/PEP

The key employment security program is called Job Opportunity Bank-Security (JOBS) at GM and Protected Employee Program (PEP) at Ford. Aside from the usual adaptations to the different structures of the two companies, those programs are essentially identical. Thus, this paper will refer to JOBS/PEP to emphasize their uniformity. There also are other

employment security provisions, which will be noted later.

In framing its proposals, the union had pointed to its concern about the companies' outsourcing activity and about the job loss implications of technological change. It was understood that, as a practical matter, those events had to be separated from market-driven employment fluctuations or other causes beyond the control of management.

At the same time, the union reaffirmed its historical recognition of the importance of productivity gains and of the need to permit efficient utilization of capital equipment as well as the need to produce high quality products. As in the development of past programs (for example, the paid personal holiday plan), it was necessary to integrate those requirements with adequate provisions for worker protection and satisfaction.

As in every negotiated program, the result is not entirely satisfactory to either workers or management. Even after the general principle of JOBS/PEP was agreed to, there was very hard bargaining about many specific provisions. What may appear to be an illogical inconsistency (for example, the different degree of protection against job loss due to outsourcing vs. technological change), in fact reflects a compromise of conflicting positions.

Similarly, lack of specific rules (for example, the general authority given to local company-union committees to determine the type of work activity for affected workers) reflects the need for adaptability in a ground-breaking program, which must be applied in thousands of different situations. In that regard, it is significant to note that JOBS/PEP officially became effective on April 15, 1985 (which was the same week this paper was presented at the IRRA conference). Although substantial additional preparation has been done since negotiations were concluded and preliminary implementation has occurred in some locations, very little operating experience has developed under the programs.

The Job Bank

JOBS/PEP essentially provides a buffer (called a "bank") between the rate of displacement due to various covered causes and that due to attrition. That is, job slots are created in the bank as a result of those covered causes and are eliminated by attrition (as well as by certain new work brought into the bargaining unit). To the extent that protected displacement exceeds attrition, the excess is buffered by employment in the bank. Admittedly that will not create jobs for new workers; that is a general shortcoming of attrition related schemes.

Furthermore, while workers with at least one year of seniority are protected against layoff due to a covered cause, JOBS/PEP does not provide an employment guarantee to any particular worker, nor does it guarantee any minimum number of jobs. Protection against volume related fluctuations continues to rely upon the existing unemployment benefit programs. Thus, a particular worker who was displaced by a covered cause and assigned to the bank could subsequently be "bumped" to layoff by a higher seniority worker in a volume downturn. Similarly, laid-off workers can be called into the bank when production volume increases. The net result is that the bank consists of additional job slots, which would not exist in the absence of JOBS/PEP, but the specific workers assigned to those slots can change due to volume fluctuations.

Assignment to the bank is continued employment at normal pay and benefits (with minor modification); it is not an unemployment income supplement or other layoff benefit. The worker involved can have a wide range of assignments. Most likely he or she will be put in some kind of training program or will be used to replace other workers who go for training.

The latter provides a mechanism for rotating training assignments throughout the workforce and thus reaches workers who would not normally be involved in training aimed solely at displaced workers.

Some of the employment costs for workers assigned to the bank are charged against a bookkeeping account, which limits the company's liability for JOBS/PEP. In GM, that account cannot exceed $1 billion over its expected six-year life (the programs automatically continue for the duration of the collective bargaining agreements to be negotiated in 1987); the corresponding amount at Ford is $280 million, which reflects the relative size of the two companies.

Areas of Protection

JOBS/PEP protects against displacement due to four types of covered causes: technology, outsourcing, negotiated productivity improvements, and job loss due to transfer or consolidation of work within the company (usually to a more efficient facility). The latter two causes are fairly self-explanatory.

Technology is broadly defined for the purpose of JOBS/PEP as any change in product, method, process, or the means of manufacturing at a location. Thus, protection is not limited to the usual concept of automation. There is also protection against: new materials, for example diemakers may be affected by more durable dies; revised work organization that might substitute new quality control techniques for inspectors; product redesign that might reduce labor input; even the impact of a new product, such as a smaller car, is protected at the location involved.

This broad definition of technology in JOBS/PEP is very significant, since much job displacement can occur from changes other than utilization of new equipment. It has often been pointed out that much of the difference between Japanese and American manufacturing systems reflects work organization, rather than the level of automation. Displacement due to a change in work organization is a covered cause under JOBS/PEP.

Outsourcing means the shifting of work outside the U.S. or Canada or to a non-company (e.g., non-GM for JOBS) location in the U.S. or Canada. Furthermore, if work is outsourced, JOBS/PEP protects against displacement at the location where the work was done and at plants that directly supplied parts for that outsourced work. For example, if an engine was outsourced, in addition to establishing a bank at that engine plant, banks could be established at plants supplying pistons, valves, etc., directly to that engine plant.

Under JOBS/PEP, outsourcing covers replacement products even if not identical to the ones previously produced. If a four cylinder engine is replaced by an imported three cylinder one, JOBS/PEP provides job loss protection.

JOBS/PEP clearly will involve considerable situation-specific fact finding and decision making. Did displacement occur as the result of a covered cause? If so, how many jobs are involved? That question will be especially tricky if there is a concurrent volume change, since the two effects are to be separately evaluated. What activity will be appropriate for individuals in the bank at specific locations? Authority in these matters is given to joint company-union committees at each location, operating under the guidance of a national joint committee (and area joint committees at GM, where needed). In fact, the reliance upon joint company-union activity is a major feature of JOBS/PEP.

The joint activity aspect is a continuation of an evolution that essentially began with quality of work life (QWL) programs at GM and their counterpart at Ford, employee involvement (EI). The 1982 contracts not only involved relief for the companies, they also produced jointly

administered training programs and other changes (e.g., Mutual Growth Forums at Ford) that increased the union's involvement in corporate decision making and implementation.

In addition, there has been a move toward a less legalistic approach to contract provisions and implementation. The collective bargaining agreement relies more upon principles and statements of intent, and the parties are to give those realistic good faith interpretation, rather than simply insisting upon any short-term advantage that may derive from literal application of detailed contract language.

While those changes have not been problem free, they have produced a new relationship that gives the union a more influential role. Implementation of JOBS/PEP and other aspects of the 1984 contracts brings that joint activity to a higher level. For example, since the conclusion of negotiations, there has been an unprecedented level of company-union work in developing and presenting explanatory material and programs to combined management and worker groups.

Additional Changes

JOBS/PEP was not the only employment security change which was negotiated in 1984. Among the others were the following. Training programs and their financing were improved to help active and laid off workers prepare for new jobs in the industry and elsewhere. Funds of $100 million at GM and $30 million at Ford were committed for new business activity to be identified and developed by company-union efforts. This is primarily intended to provide employment for displaced GM and Ford workers. As noted above, JOBS/PEP protects against some displacement but is not a full solution to job loss. Small car production commitments were made to the Saturn project at GM and the Alpha program at Ford.

Strengthened protections against outsourcing were negotiated. Even though JOBS/PEP protects against job displacement due to outsourcing, the union made it clear that it continues to oppose erosion of the manufacturing base. A new overtime disincentive provided for a 50-cent per hour penalty for hours in excess of 5 percent of straight time work. To avoid the conflicts that occur when the overtime premium increases the individual worker's pay, the new penalty goes into the jointly administered training fund. In addition, the companies are committed to reducing average overtime by two hours per week. At Ford, a moratorium was placed on plant closings during the life of the 1984 agreement, i.e., until 1987.

Conclusion

On the whole, UAW leadership believes that substantial progress was made in 1984 with respect to employment security. The programs go beyond the traditional income security mechanisms. Of course, the specific programs negotiated at GM and Ford do not necessarily apply elsewhere; variations have already been negotiated at International Harvester and elsewhere.

Furthermore, it is recognized that pressure on GM and Ford to provide employment security for their workforce adds to the problem of achieving similar security at supplier plants. For that and other reasons, the UAW continues to believe that legislated standards and public programs are the only effective means to achieve broad-based employment security for UAW members and for other workers. Historically, programs negotiated by the UAW and the auto companies have served as models for others, including government, to build upon. We hope that JOBS/PEP will have the same effect.

[The End]

The 1984 Auto Contract: A Management Perspective

By Ernest J. Savoie

Director, Labor Relations Planning and Employment Office, Ford Motor Company

This assignment has proven personally valuable. It has forced me to look up the various meanings of *perspective*. Perspective, we all know, involves a point of view, seeing things from a certain angle. In optics, it concerns showing objects in a right position, so they do not appear distorted. There are one, two, and three-point perspectives, as well as several specific ones: linear, conic, diagonal, terrestrial, panoramic, and even the so-called bird's-eye perspective, seeing things from a great distance. The latter, of course, is the preferred perspective of academic commentators, strategic planners, and senior management. Perspective also is the capacity to view things in their relative importance. Finally, Henry Adams tells us that time and experience alter all perspectives.

Fortified with these observations, I would like to offer my own management perspective on the 1984 auto contract by placing it in what I believe is its proper position in the decade of the eighties.

The transformation of the auto industry is no secret to those assembled here. The reshaping of its global configurations is the subject of hundreds of thousands of pages and equal amounts of travel miles, not only from the news media, the government, and the popular press but also from lofty observers attached to Harvard, MIT, the University of Michigan, and the OECD. When you get that much high-powered attention, you know something important is happening.

The base perspective then, and we need not spend time establishing it, is that the industry is in a period of radical restructuring. In this process, there will be winners, losers, and survivors. Only the sideline observers will be able just to stand and wait; those of us directly involved in the industry are working hard to become some of the winners. These are times that ask for much, for great adaptations. To paraphrase Franklin D. Roosevelt, this generation of American autoworkers (employees, their union and management) has a rendezvous with destiny.

In its 80-year history, Ford Motor Company never had a greater need for total change than it has had in the past six years. There is a compelling dynamism when the alternatives are to shrink or to perish. Survival sharpens the wits and girds the loins.

Ford has launched itself on a course of total transformation. Every phase of our business is being reexamined and changed. The transformation involves our products, our technology, and (very importantly) our people.

We spent more than $14 billion in the United States during the 1980-84 period for new products, processes, machinery, equipment, and research and development. We launched 25 new products during that period. And this year we will introduce our new Aerostar mini-van and our new, front-wheel drive Taurus and Sable family cars. Our spending for these three new vehicle lines alone came to nearly $3.6 billion.

With respect to technology, items such as lasers, computers, and robots are now commonplace features of the work scene in Ford facilities. Robots are no longer being given special names; they are simply expected to work, like everyone else. For advance product and technology concepts alone, we are spending $185 million

a year. This is seed money to develop ideas we will need to be competitive five to ten years from now.

Our attention to the people factor has been no less sweeping and progressive. To elevate our labor relations from the seventies to the eighties, we set out to create a whole new relationship, to involve our employees in the business, to use their help and their ideas, to discard inhibiting attitudes and systems, to put our time and our money where we were putting our mouth, and to work day-by-day with our union, the UAW. I will be discussing throughout the rest of my review our approach to labor and employee relations in the eighties, to what our Chairman Don Petersen calls "our second bottom line."

The 1984 contract is a part of our total restructuring and the deliberate effort to fashion new and better human resource systems. But before we place 1984 into this context, I would like to offer a sort of philosophical perspective of the process that produces a contract, the mechanism we call collective bargaining.

Alternatives to Pattern Bargaining

In the auto industry, we have had a form of bargaining commonly known as pattern bargaining. Under this arrangement, the economics of a settlement are negotiated at one company first; with relatively minor variations, this then becomes the "pattern" for the rest of the industry. However, it should be noted that, of late, it has not always been clear what comprises a settlement's "economics" or even what is considered to be the "industry" anymore.

Pattern bargaining was a strategy adopted by the union many years ago for a number of reasons, principally because it maximizes the union's negotiating leverage. But it also enables the union to establish broad similarity of treatment for its members who are doing much the same type of work in the different companies, frequently in the same geographical areas.

In past decades, this pattern system may have been bearable to the companies, though certainly not always palatable. But in the climate of the eighties it seems less serviceable and logical. It would make so much more sense, especially in today's turbulent circumstances, if a company and a union were more free to chart their own destinies. It would make so much more sense if they could respond, in their own special way, to the economics of the time and to the real competitive forces working on that firm and its employees.

Were this the case, both the company and the union could fashion and implement more sensible and coherent long-range policies. Both parties could focus on problems which heavily impact them. The crucial day-to-day meshing of intent and practice would be more manageable. It would be easier to plan intelligently and more accurately, easier to make better product, facility, and investment decisions. We could respond more promptly, and more wisely perhaps, to market shocks. We might be able to manage the workforce with more flexibility. We could accelerate the merging of our common efforts to improve our relationships, our workplace, our worklife, and the quality of our life outside the workplace. We might not eliminate crises, but we might address them better. In short, the overall enduring interests of both parties, and indeed of the employees and the communities where they live, could be addressed more rationally and perhaps more satisfactorily.

Unfortunately, this wished-for world of bargaining is not yet a reality. So in 1984, as in so many previous rounds of bargaining, we had to wrestle not only with issues on the table but with numerous other factors that surrounded the negotiations and exerted heavy pressures of their own. With these two broad perspectives in mind (radical, total restructuring of all parts of the business and the lingering presence of an inhibiting bargaining con-

cept), let us focus our lens, our perspective, on the 1984 contract specifically.

To put any contract into an appropriate bargaining perspective, one must look in several directions. Perspective also means looking backward, forward, and to the side. It means looking at historical antecedents, addressing the imperatives of the present, and assessing the degree to which the contract will influence those agreements which will follow. No contract stands on its own; each is bound up in a continuum of events between the parties to the bargain. And each is shaped in some way by the forces and the pressures that shaped its predecessors.

The story of Ford's human resources transformation began with small steps. Early in 1980, as charted by the 1979 agreement, we enlisted the efforts of our employees (working under the umbrella of joint national and joint local committees) to upgrade the quality of our cars and trucks. Product quality had become the imperative for survival. The UAW said it would work with us, knowing full well that the other side of product quality is job security.

These early joint efforts, which have been widely recognized and studied, grew and spread to virtually all our locations. Now they have become part of our way of life. Furthermore, they quickly extended far beyond product quality and soon embraced work environment improvements, communications, management style, group and individual relations, and work satisfaction.

We got major results from our joint efforts. For one thing, between 1980 and 1984, product quality (as measured by an outside agency) improved by over 50 percent. For another, employee attitudes improved sharply. In one survey, 82 percent of our participants in the joint processes said they were able to accomplish something worthwhile in their jobs. Previously, a meager 27 percent felt that way. In addition, labor relations improved, grievances went down, attendance went up, and we learned the value of a problem-solving approach to labor relations and collective bargaining. We learned the value of seeking and finding common ground. We learned the value of shared activity.

The 1982 Agreement

If our actions were heroic, that was what the period called for. Nothing less would do. From 1979 through 1982, as we were in the midst of converting our entire product line, we lost over $4.5 billion in the U.S., an average of over a billion dollars a year. We were in the industry's worst slump since the Great Depression. Our balance sheet was bleeding. Worse, so were our employees. From a peak in 1978 of just over 200,000 employees, our hourly employment dropped by one half, to around 100,000. Those were not happy days in Dearborn, and with the Union we looked for every conceivable solution to our problems.

Failure to make mid-course adjustments would have been disastrous in this situation. The facts were clear and compelling. But necessity is not always the mother of innovation. Leadership also shapes events. The union, under the leadership of Doug Fraser, took on the risks of a contract reopener. Those were times of high drama, which we cannot recount here.

Early in 1982, after an aborted attempt elsewhere and after only 13 days of actual bargaining, Ford and the UAW reached a new agreement. That agreement gave us critically needed labor-cost relief, largely through deferrals and a moratorium of wage increases. But there was so much more to this watershed agreement. Job security was addressed in a number of ways, including a plant closing moratorium, a new guaranteed income support program for senior employees, and a pathbreaking approach to worker retraining.

Profit sharing also was introduced, so that workers would get a share of the eventual recovery. With profit sharing came not only a safety valve and the notion of more flexible compensation but also the concept of tying employee compensation to the performance of the enterprise itself.

Equally important, the new agreement established or strengthened a series of joint worklife programs. Thus, we continued on the new course we had taken with our labor relations beginning in 1980. Principal among these programs were: (1) a strengthened employee participation process; (2) mutual growth forums for extensive labor-management consultation and information sharing at both the national and local levels; and (3) a comprehensive joint Employee Development and Training Program that covered active employees as well as the dislocated, with its special fund (5¢ per hour worked) and special joint staff.

In terms of our human resources and labor relations, the period following the 1982 settlement was one of the most constructive in the company's history. It confirmed what we had tried to do; we were indeed moving in a new direction.

Managing Prosperity

Many wondered, of course, if this was really a new direction and if it could last. Well, it has, through changes in both union and senior management leadership. Our quality cars and trucks and our new products brought back market share. This, together with the nation's economic recovery, returned us to profitability. As a result, Ford hourly employees received, on average, $2,000 as their share of the Company's 1984 profits. Our plants have become more efficient, and employee attitudes and labor-management relations have steadily improved. Our joint training program has provided services to over 20,000 individuals and has attracted national attention. Over the last six years, we have not lost a single production unit due to a strike in the United States. Locally, there is more flexibility, at the same time there is more sensitivity.

Together, working with the UAW, we proved our ability to manage adversity. Our next challenge was to manage prosperity. And to do so with the same dedication and innovation, with the same focus on employees and on problem solving, that had seen us through the dark period.

Going into 1984, we had no intention of reverting to the management styles of yesteryears. We did not believe prosperity had to signal the destruction of all the constructive elements we had put into place during hard times. Nor did we believe that prosperity had to mean outsized labor settlements that could not be digested for long by either party. We knew from experience the harm that they could do and the penalty of contractual rigidity.

So we kept our lines of communication open and continued to discuss candidly facts with the union leadership. At one point, Philip Caldwell, then our Board Chairman, held an unprecedented meeting with 250 national and local Union leaders. He openly talked about such issues as our growing profits, the small car problems, our new Mexican assembly plant, overtime schedules, sourcing, and the company's long-term needs. No subject was out of bounds, and he answered every question they threw at him.

When we sat down to bargain in 1984, we had five distinct goals. They were: obtain a peaceful settlement; preserve our good relationships with the Union and our employees; continue cost-increase moderation and find additional ways to provide labor cost flexibility; provide job security at a fair cost while preserving operating adaptability; and obtain continuing commitments for quality and plant efficiency.

We entered each negotiation fully prepared to be the "target." Frankly, we were wedded to the idea of determining our own destiny. We differed from others

in size, in market share, and in the composition of our workforce. We had a different product mix, different levels of product integration and (because of our capacity constraints) different scheduling. An arrangement that would be relatively innocuous at another company could prove to be extremely difficult to manage at Ford. Eight days before the contracts expired, the union picked GM for the lead settlement, and GM and the union came to terms after a week of "selective" strikes.

When our own bargaining resumed, we hoped to make some major revisions to the GM settlement. We still believed that we had some better ideas. But it was not to be. While we negotiated a number of special features in our agreement, these are of importance mostly to Ford management. Yet, I have to say that given all the circumstances, we have a good settlement and one which reinforces our transformation efforts.

The 1984 Settlement

Briefly, here are the principal features of the 1984 settlement. (1) It continues some level of cost increase moderation versus the past. (2) The agreement strengthens the concept of cost flexibility. (3) We established a broad new form of employment security for employees (the Protected Employee Program (PEP) with a six-year cost cap of $280 million). (4) the new agreement does not hinder our ability to compete. In fact, it commits to many of the things that are necessary if we are to become fully competitive. (5) We gave important continuing impetus to our joint endeavors with the UAW.

This last point deserves special comment. Under the 1984 agreement, our joint training commitment will increase more than three-fold from $28 million in the last contract to about $120 million over three years. New joint programs include: an employee assistance plan to address drug and alcohol dependency and features aimed at problem avoidance in the first place; joint health and safety training; and a joint labor studies program.

All in all, it was a satisfactory round of bargaining for us. We resolved a number of difficult and sensitive issues, issues that easily could have hurt us with both the union and our hourly employees. We dealt openly and fairly with the UAW, and the union, in turn, dealt with us fairly and responsibly. We came out of the bargaining still enjoying a high level of employee trust and goodwill. Moreover, many of the elements of our new agreement, especially the job security and training features, will give us the opportunity to improve our standing with the workforce.

Thus, we did indeed stay on that new course we charted for ourselves in 1980 and with the 1982 settlement. Nothing happened in 1984 to alter our direction or our dedication.

Not that 1984 is the best of all contracts in the best of all possible worlds. From a long-term perspective, it may be that too little progress was made. We do not yet know if the contract is really workable in this changing world's economic arena. But as always, our path to the long term is through the short term.

We are aware of the debate as to whether the new directions we are committed to are now firmly institutionalized. Will we continue to steer a realistic, sound course? Can we count on what we have learned so far (and on what we have already put into place) to deal with future crises? If one swallow does not make a spring, two contracts do not make a sure thing. But let us remind ourselves that come 1987, we will have passed seven years into the eighties and will be left with only three to go.

My fond hope, if not my firm prediction, is that 1987 will confirm 1984 and that the decade of the eighties will truly be recorded as the decade of historic transformation in the auto industry's

labor relations systems. Certainly, I hope this will be true for Ford.

Perspective for the Future

That brings us to still another perspective, that of the future. What do we need, and what do we want? One thing we can say for certain about the future is that it will bring us many new and vigorous challenges. The growing trade deficit, the significance of automobiles in that deficit, the continued distortions of currency valuations, the expiration of Japan's Voluntary Export Restraints, and the growing presence of lower cost auto producers in the U.S. (both non-union and union) will stir a cauldron of boiling competition in the marketplace. These forces may indeed overflow and result in serious future dislocations.

We have come a long way, but we still have a long way to go. In many respects, the decisions and the competition that we have to face in the future will be far tougher than even the ones the company and the UAW faced together these past five years.

In our view, the government is gambling with the future of the U.S. economy with its decision not to pursue additional Japanese import restraints. And it has failed to find a reasonable level in the dollar-yen relationship. The dollar is priced far too high, compared to what most experts think should be the fair rate of exchange. Among other thing, that misalignment contributes more than $1,000 to the small car cost advantage of $2,700 that the Japanese automakers have over us.

Overseas, the Japanese have the capacity to build two million more cars a year than they build at the moment and only one market to send them to—ours. Here in the United States, the third Japanese auto plant opened in New Smyrna, Tennessee, when Nissan began to build Sentras there is well as trucks. The good news is that they are employing some American workers and paying some American taxes, though not as many workers and not as much taxes as they would if they were really full domestic producers of the vehicles they assemble. Major engine and powertrain components are, of course, brought in from Japan. The bad new for us is that their costs are lower. Published estimates show Honda's hourly labor cost at Marysville, for example, to be about $10 an hour less than Ford's. And several other domestic producers, some represented by the UAW, also have workplace arrangements and labor costs more favorable than ours.

No one would have dared predict it a few years ago, but some of our toughest competition is coming from a non-union auto presence in the U.S. and from a lower-cost union sector. But these are facts the future must deal with. And while I have been focusing on Ford, another fact is that all the auto companies, world-wide, must plan to rationalize facilities, production, and markets. This is a fact the UAW, too, must wrestle down, as it considers its next round of bargaining and as it seeks to adapt its past strategies to entirely new situations. They, and we with them (for we are indeed bound together) must carve out approaches responsive to flexibility, security, and fair treatment. What may have worked for the seventies, at least in part, is clearly not good enough for the eighties.

For our part, we have specific labor-related needs. We must forever keep improving the quality of our products. There is no relenting. It is the core of the competitive struggle. We must wage this struggle with the rigorous help of our employees and with our union. Without the highest product quality, there is no long-term company, and there is no union.

We must adjust more quickly to volume and style changes and to shifts in consumer demand. We need to operate without costly, large inventories, yet without fear of shutdown. We have to be more and more efficient. We need to use our human resources more broadly and

more wisely. We need to do all of these things on an ongoing basis, in all of our facilities, not just when there are new products or new plants to be offered.

We are continuing our dialogue with the union on these and on all matters of common interest. And the request of Steve Yokich, UAW Vice President and Director of the National Ford Department, Don Petersen our new Chairman, and Red Poling, our President, along with other senior operating executives, met just this month with Owen Bieber, Steve, and more than 250 local, regional, and national UAW leaders. It was an opportunity for the union to meet our new management team face-to-face, to air concerns and share information. The proceedings of the session are being distributed to all our 88 facilities for local information. Informed dialogue is the precursor to informed action.

At Ford, labor relations is no longer the province of the specialist. Pete Pestillo, Ford's Vice President for Employee Relations, continues to try to teach all of us that labor relations is a line activity and is far too important to be left to the professionals. Labor relations and good employee relations are the responsibility of each member of management, from the line supervisor to the Board Chairman.

We are often told by our union counterparts that management gets the type of unionism it deserves. I hope this is so, because we have worked hard and long to deserve the very best unionism. We have committed time, resources, and leadership. We are dedicated to transforming our labor relationships at all levels, national and local. But we, too, need the fair treatment that people talk about in reference to the terms of trade. Such fair treatment includes finding ways to afford us the same advantages that others are accorded, in different ways if necessary, but with results that even out man-made imbalances.

Conclusion

Because the only real job security can come from a healthy company, we will work closely with the union and with our employees to address the major issues that confront us. There is a strong feeling in our corner that we have so far only started our transformation. What has been achieved to date in terms of new directions, new awareness, and new attitudes, while startling, is but a modest beginning. It will not, by itself, be enough to deal with tomorrow's challenges.

Fortunately, we can continue to address the future, though we cannot control it. Negotiation, like politics, is still the art of the possible. And finally, after all these perspectives, let us remind ourselves once again of Henry Adams' saw: time and experience alter all perspectives.

[The End]

Discussion: The 1984 Auto Negotiations

By Mark L. Kahn

Wayne State University

What our speakers have reported makes clear the remarkable transformation in labor relations that has taken place within the U.S. auto industry in response to fundamental economic changes. Most particularly, the internationalization of auto production and distribution has coerced management and the United Auto Workers into a fervent,

sometimes desperate, search for ways to survive, and perhaps even to prosper, under the kind of open competition from which they were previously immune.

Traditional collective bargaining theory, certainly since the 1950s, recognized that a "crisis" in a unionized plant or company—a situation that threatened the very survival of that employer—was likely to cause (a) deviations (downward) from pattern bargaining, and (b) incentives for union-management cooperation as a means of mutual survival.

What was not anticipated, in the 1950s and 1960s, was how widespread and severe the crisis syndrome in the United States would become, propelled especially by foreign competition and by domestic nonunion competition in a political environment that favors deregulation and an increasing reliance on market forces. In this context, we should not have been surprised that there have been radical substantive changes in the relations between strongly unionized workforces and powerful but economically battered corporations. Although economic givebacks have been among these changes, the innovative and dramatic job security and employee involvement provisions are a far cry from mere "concession bargaining."

I think it is apparent that U.S. auto makers, the UAW, and the workers themselves are all to be congratulated on their demonstrated ability to respond constructively to extremely difficult challenges. So, instead of belaboring that point, I want to return to the theme of this session: to look at these developments in perspective—the perspective of space and the perspective of time.

Scope of Agreements

How widespread will be the effects of these 1984 auto agreements? Have they provided a model that can and will be adopted in other industries? My initial judgment is that there will not be much effect. I do not believe that such agreements are feasible for smaller and less stable firms. Within the auto industry, broadly defined, some of the increased job and income security of the big employers may well mean, as Howard Young indicated, greater instability among their suppliers. This dilemma is applicable to other industries. Also, I do not believe that we can anticipate the adoption of such job security and joint activity measures at nonunionized companies.

In other words, there will still be, among workers, the "haves" and the "have nots" in regard to job security. This audience will not be surprised by the notion that workers who are employed by large and resourceful corporations, and who are effectively represented, are likely to be better off then those who are not.

There is a dimension, however, in which the 1984 auto agreements may spread beyond their immediate beneficiaries. Howard Young reasserted the UAW's belief that public measures are needed for broad based employment security. It is my hope and belief that the knowledge and experience gained through the application of the JOBS and PEP programs, and similar measures wherever privately adopted and implemented, will provide a basis for the design of effective public programs for workers who cannot get into the job banks of the GMs and Fords, but who need that kind of constructive help.

Although the spread of JOBS and PEP programs will be limited, I should note that the employee involvement concept is more adaptable to smaller establishments and to unorganized firms. As more and more workers become active participants in shaping their work lives and relish that role, the practice may prove to be infectious. I hope so.

Future Effect

As to the perspective of time, I predict that these innovations of the 1980s will have lasting effects, enduring even into some future era of economic stability and international equilibrium. Where employees come to be regarded more as invest-

ment commitments than as variable costs and where their involvement in workplace decisions actually pays off in both human and economic terms, the clock is not likely to be turned back. Joint activities and worker involvement lead to changes in workplace organization and supervision that cannot be easily reversed.

A significant aspect of these joint activities, and the complex decisions that are made on this basis, is that for many of the new joint functions there is no provision for resolving impasses. The regular grievance and arbitration systems do not apply. It will be important and fascinating to see how effectively the local joint committees and the national joint committee continue to operate on a consensus basis and whether, in the heavy atmosphere of mutual cooperation, the union members will continue to believe that the union is their advocate. That is a question to which I do not have an answer.

One final point relates to Ernie Savoie's labeling of pattern bargaining as "an inhibiting bargaining concept." Perhaps, in 1984, too much of the GM settlement was imposed on Ford. I do not know. What has been generally impressive to me, however, is the extent to which long-established pattern relationships have been abandoned or modified in the face of incompatible economic realities. When these realities change, however, and are again compatible with patterns, patterns will return. What "comparable" workers enjoy will always be a valid benchmark in collective bargaining as well as in nonunion wage and benefit determinations. It simply has to be assigned less weight in bad times.

[The End]

Discussion: The 1984 Auto Negotiations

By Arthur R. Schwartz

University of Michigan

The two papers have given us a broad perspective on labor and management views of the 1984 auto industry labor contracts. Since the papers are for the most part descriptive and cover material that is familiar to most industrial relations practitioners, I will use them as a springboard to compare the auto contracts with some of the other major labor contracts negotiated in the last two years.

Job Security

The most novel aspect of the 1984 contract round is the job security program. Mr. Young has spent the bulk of his paper describing this program, and rightly so, since the program provides substantial job security for most UAW workers with more than one year's seniority. In fact, the combined job security-guaranteed income stream-SUB chain provides income guarantees for varying lengths of time to virtually all workers covered by UAW contracts.

In making job security the number one priority, the UAW is pursuing a policy that has been pursued by other unions in the major industries. In the 1983 steel negotiations and the 1985 trucking negotiations, new job security provisions were pursued with varying degrees of success. The recent UAW-International Harvester agreement also contained new job security arrangements. By any measure, the UAW-Ford/GM job security provisions

are the strongest won in any of the so-called declining smokestack industries and are among the best of any provisions won outside of the longshore industry.

Additional Provisions

One of the distinguishing features of the auto contracts is that they do not contain some of the aspects of the current "round" of concession bargaining. Missing is the most prevalent current concession: the two-tiered wage structure. The two-tiered wage structure has been used to allow employers to cut labor costs, while letting unions avoid current political confrontation with members over cuts in wages.

The workers who receive the "cuts" in wage rates are the new employees. Sometimes these new employees eventually reach the higher tier (such as in the Teamster agreement), and sometimes they never do (such as in certain airline agreements). This creates two classes of citizens among union workers and the potential for a rank and file revolt in later years. Although new hires earn a slightly lower rate in the auto industry, that has always been the case, and they quickly move up to the regular rate.

In the area of COLA and health insurance, this contract does well relative to some other contracts. The automatic COLA concept has been under attack in certain recent major negotiations. It does not appear in the current Teamsters contract and was severely watered down in the 1983 steel contract. In the auto contracts, COLA survives intact.

Prior to the negotiations, much was made by the companies of the need to cut health care costs. Many presumed that would result in worker premium contributions or a deductible for the workers. Neither of these is in the contracts. The attempts to cut health care costs are limited to cost containment and new choices of care, such as HMOs.

The paid personal holidays that disappeared in the 1982 contract do not appear in the 1984 contract. This appears to confirm the switch in tactics by the UAW leadership from one of creating jobs by cutting hours to direct protection of jobs through various job security and income maintenance programs. It is probably also a result of strong management opposition to any increase in paid time off. It should be noted that there is an attempt to cut hours in the contracts by charging the companies an additional 50 cents per hour for overtime hours over 5 percent of straight-time hours and a pledge to work toward lower overtime.

In adopting lump-sum payments rather than wage increases in 1985 and 1986, the contracts are in keeping with a current trend in collective bargaining. According to the Bureau of National Affairs, 76 contracts, covering 725,000 workers in 1984 alone, contained provision for some kind of lump-sum payment. Lump-sum payments can be considered a pay compromise because they give workers more money without increasing base pay and pay-related benefits.

One other provision missing from the auto contracts is union representation on the company board of directors. This has become increasingly common for industries in trouble, especially airlines. Its absence in autos could be due to anti-trust considerations or could attest to the relative strength of the industry and therefore the lack of a pressing reason for the companies to concede this union gain.

Evaluation

In the context of recent major agreements, labor must be pleased with the auto contracts. Compared to the other giants of labor in the private sector (the Teamsters, United Steel Workers, and United Mine Workers), the UAW has done extremely well. They have received some wage increase, continued COLA, and increased job security without conceding many of the points that other major unions have been forced to give. This has been true because of the current

strength of the auto companies. Given their financial success in 1983 and 1984, after significant concessions in 1982, it would have been difficult for the auto companies to have denied the UAW a good contract. Despite the obvious current and potential future problems in the auto industry, it is certainly in better shape than the steel, trucking, coal, or airline industries.

When there is no immediate threat to survival, innovative planning on all aspects of bargaining is not easy. In the 1984 agreement, job security was the key issue. What about compensation? I think that by including guaranteed increases or guaranteed bonuses in combination with an unchanged profit sharing plan, the parties missed an opportunity to establish a more flexible pay structure to meet any future downturn.

Both papers refer to profit sharing. Mr. Young thought it significant that the companies would re-offer profit sharing in a period when they are actually making profits. Mr. Savoie referred to profit sharing as a safety valve and a form of more flexible compensation. I would ask: what type of safety value do you have if you are simply adding an *additional* form of compensation? One could argue that the difference between the usual 3 percent per year gain to the 2.25 percent plus two years of lump-sum payments is a cut from past increases, and profit sharing makes up that difference. In that case a new precedent has been set. However, I doubt that the UAW considers profit sharing a permanent substitute for any other form of compensation.

Labor costs per hour worked in the auto industry have tended to rise in periods of layoff, due to the increased fixed-cost component of benefits. These fixed costs will rise with the new job security program. Since these are coupled with automatic COLA pay increases that take effect regardless of the health of the industry, something needs to be included in the contracts to allow for flexibility and insure that there is no need to re-open the contract, as in 1982, to do away with scheduled wage increases coming due in the face of a declining demand for labor.

I think that the parties had an opportunity to introduce a more flexible pay formula, such as automatic COLA plus an enhanced profit sharing scheme. Given the expected profitability of the companies in 1985, the members would have seen a payment greater than 2.25 percent of their pay, and the companies would have had the assurance that, if things turned bad in 1986, there would be no guarantee of a bonus or wage increase. This kind of flexible compensation would allow wages to be more responsive to the market in a rapidly changing auto industry.

[The End]

Health Care Cost Containment: An Employer's Perspective

By Richard F. O'Brien

General Director of Employee Benefits General Motors Corporation

The success of General Motors' early efforts at health care costs containment is difficult to measure. However, while some identifiable cost savings have been real-

ized, the potential success of GM's early efforts at cost containment were limited by the following factors: (1) the lack of meaningful data for comparative evaluations of the pilot programs; (2) the reliance on insurance carriers with their limited expertise (and occasionally conflicting interests) to develop, implement, and evaluate the cost containment programs; (3) the limited resources within General Motors to direct and coordinate an integrated program for cost containment; and (4) the reluctance of the corporation, unions, health providers, and insurance carriers to address the issues in a concerted manner.

Despite the negative impact of the preceding factors, GM's early cost containment initiatives did serve to set the stage for later GM efforts to contain health care costs, which culminated in the health care provisions of the 1982 and 1984 labor negotiations.

A United Effort

We realized early in our efforts that long-term cost containment would only result from a unified effort by all of the parties: corporation, management, the unions, our insurance carriers, and our enrollee population. The task we faced was a formidable one, as General Motors provides health care benefits to more than 2.1 million enrollees, or roughly one percent of the U.S. population. Our health care expenditures were in excess of two billion dollars. A concerted effort was required by all parties to ensure the success of any cost containment initiatives.

The ultimate decisions would eventually come to the bargaining table. However, health care cost containment is not an issue that is resolved in the same manner as wage rate adjustment. A wage adjustment has more clear-cut alternatives than cost containment. On the other hand, cost containment requires careful planning and commitment prior to negotiations to sort out among the infinite solutions the most amenable alternatives for the affected population.

In an effort to cooperatively approach the issue of cost containment, bargaining agreements since 1979 with the UAW included provisions for establishing a Corporation-Union Committee on Health Care Benefits. However, in 1982, the economic condition of the auto industry and the continuing rise in health care costs led the corporation and the UAW to agree to place more emphasis on cost containment. The Committee allocated $500,000 per year toward consultant fees and data gathering costs to explore and implement a variety of pilot projects designed to contain inappropriate utilization and to deliver health care in a more cost-effective manner.

In committing to this effort, the corporation and the UAW were able to collect sufficient data and to gain experience with selective benefit redesign to lay the groundwork for major revisions of GM's health care coverages. It is important to note that while the Corporation-Union Committee on Health Care Benefits was established to help lower the costs of our hourly workers' health care coverages, the resulting health care cost containment initiatives were also extended to GM's salaried work force.

An appreciation of the magnitude of the health care cost problem at GM can be gained by observing the trend of health care costs over the eleven-year period from 1973 to 1983. GM paid $575 million in 1973, or $765 per contract (each contract includes the employee, active or retired, and eligible dependents) for health care coverages for employees, retirees, surviving spouses, and their dependents ("eligibles"). The $575 million expended on health care was approximately five percent of the total compensation package of GM employees in 1973. Since then, the cost of health care has almost quadrupled, totaling $2.3 billion in 1984, or $2,990 per contract. The number of GM health care contracts did not

increase as fast as the corresponding aggregate expenditures. Therefore, there were other factors besides the increase in the number of GM health care contracts that resulted in the increase in health care costs at GM.

Causes of Rising Health Care Cost

Several factors have contributed to this rising cost of health care. Central among these factors are broadened health care coverages, aging of the population, intensifying competition in the health care market, excessive applications of existing technology, availability of costly new technology, and expensive reimbursement methods. In general, these factors apply equally to GM and to the national environment.

The inflation spiral for national health care expenditures began to gain momentum in the 1960s when the federal government implemented Medicare and Medicaid. A similar effect occurred at GM, when it expanded its health care coverages in the 1970s. Since 1973, GM has supplemented its basic coverages, Hospital, Surgical, Medical, and Drug program (HSMD) and Comprehensive Medical Expense Insurance Program (CMEIP), with dental coverage in 1974 and vision coverage in 1977.

The increasing average age of the population contributes to health care cost increases because average per capita spending for health care is 3.5 times greater for elderly persons than for those under 65 years of age. Thus, the aging population exacerbates national health care costs primarily through increased utilization. The problem of the aging of the population also applies to General Motors, inasmuch as GM's health care benefits are extended by the corporation at no cost to retirees in both the hourly and salaried work force.

GM's population has been growing older in two different dimensions. First, GM's retiree population relative to its active work force has been steadily increasing. In 1973, there were 4.4 active employees for every retiree, compared to 1.9 active employees for every retiree in 1984. This contributes to increasing health care costs because GM's health care coverage for retirees is more expensive than for active employees. As a result, GM payments for the full range of health care benefits on behalf of retirees contribute significantly to the increasing cost of GM's health care coverage and therefore impacts all those covered by GM's plan.

Secondly, the average age of GM's active work force has been increasing since 1973 because the number of new entrants into the work force has declined as the GM work force has been reduced. Currently, the average age of GM's active work force is approximately 41 years, as compared to approximately 38 years in 1973. This compares to a national average of 36 years. As already discussed, older employees generally utilize more health care services and the aging of GM's active work force plays a significant role in the increase in health care costs.

In 1973, there were approximately 17 physicians for every 10,000 people in the U.S. With medical schools graduating an increasing number of doctors each year, this number increased to 21 physicians for a comparable number of U.S. citizens in 1983. Because of this growing abundance, some argue that, as a result of this expanding supply, physicians are now more frequently engaged in creating additional demand for their services. When this is coupled with the fact that the judgment of the medical profession is being reviewed more frequently in the courts, it is not surprising that doctors are resorting to the use of seemingly unnecessary tests and services to protect their own interests. This use of unnecessary medical procedures, referred to as inappropriate utilization, inflates GM's medical expenditures without contributing to the welfare of the employees.

The excessive application of existing medical technology has also been cited as a factor in rising health care costs. In today's competitive environment, each hospital is concerned about remaining financially viable, projecting the image of a modern facility, and avoiding the risk of malpractice litigation. The result has been an incentive to utilize relevant medical technology whenever available. Currently, few constraints are in place to limit unnecessary use of such technology.

Continual advancements in medical technology further contribute to the increase in health care costs. While advances in medical technology have enhanced the quality of available care, new tests and procedures often become additions, rather than replacements, to previously accepted methods. This adds to unnecessary and inappropriate utilization of health care. Other technological improvements, such as organ transplants, have permitted lives to be prolonged; however, the cost of such procedures adds significantly to the burgeoning health care bill.

Traditionally, reimbursement for the medical profession has been based on a fee-for-service concept. This form of health care cost reimbursement can act as an unintended incentive for providers that further contributes to the health care cost problem. In this regard, revenue earned by physicians and hospitals has been a function of the total amount that is billed. Therefore, the reimbursement mechanism can encourage physicians and hospitals to administer excessive applications of medical services in an effort to maximize revenue.

Individually, companies like GM are attempting to minimize the need for government intervention in health care by demonstrating an ability to initiate and administer successful health care cost containment measures. In attempting to reduce health care costs, companies today are more frequently offering managed health care systems, also referred to as capitation or prepaid programs. In a managed health care system, providers of health care agree to implement utilization controls and to provide discounts in exchange for a guaranteed volume of patients. In practice, the providers of health care services receive a fixed monthly payment per enrollee for agreeing to provide the enrollee all appropriate medical services in the future.

The first really significant manifestation of GM's efforts to contain health care costs resulted from the pilot programs established by the 1982 GM/UAW Corporation-Union Committee on Health Care Benefits. Among these were: prior authorization and ambulatory surgery initiatives; maximum allowable cost and mail order prescription drug programs; second surgical opinion programs; and dental capitation programs. These pilot programs had targeted annual savings of about $20 million. These joint programs also aided in building the mutual trust and commitment needed to address health care cost containment on a full-scale basis.

1984 Collective Bargaining Developments

The efforts of the 1982 GM/UAW Corporation-Union Committee on Health Care Benefits provided the framework for the 1984 GM-UAW agreement on health care. The agreement by management and the union to offer hospital, surgical, medical, and prescription drug coverages as a three-option plan, to be known as the Informed Choice Plan, addresses the issues of controlling health care utilization through managed health care systems and controlling health care price by the injection of competition into the delivery system. The program modifications became effective April 1, 1985, and are extended to salaried employees as well as hourly. The Informed Choice Plan offers enrollees a choice of three options where geographically available: (1) preferred provider organization option, (2) health

maintenance organization option, and a (3) traditional insurance option with predetermination requirements.

Overall, the Informed Choice Plan (ICP) should play a major role in reducing the corporation's health care expenditures in the near term, and it should allow the corporation to better control costs in the future.

In addition to the cost/benefit characteristics of the managed health care options (PPOs, HMOs, and traditional insurance plans), the Informed Choice Plan includes a unique cost reduction incentive agreement which was negotiated with GM's major health insurance carriers with the concurrence of the unions. In this agreement, Blue Cross-Blue Shield and Metropolitan Life Insurance Company, our two health insurance carriers, are committed to reduce claims and administrative costs with the aim of reducing health care costs in real terms of ten percent over the term of the contract.

Apart from the Informed Choice Plan, another notable cost control initiative agreed to during the 1984 negotiations is a revision to the substance abuse coverage. Again, in the spirit of improving the quality of care delivered and controlling inappropriate utilization, coverage for substance abuse treatment will require review and approval of all but the first course of treatment prior to receipt of services. To further reduce the cost of the substance abuse coverage and to increase compliance with the new predetermination requirements, substance abuse coverages will be insured as a separate benefit (through Connecticut General), and a separate organization (Family Services America) will be retained to administer the predetermination program.

Although we had achieved mutual trust and commitment from management, the unions, and our carriers to address the problems at the bargaining table, we needed to obtain the firm commitment of our enrollee group if our ICP would be successful.

Consultant studies done in cooperation with the Corporation-Union Committee on Health Care Benefits showed that there was excessive overutilization of our benefits programs by both enrollees and providers. Our utilization patterns are reflected in the following 1982 and 1983 statistics.

(1) Rates for admission and total days of care for GM employees were nearly 9.1 percent greater than the national average. (2) Maternity lengths of stay in Michigan represented nearly 1.2 days longer than other state statistics. (3) GM averaged nearly 11.8 hysterectomies per 1000 eligible women; a 60% increase over the national average of 7.4. (4) Nearly 32 percent of the total annual dollars spent by the GM Insurance Program in New Jersey could be considered questionable compared to state statistics.

As a result of these patterns, there was a definite need to alter both enrollee and provider behavior through the ICP and a massive communication effort. Our carriers undertook the responsibility of informing the provider community of our program, while we spent nearly four million dollars to communicate the package to our employees and their families.

As a result of these combined efforts, the first enrollment period of the ICP resulted in over 60,000 employees and retirees (156,000 individuals including dependents) switching to managed care systems (either HMOs or PPOs). This is an increase of over 85 percent from the previous year and brings the total number of employees and retirees under managed care to 128,000 which, including dependents, represents over 350,000 people.

Conclusion

In conclusion, General Motors provides 2.1 million individuals, or about 1 percent of the U.S. population, with health care coverage. Thus, implementation by General Motors of the Informed Choice Plan

represents a major initiative on the part of a private sector corporation to modify the health care delivery systems in the U.S. This effort could only have occurred with the cooperation of all the parties—management, the union, our carriers, the consultants, and the enrollees.

The barriers that impeded cooperation in the past must be removed if long term cost containment objectives are to be realized in the private sector. While GM's Informed Choice Plan is not a total solution to the health care cost problem, it provides a solution whereby cost containment is achieved without sacrificing quality of care.

[The End]

Organized Labor's Perspective on Rising Health Costs

By Karen Ignagni

Department of Occupational Safety, Health and Social Security, AFL-CIO

I am delighted to have an opportunity to participate in this conference on behalf of the AFL-CIO. For many years organized labor has pursued a broad agenda for health care reform, and one of our highest priorities has been to contain the rate of growth in health care costs. Although the focus of our session is on labor-management efforts to reduce the rate of increase in the cost of employee health benefit plans, when discussing health care cost containment we cannot afford to overlook the role which government (federal and state) can play in complementing cost containment initiatives in benefit plans, as well as in preventing certain inequities which may result from unfettered competition in the private sector. I would like to address this issue and summarize what unionists are doing in Congress, in state legislatures, and in local coalitions, as well as at the bargaining table, to reduce the high cost of health care and to improve access to services.

Organized labor does not believe that we can solve through private action alone the complex problems which exist in the health care system. Nor do we believe that the passage of cost containment legislation will be sufficient in and of itself to reduce health care inflation. Rather, if we are to achieve a solution to the health care crisis, which is permanent and effective in the long run, we believe that we must make changes in health benefit plans which encourge providers to practice in an efficient and cost-effective manner and work for the passage of legislation that supports and supplements negotiated health benefit initiatives.

The Kennedy-Gephardt Legislation

Why is legislation needed? Trade unionists are concerned that the so-called competitive system may work for large employer groups with relatively low health care risks and against smaller groups, those in high-hazard industries, those with poor health histories, or those with large numbers of older workers. There is a great deal of anecdotal evidence to suggest that, by agreeing to various selective contracting arrangements, many in the former group are able to obtain significant premium savings from insurers, while the latter group does not find insurers willing to offer comparable discounts.

In effect, competition in the private sector may not work for all employers. Cost containment legislation, on the other hand, would limit the rate of growth in health care costs for all employer groups regardless of size, health status, or age. In addition, the passage of legislation would allow states to more equitably distribute the cost of uncompensated care among all private payers and prevent hospitals from looking to the private sector to make up revenues forgone as a result of cutbacks in public programs.

At the national level, the AFL-CIO is supporting the passage of legislation introduced by Congressman Richard Gephardt and Senator Edward Kennedy. The Kennedy-Gephardt legislation would encourage states to develop their own cost containment programs within specific federal guidelines. State programs, unlike the Prospective Payment System for Medicare, would apply to all payers, public and private, thereby eliminating the opportunity for cost-shifting.

The AFL-CIO also is encouraging its affiliated international and local unions to support the passage of statewide cost containment programs, and we are developing a model state statute, which includes provisions to limit the rate of increase in hospital operating costs, capital expenditures, and expenditures for inpatient physician services. It also requires full data disclosure and sets up a pooling mechanism to deal with indigent care.

In our view, this legislation will: (1) prevent cost shifting; (2) control capital expenditures as well as operating costs, thereby setting up a system which does not encourage administrators to substitute capital for labor; (3) more equitably distribute throughout the system the burden of uncompensated care, which has made it almost impossible for some of our best facilities and teaching hospitals to compete fairly in a competitive system; and (4) give labor and management access to data concerning provider costs and utilization patterns, which is crucial for making efficient and effective choices in health benefit plans.

Union Role

In discussing cost containment at the bargaining table, I would like to share with you some general observations about how the role of trade unionists in health benefits negotiations has evolved over time and directly respond to the charge that, because of so-called first dollar coverage, organized labor has little reason to be concerned about rising health care costs.

Organized labor's involvement in decisions concerning health benefit plans is no longer limited to negotiating with management over the level of employer contributions to health benefit plans. Unfortunately, in the past, neither management nor labor was sufficiently aware of how and where those contributions were being spent. Currently, labor and management have begun to take a more active role in decisions that affect the administration of health benefit plans, choice of insurer, and (in some cases) selection of providers. This new awareness about the importance of "managing" the flow of health care dollars has come about as a result of the pressure of spiraling health care costs, which on a national level amount to approximately one billion dollars per day.

The question with which all of the players on the health care stage are struggling is how can health inflation be controlled. From the standpoint of collective bargaining, the question is how can we put the brakes on rising health care costs and prevent health expenditures from consuming a disproportionate share of the total contributions for all collectively bargained benefits. Some in the management community respond to this question by proposing to penalize union members, who, they believe, are not sufficiently sensitive to the problem of rising health care costs, because they are insulated from the

problem (so the theory goes) by first-dollar coverage.

For the record, it should be clear that very few unions have first-dollar coverage. Even the best labor negotiated health plans are deficient in terms of providing coverage for preventive care and diagnostic services—the utilization of which can keep people healthier longer and detect disease at its earliest stage, rather than waiting until an expensive hospital stay is warranted. The average union member does not have coverage for preventive care and must pay deductibles and coinsurance for basic benefits. Some of our union members also must pay for part of their health insurance premiums. Some, and very often those working in hospitals and nursing homes, are limited to individual coverage and cannot obtain family protection through their employer. It is a myth, therefore, that union members are not sufficiently sensitive to rising health care costs or that they are unaware of the high price tag attached to negotiated health benefits. In fact, unions have forgone needed improvements in other benefits to preserve existing health care coverage.

Organized labor stands ready to work with management to develop and implement legitimate cost containment initiatives, which will improve benefit administration and limit rising health care costs without reducing benefits. Labor has supported preadmission testing and certification programs, mandatory second surgical opinions, concurrent and retrospective utilization review, and has joined with management in encouraging members to join alternative delivery systems. A number of unions are now participating in labor-management committees and attempting to begin to address health care issues long before their current contract expires, so that positive and effective initiatives can be brought to the bargaining table.

The economic imperative for management is to control expenditures for health care benefits. To the extent that labor can bring alternatives to the bargaining table that promise to save money, we will be successful. Employers, on the other hand, must realize that increasing employee out-of-pocket payments involves shifting of costs onto employees, which may in the short run save money, but will in the long run do very little to alter provider practice patterns. Since physicians are the primary decision-makers in the health care market place, labor and management should attempt to develop cost containment initiatives which eliminate unnecessary hospitalization and unnecessary testing and move away from paying physicians on a piece rate fee-for-service payment system.

Health Care Coalitions

The other avenue through which organized labor is working to contain health care costs is in health care coalitions. At the national level, the AFL-CIO, along with the American Hospital Association, American Medical Association, Blue Cross, the Business Roundtable, and the Health Insurance Association of America, is participating in the Dunlop Group, which is coordinated by former Secretary of Labor John Dunlop.

The members of the Dunlop Group have encouraged their local counterparts to work together to develop programs to address the high cost of health care along with the inaccessibility of the medical care system to jobless workers who have lost their health care coverage, as well as those who, as a result of federal budget cuts, are no longer eligible under public programs for health care protection.

There are currently 113 coalitions around the country. Organized labor is participating in 45 of them. In a survey by the Dunlop Group, local coalitions were asked what they considered to be their most significant accomplishment. The vast majority ranked dialogue as their most successful program. Education of coalition members ranked second as the

most significant accomplishment. What coalitions are saying to the Dunlop Group in general, and their own organizations in particular, is that coming to a table with organizations that have had very divergent views on health care, in the short run, is a valuable experience and, in the long run, may produce positive change.

Participants on both sides of labor-management committees on health express similar views. They are frequently surprised about exactly how closely labor and management interests (as payers of health care services) can converge. That is not to imply that there are small differences of opinion about issues such as cost-sharing. But what many trade unionists have found is that, if they play an active role with management in discussions about cost containment, management can become supportive of initiatives that reduce the rate of increase in health care costs and do not merely reduce benefits or shift costs to employees. For its part, management must be willing to regard labor as an equal partner in the effort to develop solutions to the health care crisis and must be willing to disclose data with respect to all aspects of health benefit plans, including insurance premiums, administrative fees, and expenditure trends.

Access to Health Care

Our topic has been health care cost containment. I hope that you now have a better sense of the way in which the AFL-CIO is attempting to address this complex problem. Before concluding my remarks, however, I would like to emphasize that in our pursuit of ways to reduce health care costs, we cannot forget about the growing problem which exists with respect to access to care.

Approximately 30 million Americans have no health insurance protection whatsoever. According to the Department of Health and Human Services, another 20 million people under 65 have "inadequate" coverage. Facilities, such as inner city public hospitals, which have always been the providers of last resort for the uninsured, are having serious financial problems and cannot accommodate the growing demand for service from the uninsured or the large numbers of patients being transferred from proprietary hospitals due to lack of coverage.

In addition, and as a direct result of cutbacks in maternal and child health care programs, for the first time in the last 15 years, there has been a slowdown in the rate of decrease in U.S. infant mortality rates. It is clear that lack of access to care has severe negative implications and cannot be adequately dealt with until all providers and all payers bear their fair share of the social responsibility of treating those without health care protection. Labor and management have a significant stake in this issue and should be willing to work with their respective state legislators to see that an equitable solution to this problem is found.

[The End]

The Impact of Survey Feedback Upon Member Perceptions of the Union

By Mitchell W. Fields and James W. Thacker

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Survey feedback represents a popular common method of implementing Organizational Development (OD) efforts and can be defined as a technique aimed at collecting and feeding valid data back to members of an organization. The goal of survey feedback is to institute meaningful and lasting change in an ongoing organization[1]. Although survey feedback and related techniques for gathering and disseminating information have been employed in many different companies and industries, union officials have yet to employ this mechanism for improving attitudes of the rank and file toward their union. There are a few reasons for this, and we will discuss two of them.

First, unions in their inception are spontaneously developed organizations that fulfill an immediate need. The primary purpose of a union is to serve its membership. Initial formation of a union requires that a majority of workers desire representation. In their early years, out of necessity, unions are very dynamic. From a systemic perspective,[2] new unions are open to inputs from the environment and display a large amount of flexibility and responsiveness to member needs. When the initial fervor surrounding the beginning of a union subsides, the union slips into a more bureaucratic pattern. This process of moving from a crisis organization to a more stable bureaucratic structure is not unique to the union setting but is a more general byproduct of organizational growth and development [3].

Many of the unions currently in existence have been established for a long period of time. The initial reasons for certification have long been forgotten. During the transition to their current structure, the membership of unions has changed. The new breed of union members do not feel as ideologically attached to unions as do those who were there at the beginning[4]. With the advent of the union shop and automatic check-off, instances have arisen where some new employees have not even been aware that they were union members. As unions become larger, they create their own forms of bureaucracy. This often results in increased administrative demands, which result in less opportunity for union officers to interact with the rank and file[5]. Union officials, however, still believe that the union provides its members the best form of protection available. As a result, to suggest that union officials require assistance to improve the ability of unions to serve their membership appears sacrilegious to union officials.

There is a second problem that has kept many unions from becoming involved with survey feedback and related techniques. Survey feedback typically requires the assistance of external researchers and/or consultants. Union

[1] D. A. Nadler, *Feedback and Organizational Development: Using Data Based Methods* (Reading, MA: Addison Wesley, 1977).

[2] See D. Katz, and M. Kahn, *The Social Psychology of Organizations* (New York: John Wiley and Sons, 1978).

[3] S. Sarason, *The Creation of Settings and the Future Societies* (San Francisco: Josey Bass, 1978).

[4] M.E. Gordon, J.W. Philpot, R.E. Burt, C.A. Thompson, and W.E. Spiller, "Commitment to the Union: Development of a Measure and an Examination of Its Correlates," (monograph) *Journal of Applied Psychology*, Vol. 65, pp. 479-499.

[5] T. Selznick, "Leader As Agent of the Led," *Human Relations in Administration*, edited by Dubin (New York: Prentice Hall, 1951).

leaders generally do not perceive researchers in a favorable light. Elected union officials have exhibited a distrust of consultants and/or researchers because of their association with management [6], union busting[7], industrial engineering, and time and motion studies[8]. Union officers may have a general distrust of research and particularly attitude surveys, as surveys have been used extensively for union prevention and union busting[9].

Even with all these problems, there is evidence that the perceptions of union leaders are changing. Researchers in different academic disciplines are attempting to overcome these stereotypes. The Industrial Relations Research Association (IRRA) has continually attempted to focus research at both the international and the grass roots level. The participants at IRRA conferences have included, along with academic researchers, the representatives of different sectors of labor. In a related effort, Division 14 of the American Psychological Association has established a task force which has been working toward improving the relationship between union leaders and psychologists.

Potential Uses

Researchers interested in collecting data on union elections, certification issues, and union voting behavior have traditionally employed faculty unions as subjects. This is because the faculty union is more accessible to researchers than other unions. As union leaders become convinced that there are benefits to be gained, other unions will become available for research. As Stagner[10] has suggested, the union leaders' problems today are much more complicated than in the past. He further states: "Despite the distrust of psychologists . . . union leaders will soon recognize the gains to be derived from using psychologists."

One area where organizational researchers may contribute relates to the use of organizational development techniques aimed at improving rank and file perceptions of the union. Prior union experience with surveys have typically been limited to the investigation of management issues. Even Quality of Worklife (QWL) surveys, which involve joint union management participation, are for the most part aimed at work-related issues.

This paper has established a grounding which suggests that the union represents an organization in and of itself. Furthermore, as the union bureaucracy develops, union officials find greater constraints on their time. There is less time spent dealing with issues of concern to the rank and file, while more time must be spent on administrative and other related matters. This is particularly true of non-contract bargaining periods. Between negotiations, officials who spend time on member concerns do so as a response to the more vocal ten percent, while the needs of the silent ninety percent remain ignored [11]. Union leaders, unlike managers, are subject to reelection after a fixed term in office. If the membership perceives the leadership as not fulfilling their obligations, the leadership is subject to removal. Survey feedback represents an excellant mechanism for union officials to employ in directing increased energy at the silent majority.

This paper addresses the impact of employing survey feedback in two local unions. Evidence suggests that survey feedback has been successful in a number

[6] R. Stagner, "The Future of Union Psychology," *International Review of Applied Psychology,* Vol. 30, 1981, pp. 321-328.

[7] S. Barkin, "Psychology as Seen by Trade Unionist," *Personnel Psychology,* Vol. 14, 1961, pp. 259-270.

[8] M.E. Gordon, and R.E. Burt, "A History of Industrial Psychology's Relationship with American Unions: Lessons from the Past and Directions for the Future," *International Review of Applied Psychology,* Vol. 30, 1981, pp. 137-156.

[9] *Ibid.* and Barkin, cited at note 7.

[10] Stagner, cited at note 6.

[11] G. Watts, Address to Michigan Bell Management and the Communication Workers of America Union Leadership, Michigan Inn, Southfield, April, 1983.

of different types of organizations,[12] and there is no reason to expect anything but a positive impact in the union setting. This study focuses on three local unions which belong to the same international union. For the purposes of this investigation, the locals will be referred to as Locals A, B, and C. Locals A and B had previously been involved with survey feedback, Local C had no experience at all.

The Intervention

Prior to the present study, Locals A and B became involved in a joint data gathering process as a function of their involvement in a QWL intervention. A part of the intervention process included the collection of survey data on both union and management issues. This afforded the union officials of Locals A and B the opportunity to become acquainted with the survey feedback process.

During the course of the QWL intervention, the unions collected data on relevant member perceptions and attitudes. The process required that external researchers (the authors) meet with union officials to feed back the results of the data obtained from members. The feedback was followed by a discussion of the implications of the data. Each chief steward in Locals A and B received a report describing the responses of members specific to their group. They then worked with the researchers on an appropriate action plan for feedback to their constituents. Discussion followed regarding how to facilitate the feedback process and obtain input from the rank and file to improve the problem areas raised.

At the feedback meetings, union officials from both locals discussed how they could change their manner of interacting with members. The data had indicated that the rank and file perceived union officials as not generally concerned about their needs. The extent of the negative attitudes expressed by members surprised the officers, and this information was acted upon. The chief stewards took steps to remedy this situation. They met with stewards and then with the rank and file to discuss methods of improving rank and file perceptions of the union.

Although not formally documented, the researchers noted that support for the "new approach" was widely dispersed throughout Local A. Encouragement and support from all officers of the local for the concept of survey feedback was evident. This "total support" for survey feedback was not evident in Local B. Although the chief steward did indicate a determination to operate in a more consultative manner, upper level support at the local was mixed. Local C had no prior experience with QWL or survey feedback, and there is no reason to believe that they have undertaken any steps to modify their image.

This research was conducted in a new functional work district of a large midwestern communications company. Prior to the data collection, the company reorganized itself and created this new district. The nature of the work performed by the unionized employees ranged from clerk/tellers and sales to the investigation of unpaid bills. All employees were transferred from old locations to new jobs within the district. The staff included both surplus employees who had been awaiting reassignment and employees who had specifically requested a transfer into the new district. Each of the three locals was representing employees in similar jobs. All of these employees were new to their jobs.

The manager of the new district initiated discussions with union officials regarding the possibility of implementing a QWL process soon after receiving this

[12] R.T. Golembiewski, et al., "Estimating the Success of OD Applications," *Training and Development Journal*, April, 1982, pp. 85-95; J.M. Nicholas, "The Comparative Impact of Organization Development Interventions on Hard Criteria Measures," *Academy of Management Review*, Vol. 7, 1982, pp. 531-542.

new assignment. He established a steering committee including representatives, both union and management, from all work locations represented by the three locals. After a great deal of planning, it was decided to survey the employees prior to QWL implementation. This survey was designed to provide information in two areas: first, for use by QWL committees and problem solving teams to generate valid information with the goal of implementing positive organizational change; second, to enable the local officers to determine member perceptions of the local with the goal of impacting positively upon these perceptions.

The Study

A survey instrument was developed for the present study with both union and management representatives providing input regarding the information collected. The researchers encouraged the local unions to use the opportunity to obtain survey information regarding rank and file attitudes toward the union. The two locals that had previous experience with the survey feedback process fully endorsed the idea and were instrumental in obtaining Local C's support. Local C was initially hesitant concerning both dealing with researchers and gathering data on member attitudes toward the union.

The chief stewards of Locals A and B, because of their previous involvement in survey feedback, had changed their style of dealing with the rank and file. The district in which the study took place was created eight months prior to the present investigation. Since its inception, the officers of both Locals A and B had been treating their new rank and file members with a more interactive style. The officers of Local C did not have any previous experience with survey feedback. It is therefore hypothesized that the rank and file perception of their chief steward's consideration in Locals A and B will be more positive than Local C's rank and file perception of their chief steward. Similarly, the participative behaviors previously established by officials in Locals A and B should result in a more positive attitude toward the union by the members of Locals A and B when compared to the members of Local C.

It has been argued that commitment is a more stable measure than job satisfaction[13]. If this is also true of union commitment, then it may take longer for the behavior of union officials to impact on the union commitment of the rank and file. For this reason, it is difficult to suggest that the changes in attitude toward the union in Locals A and B will translate into a similar change in union commitment in only eight months.

Individuals do not participate in union affairs for a number of reasons. The survey feedback process employed in the present study was designed to impact on attitudes, not participation in the union. As a result, no difference in the amount of participation between locals is expected. If however, the differences noted above are not a function of survey feedback, but rather because Locals A and B have higher participation and interest in their local union, then a significant difference between Locals A and B when compared to Local C should be found.

All participants were members of Local A, B, or C. Survey respondents included 13 members of Local A, 52 members of Local B, and 29 members of Local C. They were all office workers who were primarily required to perform such duties as teller, sales, and investigation of upaid bills.

Several variables were measured in the present investigation. Attitude toward the local union was measured by a nine item scale (alpha = .72). Union committment was measured by a twenty-three item

[13] L. Porter, R. Steers, R. Mowday, and P. Boulian, "Organizational Commitment, Job Satisfaction, and Turnover Among Psychiatric Technicians," *Journal of Applied Psychology*, Vol. 59, 1974, pp. 603-609.

scale which represented an empirical reduction of a larger scale developed by Gordon, Philpot, Thompson, Burt, and Spiller[14]. A measure of chief steward consideration consisted of four items paralleling most measures of supervisory consideration (alpha = .85). Participation in the union was measured with a nine item scale, developed by Huszczo[15] (alpha = .9).

To test hypotheses raised in the previous section, the responses of the members of Locals A and B were pooled and compared with the results from Local C. Whereas Locals A and B had previously engaged in survey feedback and changed the nature of their interactions with their members, this was not true of Local C.

Results

Table 1 presents descriptive statistics for each variable in the study broken down by local union. Table 2 presents the results of analyses pooling the results of the two experienced locals and compares them to Local C. In terms of the perception of the chief steward's consideration, the analysis indicated significant effects ($F = 9.3$, $p < .01$) as a function of experience with survey feedback. An analysis of the means presented in Table 1 indicates that chief stewards were perceived as most considerate by members of Local A (mean = 20.9) and least considerate by members of Local C (mean = 14.3).

Significant effects are noted for member attitude toward the local on the analysis comparing Locals A and B with C. ($F = 11.4$, $p < .01$). As in the previous analysis, the means on this variable indicate a positive trend from Local C (mean = 27.2) to Local A (mean = 34.4).

The analysis pertaining to union commitment did not display a significant effect across the experience dimension ($F = 1.4$). Although the mean commitment levels from the three locals varied in the hypothesized direction, no substantive conclusions can be derived from the present analysis.

The final analysis addressed the differences across locals in member participation in union affairs. No significant effects were detected for the analysis ($F = .54$). Similar to union commitment, all mean values varied in the hypothesized direction.

Discussion

The results of the present study indicate that unions who utilize the survey feedback process to facilitate change have members with more positive attitudes toward both their chief steward and their local union. Of three locals investigated, there was a definite trend that suggested that Local A, with the greatest commitment to the survey feedback process, had members with the most positive union related attitudes. Conversely, Local C, which had no experience with survey feedback, had members with the least favorable attitudes toward their chief steward and their union.

Four variables were investigated in the present study. Two indicated significant effects in the hypothesized direction. The first, attitude toward that union, represents a measure of member favorability toward the union. This variable taps the extent to which members feel the union has the best interests of the workers at heart and the extent to which officers are perceived as fulfilling their mission. The results clearly indicate that there is a difference in member attitude toward the union as a function of local union experience with survey feedback. There is additional evidence that supports the contention that the differences between the locals on this variable are a function of survey feedback experience and not a function of factors that were not measured. The survey data collected from the

[14] Gordon et al., cited at note 4.

[15] G. Huszczo, "The Relative Importance of Variables Related to Union Activities," Paper presented at the 88th Annual Convention of the American Psychological Association, Montreal, Canada, 1980.

members of Locals A and B at the time of their initial survey feedback experience were examined to determine the baseline for these locals on this variable. In their initial experience with survey feedback, prior to this study, the mean responses for members of Locals A and B on this variable were 27.1 and 27.2 respectively. If this can be considered baseline data, these results compare with the responses of the members of Local C who indicated a mean of 27.2 in the present investigation.

Member perceptions of chief steward consideration represented the second variable to display a significant effect as a function of local union experience with survey feedback. As predicted, the members of Locals A and B perceived a greater level of chief steward consideration than the members of Local C.

Of the four variables investigated, union commitment and union participation displayed nonsignificant results. Although cell means varied in the predicted direction in both cases, firm conclusions cannot be drawn. Certainly, of the four variables investigated, union commitment and union participation tend to be the most stable. The work of Steers, Porter and their associates[16] on organizational commitment has suggested that this variable is stable and changes only slowly over time. Because of the high congruence between the Gordon et al.[17] measure of union commitment employed in the present study and the Steers[18] measure of organizational commitment [19], it may be assumed that the same factors are acting. If union commitment represents a stable variable subject to slow change, then the time period in the present study may not represent an adequate temporal framework.

A similar argument may be leveled at the degree of member participation in the union. The measure employed in the present study was originally developed by Huszczo[20] as a self report measure of union participation. Members are requested to indicate the extent of their involvement in union affairs on a day-to-day basis. Unlike attitudes toward the union and the perception of chief steward consideration, participation is less apt to be influenced by a survey feedback design. Similar to union commitment, participation will be more stable over time and less subject to immediate influences. The results of the present study appear to support these arguments.

One criticism which may be leveled at the present study concerns the cross-sectional nature of the research design. At one point in time, three different locals were measured with respect to member attitudes. A difference in attitudes across locals was noted. This difference appeared concomitant with local use of the survey feedback process. It is entirely possible that other variables could account for this difference. However, several safeguards were taken to insure the integrity of the conclusions. First, to control for potential job differences, the members of all the locals performed jobs of approximately the same scope and level. Second, to control for management-induced differences, the members of all three locals worked for the same third level manager. In some cases, first and second level managers supervised employees in more than one local within the study. Ideally, to draw firm conclusions, data of a more longitudinal nature is required. Until this data becomes available, the present research represents the first attempt to document the impact of survey feedback on unions.

[16] Cited at note 13.

[17] Cited at note 4.

[18] R.M. Steers, "Antecedents and Outcomes of Organizational Commitment," *Administrative Sciences Quarterly*, Vol. 22, 1977, pp. 46-56.

[19] C.V. Fukami, and E.W. Larson, "Commitment to Company and Union: Parallel Models," *Journal of Applied Psychology*, Vol. 69, 1984, pp. 367-371.

[20] Cited at note 15.

TABLE 1

Means on critical variable broken down by local union

	N	Attitude toward local union	Chief Steward consideration	Union commitment	Participation in the union
Local A	13	34.4	20.9	80.8	20.1
Local B	52	30.7	16.8	77.2	17.8
Local C	29	27.2	14.3	73.9	17.4

TABLE 2

ANOVAs for Comparison of Experienced with Inexperienced Locals

	Attitude toward local	Union committment	Participation in union	Chief Steward consideration
Local A & B vs. C (F values)	11.4**	1.4	.59	9.3**

*p < .05.

**p < .01.

[The End]

Changing from a Rotating to a Permanent Shift System in the Detroit Police Department: Effects on Employee Attitudes and Behavior*

By John D. Owen

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There is evidence in the U.S. and other industrialized countries of a long-term, upward trend in the proportion of employees who are shift workers—that is, who work on other than the standard daytime schedule. This trend is in contrast to other long-term trends in work schedules that have been more accommodative of employee needs:[1] shorter workweeks, longer vacations and holidays, and earlier retirement. The increase in shiftwork has also occurred at a time when research results have tended to confirm the expectation of negative psychological, social, and biological effects of different types of nonstandard schedules.

The increase in shiftwork is a response to important economic and social needs, and it is not clear that this trend will be reversed. However, research on the costs that shiftwork imposes on employees has been one factor in an increased interest in methods to ameliorate its effects. For example, study of the Circadian rhythms of the body helps us to understand reactions to changes in work and sleep schedules and to learn which bodily functions will adjust to a night schedule and how long it will take them to adjust. Such research has led to the development of new systems of shift rotation, which are said to minimize the effect of rotation on the worker.[2]

An obvious alternative to rotation is the permanent shift system, which divides the workforce into shifts on a permanent basis.[3] This system allows the individual a maximum amount of time to adjust to nonstandard sleep and eating patterns. It also permits him and his family to work out a permanent adjustment to his work schedule. Permanent shifts may also permit more stable relationships in community organizations and other activities. If these benefits are achieved, the employer may also gain. A healthier, less stressed, and better satisfied workforce might have higher morale, be able to meet difficult situations more easily, and in other ways have a potential for greater productivity.

In a permanent shift system, it must be determined which workers get the less desirable shift. A combination of premium pay for undesirable shifts and voluntary trades among employees can provide a partial resolution, since monetary incentives can be effective and since some employees do prefer afternoon or night work. However, such measures will typically leave some unresolved demand for the most desired shift. A common way of rationing this demand is through a seniority system. Then, the permanent shift system in a sense becomes one of (very slow) rotation, with younger workers tending to work nights and the middle-aged workers having the less stressful day shifts.

* The author acknowledges the assistance of the Wayne State University Center for Urban Studies and the Detroit Police Officers Association.

[1] See Owen, *Working Hours* (Lexington, MA: Lexington Books, 1979), for a discussion of long-term changes in working schedules.

[2] See Charles A. Czeisler, Martin C. Moore-Ede, and Richard M. Coleman, "Rotating Shift Work Schedules That Disrupt Sleep Are Improved by Applying Circadian Principles," *Science*, Vol. 217 (July 1982), pp. 460-462.

[3] For a discussion of available data on the prevalence of permanent and rotating shift systems in the U.S., see Donald L. Tasto and Michael J. Colligan, "Shift Work Practices in the United States," *Report to the National Institute for Occupational Safety and Health*, U.S. Department of Health, Education and Welfare, March 1977.

The Detroit Experiment

An experiment with permanent shifts was carried out in two precincts of the Detroit police system. It was instituted by joint agreement of the city and the Detroit Police Officers Association. The prevailing system in Detroit is rotation. Typically, a monthly rotation is made from midnights to afternoons to days, providing a three-month cycle. In the two experimental precincts, permanent shifts were instituted on November 1, 1981, and maintained for over a year.

Officers were offered their choice of schedule, but ties were broken by seniority. In order to ascertain the effects of permanent shifts, the officers were surveyed at quarterly intervals, beginning a few days before the introduction of the new system and ending after one year. The surveys were administered at roll calls, with both union and management representatives present. These representatives developed a system to insure anonymity for the employees.

A total of 204 officers in the pilot precincts filled out the first of these surveys; 155 responded to the last survey, taken at the end of the experiment. Two matching precincts (similar in both nature of police work and demographic composition of the police force) were chosen as controls. They remained on the rotating shift system and were surveyed in the same way.

The use of a before-and-after experimental design is, of course, highly unusual in research on shiftwork. The availability of data on a control group provides another advantage, unusual for this type of research.

It is important to note that the participants were *not* volunteers. This reduces a possible source of bias. Self-selected participants in a year-long permanent shifts experiment might have a positive preference for that system. The present study design is not completely free from bias, however, since the long history of shift rotation in the DPD means that those with strong preferences for permanent shifts would be less likely to be recruited to the system or, if recruited, would be less likely to remain. Such bias would be expected to tend to reduce the approval rating of the permant shift experiment.

Study Results

At the end of the study, the officers in the pilot group gave a positive overall assessment of the permanent shift system.[4] Table 1 gives the November 1982 value of the answer of the median officer in the pilot group to questions assessing the new system. When asked whether they would "Strongly agree" or "Strongly disagree" with the "concept of permanent shifts," on a scale of 1 to 5, the average respondent gave a rating of 1.66, indicating a high level of agreement. Positive ratings were given by each of the age, sex, race, and shift groups.

When asked "Has the new system of permanent shifts helped or hurt your job performance?" (with hurt = 2.0 and helped = 0.0), the average officer rated it a .2, again a very favorable response. Table 1 indicates that favorable ratings were given by each of the age, sex, race, and shift subgroups.

Another measure of overall assessment is the ranking given among four alternatives: steady days, steady afternoons, steady midnights, and rotating shifts. The pilot group as a whole ranked rotating shifts lowest. Moreover, positive evaluations are given by each subgroup examined, although large differences remain among them. Blacks are more positive about the new system than are whites. Women are less enthusiastic than men. Older officers like it better than do younger officers. Those on days like it most.

[4] Only the beginning, or pre-experiment, and ending scores are discussed in this paper. In a more extensive report submitted to the Michigan Employment Relations Commission, quarter-to-quarter changes within the experiment period are also discussed.

Rotating shifts were ranked lowest by men, blacks, and officers in their twenties. The others ranked permanent midnights lower than rotating shifts (except for those on midnights, who gave afternoons the lowest rating). It is most interesting to note that, on average, the officers on each shift prefer it to all other shifts.[5]

A comparison of these evaluations, made at the end of the experiment, with the assessment of permanent shifts made in the first round of questionnaires, completed just before the introduction of the new system, showed some small increases in approval. These results would be consistent with the hypothesis that the officers had high expectations of the new system and that these expectations were fulfilled, or perhaps exceeded.

Table 2 presents an analysis of the impact of the change to a permanent shift system on three aspects of the officers' lives: their attitudes towards the job, their health and health-related activities, and their family lives.[6] The first and third columns give the changes in the pilot and control groups, respectively, over the course of the experiment. The second and fourth columns give the standard errors of the changes. The fifth column gives the t-ratio of the net change in the pilot group. Using a one-way test, a t-ratio in excess of 1.64 would be significant at the five percent level. A ratio in excess of 1.96 would be significant at the 2.5 percent level.[7] A plus sign in Table 2 indicates an improvement; for example, a *reduction* in trouble sleeping is shown here as a *plus*.

The officers were asked whether they agreed (on a scale of 1 to 5) with the statement that they were satisfied with their jobs, the quality and performance of their co-workers, the support given them by their supervisors, their ability to do their jobs, the kind of work they do, and whether they experienced anger on the job, dreaded going to work, perceived precinct residents as decent and law-abiding, were willing to make sacrifices for the good of the department, and would choose this type of work if they had another opportunity.

Decline in Morale

The most important change observed here was a significant decline in morale in the *control* precincts. Layoffs of police officers in both the control and pilot precincts took place over the course of the experiment. The result was an increase in workload for each officer, which may be responsible for the observed decline in employee morale.

Note that in the control precincts each of the ten measures of employee attitudes shows a decline. The largest declines are in the willingness of the employee to make sacrifices for the good of the department and in his satisfaction with his ability to do his job. In the pilot group, there are some improvements, and those declines that are measured are typically much less than those in the control precincts. When the change in the control precinct is subtracted from the change in the pilot precinct, a positive net result is observed in all but one measure. Three of these positive net changes are statistically significant, including the response to the question on the frequency of feelings of anger on the job.

These results are consistent with the hypothesis that permanent shifts improved the morale of these employees by preventing the declines observed in the control group. Similar results (not shown) are obtained for each of the three shifts. The permanent day shift workers show

[5] This interesting finding appeared in each of the four rounds of questionnaires.

[6] An effort was made to apply multivariate analysis to a number of the responses listed in Table 2 and to the two questions on sleep mentioned in the text. It is possible that the relationship between permanent shifts and these reponses might vary among shifts. In only a few cases were the F-ratios of the overall regressions significant, and even these results were highly sensitive to small changes in the specification of the estimating equation.

[7] It is assumed that the errors are normally distributed.

very positive results; effects on the other two shifts are mixed.

For the pilot group, statistically significant improvements are found for five of the eight health measures: less trouble getting to sleep and/or remaining asleep, less trouble in digesting food, less frequently tired on the job, less smoking, and less drinking to unwind after work.[8] When adjustment is made for changes in the control group,[9] gains are observed in six of the eight measures, but only one is statistically significant (trouble sleeping). Strong positive health effects are observed for those on day shifts; effects on the other shifts are mixed.

Family Relationships

Family relationships appear to be improved by the new system. Four of the seven measures showed statistically significant improvement in the pilot group. Spouses were better satisfied with the officers' work schedule, the officers are more likely to have enough time to spend with spouses, marital quarrels are less likely to be related to the officers' jobs, and their work schedules are less likely to keep them from doing things with their children.

When changes in the control group are netted out, only satisfaction with spouse's schedule remains statistically significant.[10] However, net gains are observed in all measures, including a diminution of quarrels with spouse, a perception that children are doing better in and out of school, and the officer is better able to protect his spouse.

Among the three shifts, one finds positive net effects only for those on either the day or midnight schedules. On the day shift, three of the net effects (satisfaction of spouse with schedule and ability to spend time with spouse and children) are statistically significant. The effects on those on afternoon shifts are mixed and insignificant.

Significant improvement (with or without correction for change in the control group) was found in the answer to the question on whether the officer's work schedule interfered with his education plans. Large net gains were found for those on each of the three shifts. No improvement was found in the actual number of hours spent in study. This would be consistent with the limited duration of the permanent shift experiment.

Almost all officers drive to work, and no significant change was found in mode of commuting. Nor was significant change found in commuting time for the entire pilot group. The midnight shift did report a small reduction in commuting time, an expected result of their avoiding rush hour congestion.

The surveys also included questions about participation in sports, attendance at various types of performances, television watching, visiting friends, relatives, and co-workers, participation in organizations, and working in their yards. They were also asked whether their shifts interfered with their attending social functions. None of the responses showed a significant change for the group as a whole. Apart from an increase in yard work by day shift workers, there was no significant change on any of the three shifts.

Employer records show that there was a sharp increase in the productivity of officers throughout the city, including both the pilot and control precincts. Large-scale layoffs of officers increased the workload of the remainder with a resulting increase in arrests made and tickets issued by each officer (the DPD's

[8] Insignificant changes in appetite (negative) and in frequency of headaches and in self-perceived general health (both positive) were also observed. An increase in the amount of sleep was also observed, with virtually no change in the degree to which sleep was interrupted.

[9] The author has no explanation of this apparently random change in the control group.

[10] See note 9.

measure of productivity).[11] However, the increase in this measure of productivity was somewhat greater in the pilot precincts than in the control precincts,[12] which would be consistent with a small but positive effect of permanent shifts on productivity.

A most unusual feature of this experiment was that the supervisors of the officers on permanent shifts—the sergeants and lieutenants—were kept on rotating shifts. Hence, the productivity gains here occurred in spite of what might be called a system of rotating supervisors.

Conclusions

After a one-year experiment, permanent shifts were well regarded by the officers who had been moved from a rotating shift system. Approval was found among those on the less desirable shifts as well as those on days. This consensus included blacks and women as well as younger and older officers. An expectation of this positive experience is reflected in the responses given by the officers to the permanent shift idea before the experiment began.

The permanent shift idea had several positive effects on the attitudes of the officers towards their jobs. Several indicators of health and of the quality of family life also showed improvement. In general, the strongest results are observed among those on permanent day shifts. Officers on all three shifts felt that the new system facilitated their education plans and had little or no effect on commuting patterns or on participation in recreational, cultural, or civic activities.

A small net positive effect is observed on productivity per officer. This occurred despite the fact that the officers' supervisors continued on a rotating shift system.

Permanent shifts are not a panacea for the scheduling problem. They were not welcomed by all officers in the experiment and, in response to an open-ended question, some officers complained that they were not allowed to make voluntary trades of shifts with other officers after some reasonable period of time. This suggests an obvious way to obtain possible further improvements. The officers in the permanent shift experiment were returned to the rotating shift system by the Detroit Police Department in 1983.

TABLE 1: ASSESSMENT OF PERMANENT SHIFTS

Rating by Experiment Group at End of Experiment

	ALL	MEN	WOMEN	BLACK	WHITE	AGE 21-30	AGE 31-40	AGE 41 AND OVER	DAYS	AFTRN	MIDNT
PERMSH	1.66	1.58	2.50	1.44	1.93	2.13	1.49	1.50	1.34	2.30	1.79
HURTHLP	0.17	0.15	0.25	0.11	0.22	0.32	0.14	0.21	0.06	0.47	0.14
ROTATE	2.96	3.01	2.72	3.39	2.52	2.93	2.96	2.92	3.08	2.77	3.07
DAYS	1.47	1.45	1.63	1.41	1.58	2.25	1.42	1.33	1.04	2.25	2.50
AFTRN	2.39	2.33	2.83	2.10	2.78	2.50	2.39	2.38	2.37	1.46	3.57
MIDNT	2.92	2.96	2.79	2.91	2.92	2.30	2.98	3.50	3.47	3.27	1.15

See text for description of table entries.

[11] Data on arrests and tickets obtained from annual reports of the Detroit Police Department. Number of police officers obtained from Ronald Pakulski, Sergeant-at-Arms of the Detroit Police Officers Association. Method for weighting arrests and tickets and for deriving per office productivity taken from report of the DPD on the permanent shift system. The permanent shift system was introduced in 1981 and kept in place throughout 1982. In calculating productivity changes, a base period of two years, 1979-1980, was chosen. This was compared with 1982.

[12] Productivity increased by about six percent, calculated according to the method described in note 11.

TABLE 2: EFFECTS OF PERMANENT SHIFT SYSTEM

Changes in Mean Scores From Before Experiment to End of Experiment

	Change in pilot	(Stand. Error)	Change in control	(Stand. Error)	Net change ratio
JOB ATTITUDE:					
Angry Job	.26	(.11)	−.16	(.12)	2.54
Dread Work	.04	(.13)	−.13	(.14)	.94
Same Career	.02	(.11)	−.12	(.14)	.77
Decent Area	.07	(.08)	−.04	(.11)	.80
Sacrifice	−.18	(.10)	−.51	(.13)	1.99
Satisfied:					
Job	−.17	(.11)	−.13	(.12)	−.23
Cowkrs.	.10	(.11)	−.22	(.12)	1.98
Superv.	−.07	(.12)	−.13	(.14)	.35
Ability	−.21	(.09)	−.44	(.10)	1.73
Work	−.14	(.11)	−.25	(.12)	.70
HEALTH RELATED:					
Trouble Sleep	.41	(.10)	.02	(.09)	2.92
Trouble Digest	.26	(.08)	.05	(.08)	1.88
Tired on Job	1.04	(.45)	1.17	(.51)	.20
Appetite	−.01	(.05)	.16	(.07)	−1.93
Headaches	.07	(.07)	.08	(.07)	−.17
Smoking	.12	(.06)	.06	(.10)	.53
Drinking	.12	(.06)	−.03	(.08)	1.50
Gen. Health	.10	(.08)	.02	(.08)	.71
FAMILY:					
Wife satis.	.47	(.16)	.02	(.13)	2.19
Wife time	.46	(.14)	.16	(.14)	1.48
Child. time	.73	(.18)	.34	(.20)	1.45
Child. do well	−.02	(.15)	−.22	(.15)	.92
Protect	−.10	(.14)	−.18	(.15)	.39
Quarrels	.16	(.12)	−.08	(.13)	1.38
Quar. wrk. rel.	.45	(.15)	.17	(.16)	1.29

Signs of responses have been changed where necessary so that a positive entry always indicates an improvement. Only those respondents answering both the initial and final surveys are included in this calculation. (122 in the pilot and 117 in the control groups.) See text for description of variables.

[The End]

An Analysis of Factors Related to the Accuracy of Steward Predictions of Membership Views

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There have been several studies of the ability of union officers to predict worker preferences in relation to collective bargaining and labor relations topics[1]. These studies noted that it is important for both union and management officials to have accurate perceptions of the rank-and-file concerns and viewpoints. Both management and union policies and labor agreements that are based upon an accurate assessment of rank-and-file concerns are more likely to lead to satisfaction with the employer and the union and to harmonious labor relations. This paper will examine the degree of correspondence between steward predictions of rank-and-file ratings and the actual ratings of the rank and file in two areas: (1) the importance of a number of work-related issues and (2) satisfaction with the union's success on those same issues. It will then examine what factors led to better accuracy of the stewards' predictions of the member preferences.

Most studies have found that although union officers as a group were reasonably accurate predictors of the workers' views, very few individuals could predict the preferences closely[2]. The union groups involved appeared as reasonable predictors only because the errors of the poor predictors cancelled each other out. In addition, Lawler and Levin[3] thought that one reason the union officers in their study were relatively good predictors was that their backgrounds and those of the members were similar.

Determining Preferences

These findings suggest that union officers may make predictions about the concerns of the members based upon the assumed similarity method[4]. That is, union officers assume that their own concerns are similar to those of rank-and-file members and therefore predict rank-and-file views based on introspection. To the extent that the officers are actually similar to the members on characteristics related to issue preferences, their predictions of membership concerns will tend to be more accurate.

Further, several studies speculated that union officials further removed from the work force would have an even more difficult time predicting the members' preferences accurately[5]. The changing nature of unionization means that union members within one local union, and even within one bargaining unit, may be geographically dispersed over a wide area and that the officers and paid staff do not work alongside the members. In such cases, it

[1] Peter Brosnan, "The Ability to Predict Workers' Preferences: Further Evidence," *Human Relations*, Vol. 28, November 1975, pp. 519-541; Edward E. Lawler and Edward Levin, "Union Officers' Perceptions of Member Pay Preferences," *Industrial and Labor Relations Review*, Vol. 21, July 1968, pp. 509-517.

[2] Brosnan, cited at note 1.

[3] Lawler and Levin, cited at note 1.

[4] Brosnan, cited at note 1; Lee J. Cronbach, "Processes Affecting Scores on 'Understanding of Others' and 'Assumed Similarity,'" *Psychological Bulletin*, Vol. 52, May 1955, pp. 177-193.

[5] Brosnan; Lawler and Levin, cited at note 1.

would be expected that the officers might have difficulty in knowing the preferences and views of the rank and file based on direct contact. In these situations, while they may rely on a variety of sources, one of the most important is likely to be the union stewards. It is therefore important to know whether stewards can accurately predict rank and file views and the nature of the variables related to their accuracy.

Theory and research suggest that a number of demographic characteristics are related to employee preferences and satisfactions[6]. Other types of variables used in studies of union member preferences[7] (Dyer, Lipsky, and Kochan 1977, Ponak and Fraser 1979) include economic variables, family-related variables, union activism, size of worksite, union-management relations, skill level, and attitude variables concerning unions and integrative bargaining. Job satisfaction and attitudes related to the employer also appear important [8] (Nealey 1963). These findings suggest that these types of variables might relate to the steward predictions.

Two hypotheses concerning the accuracy of stewards in predicting rank-and-file views are advanced. The first is based on the assumed similarity hypothesis. Specifically, it states that the smaller the steward-member difference on a variable related to issue importance and satisfaction, the more accurate will be the steward's estimate of the members' ratings of importance and satisfaction.

The second holds that stewards who represent work units where the members are more homogeneous on a variable related to preferences should be better able to make accurate predictions. Where members all hold similar views and/or have similar characteristics, there is less chance that stewards would be exposed to an unrepresentative sample, even if they only have close contact with a small fraction of the members they represent. In addition, a number of steward and member characteristics which have been found related to employee preferences were examined to determine if any led to better accuracy in the stewards' predictions. Finally, organizational characteristics of the stewards' and members' work unit, such as urban or rural location, skilled or nonskilled employees, and size, all of which have been found related to employee preferences[9], were also examined.

Method

The 16 items that were the focus of the predictions were adapted from Kochan, Lipsky, and Dyer,[10] with some minor changes and additions. To recognize the concerns of females, the two issues of sexual harassment and equal opportunity for women were added. In addition, we separated the job security issue into two components: lay-offs and discharges. We also changed their four-point importance scale into a five-point scale, ranging from "not at all important" to "extremely important." The stewards were asked to rate the importance they thought the rank and file would place on each issue and to rate how satisfied they thought the members were with the union's performance on each issue, using a five-point scale ranging from "very dissatisfied" to "very satisfied." The rank and file also were asked to rate their personal importance and personal satisfaction on the same issues.

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[6] Lawler and Levin; Stanley M. Nealey, "Pay and Benefit Preference," I *Industrial Relations*, Vol. 3, February, 1963, pp. 17-28.

[7] Lee Dyer, David B. Lipsky, and Thomas A. Kochan, "Union Attitudes Toward Management Cooperation," *Industrial Relations*, Vol. 2, May 1977, pp. 163-172; Allen M. Ponak and C.R.P. Fraser, "Union Activists' Support for Joint Programs," *Industrial Relations*, Vol. 18, Spring 1979, pp. 197-209.

[8] Nealey, cited at note 6.

[9] William F. Glueck, *Personnel: A Diagnostic Approach*, Revised Edition (Dallas, Texas: Business Publications, Inc., 1978).

[10] Thomas A. Kochan, David B. Lipsky, and Lee Dyer, "Collective Bargaining and the Quality of Work: The Views of Local Union Activists," *Proceedings of the 27th Annual Winter Meeting, Industrial Relations Research Association* (Madison: The Association, 1975), pp. 150-162.

The union involved in the study was a 10,000-member local union representing employees in one bargaining unit of one private sector employer. Its members were employed in a midwestern state in 45 different work locations in a wide variety of occupations, ranging from skilled-trades positions to nonskilled service positions. All of the union stewards were administered a questionnaire; 192 were completed, resulting in a 96.5 percent response rate.

Questionnaires were mailed to all 9,700 rank-and-file employees. Returns were received from 1,240 employees, or approximately 13 percent. To determine the impact of the low response rate on the data, comparisons were made between the respondents and the population on a number of characteristics. There were no significant differences on marital status or skilled or nonskilled status. However, the respondents were significantly older and more senior than the population and were also more male and full-time.

Comparisons were made between this study's sample and the sample of union activists surveyed by Kochan et al.[11], using 11 equivalently worded issues. The rank order correlation between the average importance ratings in their study with those of this study's union stewards and those of the rank and file were .91 and .64, respectively, both significant. Thus the sample studied here seems equivalent to a national sample in terms of ranking the importance of the issues, suggesting that the low response rate of the rank and file did not produce major biases.

However, significant correlations between the two satisfaction ratings of the issues were not found (r = .12 for stewards and – .10 for members). This is not surprising. First, there were differences in the wording of the satisfaction concept. Second, satisfaction with a particular union's performance in relation to bargaining issues is likely to be a complex function of both individual preferences and union performance.

Analysis

Three different methods were used to determine how accurate the steward predictions of rank-and-file preferences were. First, the data were examined in the aggregate. Second, using the method of prior studies to determine how accurate any individual's predictions were[12], each steward's predictions on the issues were correlated with the average ratings of the member preferences within the steward's work unit. Third, accuracy scores were constructed [13] between the stewards' predictions and the member preferences in the work units they represented, for both importance and satisfaction. These accuracy scores essentially represented the difference on each issue between the steward's prediction and the average of the rank and file in the steward's unit. With both the correlations and the accuracy scores, correlation and multiple regression analyses were used to determine which factors or independent variables were related to better prediction of the rank and file views.

Approximately 40 variables, found to be either theoretically or empirically related to employee preferences[14], were examined in detail. The correlations of these 40 variables with the importance and satisfaction scales were then computed separately for the steward and rank-and-file samples.[15] Eleven variables were significantly correlated with the

[11] *Ibid.*

[12] See Brosnan, cited at note 1.

[13] See Cronbach, cited at note 4.

[14] See Dyer et al., cited at note 7; Nealey, cited at note 6.

[15] Three of the member variables were not measured for the stewards. They were: attitudes on job satisfaction; the quality of union-management relations in the unit; and views on integrative bargaining. The variable "Tenure as steward," was not measured for the members. The properties of all attitude scales used are discussed in more detail in "Patterns of Commitment Among Rank-and-

steward predictions of rank-and-file views ($p < .05$, two-tailed test) and 16 with the member preferences.

Combining the steward and rank-and-file lists, there were a total of 20 different variables considered as predictors. The rank-and-file data were then aggregated by work unit for every unit where there was more than one response, producing a mean and standard deviation for each unit on each variable. Then the member data file was merged with the steward data file so that the work units of both were matched. Because of missing data on the units, and because several small units had only one member respondent and thus no member standard deviation, the total number of cases was reduced to 168.

The 20 variables to be considered as predictors could be grouped into families of four possible types: (1) the individual steward value; (2) the average value for the members in the steward's work unit; (3) the standard deviation of those members; and (4) the absolute difference score between types 1 and 2. In addition, three organizational characteristics were considered as predictors. Several methods were used to reduce the number of variables considered. Variables having no significant correlation with any dependent variable were discarded from further consideration. Further, variables with more than 64 percent of their variance explained by the other independent variables were also discarded as predictors. As a result of this process, 22 variables were selected to be entered into the regression equations.

Results

The correlation calculated between the average of all the stewards' predictions of the rank-and-file preferences on the importance of the 16 issues and the average of all the actual rank and file preferences was .75 ($p < .01$). The similar correlation for the members' satisfaction with the union's handling of those issues was .92 ($p < .001$). Examination of the accuracy correlations computed between each steward's rating of the member preferences and the actual preferences of members in the steward's unit suggested that most individual stewards were not very accurate. The accuracy correlations for importance ranged from $-.53$ to .87, with an average of .29. Eleven percent of the stewards had negative importance accuracy correlations; 20 percent had reasonably accurate correlations of .50 or above ($p < .05$, one-tailed test); and only 10 percent had very good correlations of .63 or above ($p < .01$). The accuracy correlations for satisfaction ranged from $-.53$ to .77, with an average of .26. Seventeen percent were negative; 16 percent were .50 or above; and only five percent were .63 or above. These findings are in line with the literature which suggests that group predictions are generally more accurate than individual predictions.

Accuracy correlations and scores were computed for both importance and satisfaction ratings, resulting in four dependent variables for this portion of the analysis. The table below shows the correlation and regression coefficients of the independent variables with the four accuracy measures. In presenting the results, the accuracy scores were recoded so that, for both the accuracy correlations and scores, the higher the score the more accurate the prediction. The independent variables are grouped into the four different categories described above. The R^2s show for both the importance and satisfaction predictions that more variance in the accuracy scores is explained than in the accuracy correlations.

The first set of variables, the differences between the stewards and the mean of the members in the steward's work unit, tests the assumed similarity hypoth-

(Footnote Continued)

File Union Members: A Canonical Analysis," by John Magenau and James E. Martin, *Proceedings of the 37th Annual Meeting, Industrial Relations Research Association* (Madison: The Association, 1985), in press.

esis. In all but three of 15 cases, where a variable from this set was significantly associated with an accuracy variable, the less difference there was, the better the stewards' predictive accuracy. Three variables most consistently supported the hypothesis: differences in education, employer commitment, and supervisor support. The differences in influence on union decision making did not support the hypothesis.

The second set of variables tests the hypothesis that a greater membership homogeneity on characteristics related to issue importance and satisfaction enables a steward to more accurately predict member views. Because all of the seven significant associations from this set of variables with an accuracy measure were in opposition to the hypothesis, it was rejected.

Characteristics of the represented members, their stewards, and the organization were also examined. Four member characteristics stand out, suggesting that members for whom stewards are able to predict more accurately had foregone more major purchases, perceived their supervisor as more considerate, had lower job satisfaction, and took a more integrative view of collective bargaining. It may be that members with these characteristics actually hold views that are similar to the steward's stereotype of the typical union member. The most important steward characteristics appeared to be the number of major purchases foregone and the commitment of the stewards to the union. The higher their union commitment, the better their importance and satisfaction accuracy scores were, but the worse their satisfaction correlations were. In contrast, the more purchases forgone, the better the satisfaction correlations were, but the worse both sets of accuracy scores were. Only one organizational characteristic met the criteria for entering the analysis: size of unit. Stewards from larger work units made more accurate predictions.

Discussion

The results generally supported the assumed similarity hypothesis that the less difference there was between stewards and the members they represent on the relevant variables the better the stewards' predictions. The second hypothesis, that membership homogeneity leads to more accurate predictions, was rejected. However, that rejection, along with the finding that stewards in larger work units predict better, suggests that representing more employees, who would likely be more heterogeneous,[16] may encourage them to gather information more carefully than stewards from smaller and/or more homogeneous units.

Two variables stand out as leading to better prediction of the membership views by the stewards using both accuracy measures: having less difference between the stewards and the members they represent on employer commitment; and representing members who have more integrative views of bargaining. Employer commitment is probably important because the employer has a strong hand, along with the union, in determining the degree to which the employee perceives the presence of each of the 16 issues in the workplace. Thus, employer commitment likely reflects both the perceived importance of the issues and the perceived ability of the union to be successful on them. Where stewards and members differ on employer commitment, their views on the issues are likely to differ, and thus accurate predictions are less likely to be made.

[16] This is supported by the average correlation of .40 between the four variables representing member standard deviations in the Table and size of unit.

Other references used in preparing this article include: John Magenau and James E. Martin, "Patterns of Commitment Among Rank-and-File Union Members: A Canonical Analysis," *Proceedings of the 37th Annual Meeting, IRRA* (Madison, Wisc.: IRRA, 1985), in press; Allen M. Ponak and C. R. P. Fraser, "Union Activists' Support for Joint Programs," *Industrial Relations*, 18 (Spring, 1979), pp. 197-209.

Viewing bargaining integratively is also likely to shape the perceptions of the membership regarding the issues rated. If stewards see the typical member as having integrative views of bargaining, and such views also influence the stewards' perceptions of the membership preferences in a manner consistent with the preferences of members who actually hold integrative views, it is logical that representing such members would be associated with better predictions.

While the results agree with the earlier studies that group predictions are generally accurate and that most individuals are poor predictors, the large sample permitted the examination of how much variance in accurate predictions could be explained and what could explain it. The variance explained in the accuracy scores was moderately high, about 35-37 percent, compared to the much lower 18-23 percent in the accuracy correlations. Accuracy correlations have been the method used in all prior studies to determine how well individuals could predict the preferences of groups of union members. Our results suggest that using accuracy scores rather than accuracy correlations may be more useful in understanding the factors related to better predictions. Understanding such factors should also help the union leadership determine the conditions under which stewards may accurately predict rank-and-file views.

[The End]

Independent Variables	Importance Accuracy				Satisfaction Accuracy			
	Correlations		Scores		Correlations		Scores	
	r	Beta	r	Beta	r	Beta	r	Beta
Differences - steward vs. member:								
Education	-.17**	-.10	-.31***	-.26***	-.01	-.06	-.11	-.05
Number of major purchases foregone in prior year	-.06	-.05	-.04	-.11	-.23	-.25***	-.08	-.09
Employer commitment	-.21***	-.16*	-.24***	-.22***	.07	.04	-.20***	-.18**
Supervisor Support	-.09	-.04	-.22***	-.11	-.02	-.01	-.23***	-.11
Influence on union decision making	.04	.06	.02	-.04	.13	.16*	.18**	.16**
Member standard deviations:								
Union commitment	.21***	.20**	-.02	-.10	-.01	.17*	-.05	-.07
Job satisfaction	.09	.09	.22***	-.01	.09	.08	.18**	-.05
Quality of union-management relations	.08	.04	.19**	.09	-.06	-.04	.05	-.11
Shift worked	.07	.03	.17**	.08	-.03	.08	10	- 05
Member characteristics:								
Number of major purchases foregone in prior year	-.01	.02	.07	.15*	.14*	.10	.16**	.23***
Supervisor support	.11	.12	.20***	.02	.06	.27**	.32***	.06
Union commitment	.00	-.05	.18**	.05	-.10	-.07	.24***	.07
Job satisfaction	.03	.11	-.21***	-.09	-.13	-.00	-.29***	-.27**
Quality of union-management relations	.10	-.01	.00	.01	-.21***	-.29**	.04	.07
Integrative views of bargaining	.22***	.17*	.33***	.20**	-.01	-.08	.29***	.12
Steward characteristics:								
Number of major purchases foregone in prior year	-.10	-.05	-.14*	-.08	.04	.14*	-.20***	-.15**
Union commitment	-.00	-.06	.15**	.04	-.14*	-.17*	.17**	.03
Supervisor support	-.01	-.08	.04	-.04	.02	.02	.20***	.05
Gender (female = 2)	-.11	-.11	.17**	.12	.05	.12	.09	-.02
Tenure as steward	-.11	-.05	-.13*	.05	.00	-.01	-.15**	-.03
Organizational characteristic: Size of unit	.06	-.07	.23***	.14	-.09	-.15	.19**	.25**
R^2(adjusted R^2)		18(07)		35(26)		23(12)		37(28)
F-Values		1.57*		3.74***		2.11***		4.02***

Note: ***p < .01; **p < .05; *p < .10

Interest Arbitration Revisited

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Michigan's public employees were first accorded collective bargaining rights in 1947 by the passage of the Hutchinson Act.[1] Under this act, public employees in Michigan were allowed to "meet and confer" with public employers to determine wages and other conditions of employment.[2] In reality, the ultimate decision for these issues rested with the public employer. The Act provided for mediation and fact finding services, and strikes were specifically prohibited. In 1965, the Hutchinson Act was amended, and it became the Public Employment Relations Act (PERA).[3] This act expanded the rights of Michigan public employees, giving them explicit rights to organize and bargain collectively. The strike ban was retained, but the penalties were less severe.[4]

In 1966, then Governor George Romney appointed an advisory committee on public employee relations to analyze the PERA experience. The Committee recommended experimental legislation to provide police and firefighters binding interest arbitration.[5] During the mid-1960s, several police and firefighter disputes took place, and this was one of the reasons for the advisory committee's recommendation. Acting on this recommendation the Michigan Legislature passed the Compulsory Arbitration Act, Public Act 312 of 1969.[6] The strike ban had been retained in the PERA, but police and firefighters were given binding interest arbitration as an alternative to the strike.[7] The law as originally passed provided for binding interest arbitration for police and firefighters for a three-year trial period.

The original Act 312 provided for conventional arbitration. That is, the tripartite arbitration panel could fashion an award appropriate to the issues in impasse. The arbitration panel was composed of one representative selected by the employer, one selected by the employee bargaining unit, and a neutral chairperson selected by the representatives. If the representatives failed to agree on a neutral chairperson, the neutral was appointed by the Michigan Employment Relations Commission.[8]

In 1971, the legislature was faced with the decision to extend Act 312 or let it expire. The debate over renewing binding interest arbitration centered on two factors: 1) Act 312 had diminished the parties' voluntary settlement efforts in the course of collective bargaining, and 2) conventional arbitration resulted in giving arbitration panels too much leeway to issue excessively high awards.[9] In regard

[1] Michigan, Dept. of Labor, *Employment Relations Commission,* Act 336, (1947), p. 15.

[2] Michigan, *MERC and Administrative Obligation of Neutrals,* Compulsory Arbitration Public Act 312 Seminar (November 6, 1981), p.1.

[3] Michigan, Act 336 as amended Statutes 423.201—423.216 (1965).

[4] Michigan, *MERC and Administrative Obligations of Neutrals,* Compulsory Arbitration Public Act 312 Seminar (November 6, 1981), p.1.

[5] Michigan, Dept. of Labor and Dept. of Management and Budget, *Review of Michigan's Compulsory Arbitration Act, Public Act 312 of 1969* (May 21, 1979), p.4.

[6] Michigan, Act 312, Statute 423.231 Section 1.

[7] Thomas A. Cattel, "Compulsory Arbitration for Police and Firefighters: Is it Here to Stay?" *Detroit College of Law Review* (1979), p. 702.

[8] Michigan, Dept. of Labor and Dept. of Management and Budget, *Review of Michigan's Compulsory Arbitration Act 312, Public Act 312 of 1969* (May 21, 1979), p. 5.

[9] Michigan, *MERC and Administrative Obligation of Neutrals,* Compulsory Arbitration Public Act 312 Seminar (November 6, 1981), p.2.

to the first factor, the Michigan legislature amended Act 312 in 1972 to allow the arbitration panel to remand cases to the parties when the panel found that good faith bargaining had not taken place.

Regarding the second factor, the legislature provided for "last best offer" arbitration on each economic issue and extended Act 312 for three years.[10] The original Act 312 has been criticized as "chilling collective bargaining" by failing to offer an incentive for the parties to make realistic offers and proposals. This allowed the arbitration panels to give an award which was a compromise between the last offer of the parties to the dispute.

Binding interest arbitration under the issue-by-issue last best offer approach only applies to economic issues.[11] Non-economic issues still remain subject to conventional arbitration. The arbitration panel determines which issues are economic and which are non-economic. Each party to the Act 312 arbitration then submits its last best offer on each issue to be arbitrated, within certain time limits as prescribed by the arbitration panel. The arbitration panel action is limited to choosing one of two offers submitted on each economic issue and to fashion its own award on non-economic issues. The rationale behind last best offer arbitration was that a forced choice between the last offers will bring the parties closer together and thereby force a voluntary settlement.

In March 1975, the Michigan legislature amended Act 312 and repealed Section 15 of the Act which stated that the Act would expire in June of that year. The amendment did not substitute a new expiration date but provided for permanent extension of the Act.[12]

Questions concerning the constitutionality of Act 312 arose in 1975 and culminated in the evenly divided Michigan Supreme Court decision in *Dearborn Firefighters v. City of Dearborn.*[13] The Supreme Court upheld Act 312 but challenged Section 5 of the Act which permitted the panel representatives of the parties to select a neutral chairperson.[14] To stave off future problems with cases involving this issue, Act 312 was amended by the legislature in March 1976 by Act 84, which provided that the Michigan Employment Relations Commission (MERC) would maintain a list of arbitrators.[15]

In addition to the above amendments, the legislature in 1976 also revised Section 2 of Act 312 by bringing emergency medical service personnel employed by police or fire departments under the Act.[16] Act 312 was again amended in 1977 and Governor Milliken signed Act 303 in January 1978.[17] This Act made amendments in three areas, Sections 2, 3, and 10. The amendments to Section 2 provided that emergency telephone operators (911 operators) employed by the police or fire departments would also be covered by binding interest arbitration under Act 312. Amendments to Section 10 regarded the retroactivity of awards. Increases in rates of compensation, as well as benefit increases, may be awarded retroactively to commencement of any fiscal year, except where a new fiscal year had commenced since the initiation of arbitration procedures.[18]

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[10] Michigan, Act 312 Statute 423.245 (1975).

[11] Michigan, Act 312 Statute 423.238 Section 8.

[12] Michigan, *Merc and Administrative Obligation of Neutrals,* Compulsory Arbitration Public Act 312 Seminar (November 6, 1981), p.3.

[13] *Dearborn Firefighters v. City of Dearborn,* 394 Michigan 229 (1975).

[14] Michigan, *MERC and Administrative Obligation of Neutrals,* Compulsory Arbitration Public Act 312 Seminar (November 6, 1981), p.3.

[15] Cattel, p. 705, cited at note 7.

[16] Michigan, Dept. of Labor and Dept. of Management and Budget, *Review of Michigan's Compulsory Arbitration Act Public Act 312 of 1969,* (May 21, 1979), p.7.

[17] Ibid.

[18] Michigan, *MERC and Administrative Obligation of Neutrals Compulsory Arbitration Act Public Act 312 Seminar* (November 6, 1981), p. 3.

In recent years a number of proposals have been made to increase the effectiveness of collective bargaining and mediation of Act 312. On June 20, 1984, the Michigan Employment Relations Commission officially adopted a new set of procedures designed to make sure that meaningful use had been made of negotiations and mediation prior to the granting of access to Act 312. In addition the procedures were designed to have the arbitration process carried out more expeditiously and awards issued in a more timely manner.[19] Among the new procedures are the following. (1) A petition for arbitration that includes the number of bargaining and mediation sessions already held, a list of issues still in dispute, and other information MERC may require, is mandatory. (2) The impartial chairperson of the arbitration panel may call a prehearing conference to establish the issues already settled, the issues unresolved, and the methods for a quick arbitration proceeding. The chairperson also had the right to mediate disputes and, if desirable, to remand them for further mediation and/or collective bargaining. (3) Transcripts of the hearing, of the submission of last offer, or of the submission of final briefs, whichever is the latest, are also required.

Overview of Act 312

The collective bargaining process for police and firefighters is governed by all three Michigan Labor Relation Statutes. PERA provides the procedures for organizing, representation, and unfair labor practice charges. The mediation services and procedures available to public employees are detailed in the Labor Relations and Mediation Act, which is referenced in PERA. Finally, Act 312 details the binding interest arbitration procedure.[20] In order to understand how binding interest arbitration works under Act 312 in Michigan, a brief overview of the procedures as stated in the statute follows.

The dispute is submitted to mediation after negotiations have broken down. Both parties are given the right to initiate binding arbitration proceedings within 30 days after the submission of the dispute to mediation.[21] The application for binding arbitration is made to MERC, and, under current procedures, the mediator confirms that an impasse has been reached. The filing for binding arbitration must occur prior to the expiration of the agreement. The parties are then required to each select a delegate to the arbitration panel. MERC provides the parties with a list of three persons from which each party strikes off one name. It then designates the impartial arbitrator from the remaining names. Following the selection of the Chair MERC has a limited role. It becomes involved in the Act 312 proceeding only if the Panel remands the parties for further negotiations and a mediator is used.[22]

The arbitrator has specific statutory duties which are set out in Act 312.[23] The arbitrator, as the impartial chairperson of the arbitration panel by virtue of his deciding vote on ultimate award issues, virtually dictates the way arbitration will proceed. Parties to interest arbitration will usually, out of self interest, attempt to choose an arbitrator receptive to their point of view. By virtue of the selection procedure noted above the shopping around for an arbitrator by the parties is limited to the three names submitted by MERC.

The arbitration panel, consisting of the arbitrator and a delegate from each

[19] Michigan, Dept. of Labor, *Bureau of Employment Relations Memorandum on Act 312 Proceedings* (July 2, 1984).

[20] Michigan, *MERC and Administrative Obligation of Neutrals Compulsory Arbitration Public Act 312 Seminar* (November 6, 1981), p. 4-5.

[21] Cattel, p.709.

[22] Michigan, *MERC and Administrative Obligation of Neutrals, Compulsory Arbitration Public Act 312 Seminar* (November 6, 1981), p.6.

[23] Michigan, Act 312 Statute 423.236 Section 6.

party, must make a determination as to which issues are economic and which are non-economic, and this determination is statutorily conclusive. The statutory mandate to make this determination is critical as to whether last best offer or conventional arbitration is applicable. The arbitration panel must choose one of the parties' last best offers on each economic issue, but non-economic issues are still subject to conventional arbitration. Conventional arbitration on non-economic issues allows an arbitrator to fashion an award which is different from the last best offer of either party. The determination of which issues are economic or non-economic is really made prior to the hearing, but the statute allows it to be made at any time before the conclusion of the hearings.

The arbitration panel is statutorily directed to base its findings, opinions, and order upon factors enumerated in the statute. Section 9 of Act 312 is critically important because it sets out the specific factors that must be taken into account by the arbitration panel in formulating its award:[24] (1) the lawful authority of the employer; (2) stipulations of the parties; (3) the interests and welfare of the public and the fiscal ability of the unit of government to meet those costs; (4) comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of other employees performing similar services and other employees generally—in public and private employment in comparable communities; (5) the average consumer prices for goods and services, commonly known as the cost of living; (6) the overall compensation presently received by the employees—wages, vacation, holidays, other excused time, insurance, pension, medical, and hospitalization benefits, the continuity and stability of employment, and all other benefits received; (7) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and (8) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

The arbitrator may feel that the parties should negotiate further and can remand the dispute.[25] By remanding a dispute the arbitrator often takes on the role of the mediator but with sanctions to impose on parties who fail to heed his advice and suggestions.[26] This aspect of Act 312 has been called "med-arb" (mediation-arbitration).

In rendering a decision a majority of the arbitration panel controls.[27] This means that the Chair's vote is almost always the deciding factor since each party's own delegate on the panel will usually vote for that party's own last best offer. In order to ensure that the award by the arbitration panel is not subject to judicial review, the representatives of the panel are mandated to issue awards based on the material, and substantial evidence indicated on the whole record during the arbitration hearings.[28] The decision of the arbitration panel can be enforced, at the instance of either party or by the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees live. The grounds for judicial review were deliberately restricted by the Michigan legislature in Act 312 in order to ensure an alternate expeditious, effective,

[24] Michigan, Act 312 Statute 423.329 Section 9.

[25] Cattel, p. 709.

[26] Michigan, Act 312 Statute 423.237a Section 7a.

[27] Michigan, Act 312 Statute 423.240 Section 10.

[28] Michigan, Act 312 Statute 423.240 Section 10.

and binding procedure for the resolution of disputes.[29]

The final significant mandate of Act 312 prohibits changes in existing wages, hours, and other conditions of employment during the pendency of proceedings before the arbitration panel.[30] This is a necessary safeguard to ensure that the employer will not exercise any economic pressure upon employees to settle the contract.

Overall, Act 312 provides police, firefighters, emergency medical service technicians, and the 911 operators with an alternative to the right to strike. The procedures for arbitration are specifically enumerated and allow for the peaceful resolution of interest disputes between public employers and their public employees. The Act vests considerable authority in the arbitration panel by limiting judicial review of an award, thus legitimizing the panel's position.

The purpose of Act 312 was specified as follows: "It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operating of such departments to afford an alternative expeditious, effective, and binding procedure for the resolution of disputes." [31]

Act 312 was meant to provide police and firefighters a means of resolving collective bargaining disputes, thereby preventing strikes. An arbitration statute's underlying purpose is to provide some equality of bargaining power between parties where none formerly existed due to the lack of a right to strike.[32] Michigan's public policy, as set out in Act 312, was that since police and firefighters were not allowed to strike it was necessary that they be given an alternative to the right to strike, namely binding interest arbitration. To date, Act 312 has been very successful in preventing public safety employee strikes and has partially satisfied the intent of the 1969 legislation.

There have been no strikes by firefighters. In police employment, a few brief wildcat stoppages or "blue flu" attacks have occurred during the period in which the Act has been in effect, but there has been only one significant strike.[33] The police went out on strike when the city of Marquette decided to appeal the second arbitration award issued under the Act, which it had the right to do under the law. In response, the city got a court injunction against the strike. The Marquette police strike was resolved with help from American Federation of State County Municipal Employees officials, who had labored for Act 312 and were able to reach an agreement that gave the police less than the arbitration panel had awarded them.[34]

An important objective of Act 312 is to expedite public employee and public employer disputes. This part of Act 312's goal has rarely been achieved in the past years. The major culprit for the slow resolution of Act 312 proceedings lies with the large number of issues that were not settled during collective bargaining or mediation and eventually were carried to the arbitration panel.

Advantages and Disadvantages

The concept of binding interest arbitration and its application in the public sector has attained considerable attention as an alternative to the strike.[35] Both the methods, mechanics, and results of bind-

[29] Grodin, "Political Aspects of Public Interest Arbitration," 1 (1976) *Industrial Relations Law Journal*, pp. 1 and 20.

[30] Michigan, Act 312 Statute 423.243 Section 13.

[31] Michigan, Act 312 Statute 423.231 Section 1.

[32] Cattel, p. 706.

[33] Richard A. Lester, *Labor Arbitration in State and Local Government* (Princeton, New Jersey: Industrial Relations Section, Princeton University, 1984), p. 44.

[34] *Ibid.*

[35] D.S. Chauhan, "The Political and Legal Issues of Binding Interest Arbitration in Government," *Monthly Labor Review* 102 (September, 1979), p. 36.

ing interest arbitration are not free from criticism and continue to be subject to debate. Among the arguments favoring binding interest arbitration are the following.

(1) Such arbitration reduces strikes.[36] Arbitration reduces the opportunity for one side to conduct a work stoppage for terms more favorable than those determined by the arbitrator.

(2) It serves to equalize power at the bargaining table.[37] This aspect of compulsory arbitration is especially important to unions. Under an arbitration procedure, management cannot adopt a "take it or leave it" bargaining position, for such a position may be rendered useless by an arbitrator binding award.

(3) An important rationale for the use of binding interest arbitration is that it functions as a face-saving device for both management officials and union leaders who are under considerable pressure to compromise their negotiating positions.[38]

(4) Act 312 encourages the parties to reach a negotiated settlement in order to avoid arbitration. The success of the Act is evident in the fact that negotiated settlements are far more common than arbitrated settlements.[39]

(5) The flexibility of the Michigan Act 312 permits mediation and negotiation to continue during the arbitration process. This makes it easier for the neutral arbitrator to convey his/her feeling about a disputed issue to one of the partisan arbitrators, who in turn can inform his/her party that the neutral is leaning the other way. When that party modifies its offer to suit the neutral arbitrator, the neutral can then play the same game with the other party. In this way, an effective neutral can draw the parties even closer. Arbitrators attempt through Act 312 to produce settlements that the parties would have achieved had they been able to do so through good faith collective bargaining.

(6) Making final offers on an issue-by-issue basis allows the arbitrator to reject unreasonable proposals, which would not be possible under a total package system. Each party will be afraid to lose completely, for there can be no splitting of the differences as in conventional arbitration, because both parties at impasse submit to the arbitrator the last offer on each issue.

The most controversial issues surrounding binding interest arbitration involve the relationships between state political and administrative functions; but all involve fundamental public policy questions. Among the perceived disadvantages are the following.

(1) The sovereignty of public authority, its right to govern and manage, is a basic concern. Political jurisdictions look at compulsory arbitration as an invasion into a domain over which they formerly had control. The home rule issue was specifically addressed in *Dearborn Firefighters* and in *Detroit Police Officers Association v. City of Detroit*.[40] The Michigan Supreme Court held in both cases that the arbitration panel, pursuant to state statute, supercedes charter provisions and local policy considerations, even though this may affect the fiscal and budgetary process of a political jurisdiction.

(2) Another issue is the maintenance of the health, safety, and welfare of the people by reducing the threat of a strike. Strikes by public safety employees, such as police and firefighters, may not be more costly than the arbitration award. It may be better for the political jurisdiction to stick out a strike than to turn to binding arbitration. The monetary costs of a

[36] Harry E. Jones, "Compulsory Interest Arbitration In The Public Sector: An Overview," an unpublished paper submitted to LIR class 895 (November 1, 1979), p. 4.

[37] Jones, p. 5.

[38] *Ibid.*

[39] Letter received from James C. Amar, Executive Assistant of the Michigan Bureau of Employment Relations (March 25, 1985).

[40] Cited at note 13.

strike may favor the political jurisdiction, which in turn may give it more bargaining leverage over the public employee union.

(3) The charge has been made that the Chair has no accountability of public funds. Moreover, the Chair, through the award of the Panel, plays a key role in the allocation of financial resources, which is the legitimate responsibility of the legislative body, i.e., city council. The forgotten man in the Act 312 process is the citizen-taxpayer who, one way or another, must pay for the award.

(4) In the final analysis, the legislative body of the public jurisdiction has the responsibility of finding the necessary funds to finance the award. In the absence of adequate resources to finance the award, layoffs or cutback in services occur.

(5) The quasi-judicial role of the arbitrator has been critized because it is claimed that there was an unlawful delegation to the arbitrator. This issue was settled by the *Dearborn Firefighters,* which permitted the MERC to delegate authority to an arbitration panel.[41]

(6) Also of concern are the finality of awards and judicial review. Courts are hesitant to review arbitration panel decisions because of respect for the arbitration process as a final and binding decision on the parties. Courts will review arbitration decisions if not based on the record of the hearings.

(7) There is a "chilling effect" on collective bargaining because the parties to a dispute may believe that they gain more through arbitration than can be achieved from a negotiated settlement. The City of Detroit has "claimed that Act 312 has impeded collective bargaining because both sides to a dispute are reluctant to consider any issue for fear that the arbitration panel will not take into consideration any such concession." [42]

(8) Binding interest arbitration prevents normal collective bargaining from occurring and undermines the development of a cooperative relationship between the public jurisdiction and its union. Parties constantly forced into interest arbitration have not developed a history of mutual resolution of each other's problems. It appears that the parties do not recognize the need for mutual understanding, cooperation, or compromise, which are the essential ingredients to good faith bargaining.

Experience Under the Act

The availability of interest arbitration during contract negotiation in no way compels the parties to arbitrate the resolution of issues pertaining to that contract. In fact, between the years 1976 and 1983, only 261 petitions or 33 percent of the 785 petitions filed for Act 312 proceedings resulted in an arbitration award.[43] Three hundred fifty-six or 46 percent were settled by the parties and 113 petitions or 14 percent were settled by mediation.[44]

Act 312 encourages the parties to reach a negotiated settlement in order to avoid binding interest arbitration. The success of the Act is evident if one realizes that negotiated settlements are far more common than arbitrated settlements. Below is a table showing the petitions filed, petitions settled by the parties or through mediation, and the number of petitions in which an award was issued in the years 1976-1983.

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[41] *Dearborn Firefighters,* cited at note 13.

[42] "City of Detroit Objections to and Recommended Changes in the Policemen and Firemen Arbitration Act (Act 312 of 1969 as amended)" 1979, p. 2.

[43] Letter from James C. Amar, Executive Assistant of the Michigan Bureau of Employment Relations (March 25, 1985).

[44] *Ibid.*

YEAR	PETITIONS FILED	SETTLED BY PARTIES	SETTLED BY MEDIATION	AWARD
1976	86	40 = 47%	7 = 8%	36 = 42%
1977	111	47 = 42%	6 = 5%	57 = 51%
1978	61	17 = 28%	16 = 26%	22 = 36%
1979	92	33 = 36%	35 = 38%	24 = 26%
1980	99	51 = 51%	10 = 10%	27 = 27%
1981	83	48 = 58%	9 = 11%	24 = 29%
1982	108	50 = 46%	8 = 7%	39 = 36%
1983	145	70 = 48%	22 = 15%	32 = 22%
TOTAL	785	356 (46%)	113 (14%)	261 (33%)

Source: Department of Labor, State of Michigan, March 25, 1985 Bureau of Employment Relations.[45]

Act 312 does help secure voluntary settlements in public safety employee-employer negotiations. The key to this success is the flexibility of the Michigan procedure, which permits mediation and negotiations to continue during the arbitration process.[46] If the decision of the unions to invoke arbitration had resulted in "freezing of positions" in the arbitration proceedings, then the number of voluntary settlements would have declined sharply. Requests for arbitration are essential to stimulate negotiations with the result that the issuance of a formal award is not necessary in all instances.

In its present form, Act 312 acts as a fire station always on call, ready to extinguish a stalemate in collective bargaining negotiations between the public employer and the union. Those who claim that Act 312 has been overused and abused by public employee unions fail to realize that only a small proportion of negotiations do require resolution through a formal arbitration award. Arbitrated settlements can result from a number of factors, including the inability of both parties to politically support a voluntary settlement, or a refusal to compromise, or because one of the parties to the dispute believes it can get more from the arbitrator than from each other. To see how Act 312 works, consider this dispute involving the City of Detroit and the Detroit Police Officers Association.

Hearings began in August, 1983, and terminated on March 22, 1985. In total, 86 hearing days were covered, and some 147 issues were initially presented to the panel. At the moment there are 78 issues before the arbitration panel. On March 22, 1985, the Chair remanded seven issues back to bargaining by the parties. The Chair felt that there was room for movement on these seven non-economic issues. These bargaining sessions will terminate on April 15 and will be monitored by the city panel delegate and the union panel delegate. The Chair will not participate in these bargaining sessions in order to maintain his neutrality.

The parties submitted their last best offer on economic and non-economic issues on April 5, 1985. The briefs on the economic issues at impasse will be due on May 1, 1985, and the award of the panel on economic issues is due on June 1, 1985. The Chair instructed the parties on March 22 that each and every economic issue must be costed out. The panel will not entertain or consider any economic issue that is not costed out. If the parties do not know the cost of an economic issue, the panel feels that it should not consider that particular economic issue. The parties will both use the same criteria in costing out the issues at impasse. The brief on non-economic issues will be due on June 15, 1985. The panel award on non-economic issues will be due on July 15, 1985.

[45] *Ibid.*

[46] "The Act 312 Experience: An Answer to Proposals for Amendment," *Police Officers Association of Michigan* (February, 1980), p. 6.

The city is in the midst of its budgetary process, and the award on economic issues will be due in the final stages of this budgetary process. Obviously, the award on economic issues will have a significant impact on the budget for 1985/86. The old contract expired on June 30, 1983. The award will be issued on economic matters on June 1, 1985, almost two years after the expiration date of the contract. The new contract will be for three years. It should be noted that when the award on non-economic issues is announced on July 15, the parties will have several months of operating under the new agreement before they begin negotiations for the 1986-1989 agreement.

It should be noted that the City of Detroit is currently involved in three Act 312 proceedings: The *City of Detroit v. The Detroit Police Officers Association,* the *Lieutenants and Sergeants Association v. The City of Detroit,* and the *Firefighter's Association v. The City of Detroit.* The latter is the lead Act 312 case. The economic award in this case will have significant implications for both the Lieutenants and Sergeants and Firefighters. The salaries of the Lieutenants and Sergeants are based on the salaries of the police officers, that is to say, the Sergeants and Lieutenants receive a certain percentage differential of the police officers' salaries. There is a kind of parity between the police officers' and the firefighters' salaries.

Issues and Comparability

As noted, the Michigan Act 312 deals with both economic and non-economic issues. This raises an interesting question as to what constitutes an issue.[47] An issue can be defined as a single item that can be dealt with separately. Some non-economic issues are so interrelated that they cannot stand alone and hence must be looked at in their totality. For example, there may be a key issue with six or seven connecting issues.

In the experience of this arbitrator, the non-economic issues are the most troublesome. Non-economic issues deal with contract language under which the parties will operate. A contract should be tailored to meet the needs of the parties. They will be living under these contractual provisions. Resort to comparability in other public jurisdictions is of little help in non-economic matters because the language of the contract should be designed to resolve a particular problem between the parties.

In economic issues, the panel is presented evidence to support its position. The evidence can take the form of comparisons with other public jurisdictions, as well as internal comparability with other employees in the public jurisdiction, the behavior of the Consumer Price Index (CPI), data on the financial condition of the public jurisdictions, and other relevant and pertinent data. The parties were urged to make a good faith effort to resolve as many non-economic matters as possible. There is no substitute for negotiating a labor agreement by the parties.

While Act 312 indicates that there are two kinds of issues, economic and non-economic, it is the experience of this arbitrator that there is a third type of issue, the political issue. A political issue can be either economic or non-economic. It is placed in the record for political purposes. A political issue is very difficult to resolve through the collective bargaining process. It is usually an issue replete with emotionalism. In the Detroit case, a classic example of a political issue, unresolvable through the collective bargaining process, is the residency requirement. Briefly, the city wants the police officers to live in the city, whereas the officers want to live wherever they choose. It is this kind of issue that the panel must decide.

[47] "The Act 312 Experience: An Answer to Proposals for Amendment," *Police Officers Association of Michigan* (February, 1980), p. 6.

Remanding back to bargaining is an exercise in futility.

"The whole basis of public sector collective bargaining is premised on the notion of comparability, not only in bargaining rights, like work in both public and private employment. Based in that general premise, many state and local public employees bargaining and arbitration statutes mandate a comparison of the total earning of public employees with other public and private employees." [48]

In the private sector, the profit-maximizing behavior of individual firms is an important factor in determining the level of compensation for private industry workers.[49] However, government employees, operating without the constraint of profit maximization, are not directly affected by market forces in wage determination. In public sector bargaining wide use is made of comparability. The principle of "comparability" means that public sector wages, salaries, and fringe benefits are set at the level of wages and benefits prevailing in other jurisdictions or for similar work.[50]

Despite efforts to insure comparability in wages, it is not clear that the process has been or can be entirely successful. For example, when job characteristics differ between public and private employment, assessing the comparability procedures is complicated. Since qualitative decisions must be made to determine work equivalency, the job matching process is inherently subjective.

A public employer may have a policy that calls for public employees to be paid at the same rate as private sector employees who perform similar work. However, in implementing this policy, it is not always clear as to what private sector group the public employees should be compared to. In the same light, if the work involved is unique to the public sector, there is no way of making a comparison. This puts the arbitrator in the position of trying to find a reference group that is not too far removed from the employees whose wages he is setting.[51]

A policy stating that public employees should be paid by reference to comparable rates in other public employment is likely to be artificial. Wages paid by other public employers may have been determined by other Act 312 panels on the basis of Section 9 criteria. The process can become circular, with each panel looking to the results of other panels.

Section 9 of Act 312 mandates that one of the criteria to be considered by the panel is comparability.[52] There are two types of comparability, internal and external. Under internal comparability, comparisons are made with other employees employed by the public jurisdiction. Unions use internal comparability for their "me too" arguments in demanding wages similar to other public employees within the same political jurisdiction. External comparability involves other public jurisdictions, contiguous or noncontiguous, within the state and outside the state. In the *Detroit* case the police officers used data from public jurisdictions in southeast Michigan. The city used data from large cities in other parts of the state and major cities like Chicago, Cleveland, Boston, Philadelphia, Pittsburgh, etc.

The use of external comparability is replete with problems, e.g., differing fiscal problems of cities, statistical errors in the data used, socioeconomic demographic characteristics, etc. Detroit currently has a unique set of fiscal problems. When the

[48] Arvid Anderson quoted by George L. Stelluto in "Federal Pay Comparability: Facts to Temper the Debate," *Monthly Labor Review*, 102 (June, 1979), 1/2.28.

[49] Alicia H. Munnell and Ann M. Connolly, "Comparability of Public and Private Compensation: The Issue of Fringe Benefits," *New England Economic Review* (July/August, 1979), p. 27.

[50] *Ibid.*

[51] Jones, cited at note 37.

[52] Michigan, Act 312 Statute 423.239 Section 9.

parties present comparability data, in most instances the financial condition of the comparable public jurisdictions is not discussed. Section 9, Act 312 mandates the panel to examine carefully the fiscal condition of the public jurisdiction.

The most common factors used to establish comparability are: (1) nearby communities, (2) similar population size, (3) past practice, (4) police/fire parity, (5) other employees of the public jurisdiction, (6) extent of fire or crime problem, (7) compensation in private firms, (8) comparable ability to pay, state equalized value, taxes levied, (9) distinctive characteristics of locality, and (10) comparable duties of referenced groups of employees.[53]

Building the Record

In the Detroit case, the parties have meticulously built a complete record. Employer introduced *539* exhibits in support of its various positions. The union introduced *233* exhibits; in addition, there was a total of *61* joint exhibits. One joint exhibit consists of the entire record made at the Lieutenants and Sergeants Act 312 hearing dealing with a pension issue. Another joint exhibit deals with the entire record, including transcripts and exhibits, on the residency requirement which was before an Act 312 panel in 1975.

It was noted by the attorney for the Detroit Police Officers Association that in the present case, the city introduced more evidence on the economic conditions of the city than in all other Act 312 cases. The panel, as indicated in Section 10, must base its award on the record. It is for this reason that the parties must build a substantial and persuasive record in support of their respective positions on the issues at impasse.

This panel is determined to produce an award based on the record that will withstand a court challenge. The panel has no enforcement power. The enforcement power, pursuant to Section 10 of Act 312, lies with the circuit court of the county in which the dispute arose or in which a majority of the affected employees reside.[54]

The Michigan law requires a verbatim transcription of each day of hearings.[55] Each transcription constitutes a volume. The 86 volumes that resulted from the hearing represent thousands of pages of testimony.

Below is a history of bargaining by the Detroit Police Officers Association and the City of Detroit. In 1968, the parties resorted to fact-finding because that was the only mechanism available at the time. In 1970, 1972, 1973, 1975, and 1978, the parties invoked Act 312. In 1981, the parties negotiated an agreement. In 1983, the parties again resorted to Act 312. It would appear from the extensive use of Act 312 that the parties are addicted to interest arbitration.

THE HISTORY OF BARGAINING

CHAIR	*YEAR*	*METHOD OF BARGAINING*
R.A. Smith	1968	Factfinding
Haber	1970	Act 312
Alexander	1972	Act 312
Fox	1973	Act 312
Platt	1975	Act 312

[53] Ernest Benjamin,"Final Offer Arbitration Awards in Michigan, 1973-1977," mimeographed paper, Institute of Labor and Industrial Relations, The University of Michigan and Wayne State University, 1978, p. 43a.

[54] Michigan, Act 312 Statute 423.240 Section 10.

[55] Michigan, Act 312 Statute 423.236 Section 6.

Bowles	1978	Act 312
No Chair	1981	Parties negotiated the agreement
Kruger	1983	Act 312

As indicated, the Chair for the Act 312 proceeding is now appointed by the state, as opposed to the parties directly selecting the neutral arbitrator.[56] In the instant case, the Chair has made extensive use of the two panel members. The panel has met in executive session as the hearings unfolded. Issues were discussed without arriving at any definitive conclusions.

The Chair shared with the panel members his views on the issues. His views eventually were transmitted to the parties by the panel members. His rationale for this was to force the parties to reexamine their positions or withdraw issues, for which there was a possibility of the panel ruling against it in favor of the other party's position. This arbitrator cannot state with certainty which items were withdrawn as a result of the discussions with panel members. The fact remains that issues were withdrawn or amended.

Once the hearings were concluded, the panel met frequently to discuss the issues before it. In this connection these executive sessions constitute a unique kind of bargaining, i.e., a third tier of bargaining. The parties are required to bargain in good faith on the issues they consider to be included in the new contract (the first tier). If they reach an impasse, mediation is to take place. If mediation fails, application to Act 312 is made and hearings are conducted and last best offers presented to the panel (the second tier of bargaining).

The panel, as it considers the issues before it, is engaged in bargaining. Each of the delegates attempts to present each issue in its best light from its perspective. The key vote, however, is the Chair. Because of the political implications of the Act 312 award it is the practice of this arbitrator to include the vote of the panel on each issue addressed by the panel. This shows the reader of the award the position of each delegate and the Chair on each issue in the award.

The Chair plays a critical role in the Act 312 proceeding. The Chair sets the tone of the hearings. In addition, the Chair is responsible for keeping the hearings moving forward so that its duties and functions can be discharged pursuant to the Act.

The Chair functions like a judge in a judicial proceeding. Both the union and the employer advocators may raise arguments which are in conflict. The Chair rules on objections raised by the advocators. The union and the employer introduce exhibits in support of their respective positions. The Chair rules on the acceptance of these exhibits into the record. The Chair can also interrogate the witnesses, if he feels that there is need for amplification of their testimony. Some chairs take an activist approach in the hearing, while others just listen to the arguments presented by the advocators.

As Chair, I am a strong believer in keeping the members of the panel fully informed. In addition, this Chair, from time to time, communicates to the parties the need for more information on a given issue so that he will be able to understand it more fully. The Chair is responsible for the writing of the award. The award must be based on the record made at the hearing in order to withstand court challenges. In writing the award, the Chair needs to indicate the reasons he chose the specific last best economic offer of one party rather than that of the other party. It is just not sufficient to write an award

[56] Michigan, Act 312 Statute 423.235 Section 5.

without giving a thorough, well-written explanation for it.

The Chair must seek to develop the confidence of the parties by his actions and by his conduct of the hearings. The neutrality of the Chair is important if both parties are to accept the spirit in which the award was made. Obviously, on each issue there is a winner and a loser. But if there is confidence in the Chair, the parties can accept the award although they did not "win" all the issues in impasse.

It is the responsibility of the Chair to protect the integrity of the Act 312 proceeding. He must give credibility to the process if the legislative intent of Act 312 is to be realized. In this regard, the philosophy of the Chair as to the role of unions and employers in collective bargaining is important. He must understand both what a union is and what its objectives are. Similarly, he must understand the role of management and its goals and objectives. He therefore must recognize from whence the parties are coming. He must further understand that once the award is issued, the parties will be required to live with it. The Chair, however, will move on to another case or to his full-time job.

Being an arbitrator in grievance arbitration is quite different from being a Chair in an Act 312 proceeding. In grievance arbitration, the authority of the arbitrator is specified and delineated by the contract. He is guided by the four corners of the agreement, past practices, and the common law developed through arbitral awards. As noted earlier, in interest arbitration the criteria used by the panel is spelled out in Section 9 of Act 312. However, the interpretation of the record as it relates to specific issues is quite different. In grievance arbitration, the arbitrator cannot fashion his own kind of industrial justice based on the record. He in fact legislates the new agreement.

The rocks and shoals for the arbitrator in interest arbitration are far greater than in grievance arbitration. In other words, the arbitrator to an Act 312 proceeding will be subjected to a more critical evaluation when issuing the award because of the high stakes for both public employer and union. Given the notoriety of the Detroit case, the advocates, public officials, other unions, and the state legislators are all watching to see what this panel will do with its award. The arbitrator can expect adverse criticism from one or both of the parties, the city administration, the union, and the media. He, therefore, has to do the most credible job because the spillover effect of this award will affect his reputation in the field. There is no place to hide, except in his integrity and commitment to make Act 312 work effectively as spelled out in the Preamble.

A Critique of the Detroit Case

In the Detroit case there were too many issues, both economic and non-economic. It seemed that the parties wanted to rewrite the entire contract. A case with so many issues should not have been granted an application to Act 312 by the Michigan Employment Relations Commission. Apparently, very little hard bargaining took place before the Act 312 hearings, as evidenced by the number of issues.

It is clear that very little mediation took place, and at best it was perfunctory. The mediation that did take place should be appropriately titled "surface mediation." There was no real effort made to get to the root of the problems confronting the parties. The quality of the relationship between the parties has exacerbated tensions. The parties to the dispute have been through many grievances, arbitrations, and much litigation. Much of the non-economic issues presented by the city appeared to be an effort to rectify an arbitrator's adverse decisions.

During the course of the Act 312 proceeding, there was a change in leadership

of the Detroit Police Officers Association. The incumbent was successfully challenged in the election. The new leadership brings a new perspective, a new platform on which he ran, and a new set of expectations of the membership. The members apparently voted for a change in electing its new officers.

Even before the new President of the DPOA took office, he was subject to disciplinary action by the Police Department for allegedly living outside the city in violation of the city's residency requirement. On the very day of his installation, a disciplinary hearing was scheduled. He subsequently was discharged; in all probability, the case will go to arbitration. He continues to serve as the President of the Union, even though he has been discharged from the police force.

New leadership coupled with the disciplinary action for violation of the residency requirement added another critical dimension to this Act 312 proceeding. The question has been raised if the action of the city was designed to harass the new leadership. This Act 312 proceeding was further complicated by a critical federal lawsuit involving the *N.A.A.C.P. (Detroit Branch), the Guardians, Inc. v. D.P.O.A. and the City of Detroit.*[57] This case is commonly referred to as the *Gilmore Case* (Judge Horace Gilmore).

At issue in this case was the layoff of approximately 1,100 Detroit police officers below the rank of sergeant, approximately 75 percent of whom were black. As a result of a budgetary crisis, the city implemented large-scale layoffs of city employees in 1979, including police officers, 71 percent of whom were black. In 1980, an additional 690 police officers were laid off, 85 percent of whom were black. All officers were laid off pursuant to Article 10(e) of the collective bargaining agreement between the city and the D.P.O.A. that required seniority be strictly applied in the event of layoffs, with the result that those last hired were first to be laid off.[58]

The Court in its opinion stated: "Can the City of Detroit, knowing full well that by laying off a large number of black police officers it breached its affirmative obligations in violation of the Fourteenth Amendment, fail to return these officers to work? This is one issue presented in this case, and the answer is clearly no.

"Did the Detroit Police Officers Association fail to take reasonable efforts to protect these black members in connection with the layoffs and thus breach its duty of fair representation to them? This is the second major issue presented here, and the answer is clearly yes." [59]

In its opinion, the court stated it would issue a judgment embodying the following. (1) "The previous determination of this Court that the City breached its affirmative obligations to plaintiffs in violation of their rights under the Fourteenth Amendment in the layoffs of 1979 and 1980 is reaffirmed.

(2) "The City of Detroit is ordered to recall all black police officers laid off in the 1979 and 1980 layoffs who desire to return to the force, and who are qualified for police work within 180 days, and submit a plan to accomplish this to this Court within 30 days.

(3) "No back pay will be awarded to any recalled officer, but all recalled officers will be entitled to the full seniority they would have had, if they had remained on duty from the time of the layoffs until the time of the recall.

(4) "The City of Detroit shall not lay off, suspend, or discharge any police officer, except for disciplinary reasons, without the prior approval of this Court. This order will remain in effect until the further order of this Court.

[57] Civil Act No. 80-73693, US District Court, Eastern District of Michigan, Southern Division.

[58] *Ibid.*

[59] *Ibid.*

(5) "Any white police officer laid off in the 1979 and 1980 layoffs who has seniority over any black officer recalled may, within 30 days, petition this court for consideration of his or her case, and for consideration of his or her recall. The Court expresses no opinion as to the merit of any such claim.

(6) "The D.P.O.A. breached its duty of fair representation under Michigan law in bargaining on behalf of plaintiff police officers.

(7) "The D.P.O.A. is ordered, within 12 months, to remedy its breach of the duty of fair representation by having a reasonable representation of blacks in the leadership structure of the D.P.O.A., including, but not limited to, the board of directors, all committees, and the executive committee. Within 12 months from the date of this opinion, the court will conduct a further hearing to determine if reasonable representation has been achieved and, if it has not, to determine what remedies the Court will order against the D.P.O.A. for its failure to comply with this order." [60]

The city has prepared the following schedule of recalls of laid off officers pursuant to the court order.

RECALL NOTICE DATE	REPORT DATE	NO. RECALLED	THOSE THAT ACTUALLY RETURNED
July 28, 1981	August 12, 1981	107	100
April 1, 1982	April 12, 1982	193	171
May 18, 1984	June 4, 1984	140	135
December 14, 1984	January 2, 1985	215	185
January 21, 1985	February 18, 1985	251	189
March 20, 1985	April 8, 1985	275	NA

Source: Union Exhibit 230, Act 312 Proceedings between the City of Detroit and the D.P.O.A., 1985, Police Officers Recalled to Active Duty.[61]

Obviously, the recall of these officers represents a significant cost to the city. It is beyond the purview of this paper to discuss the significance and effect of the *Gilmore* decision. It should be noted, however, that the Gilmore case was indeed a factor in this Act 312 proceeding. When reference is made to the Duty of Fair Representation, it usually implies a union's obligation to represent employees fairly and equitably in a grievance procedure. Judge Gilmore has now extended the Duty of Fair Representation to include the process of collective bargaining.

The Road Ahead

There are problems inherent in any type of compulsory arbitration process. None are as acceptable as a voluntary settlement by the parties. There is no consensus as to the effects both positive and negative of Act 312 on negotiations between the parties. This has resulted in a kind of debate involving public officials, unions, legislators, and other interest groups as to what kinds of changes should be made in Act 312.

Among the parties seeking the repeal of Act 312 is the Michigan Municipal League. The MML has compiled figures and statistics on awards made pursuant to Act 312 and believes that the Act is unequitable.[62] Rather than being used as an impasse procedure, the MML feels police and firefighters resort to arbitration because they can receive more from

[60] *Ibid.*

[61] Interoffice Memorandum, Detroit Police Department (March 21, 1985).

[62] Cattel, cited at note 7, p. 725.

the arbitrator than the employer last offered. The MML further objects to the state legislature determining that police and fire service are essential.[63]

In accordance with the MML's determination of the unessential nature of police and fire service it proposes a right to strike by public employees when collective bargaining breaks down.[64] The right to strike would be limited by allowing a city to petition the Michigan Court of Appeals to issue a back to work order upon a claim by the employer or a finding by the court after complaint by an affected citizen that the public health and safety was subject to irreparable harm by a continuation of the strike. Upon issuance of the injunction, binding arbitration would begin, as it presently does under Act 312.

The City of Detroit has released a position paper detailing its criticism of Act 312 and requesting that it be repealed.[65] The city, possibly by nature of sheer exposure, has been the most arbitrated public employer since the adoption of Act 312. It believes that Act 312 "has been a failure, not so much because it has failed to prevent strikes, but rather because it has caused greater problems than those it was meant to eliminate".[66] The city favors the complete repeal of Act 312 or, alternatively, substantial modification.[67]

The City of Detroit's first proposal, and the one it most firmly advocates, is the complete repeal of Act 312 while retaining the prohibition against public employee strikes. This amounts to returning the parties to their respective positions prior to enactment of Act 312. Failing complete repeal of Act 312, the city favors a limited right to strike similar to that proposed by the MML.[68] The final recommendation, should the first two fail to receive support, involves amendment of Act 312 rather than repeal. Among the amendments proposed are change to total package last best offer arbitration, limiting access to arbitration procedure, defining guidelines and standards for the arbitrator to follow, and providing for local voter approval before implementation of an award. Other amendments seek to limit the number or type of issues parties can bring to arbitration and finally, administrative changes by MERC which will enable Act 312 to function more uniformly, equitably, and expeditiously. One of the most important administrative changes would be to require training for public sector interest arbitrators.[69]

Of the proposed amendments, the idea of a voter referendum raises unique problems. Such control, although democratic, undermines the authority of the arbitrator and impedes his/her ability to make choices based solely on the record of the hearings. The arbitrator would have to compromise his position for the one he believed the public possesses if he wished his award to be sustained in an election. The arbitrator's neutrality is effectively defeated when the public, or anyone else, can bring pressure to bear upon his decision.

Much of the criticism of Act 312 is shared by both public employers and employees. There is general agreement that the Act 312 proceeding takes too long. While it has been suggested that the cost and time may have gotten out of hand, these factors also serve to force the parties to look away from arbitration and back to the bargaining table. The delays in the arbitration process may also help to create an atmosphere more conducive to negotiations. One reason commonly cited for the delays in the procedure is the lack

[63] *Ibid.*

[64] Cattel, p. 726.

[65] *Ibid.*

[66] "City of Detroit—Objections to and Recommended Changes in the Policemen and Firemen's Arbitration Act (Act 312 of 1969 as amended)" 1979, p. 1.

[67] *Ibid.*

[68] Cattel, p. 728.

[69] "City of Detroit—Objections to and Recommended Changes in the Policemen and Firemen's Arbitration Act (Act 312 of 1969 as amended)" 1979, p. 11.

of an arbitrator being able to set aside sufficient time to hear a case, especially a long complicated case.

Despite the criticism of Act 312, it still presents a viable alternative for public employers and employees in comparison to the strike weapon. Unfortunately, no scheme to resolve disputes can replace good faith collective bargaining. As a believer in the collective bargaining process, I regard interest arbitration as a necessary impasse resolution approach that should be used only in a narrow category of situations. The comments below focus on how to make Act 312 more effective.

For the most part, most arbitrators would regard Act 312 as an adjunct to collective bargaining, a last resort within the process rather than a substitute for collective bargaining. This view of Act 312 as a part of the collective bargaining process has prevailed since its implementation in 1969. It may be now appropriate to redefine how and when an Act 312 proceeding should be implemented. Act 312 interest arbitration should not be viewed within the collective bargaining process; rather, the bargaining process concludes with mediation. When Act 312 is evoked, it should be an indication that the parties have exhausted the bargaining process.

I would propose that during the mediation process, the parties to the dispute be required to submit their last best offer to the mediator rather than during the interest arbitration stage. The mediator would then try to bring about a meeting of the minds between the parties using the last best offers. On those issues not mediated, the mediator would write a report to MERC indicating the last best offer of the parties and the issues still in dispute. It would be the responsibility of the MERC to determine whether arbitration is necessary or to remand the parties to further negotiations. Unlike the present procedure, if arbitration was necessary, the neutral arbitrator would start off in Act 312 with the same last best offers submitted in mediation.

Under this proposed scheme of resolving disputes, collective bargaining will have ended with the mediation step. The parties will have no incentive to delay the negotiations because neither side can change their offers during the Act 312 process. As a result of this change, hard bargaining conceivably would take place during mediation and could reduce the number of cases going to arbitration. Currently, it appears the majority of cases that do reach interest arbitration were not preceded by hard bargaining.

Along with this change in the introduction of the last best offers during mediation, the following modifications to Act 312 are being proposed.

(1) In the Detroit case, too many issues were presented to the arbitration panel. The administrative agency should limit the number of issues each party can take to arbitration. There is no magic number, but five or ten should be the outer limit. This will force the parties to prioritize their demands on the issues in impasse.

(2) As to the final offer package approach, the issue-by-issue approach as specified in the Michigan Act should be retained. However, Act 312, Section 9 should be amended to include a mandate that the panel take into account the total cost of the economic items that are included in its award.

(3) The state administrative agency can play a major role in improving the effectiveness of Act 312 by taking into consideration a number of proposals. MERC can take greater care in the selection of competent chairs who have an understanding and knowledge of the collective bargaining process. MERC has begun to conduct training sessions involving would-be Act 312 cases, but more needs to be done. The administrative agency can help build case law by publishing the awards of the arbitration panel

along with fact-finding reports and making them available for public distribution.

(4) Presently, Act 312 is silent on the submission of briefs. The Act should be modified to allow for the submission of briefs following the conclusion of the hearing. The practice, however, is to submit briefs, and the Act should reflect that. Briefs serve a critical purpose in helping the arbitration panel formulate its award.

The suggestions cited above are just some of the ways Act 312 interest arbitration can be made more effective and useful in resolving disputes in political jurisdictions. In Michigan and in other states with interest arbitration acts, this impasse resolution approach has been severely criticized as destroying the real give and take of collective bargaining because both sides were concerned with mapping out their positions for the arbitration hearing. There is evidence that meaningful bargaining does not take place in such an atmosphere, and that the collective bargaining relationship is often likely to deteriorate further as the parties become accustomed to going to arbitration. These are the so-called "chilling" or "narcotic" effects of interest arbitration.

The introduction of hard bargaining with the submission of last best offers in the mediation stage should have an effect in reducing the number of cases that do go to binding arbitration. The parties to the dispute will no longer be able to conduct negotiations during arbitration. This hopefully will force the parties to bargain seriously with the aim of reaching an agreement as soon as possible prior to petitioning for Act 312.

The practice of leaving it to the arbitrator to write the collective bargaining agreement is not the intention of binding interest arbitration. Large cities, such as Detroit, face unique financial problems and a highly politicized bargaining environment. Both the city unions and the city administration find it more expedient at times to avoid responsibility for a settlement and leave it upon the shoulders of the arbitrator. Hopefully, the presence of hard bargaining at an earlier stage in the negotiation process will stimulate the parties to settle the dispute on their own. Interest arbitration was never meant to be a panacea for collective bargaining but only a tool to be used after the negotiation process had been exhausted.

[The End]

Collective Bargaining in Public Higher Education

By Ernst Benjamin

American Association of University Professors

The extension of collective bargaining to the public sector provoked concern that public employees might inappropriately influence public policy. Today's discussion of public safety dispute resolution and faculty bargaining provides an opportunity to reassess this concern.

The initial argument emphasized two problems: (1) the vulnerability of municipalities to disruptive work stoppages absent alternative dispute resolution procedures and (2) the relative lack of market constraint on union demands in the

public sector.[1] Public safety dispute resolution offers a crucial test of the first concern. However, this concern has little relevance to faculty, of whom it is frequently, if imprudently, stated that, were they to strike, no one would notice.

With respect to the absence of market constraints, the fact that many municipal leaders now confidently avow a readiness to accept work stoppages in preference to third party dispute resolution supports the rebuttal offered by Clyde Summers. He identified an adequate substitute for market restraint in the public sector via massed resistance to tax increases. He cautioned, however, that adequate resistance might not materialize on policy issues.[2]

Faculty typify those professional public employees whose expert knowledge, often in areas of little public attention but of significant long-term public impact, might in Summers's view create an imbalance in the democratic policy process. The Supreme Court, in *NLRB v. Yeshiva University,* has ruled that faculty in many instances are not only professional but managerial employees whose authority in matters of academic policy is somewhat analogous to an industrial determination "of the product to be offered, the terms upon which it will be offered, and the customers who will be served." [3] Consequently, the Court denied such faculty the protection of the National Labor Relations Act.

Faculty do continue to bargain by consent in the private sector, but the preponderance of faculty bargaining occurs in the public sector under state statute. Federalism provides, therefore, an "experiment" in public sector bargaining by a group of professional employees whose influence on management policy exceeded the bounds acceptable to the Supreme Court even in the private sector. But the experience afforded through federalism will constitute an "experiment" only if subject to systematic assessment.

Research on the impact of faculty bargaining on academic management has focused on the extent of the impact. The evidence suggests that faculty have neither substantially increased their impact on managerial authority, nor substantially lost preexisting influence.[4] Although assessment of the gain or loss of faculty influence is useful, the undisputed finding that many faculties in collective bargaining units continue to participate in academic policy decision-making requires more study directed at the modes and implications, rather than the extent, of such participation.

Collegial Governance

Faculty bargaining on terms and conditions of employment in four-year institutions has incorporated preexisting faculty representation through a complex committee structure often termed "collegial governance." The substantial autonomy of the collegial structure vis-á-vis the agent received early recognition in a finding of the New York Public Employee Relations Board that "the faculty members can be on both sides of the bargaining table but the union could not." [5]

Collegial committees are insulated from the bargaining agent, in part by formal devices such as inclusion of administrators as committee members or chairs, by joint faculty-administration selection of members, and especially by an academic

[1] Harry H. Wellington and Ralph K. Winter, Jr., "Structuring Collective Bargaining in Public Employment," *Yale Law Journal,* Vol. 79, No. 5, April 1970, pp. 805-870.

[2] Clyde W. Summers, "Public Employee Bargaining: A Political Perspective," *Yale Law Review,* Vol. 83, No. 6, May 1974, pp. 1156-1200.

[3] 87 LC ¶ 11,819, 444 US 672, 100 SCt 856 (US, 1980).

[4] J. Victor Baldridge and Frank R. Kemerer and Associates, "Assessing the Impact of Faculty Collective Bargaining," *AAHE-ERIC/Higher Education Research Report No. 8, 1981* (Washington, D.C.: American Association for Higher Education, 1981).

[5] Jerome Lefkowitz, "Scope of Bargaining: Implications for Traditional Faculty Governance II," Proceedings of the Seventh Annual Conference of the National Center for the Study of Collective Bargaining in Higher Education and Professions, April 1979, pp. 57-61.

culture, which encourages professional criteria of selection and decision making. Through these collegial committees, acting independently of the bargaining agent but under protection of the contract, faculty directly influence academic policy decisions beyond the scope of bargaining by the agent.

The resultant allocation of responsibility between bargaining agent and collegial committees is frequently incorporated in the collective agreement, especially on personnel matters where the agent negotiates and protects the rules. Yet autonomous faculty committees effectively recommend individual personnel actions affecting tenure, promotion, selective salary increases, teaching assignments, and research grants.[6] The Supreme Court in *Yeshiva* reserved judgment on the managerial and supervisory implications of personnel matters. Nonetheless, the interrelation between faculty agent and faculty committee in personnel matters requires exploration as a foundation for understanding the operation of the pattern of shared representation in those areas expressly deemed managerial.

This system of representation requires arbitrators to protect both individual and collegial, as well as administrative rights, under the collective agreement. Their task is further complicated by the absence of precise standards of evaluation. Arbitrators who object to interest arbitration because it forces them to write, rather than apply, a contract may be equally dismayed by the lack of clear guidelines in academic personnel disputes.

The absence of specific standards reflects the desire of both administration and faculty to provide latitude for qualitative professional judgment. But in the absence of specific standards, a contract which limits review to formal procedures provides insufficient protection against arbitrary judgment, and a contract which permits substantive review tempts arbitrators to substitute their judgment for that of the parties. Hence, contracts often combine broad criteria (such as excellence in teaching, research, and service) with provision for written reasons (often characterized as substantive, specific, or compelling) subject to arbitral review.[7]

Arbitrators may also apply general decision rules against arbitrary, capricious, or discriminatory actions.[8] Despite the complexity and imprecision of this system, a survey of administrators and faculty on unionized campuses found that "unions had the greatest positive impact by providing fairer grievance procedures." [9]

In the aggregate, the judgments of contractually protected faculty personnel committees profoundly affect academic policy. Other committees, especially curricula committees and faculty senates, also receive contractual protection to contribute their independent professional judgment to the formulation of broad policies affecting admissions standards, curricula, graduation requirements, program development, and even budgetary allocations.[10] Were these actions to occur directly through bargaining they would exceed the accepted scope of bargaining. But, such faculty policy participation

[6] Margaret K. Chandler and Daniel J. Julius, *Faculty vs. Administration: Rights Issues in Academic Collective Bargaining*, NCSCBHEP, Baruch College, City University of New York, 1979; Barbara Lee, "Contractually Protected Senates at Four-Year Colleges," *The Legal and Economic Status of Collective Bargaining in Higher Education*, Proceedings of Ninth Annual Conference of the NCSCBHEP, April 1981, pp. 56-61.

[7] June Miller Weisberger, *Grievance Arbitration in Higher Education: Recent Experiences With Arbitration of Faculty Status Disputes*, Academic Collective Bargaining Information Service, Monograph No. 6, 1978.

[8] Maurice C. Benewitz, "Arbitration in Higher Education: Is Academic Arbitration *Sui Generis*?" *The Legal and Economic Status of Collective Bargaining in Higher Education*, Proceedings of Ninth Annual Conference of the NCSCBHEP, April 1981, pp. 61-68.

[9] Baldridge and Kemerer, cited at note 4.

[10] Lee, cited at note 6.

rarely occurs through the action of the bargaining agent.[11]

Faculty bargaining agents operate within the ordinary limits of the scope of bargaining statutes and decisions. These range from the New Jersey proscription of all permissive or managerial issues, through the balancing test provisions of New York and many other jurisdictions, to the Michigan ruling that policy matters are mandatory subjects of bargaining if they minimally affect wages and conditions of work.[12] Since these restrictions affect only the agent and not the collegial committees, difficult issues arise in adjusting the complementary roles of bargaining agents and collegial committees.

Jurisdictional Disputes

The California provisions for higher education uniquely resolve the issue by specifying the authority of the faculty senate vis-á-vis the faculty agent.[13] Absent such legislation, "jurisdictional disputes" have emerged. The Michigan Supreme Court has upheld the right of the agent to compel bargaining on student evaluation of faculty, despite prior approval by the faculty senate, because they held such evaluation to affect terms and conditions of employment.[14] The Supreme Court has upheld a Minnesota statute establishing exclusive representation by the agent in the community colleges for "meet and confer" policy discussions which have effectively displaced collegial representation.[15] [*Minnesota State Board for Community Colleges v. Knight* 1984]

On the other hand, New Jersey denies the bargaining agent's right to negotiate, and thus protect, collegial procedures as well as substantive academic decisions.[16] [Begin 1979] The Michigan and Minnesota decisions permit adversary negotiation of substantive policies which might better be resolved through collegial deliberation, but New Jersey denies the agent the ability to guarantee even that collegial deliberation exists. The broader scope is preferable, therefore, in that the parties can jointly resolve the dispute whereas narrow scope leaves the matter to unilateral resolution.

Both the resolution of bargaining agent and collegial roles and the extent of faculty participation in policy matters are often less than fully reflected in contracts because such matters are often merely referenced to past policy, handbooks, and board regulations, or left to past practices. Contract research has understated the faculty role by failure to pursue referenced policies. The best contract study is further flawed by a decision to discount such references compared to more specific contractual delineation—apparently on the assumption that such reference merely preserves and does not extend faculty authority.[17] But referenced policies are generally arbitrable and often more far-reaching than those detailed in the agreement. Case studies are essential to an understanding of the extent, character, and impact of faculty participation in academic policy development.[18]

The faculty pattern merits study because it may prove superior to the combination of negotiations and "meet and

[11] Baldridge and Kemerer, cited at note 4.

[12] David E. Feller and Matthew W. Finkin, "Legislative Issues in Faculty Collective Bargaining," in *Faculty Bargaining in Public Higher Education* (San Francisco: Jossey-Bass, 1977); James P. Begin, "Scope of Bargaining: Implications for Traditional Faculty Governance-I," Proceedings of Seventh Annual Conference of the National Center for the Study of Collective Bargaining in Higher Education and the Professions (NCSCBHEP), April 1979, pp. 50-56; Lefkowitz, cited at note 5.

[13] "Berman Act"/California Government Code, Title I, Division 4, Chapter 12, Sections 3560 to 3599.

[14] *Central Michigan University Faculty Association v. Central Michigan University*, 404 Mich 268, 273 NW2d 21 (1978).

[15] *Minnesota State Board for Community Colleges v. Leon W. Knight*, 104 SCt 1058 (1984).

[16] Begin, cited at note 12.

[17] Chandler and Julius, cited at note 6.

[18] Lee, cited at note 6.

confer" which jurisdictions such as Minnesota have employed to provide discussions on policy matters by public employees. The "meet and confer" approach assigns a policy role directly to the agent, whose organization and leadership reflect the needs of adversarial negotiations. In the faculty model, academic policy deliberation is conducted by faculty selected for their professional attributes rather than their collective bargaining ability. Moreover, the collegial committee structure encourages a different mode of deliberation than that which is essential in bargaining councils.

Faculty deliberations are insulated from both administration and union by guarantees embodied in the concept of "academic freedom." The Supreme Court has provided special recognition to academic freedom.[19] It now also threatens it by premising its decision in *Yeshiva* on the contention that the independent professional judgment to which faculty are entitled in teaching and research must be replaced by "alignment with management" when recommending general academic policy; this despite Justice Brennan's specific warning in dissent that the "notion that a faculty member's professional competence could depend on his individual loyalty to management is antithetical to the whole concept of academic freedom."

In their desire to preclude the substitution of adversarial for collegial decision making in academe, the court has threatened faculty independence of judgment regardless of bargaining status. Ironically, in the *Knight* decision the court went to the opposite extreme in permitting the bargaining agent effectively to supplant collegial governance. Both decisions reflect inadequate understanding of the pattern of shared representation emerging in faculty collective bargaining in which the faculty agent is denied a managerial role but protects the faculty committee in their contribution to academic policy formation.[20]

The use of collective bargaining to protect employee participation in policy deliberations independent of the bargaining process has broad potential significance at a time when employee participation is widely espoused. If faculty, with the special protection of the tradition of academic freedom, can only participate in policy deliberation at the price of "alignment with management" and the sacrifice of the protection of collective bargaining, what protection will be afforded other unionized employees who enter into "employee involvement" and "quality of worklife" programs? On the other hand, extension of the emerging public sector pattern of faculty representation to other employees may reasonably enhance both employee participation and protection.

Such an orderly pattern of employee participation is especially desirable in the public sector. Clyde Summers's concern for avoiding undue influence on the policy-making process is not resolved by narrowing the scope of bargaining. Research on public safety officers shows that they have more deeply influenced public policy through political action than through bargaining.[21] Teacher bargaining, on the other hand, has moved toward the orderly resolution of policy issues precisely through development of the collegial committee characteristics of academe.[22]

Both Summers and Wellington and Winter[23] recognized the value of such professional employee participation in policy development outside the bargaining process and suggested reliance on the larger political process or such internal commit-

[19] *Sweezy v. New Hampshire*, 354 US 234 (1957).

[20] Lee, cited at note 6.

[21] Hervey Juris and Peter Feuille, *Police Unionism* (Lexington, MA: D.C. Heath and Co., 1973).

[22] Charles R. Perry, "Teacher Bargaining: The Experience in Nine Systems," Industrial and Labor Relations Review, Vol. 33, No. 1 (October 1979), pp. 3-17.

[23] Summers, cited at note 2; Wellington and Winter, cited at note 1.

tees as might exist or emerge. But the political process should be the final, not the routine, method of fashioning administrative policy; and it is neither necessary nor desirable to condition professional policy participation on sacrifice of the collective bargaining protections often required for its effective exercise. The faculty pattern of representation provides a promising approach to the orderly and protected expression of employee views in policy deliberations. We might find it useful to dwell less hereafter on whether faculty fit an obsolescent industrial model and consider, instead, the possible benefits of extending the emerging pattern of faculty representation to other employees.

[The End]

UAW-Ford Employee Development and Training Program: Overview of Operations and Structure

By Thomas J. Pascoe and Richard J. Collins

UAW-Ford National Development and Training Center

This paper provides an overview of the UAW-Ford Employee Development and Training Program (EDTP). This joint program, or model if one wishes to call it that, presents opportunities for both active and laid-off UAW-represented Ford hourly employees. But before reviewing its structure, we want to underscore the concept of "jointness" which gives the program its most important strength.

The Employee Development and Training Program is one of the more extensive joint efforts underway between the UAW and Ford. Because of these joint efforts, which began in earnest with the 1979 collective bargaining agreement, UAW-represented Ford hourly workers have more opportunities than ever before to become involved in decisions affecting their work; their job satisfaction has grown; they are upgrading their skills; and they have the chance to undertake a wide variety of projects of their own choosing. In addition, because of the joint actions of Ford and the UAW, Ford product quality has improved, operating styles are changing, information is widely shared, and the working environments in Ford plants have been generally improved.

The EDTP, which was established in the 1982 agreement, is built on participative principles and has many of the same ingredients basic to other UAW-Ford joint efforts: local committees, voluntary participation by employees, local program flexibility, a national umbrella, and national encouragement and support. The program is funded under the collective bargaining agreement by company contributions based on hours worked by UAW-represented hourly employees.[1] It is estimated that, under the 1984 Agreement, approximately $35-40 million per year will be generated under various negotiated arrangements for employee development and training purposes.

[1] Under the 1982 agreement, funding was 5¢ per hour worked. The 1984 agreement increased this to 10¢ per hour worked, plus 50¢ per overtime hour worked in excess of five percent of average straight-time hours for the previous 12-month period. (Separate provisions also were made in 1984 for funding health and safety training and local training, which are not part of the basic Employee Development and Training Program described here.)

The policy-making unit of the EDTP is a Joint Governing Body comprised of equal numbers of company and UAW representatives. The co-chairmen of the Joint Governing Body are Peter J. Pestillo, Ford's Vice President of Employee Relations, and Stephen P. Yokich, UAW Vice President and Director of its National Ford Department. The Joint Governing Body establishes program policy, provides overall guidance, authorizes expenditures of funds, and directs program administration through the UAW-Ford National Development and Training Center.

The National Center, a non-profit legal entity, is located on the Henry Ford Community College campus in Dearborn, Michigan. The Center staff includes both company and union representatives and professionals with backgrounds in education, counseling, training, placement, and information processing. It has grown from eight persons to twenty-two. The Center concentrates on planning, design, and coordinative functions and provides on-site assistance to local committees to help them design and implement local program applications. It functions principally as a broker of services and limits its own training to joint local committee members and certain program coordinators. The Center assists also in identifying appropriate outside funding sources and integrating these with those available through the negotiated joint fund. The Center is action oriented. Its main function is to make things happen and evaluate their effectiveness.

The program extends through joint local EDTP committees to 85 Ford U.S. facilities throughout the country, including their surrounding communities. The program works closely with local governmental, social, and educational resources. This is a matter of conscious choice, philosophical as well as practical. The local committees and the National Center, for the most part, do not directly provide educational or training services, but they arrange to have such services provided by existing institutions and organizations. In this way, the program benefits by accessing a broad delivery network whose components can be assembled and reassembled to match specific needs.

The UAW-Ford collective bargaining agreement charters the program and through it the National Center, to "promote training, retraining, and development activities and efforts and, in the process, . . . contribute to the competitiveness and well-being of the company—aspects which are essential to the job security, personal growth, and development of Ford employees." The program's principal objectives are to: (1) provide training, retraining, and developmental opportunities for *both* active and displaced employees; (2) support other local and national UAW-Ford joint activities; and (3) provide opportunities for the exchange of ideas and innovations with respect to employee development and training needs.

When the program was established, no attempt was made to set out all the details of what was to be done or how to do it. The parties were confident that they could do this later, using their prior experience in mutual trust and problem solving. They were content with a general charter and broad guidelines, knowing they could work together to fashion specific programs and allocate funds and staff intelligently for these purposes. They also knew that some professional help and a dedicated planning group were needed, and they did not want to duplicate existing services. This is one of the reasons why they established a National Center to administer the program.

The parties also wanted to encourage local union and plant management autonomy and local ownership of program applications, so that those closest to the situation would be intimately involved. Finally, they wanted to identify and serve the real needs and desires of individual employees and not impose preconceived notions. With that background in mind,

we will now consider the major components of the program and some of its results.

Assistance for Dislocated Workers

The program began by providing services to dislocated employees because of the critical nature of this problem at Ford as well as in the rest of the auto industry. Ford-U.S. hourly employment had peaked in 1978 at just over 200,000. The industry-wide depression subsequently reduced that hourly workforce by one-half to around 100,000. Today, Ford has about 110,000 active hourly employees on roll and still approximately 19,000 on layoff who have seniority recall rights. These individuals reside in 22 states.

With respect to the dislocated worker assistance, the outcome since 1982 has been eight distinct, yet mutually reinforcing, approaches. About 11,000 laid-off employees have taken advantage of one or more program features. These features include career day conferences, vocational interest surveys, professional career counseling and assessment, job search skills training, prepaid tuition assistance for self-selected education or retraining, accelerated full-time group vocational retraining relative to areas of forecasted job growth, and special assistance for plants that unfortunately had to be closed because of depressed market and economic conditions. In addition, relocation assistance, in the form of relocation loans, has been provided, beginning in 1984, to more than 1,600 employees. Recently, a complementary relocation counseling program has been implemented.

These programs for laid-off employees are packaged to create a variety of paths to best accommodate individual interests and needs. Laid-off workers may select the path that they feel is best suited to their interests, abilities, and goals. Program components were built up piece by piece, on the basis of perceived local need, availability of provider services, and review of the experience of others.

Comprehensive and intensive full-service delivery of these and of additional components was applied in the case of two plant closings—one at San Jose, California, and the other at Sheffield, Alabama. Subsequently, six Regional Career Services and Reemployment Assistance Centers were established.

In addition to directly funding particular assistance programs, the EDTP joins forces with external resources to deliver component services to dislocated workers. The program and the National Center have helped local unions and managements obtain assistance under the Job Training Partnership Act and other federal and state assistance provisions. Since 1982, external commitments for monetary and in-kind services worth more than $11 million have been obtained.

With respect to future assistance for our dislocated workers, we plan to continue to expand and assure availability of our program to all the communities in which UAW-represented Ford-U.S. hourly employees remain on layoff. We also will be striving to improve the quality of the various approaches, develop new ones where needed, and enlarge the network of community and educational interactions.

The results of the EDTP with respect to dislocated workers can be evaluated by a number of indicators: ultimate jobs secured, the quality of jobs, duration in new employment, speed of re-entry, training entered and completed, participant testimony, and independent evaluation. We use all of these and obviously are interested in what the numbers say. But we also believe that success should be viewed less in statistical terms and more in the impact on individual human beings—the sense of accomplishment that people have expressed about attaining new skills and gaining reemployment and the thanks and hope of individuals and families rekindled in themselves, in their society, and in their institutions. That, more than anything else, is what our pro-

grams to help dislocated employees are all about.

Ford believes it has a responsibility to its laid-off employees. The UAW believes it has a responsibilty to its laid-off members. Jointly, we are meeting our responsibilities.

Programs for Active Workers

The key EDTP applications for 110,000 Ford-U.S. active employees represented by the UAW are summarized under a general heading titled "Avenues for Employee Growth." In this regard, the program's objective is to improve and build on existing employee education and training approaches and transcend some of our more traditional job-related training efforts by emphasizing broader personal development and growth objectives.

These objectives, first conceived in 1982 and reinforced in 1984, reflect the following underlying conditions and joint commitments: a firm desire to contribute to improving the quality of individual life; a desire to upgrade the skills of the workforce to enter the new technological world, both socially and at work, including addressing issues raised in *A Nation At Risk;* a perceived opportunity to enhance organizational growth by offering programs and avenues for personal and career growth that demonstrate organizational caring to employees; and a continuation of joint efforts in areas of common interest, thus further promoting effective and successful labor-management relations.

The EDTP is much more than an education and training effort. It is designed for broader purposes and can be fully understood only in that larger context.

Active work force education, training, and development applications will follow six basic approaches which generally were launched in 1984, after the programs for dislocated workers were put in place. Within this framework, UAW-represented Ford employees can select programs suited to their background, interests, and goals. The six general components are: (1) life/education planning, (2) prepaid tuition assistance for formal education and training, (3) basic skills enhancement, (4) college/university options, (5) targeted education, training, or counseling projects, and (6) successful retirement planning.

These six individual programs are available to active employees on a voluntary basis. Some activities can be initiated directly by employees by participating in nationwide programs administered by the National Development and Training Center. Others will depend on actions and programs shaped by joint local development and training committees, assisted by the National Center. In developing these broad components, one goal was to assure that virtually every employee, regardless of age or prior education, could get something out of the EDTP.

Life/Education Planning

Life/education planning workshops and activities help employees decide which educational and personal development opportunities are most appropriate for them. Employees can become aware of their personal strengths and interests, learn about occupational and educational opportunities, determine ways to enhance personal potential, and form and implement educational and career plans. Entirely new workshops are being developed with a special focus on blue collar employees in a rapidly changing world. Thus, through either group or individual guidance, employees can explore and plan a life-long education and development process.

The Education and Training Assistance Plan is designed to give employees a chance to pursue a broad range of self-selected formal education training and developmental opportunities. The basic part of the plan, education and training assistance, replaced a former tuition refund program. The main changes and

improvements were provisions for prepaid tuition and a broadened range of courses, which now go beyond those immediately related to an employee's current job.

Under the basic provisions, tuition and compulsory fees for approved education or training courses leading to credits or degrees are prepaid directly to the educational institutions up to an annual maximum of $1,500 per calendar year per participant. Such assistance covers most formal education courses that employees may wish to pursue, related to their job or other jobs or careers in which they are interested. Enrollment under this new plan increased by 80 percent in one year, versus the more limited refund program. Some 5,800 applications were processed in 1984, and participation will likely continue to grow in 1985.

An entirely new Personal Development Assistance (PDA) feature of the plan pays tuition and compulsory fees up to a maximum of $1,000 per calendar year (part of the $1,500 above) for a special range of approved education and training, including non-credit or non-degree courses or activities, that can directly enhance personal development and potential. Such courses or activities include those relating to communication skills, success/motivation training, time management or computer literacy courses, among other occupation-related programs approved by the National Center. We expect usage under this part of the plan to grow dramatically in the next few years. Interestingly, it is drawing in participants who have not otherwise used the formal degree tuition programs. Early findings show that 75 percent of PDA participants have not been involved in other forms of tuition assistance.

Basic skills enhancement allows employees to continue their basic education, brush up on certain skills (such as math, language, and communication), and master new skills. Educational counseling and learning opportunities are offered, depending upon local interests and circumstances, in four main areas: adult basic education, general educational development, high school completion, and English as a second language.

Class instruction may be provided in the plant, local union hall, or elsewhere at times convenient for most participants. Instructors generally are from local public schools and specialize in adult education and counseling. Special features include open entry and exit and competency based learning.

Computer-assisted programs are used at a number of locations to determine the grade or school level at which participants are functioning. Computer printouts indicate (1) whether or not specific math and language skills have been mastered and (2) recommended math, reading, and writing courses to remedy identified knowledge and skill deficiencies. Employees are finding such systems both fascinating and exciting, particularly where their assignments have been scored or other feedback has been provided confidentially and immediately by computer.

The Basic Skills Enhancement Program initially was launched on a pilot basis at one plant in August 1983 with over 250 participants. Since then, it has been extended to ten other locations and an additional 600 employees.

College/University Options Program

The College/University Options Program is being launched this year on a pilot basis covering locations in five states, and it is designed to make higher education and college or university degree programs more accessible to active employees. Key elements of the program include: (1) opportunities to gain college credits for work-related education and training and certain work and life experiences; (2) agreements by participating colleges and universities to accept transfers of credits toward their individual requirements for formal degrees; (3) the offering of college curricula that incorporate plant technologies and business prac-

tices with increased relevance to the career needs and interests of our employees; (4) classes offered at the worksite, where practical, and scheduled at times convenient to working adults.

The U.S. Department of Education recently awarded a major grant to the UAW-Ford Center to promote the establishment of regional faculty teams to assess students' prior learning experiences in the five states where the pilot facilities are located. In addition, these funds will be used to develop and promote common guidelines for accepting and transferring college credits among colleges and universities participating in the UAW-Ford College and University Options Program. The program also will feature college counseling workshops and course instruction at the plant site or union hall. One goal of the grant is to obtain information to assess model applicability and replicability on a broader scale.

To supplement broader national program applications, the National Development and Training Center works with joint local Employee Development and Training Program committees on an individual basis to develop projects covering specific education, training, or counseling needs of a particular location or segment of the workforce. Frequently, these concentrate on vocational and technical training, such as computer programming, word processing, or communication skills. They can also include on-site group delivery of courses available under the tuition assistance and individual personal development plans. Local committees identify needs, assess potential response, locate providers, develop proposals for Joint Governing Body review and possible funding, and, when approved, carry out projects and evaluate their effectiveness. Targeted projects will be a growing area of program utilization.

The pre-retirement counseling program can help senior employees make the transition to retirement. It consists of eight sessions for employees and their spouses.

The sessions (each of which is two to three hours long) include presentations on insurance and pension benefits, legal and financial planning matters, leisure activities, and health awareness. Estate planners, lawyers, nurses, public health professionals, bankers, and other local resource personnel may assist in presenting the topics and leading discussions.

Last September and October, pilot projects were launched at the Rawsonville, Sheffield, and Sterling Plants for over 300 employees and their spouses. Since then, 163 company and union representatives from 58 facilities have been trained as coordinators to implement the program at their locations. Early response is enthusiastic. Approximately 15-20 percent of the Ford hourly population is eligible for retirement, and in some plants it is more than 50 percent.

Conclusion

Worker dislocation obviously hurts the United States competitive position. Unemployment diminishes the domestic market's buying power, increases the costs of social service programs at the same time that it decreases the supporting tax base, extracts high psychological costs from its victims, and diverts attention, energy, and resources from the search for technological innovation. The negotiated EDTP brings new forms of assistance to dislocated workers over and above the traditional income safety nets built up over the years by collective bargaining.

Underutilization of the active workforce also represents a serious drag on the country's industrial competitiveness. Additionally, as individuals, Americans have always had high aspirations for personal growth and education. By encouraging individual workers to develop their capabilities, initiative, motivation, and innovation, there is a clear though not always measurable impact on peformance, satisfaction, and the quality of individual and organizational life.

While these voluntary programs are readily available to employees, they are not without cost in terms of employee time and effort. Their high rate of acceptance by employees is all the more remarkable given the average age (43) and average years of service (17) of the Ford active hourly workforce, the physical and mental demands of their jobs, and the overtime frequently required to meet market conditions. The EDTP appears to be something employees were ready for.

We have concentrated on describing the UAW-Ford approach to assisting the dislocated worker with respect to retraining and reemployment services and our programs for the active workforce. Many people are also interested in learning more about the internal mechanisms that make the program work. Space does not permit us to get into these matters, which would include items such as internal staffing, organization structures and relationships, funding, and proposal mechanisms.

We would also have to address program development, advisory task forces, creating consortia, using experts and consultants, and obtaining national and local consensus. Even such details as process evaluation, program quality control, program extension, and information processing would have to be addressed. All of these have an interest and importance of their own, particularly in an arrangement as novel as the joint national and local entities represented in this program. But these are matters for another time.

Many of our program components are not unique or unusual, of course. But we believe that the spirit, care, and cooperation with which UAW and Ford have packaged and delivered them represents a fresh and dynamic approach toward addressing, if not fully resolving, a number of important and complex employee development and training questions. We have a heady task to grow into the program components we have launched, to make them widely known and available to employees, to evaluate quality and results, to constantly update and reshape program features, to keep the program young and zestful, and to respond to emerging needs and opportunities with new programs and approaches.

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[The End]

The UAW-Ford Career Services and Reemployment Assistance Centers: New Ventures in Service Delivery to Unionized Workers

By Marshall Goldberg

UAW-Ford National Development and Training Center

Under its joint Employee Development and Training Program, Ford and the UAW have implemented a number of approaches to assist active and laid-off UAW-represented Ford-U.S. hourly workers. The focus of this paper is to describe one of the approaches for laid-off workers, the Career Services and Reemployment Assistance Centers.

There are eight such Centers: one in San Jose, California (now phased out); one in Sheffield, Alabama; three in southeastern Michigan; one in Indianapolis, Indiana; and one in Lima, Ohio. Another Ohio Center is in the planning stages. These "one-stop" centers offer a full range of counseling, educational, and placement assistance services. Prior to their establishment, services generally had been made available as discrete or specially combined programs.

The development of the midwest regional Centers draws heavily from the parties' experience in assisting workers displaced by the closing of the San Jose assembly plant (May 1983) and the Sheffield, Alabama, casting plant (July 1983), and we will start by briefly reviewing these centers.

The San Jose and Sheffield Centers

With the announcement in November 1982 of the planned closing of the San Jose assembly plant (May 1983), a local joint UAW-Ford development and training committee was formed. It acted immediately to establish an in-house Employment and Retraining Center jointly staffed by four full-time personnel (two from plant management and two from the local union).

The local co-chairmen of the San Jose joint development and training committee, together with the staff of the Employment and Retraining Center, contacted community resource people and funding agencies to develop a network of professionals, community leaders, and educational and placement sources for delivery of needed services.

It was determined at the very outset that a comprehensive and coherent program was required, with a menu of services tailored to the varying needs of individuals and groups, to be offered on a timely basis, and coordinated from a sin-

gle, accessible, and familiar setting. Fortunately, the state of California was ready to assist with competent staff, proven programs, and timely funding. Local funding and services were furnished by the plant and the division and by the national UAW-Ford Program. Technical assistance was supplied, as needed, by the UAW-Ford National Development and Training Center. A working consortium was formed, but the local committee clearly ran the operation.

The Employment and Retraining Center was the focus for program coordination, personal counseling, brokering of services, follow-up, and monitoring. In-house activities started many months prior to the actual closing. In addition, the local development and training committee, with assistance from the UAW-Ford National Center, acted as a broker for vocational retraining, solicited and evaluated proposals from providers, and contracted for services. Vocational retraining classes were held at numerous vocation education agencies throughout the area. The Center was kept open for more than a year after the plant had closed.

The successful San Jose experience has been described more fully elsewhere, and it has been cited as an example of the best practice in plant closings. Among other items, Hansen listed the following as having been particularly useful: "the value of early advance notice; the importance of an external catalyst and source of technical assistance in getting the program under way and moving in the right direction; the necessity of good union and management leadership; the importance of on-site delivery of services to the displaced workers; the importance of frequent communication with the workers; the value of having a flexible, readily available resource base to underpin the readjustment program; and the employer's sense of responsibility in discharging obligations to the dislocated workforce." [1]

Some of the major San Jose outcomes include: (1) Orientations to available training programs, services, and skills assessment programs were made available to all employees. (2) There were over 2,800 enrollments for in-plant vocational training orientation sessions conducted by plant personnel. (3) Nearly 800 employees enrolled in adult education courses to improve basic skills in subjects such as math and English as a second language. A significant number (183) have earned their high school diplomas or passed the GED. (4) Over 750 employees enrolled in intensive, full-time vocational retraining programs, of which 500 involved technical training. (5) 438 employees went through a Job Search Skills Workshop. (6) Twenty-one percent were retired or expected to retire. Eighty percent of the employees who took training courses are now employed. (7) To date, over 83 percent of those who reentered the labor market have secured employment. Based on experience to date, we anticipate that those currently pursuing full-time vocational training will have a high job placement rate.[2]

The San Jose "system" was replicated, within much the same time period, and with appropriate local variation, in Sheffield, Alabama. There, too, a joint labor-management committee, working with the state and community agencies and the UAW-Ford National Center, created a comprehensive, on-site menu of services. The local service center, in this case, was established at the local union (UAW) hall directly across from the plant.

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[1] Gary B. Hansen, "Ford and the UAW Have a Better Idea: A Joint Labor-Management Approach to Plant Closings and Worker Retraining," *The Annals of the American Academy of Political and Social Science*, 475 (September, 1984), pp. 158-174.

[2] UAW-Ford National Development and Training Center. *Center Report 4: The San Jose Assembly Plant, UAW-Ford Approaches to Retraining and Job Assistance for Dislocated Workers.* Dearborn, Mich.: UAW-Ford National Development and Training Center, November 1984, Introductory Letter From the Local Union—Stan Jones, Chairman.

The National Center was more involved at Sheffield than it was at San Jose where California state agencies already had experienced staff and proven programs. The National Center provided early funding, obtained interim funding from the Alabama Office of Employment and Training, and subsequently secured a matching grant under the Job Training Partnership Act. Without Center funding, there would have been delays and gaps in launching and continuing services. As at San Jose, the local committee and the National Center provided technical assistance, maintained effective control over the delivery of services, and ensured that programs were properly conducted. (See Table 1 for Sheffield results.) The Sheffield Center will be phased out in June 1985. Originally, it had been slated to close in January but stayed open at the request of the state. One purpose was to share accumulated expertise with various agencies, so that the state would have an available base of experience to apply if it needed it in other settings.

The San Jose and Sheffield results were obtained in spite of high levels of local unemployment (nine percent and 21 percent, respectively). Sheffield had, of course, a much more difficult challenge, not only because of its unemployment rate, but also because it was in a semi-rural area with fewer industrial and commercial opportunities. At San Jose, the workforce included a substantial proportion of Hispanics and other minorities (33 percent Hispanic, 12 percent black, and two percent Oriental).

Discrete Services in Other States

While the San Jose and Sheffield efforts were proceeding, services were being delivered to UAW-Ford laid-off employees in locations in twenty other states in late 1982 and during 1983. For the most part, these were discrete services (one or more), delivered under the guidance of a local committee and National Center personnel. In addition to the approximately 3,000 employees served at San Jose and Sheffield, another 8,000 have received services, for a total of some 11,000. In addition, relocation loans have been provided for more than 1,600 employees.

From October 1982 through December 1984, career day conferences and vocational interest surveys were conducted in 30 locations, supplementing the outreach that was conducted by national mailings and local promotional and referral efforts. More than 4,000 employees received local career counseling and guidance. More than 6,500 enrolled in the prepaid tuition plan for laid-off employees (August 1982—December 1984). This plan provides up to $5,000 of self-selected tuition assistance, depending on seniority. Intensive, full-day retraining (two weeks to a year or more) in technical subjects was chosen by more than 1,000 individuals. All who so desired were given job search skills training and job development and placement assistance.

In many locations this discrete approach, tailored locally with help from the UAW-Ford National Center, will continue to be used. It is the most feasible approach when there are relatively few workers at a particular site, or when locally available services are limited. But wherever possible, the "full-service" comprehensive center is becoming the preferred delivery method. In Michigan and in other Midwest areas, local center modifications to the single plant models used at San Jose and Sheffield were required, and this will be discussed next.

Southeast Michigan Centers

In March 1984, the first of three Southeastern Michigan Career Services and Reemployment Assistance Centers for laid-off workers was opened. The first of these three centers serves employees in the Macomb, Oakland, and St. Clair counties area. It is located at the Fraser, Michigan site of Macomb Community College. A second site, which serves generally the city of Detroit, was opened March 27,

1984, adjacent to the campus of Marygrove College on the northwest side of the city of Detroit. The third center, located at the Dearborn Heights campus of Henry Ford Community College, opened on April 30, 1984; two satellite sites in the Wayne-Westland and Ypsilanti areas became operational later in the year. These sites serve out-Wayne County and the Ypsilanti/Ann Arbor areas. In March 1984, there were more than 10,000 laid-off UAW-represented Ford workers in Southeastern Michigan.

The Michigan Centers are locally operated by selected consortia composed of educational institutions, provider agencies, and UAW-Ford affiliated staff under the direction of the UAW-Ford National Center. At the Fraser site, Macomb Community College has been contracted as the lead agency. Organizations providing services include Oakland Community College and St. Clair Community College. In Detroit, CareerWorks, Inc. is the lead agency, with additional services provided by Marygrove College. The third lead agency is Henry Ford Community College, with services by Jewish Vocational Services, Wayne-Westland Schools, and Washtenaw Community College.

Advisory Councils, comprised of local company and union representatives, interact with the outside providers and the UAW-Ford National Center to provide advice and counsel regarding activities of the Career Services and Reemployment Assistance Centers (See Table 2).

In San Jose and Sheffield, services could be provided fully at a single location and under the sponsorship and administration of a single joint committee. the laid-off Michigan population was from approximately 25 different plants and resided in a wide geographic area. Clearly, a new service delivery configuration was needed. The result was the amalgamated regional service delivery configuration just described. The centers are run, not by a local committee but by the outside lead agency. Local committees are joined in appropriate geographic Advisory Councils. The National Center, which is the grant recipient under JTPA, plays a strong oversight role and retains a key company and union person to visit and regularly monitor each regional center.

The Career Services and Reemployment Assistance Centers coordinate a full range of services to participants. As in San Jose and Sheffield, they are a pivot point to assist the dislocated employee in determining needed services. Services delivered by the centers are designed under two project components: the Personal Development and Services Component, generally funded by the UAW-Ford National Center; and the Training and Placement Component, generally funded by a grant from the Michigan Governor's Office for Job Training utilizing JTPA funds. (See Table 3 for a diagram of services.)

Program projections for the three Southeastern Michigan Career Services and Reemployment Assistance Centers were a first-year take-up of 2,000 participants in Personal Development and Services (the first component), and approximately 860 enrollments in Training and Placement (the second component), with 430 participants in this second component to be placed in jobs by the end of June 1985. The goals of 860 enrollments and 430 placements were agreed upon as part of the Michigan JTPA grant.

Since the establishment of the first Michigan center on March 12, 1984, more than 3,400 persons have received orientation. Of these, more than 2,200 enrolled in the Personal Development and Services Component.

Through March 12, 1985, the Centers had cumulative enrollments of 1,226 in services under the Training and Placement Component. This figure represents 143 percent of the project's total enroll-

ment goal of 860. With respect to placement, a total of 687 participants returned to work, 160 percent of the project's total placement goal. The UAW-Ford National Center considers the Program investment well spent, for it has enhanced participants' skills and abilities as they re-enter the workforce, both at Ford and non-Ford facilities. These results are based upon 11 months of operation (See Table 4).

A special feature introduced in the Michigan area is a Family Relocation Service Center. This became operational in June 1984, as an adjunct service to the Career Services and Reemployment Assistance Centers. This program provides pre- and post-relocation assistance to employees and their families in the event that they relocate. Among other items, services include: individual and family counseling regarding relocation issues; job placement assistance for family members; development of a relocation plan; referral for financial assistance; and a complete community profile on the new location. A Relocation Guide is provided upon request to employees scheduled for relocation or to employees who have already relocated.

As of March 1985, the Family Relocation Services Center has provided relocation assistance to over 295 employees and their families relocating to Atlanta, Twin Cities, and Buffalo and to 36 employees who transferred from Green Island, New York, to the Sheldon Road Plant in Michigan. The Michigan regional center approach, based upon a one-stop service for laid-off employees, brings together the local community, the company, the union, and local and state governments in a working partnership which goes beyond shared funding and includes many elements of shared delivery. The parties are expanding this regional assistance approach with the addition this year of three Career Services and Reemployment Assistance Centers in Indiana and Ohio. Although two of these locations are single plant sites, it appears that the lead agency concept is better suited to deliver services when a plant has both an active and a laid-off population. A local committee cannot dedicate itself full-time to running such a Center when it must at the same time serve a large population of active workers.

Observations

It is no easy task to establish such Assistance Centers, whether single plant or regional consortium. Few states, especially in the early days of JTPA, could provide the full-time technical assistance necessary to structure a quality program. Company and union personnel had no prior experience, and there were few local providers qualified to deliver the entire range of services desired. Although Centers of this type are becoming more "state of the art," there are many pitfalls to be avoided and many lessons to be learned.

Such undertakings should not be started without considerable planning and commitment, in order to avoid confusion, errors, human disappointments, and promises that may not be kept. By the time the decision is made to launch a center, the desired launch time frame is short. People are waiting for services; applications for funding and installing program systems take time. A site must be found that is accessible to the population to be served. Without private funding, frequently the implementation process simply cannot begin.

Special problems are faced in implementing and operating a regional (as opposed to a plant closing site) center. It is imperative to find out if there are "lead" agencies and other providers who have the knowledge, staff, and flexibility to join in a consortium with both the company and the union.

The process used by the National Center involves a request-for-bid package issued to local providers. These providers are not asked to design a new program, or simply to describe their own program, but are requested to address how they will

implement the UAW-Ford design. The bid document guidelines request agencies to form a consortium with a lead agency (which will manage the day-to-day operations) and with other member providers who will furnish services in which they excell.

A third vital member of the consortium team is UAW-Ford personnel who will be located in the regional center. They provide liaison to the company and union, certain direct services to the participants, and are part of the day-to-day management team. A determining factor in the success of a center is bringing these separate groups together, each with their own background, training, and perceptions. Then, they must be molded into a team with one focus: service to the displaced worker using a flexible, client-driven system.

These new relationships need constant nurturing and support and, when developed, will provide a comprehensive approach that could not be obtained from a single agency. What were initially separate and distinct organizations gradually become one team, with commitment and ownership to their local UAW-Ford Assistance Center. The company and union presence is always maintained by both onsite staff and by two National Center coordinators (one union, one company). Under the single center approach, the quality of services will be higher, delivery will be faster, and the whole operation will be more cost effective and efficient.

UAW-Ford Employee Development and Training Program participant intake rates are high compared to those in similar programs. This probably is largely attributable to the joint company and union concentration of purpose, the configuration of the Program itself, and the partnerships and consortia that it has encouraged. We have found that intake rates normally are higher in plant closing situations since employees recognize clearly that there is no prospect of reemployment at their former facility. Program utilization obviously is dependent, to a significant extent, on local labor market conditions. Program utilization also is influenced by the attained skill levels of employees, by personal mobility, by family obligations and income availability, by individual characteristics, by the time and effort necessary to upgrade skills, and by an individual's vision of the short-term versus the long-term, as well as by many other factors.

The basic goal of the dislocated worker is reemployment, but not just any employment. Dislocated workers, especially, may feel the system has let them down. They want a quality job, one with dignity, and one that will last. Retraining and related activities must take into account individual qualifications and interests, as well as labor market conditions. Consequently, program providers must be careful of human needs and expectations. Everyone must be realistic about what can reasonably be achieved in times and places of high unemployment.

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[The End]

TABLE 1: ***Goals and Results for the UAW-Ford Sheffield, Alabama Career Services and Reemployment Assistance Center***

	Goals	*Results 6/12/83 - 3/20/85*	*Results as a % of Goal*
Enrollment	679	661	97
Targeted Vocational Retraining	289	400	138
Self-Directed Job Search Training	470	377	80
Job Placement	448	469	105

TABLE 2: ***UAW-Ford Michigan Career Services and Reemployment Assistance Centers***

	Zone #1	*Zone #2*	*Zone #3*
Location	Fraser	Detroit	Dearborn/Ypsilanti
Lead Agency	Macomb Community College	CareerWorks, Inc.	Henry Ford Community College
Major Subcontractors	Oakland Community College	Marygrove College	Jewish Vocational Services Washtenaw Community College Wayne-Westland School District
Advisory Council Representatives (Company and UAW personnel from the listed locations)	Ford Tractor Chesterfield Utica Mt. Clemens Paint & Vinyl Sterling Van Dyke	Rouge Area Research & Engineering Wayne Michigan Truck Livonia Wixom Pilot Plant	Rouge Area Monroe Rawsonville Ypsilanti Research & Engineering Wayne Michigan Truck Woodhaven Livonia Sheldon Road Northville Saline

TABLE 4: *Goals and Results in Three Michigan UAW-Ford Career Services and Reemployment Assistance Centers*

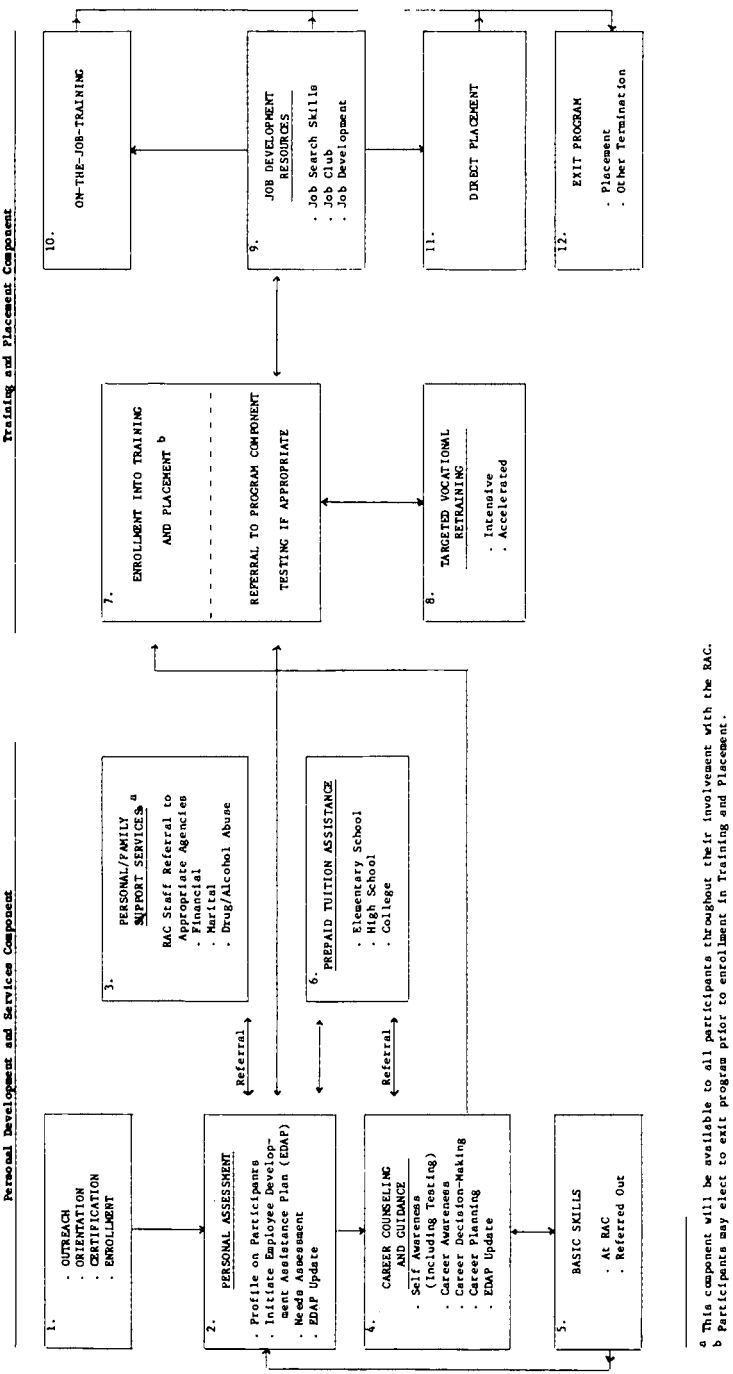
	Goals	*Results 3/12/84 - 3/12/85*	*Results as a % of Goals*
Personal Development and Services Component			
. First Year Take-Up	2,000	2,200[a]	110
Training and Placement Component			
. Enrollments	860	1,226	143
. Targeted Vocational Retraining	200	209	105
. Self-Directed Job Search Training	690	749	109
. Placements	430	687 [b]	160

[a] 2,200 employees enrolled in the Personal Development and Services Component. A total of 3,400 employees received orientation.

[b] Includes placements in Ford and non-Ford facilities.

TABLE 3: DIAGRAM OF SERVICES

UAW-Ford Career Services and Reemployment Assistance Centers (RAC)



a This component will be available to all participants throughout their involvement with the RAC.
b Participants may elect to exit program prior to enrollment in Training and Placement.

Current Developments and Future Agenda in Union-Management Cooperation in Training and Retraining of Workers

By Ernest J. Savoie

Director, Labor Relations Planning and Employment Office

Ford Motor Company

Education, training, retraining, and employee development have long been part of the American hope and the American dream. They have helped pave the road to middle class life, contributed to the productivity and efficiency of the firm and of the economy, proven of value in facilitating social and geographic mobility, improved the social and political fabric, promoted the welfare of groups, and enhanced the quality of individual life.

Despite this, training and employee development have occupied a limited place in collective bargaining. Just as recently as September 1982, at a national meeting of Ford and UAW leaders, John Dunlop (former Secretary of Labor, Harvard professor, and guru of labor-management committees) observed: "I have had the privilege of working with committees of all types .... The thing that interests me ... about your activities is that, except for fairly routine apprenticeship committees in other industries, I cannot think of a serious labor-management committee in our country that has been as concerned or as imaginative as you have in dealing with the problems of training. I've always thought training to be one of the untapped, unworked areas of labor-management relationships, and I am pleased that you are pioneering this joint committee in that particular way ...." [1]

This paper reviews emerging developments in collective bargaining in the area of employee development and training, with special emphasis on joint labor-management efforts. It does not deal with those aspects of collective bargaining that focus on traditional areas such as purely on-the-job training, apprentice training, or training related to internal promotions or to work replacement assignments. And it deals only in a cursory way with the fairly common application of job-specific retraining clauses related to changes in technology or in the organization and structure of work.

Underlying Factors

Before starting our review, it may be helpful to mention briefly the key underlying factors promoting increased attention from employers and unions to this aspect of industrial relations. Most of these factors are well known and have been discussed in other contexts, but each one has contributed to a growing emphasis on training in the collective bargaining arena. They include: (1) intensified global and local competition; (2) industrial restructuring and geographical shifts in the location of industry; (3) the relative decline of the goods producing sector and the continuing growth of employment in services; (4) widespread technological change, especially in information processing and control; (5) deregulation in certain sectors; (6) changes in the growth and composition of the workforce; (7) a concern with the quality of education of new entrants; (8) at the same time, a concern that a more educated, middle-aged group faces declining opportunities

[1] Excerpt from remarks by John T. Dunlop (September 27, 1982) to the National UAW-Ford Meeting on Employee Involvement and the Dedication of the UAW-Ford Employee Development and Training Program, September 27 and 28, 1982.

for upward mobility and for using the education they have attained; and (9) the introduction of new managerial and industrial relations systems under the broad rubric of participation.

Each of these factors, singly and in combination, affects individual companies, unions, and workforces in different ways and in varying degrees. As a group, these causal factors suggest training and retraining will continue to be subjects of growing importance in collective bargaining as managements and unions strive to find common ground in maintaining a trained and productive workforce, while at the same time handling worker dislocation in responsible and humane ways.

Because of the underlying factors just reviewed, a number of the collective bargaining agreements negotiated in the first half of the 1980s addressed training and employee development concerns.[2] Joint activity, though not universal or of landslide proportions, has been marked. It is concentrated in autos and communications and to a lesser extent in steel and agricultural implements. The driving forces in autos and communications include the depression of 1980-1982, technological change, deregulation (in the case of communications), and a background of joint participatory workplace efforts. Auto and communications agreements provide programs for both active and displaced workers. In steel and agricultural implements, efforts are concentrated on the displaced.

Relatively well-established programs for active workers, and increasingly for displaced workers, also exist with varying degrees of jointness in certain areas of the construction and the service sectors. These are related more, however, to on-the-job and career training, including certification and licensing, than to the broad education and personal development characteristic of autos and communications.

Furthermore, they are apt to be administered more by the unions themselves than by jointly directed employer-union structures, and hence they are more akin to negotiated union health and welfare funds that are supported by employer contributions. Under the Stabilization Agreement of the Sheet Metal Industry, for example, employers contribute three percent of gross payroll for various employment security purposes to a trust fund, including a National Training Fund. Arrangements of this type are not considered in this paper.

Autos and Communications

The UAW-Ford 1982 Agreement stands out as the frontrunner of a comprehensive approach. The UAW-Ford Employee Development and Training Program (EDTP) is described in two papers presented to this spring IRRA conference (Pasco and Collins, 1985, and Goldberg, 1985) and will be treated here only in a general way for its place and impact. GM and the UAW adopted a similar approach in 1982, and then both GM and Ford enlarged program funding and coverage in 1984. None of the other auto companies, suppliers, or agricultural implement companies have comprehensive plans, although specific features have been added to a few agreements.

In 1983, the Communications Workers of America, AT&T, and other communications companies adopted education and retraining provisions aimed at handling skills upgrading and dislocations resulting from deregulation and technological

[2] Information on emerging developments in the training and retraining of workers was obtained from a review of the literature, a special search of collective bargaining agreements by the Bureau of National Affairs (BNA) and the U.S. Bureau of Labor Statistics (BLS), and personal contacts with individuals in various companies, unions and academic institutions. (Public sector activity was not reviewed as part of the research for this paper.)

change. Although less comprehensive than autos, these joint arrangements represent a broad approach, and we will review them next.

The CWA represents approximately 600,000 workers nationwide. Prior to the divestiture on January 1, 1984, 85 percent of CWA members worked for one employer, AT&T.

In 1983 bargaining, AT&T agreed to spend $36 million on jointly administered training and retraining programs. Since the contract was signed, AT&T has spun off its Bell Operating Companies under court-ordered divestiture. As a result, rather than a single program emanating from a national framework, there will be a series of training programs individually operated by the new AT&T and the new Operating Companies.

The 1983 contract called for creation of joint company-union Training Advisory Boards (TAB) in each company. Each TAB was to develop, advertise, evaluate, and modify, as necessary, two types of training for active workers. Career and personal development training was to help CWA members grow personally and professionally. Job displacement training was to help members whose jobs were changed or eliminated by new technology or market forces to prepare for other jobs within the company. There is an active TAB in each company, and both types of training are being offered. Courses are offered outside of working hours, and time spent in training is voluntary and unpaid. The major emphasis thus far has been on personal and career development, but a few of the joint committees have set up retraining courses for workers whose jobs are to be eliminated.

Among the joint CWA-employer programs around the country, the amount of innovation has varied. In many cases, the committees have focused on increasing participation in previously existing training programs, such as home study and tuition assistance. In one case, however, a completely new program was developed. The TAB for CWA-Northwestern Bell contracted with Metropolitan Technical Community College (Metro Tech) in Omaha, Nebraska, to offer counseling and training through the existing network of community colleges in a five-state region. Any interested CWA member can receive free vocational testing and guidance at the nearest community college. Based on this counseling, workers can enroll for free in a wide range of courses. Tuition is paid up-front for courses aimed at either career advancement within Northwestern Bell or a new career outside the company. Metro Tech also has arranged to provide intensive counseling and job search assistance to workers displaced due to office closings in rural areas. Workers who have received notice of termination are encouraged to enroll in classes before they leave the company.

As is true in other companies and industrial settings, some CWA members require remedial courses in basic skills before they can benefit from advanced technical training, and some of the new training programs provide such courses. For example, CWA members at Bell Laboratories (a part of AT&T) include many people whose native language is Italian or Spanish. The TAB contracted with Rutgers University to provide a four-month course in English as a Second Language for this group and also set up an Individualized Learning Center for reading improvement. The CWA—Chesapeake and Potomac (C&P) Telephone TAB initiated a similar approach to training in basic skills. Called the ATLAS program, it allows CWA members at C&P to enroll in free, self-paced, after-hours courses at their worksite on topics ranging from vocabulary building and reading comprehension to basic math and test-taking skills.

The need to cope with problems caused by the divestiture has restrained the progress of many TABs. Also, there is no central TAB. As a result of these two

factors, the program is uneven across the country. To help rectify this situation and provide a common base of information, CWA's Development and Research Department is in the process of putting together an overall model, which could be used by any of the joint committees.

The CWA-type program has been negotiated also by other unions with contracts with AT&T and the independent companies (e.g., IBEW) and by other communications companies and unions (e.g., General Telephone Company of Wisconsin).

Permanent Dislocation

The plight of dislocated mature workers is a major social issue, addressed in part by the Job Training Partnership Act of 1982 (JTPA). Unions and managements have generally addressed the issue of worker dislocation in two principal ways. The traditional approach has been to negotiate provisions to try to prevent closings outright or to discourage them through increased employer costs by restricting layoffs, increasing job transfer rights, seeking more paid non-work time, sustaining employee incomes for prolonged periods, or providing generous employee buy-outs. Recently, given the realization that many of these displacements indeed will be permanent, there has been an emphasis on employee training, retraining, relocation, and related services, to be provided in some cases prior to layoff and in others after workers are laid off. Certainly, that was the case in autos and communications.

On a broader basis, the trend to include training in bargaining agreements is reflected in the AFL-CIO's periodic comparison of 100 major contracts. The most recent comparison showed that 75 of them included provisions on technological change, work transfer, or plant closing. Of these 75, 31 contracts (41 percent) provided for advance notice, 21 (28 percent) provided rights to training for a new job, and nine (12 percent) set up a special company/union committee. In the event of plant closing, 15 (20 percent) of the contracts provide for advance notice, six (eight percent) provide rights to training for a new job, and two (three percent) set up a special company/union committee.[3]

In Steel, 1983 collective bargaining agreements recognized permanent worker displacement and included a pledge to pursue jointly JTPA, Trade Readjustment Act (TRA), and related funds. Employer funding is not required under the language of the agreements, but a number of steel companies including U.S. Steel, Inland, and Great Lakes are voluntarily contributing out-of-pocket matching amounts in order to obtain grants under JTPA. Where grants are obtained, the employer and the United Steel Workers of America establish a joint advisory board and operate a joint center to assist laid-off workers. In one instance, a joint effort was specified in a collective bargaining agreement. Jones and Laughlin agreed, as part of its purchase of a competitor's small steel plant that had been closed, to fund and jointly operate the Midland Center for Career Development (Pennsylvania). The steelworkers report they are operating six major centers.

At International Harvester, in 1984 bargaining, the company and the UAW reaffirmed their 1982 commitment to joint retraining of dislocated workers, using funds to match JTPA amounts. In addition, the Company agreed to replenish the Training Fund to a total of one million dollars in each of the first two years of the new agreement—twice as much as required under the 1982 Agreement. The parties also agreed to expand counseling and retraining efforts for workers affected by plant closings.

[3] Industrial Union Department, AFL-CIO, *Comparative Survey of Major Collective Bargaining Agreements* (Washington, D.C.: AFL-CIO, November, 1984).

In 1982 negotiations with a coalition of 13 unions, General Electric agreed to establish an Employee Assistance Program to help employees terminated because of a plant closing to find new jobs and to learn new skills. The program has two major elements: (1) Job Placement Assistance, such as counseling in job search skills and interviewing techniques, skills assessment, and resume preparation; and (2) Education and Retraining Assistance, which reimburses employees for up to $1,800 for approved courses completed within two years following termination. As in the steel industry, no funding is required, but GE has voluntarily provided money in order to obtain JTPA funds where it has closed or consolidated plants. Local union participation is encouraged in job placement assistance activities, but the program is not formally administered jointly. Westinghouse and its unions have similar education and training assistance provisions.

In many cases, particularly in the event of plant closings, companies have undertaken outplacement efforts essentially managed by themselves (or by hired outside firms) with the wholehearted support of their union(s), sometimes in cooperation with private industry councils.[4] These *ad hoc* endeavors, while important and useful, are not the fully joint efforts we are focusing on and usually have been characterized by a limited range of services and by a fairly short timetable. We can expect to see this change, however, as experience is accumulated under JTPA and once the fully joint experiences become better known.

Individual unions and AFL-CIO national and state units have on their own obtained JTPA funds to run community and union assistance centers and related programs for dislocated workers, but these are independent efforts and not the negotiated joint endeavors that are the subject of this paper. In many situations, the parties' negotiated agreements and letters of understanding may not reflect the extent of their joint efforts or the scope of their training programs, and it is difficult to generalize about them solely on the basis of contractual language or survey summaries.

For example, the 1982 letter of understanding establishing the UAW-Ford Training Program included an objective of arranging training, retraining, and development assistance for dislocated workers. However, none of the eight major specific approaches or the comprehensive assistance centers that have been implemented are identified as such in the language. A similar situation is true, no doubt, of efforts by other companies and unions to meet their particular circumstances.

Although specific emphases vary, several developments are clearly emerging. First, more comprehensive approaches are being taken. In recognition that each individual's situation is different, more companies and unions are providing assistance by offering multiple services and programs from which dislocated workers select those best suited for their circumstances. Increasingly, these comprehensive approaches are addressing the human element of dislocation (stress, financial counseling, personal needs) as well as the retraining and placement needs of the individual.

Second, private sector approaches are becoming more integrated with government and community educational and social services. JTPA generally has been a supportive influence. Although unavailable or delayed public funding may in some cases constrain the effectiveness of specific projects, on balance the act has, in this area, resulted in a more cooperative and coordinated effort from employers, unions, government, communities,

[4] See, for example, the *Goodyear* and *Bethlehem* cases discussed in Kolberg's *The Dislocated Worker*, cited in *References* section of this article.

and educational institutions. Negotiated matching funds can bridge the gap and sustain programs while public requirements are being formulated. In addition, employers and unions are including professionals and community institutions in delivering services to dislocated workers.

Third, greater attention is being given to how and where services are delivered and to the quality of services offered. Services, training, and education are being provided in a manner more targeted to adult workers and adult learners. There is more effective and concerned assessment of abilities and interests. Providers are being asked to deliver more individualized programs. Job development and placement are more sophisticated and effective. The concept of an "assistance center" is becoming recognized as an effective focal point for furnishing assistance.

Fourth, union-management cooperation is becoming more common in assisting dislocated workers. Cooperative efforts where workers sense a concern and commitment from their employer and/or union improve the effectiveness of all aspects of assistance, from outreach to placement. In part, the cooperative and matching fund approaches encouraged under JTPA and local community pressure also have contributed to increased union-management cooperation in this area.

Considerable reporting and research is being focused on the structure, operation, and success of these bargaining and social efforts to assist dislocated workers. But the story remains to be written. Critical factors in the story will be the levels of local, regional, and national unemployment; the likelihood of further dislocation; the composition, quality, location, and permanence of new jobs being created in the economy; the willingness and ability of organizations to allocate funds from other alternative uses and to supply leadership and continuing commitment; the ability of disparate groups and institutions to work together and to modify some of their own requirements; and the responsiveness of individuals and families to readjust and relocate, to learn, to surmount crises, and to fashion opportunities. Hopefully, those who write the story will not encase themselves in statistical parameters or in self-selected standards of perfection but will write large the human accomplishments and the struggle for the better.

Tuition Assistance

Negotiated tuition assistance plans represent one of the more traditional approaches unions and managements have pursued in providing educational opportunities for active employees to upgrade their job skills. Typically, these plans provide reimbursement of certain tuition and fees to eligible employees upon successful completion of job- or career-related courses. Plan requirements vary but usually are specified in terms of employee eligibility, types of courses covered, types of expenses reimbursed, and amount of reimbursement. Tuition aid plans generally have been a "stand-alone" benefit and not part of an overall education, training, or development program.

After decades of relative stability, traditional tuition assistance plans are now receiving renewed attention.[5] Not only are these plans changing in shape and structure, they are becoming increasingly more popular with employees. And this is occurring even though the tax status of the plans remains confused.

Historically, Ford had administered a negotiated Tuition Refund Program representative of other traditional tuition-aid plans. Basically, it provided active seniority employees reimbursement up to $1,000 per year for expenses incurred with approved courses successfully com-

[5] Hewitt Associates, *Survey of Educational Reimbursement Programs* (Chicago: Hewitt Associates, 1984).

pleted by the employee. During the term of the 1982 Collective Bargaining Agreement, however, the UAW and Ford, acting under the charter of the then new EDTP, made substantial changes in their approach to tuition assistance. A prepaid tuition assistance plan for laid-off workers, the first such plan in a major agreement, was established in August 1982. It was subsequently liberalized twice and now provides up to $5,000 in assistance.

In addition, on January 1, 1984, the Tuition Refund Program for active employees was replaced by a new Education and Training Assistance Plan. The type of courses covered under the two new plans is broader and the amount of expense covered is higher ($1,500 per year in 1984 negotiations, for active employees). A special feature for active employees pays for certain noncredit, nondegree courses. The plans are administered jointly and are part of a broader program that complements and is complemented by them.

The need for higher quality education is being felt in many parts of the economy. Although individuals are entering employment with higher education levels than ever before, there is increasing concern with the quality of the education of new entrants. Many high school graduates seem to lack the basic skills necessary to function as "literate" members of the workforce and of a technological society. Today and tomorrow's dynamic work environment makes it more essential than ever that employees possess the fundamental preparation to support the learning and relearning necessary in an adaptable, competitive workforce.

We can expect to see: (1) more plans offering prepayment rather than after-the-fact reimbursement; (2) higher amounts of allowable expense; (3) broader coverage of subject matter; (4) expansion of the eligible population; and (5) in some cases, full, joint company-union administration.

New Products and Technology

Training related to new products, plants, technology, and industrial relations systems is substantially broader in scope and is not as clearly identifiable as are the retraining of dislocated workers and tuition assistance. It encompasses numerous efforts that have been developed in the late 1970s and early 1980s with the increased emphasis on effectively utilizing the workforce in a competitive international economy characterized by change, particularly technological change.

Contract provisions and related efforts to retrain workers otherwise displaced by new technology represent the type of training in this category most widely used by the parties. For example, the Graphic Communications International Union has operated an International Educational Training and Retraining Program for over twenty years. The program is funded by employers and is administered in regional training centers. Initially, the program was designed primarily for apprenticeship training. With the rapid technological changes occurring in the printing industry, however, the emphasis has shifted to assist employees in keeping abreast of technological changes in their classification and cross-training in skills required for other classifications.

Since 1976, GM (and since 1979 Ford) have had new technology committees with the UAW that address, among other matters, the retraining of individuals assigned to new or changed work because of technology. Such arrangements, sometimes including retraining those displaced from their jobs but not reassigned to the new work, are prevalent in many major collective bargaining contracts. These are fairly "old" by now and need not be reviewed here. For the most part, job-specific training is involved rather than broad education. As we have seen in the CWA contracts, though, as well as in the electrical sector, the emphasis may be shifting to wider educational upgrading.

The current dramatic explosion of applications of technology, perhaps as great as any time since the beginning of the industrial age, is likely to spawn new committees and reshape the agendas of existing ones. There will be continued attention to training and retraining to ensure necessary skills for operating and repairing new equipment. But more subtle training implications will relate to managing human response to technological change. This will involve dealing with changes in work organization and in the workplace, handling employee stress, and increasing employee flexibility and receptiveness to change. Jointly supporting employees through these changes has and will continue to be an area of interest to both parties.

Another example of specific local projects in this broader category of employee development and training is the Service Employees International Union (SEIU) program, Lifelong Education and Development (LEAD). This program is designed primarily for health-care and clerical workers, mechanics, and building and maintenance operators.[6] The Lifelong Education and Development Program started in 1979 with a grant from the Department of Labor (DOL) to train and upgrade employees in low-paying, low-skill jobs to fill nursing vacancies. When DOL funding expired in 1981, the SEIU broadened its programs to include basic skills and computer training as well as more extensive training for LPN or RN licenses. The SEIU works with employers (usually hospitals and medical providers) to tailor programs to meet a company's needs and work around the schedules of employees. Management is encouraged to commit to more promotion from within. There is a strong job-related flavor, aimed in part at meeting professional and state certification licensing requirements.

In addition to training related to technology and work upgrading, other developments which can be included in this category are a host of joint training efforts to improve the way businesses are managed and the way employers, employees, and unions interact. Employers are recognizing that "old" management practices must give way to new approaches which include forms of joint problem-solving and decision-making. Companies and unions are proceeding carefully in this area but, under various names, employee participation in the workplace is increasing. Collective bargaining agreements in autos, steel, and communications provide frameworks for such approaches. In many cases, the agreements specify that training will be provided in the new decision-making and problem-solving processes. This development presents training implications in at least two respects. First, there is a need to train individuals in all the subprocesses of effective participation such as interpersonal communication, listening, meeting skills, time management, some statistical processes, problem-solving, decision-making, and conflict resolution. These relate to organizational and social skills, including a sense of membership in the organization, rather than purely technical learning. Second, a climate evolves from successful involvement processes which invites participation and joint efforts in other areas.

Other recent joint training efforts are targeted directly at obtaining productivity improvements and better product quality by installing "new industrial relations" systems, including more teamwork, a slimmer classification structure, and pay based on the ability to perform a number of jobs. This is likely to take place when new plants are constructed, or when entirely new products or processes are launched. Recently publicized examples of this in autos include GM's Saturn pro-

[6] Leslie N. Stackel, "Focus on Innovation, SEIU's Lead: Opening Doors Through Education," *World of Work Report* 10 (February 1985), pp. 1-2.

ject, Ford's Alpha, the GM-Toyota venture in California, and the Mazda Project in Flat Rock, Michigan.

UAW—Ford 1984 Program

The prefunded comprehensive education and training program that Ford and the UAW started in 1982 and that has been described in other papers at this spring IRRA conference was reaffirmed and expanded in 1984.[7] It is worth looking at these 1984 changes in a general way, for they may be precursors of adjustments that others may be interested in.

First, there is an expansion of funding to support other joint efforts. The 1982 agreement included funding to support elements of the joint employee involvement process and the mutual growth forum process (a form of labor-management consultation and information sharing). This was continued, and a special pledge was made in 1984 to strengthen joint training for the mutual growth forums. Funding support was extended to training to be provided under a new job security plan (Protected Employee Program, PEP) for employees displaced by technology, productivity, or outsourcing and for the activities and personnel expenses of the National PEP Committee. Support also was given for personnel and operating expenses of a joint New Business Development Group which will seek to bring new business into the Company to enhance the job security of UAW members.

Second, entirely new programs and pilot projects were added to the central core of the EDTP. These are an Employee Assistance Plan (EAP), a joint labor studies training program, and child care projects.

The EAP will have an identity of its own, including a separate national committee, but it will receive funding and professional assistance for developmental and certain administration from the EDTP, and it will be under the aegis of the EDTP's Joint Governing Body. The EAP will have two components: one aimed at problem resolution for conditions relating to alcohol, drug dependency, and serious mental, personal, and financial problems, and one relating to problem avoidance through promoting more healthful lifestyles in such areas as hypertension screening, smoking cessation, and education relating to exercise, diet, and personal skills for coping with stress.

The joint labor studies program will be developed during the contract. The child care projects will be pilots and will result in exploratory demonstration efforts at two facilities.

Third, a new, special 2¢ allocation was provided for health and safety training and research, and joint Local Training Funds of 5¢ per hour were established. These are not part of the basic EDTP, but there are some interrelationships. The Local Funds will support local job skills training, interpersonal skills, and employee involvement training as well as certain local expenses related to the Protected Employee Program. Unlike the core EDTP, the Local Training Funds introduce clear elements of job-related training.[8]

To the outsider, the UAW-Ford funding structure can be confusing. The 1984 funding system is as follows. (1) The basic EDTP Company contribution of 5¢ per hour negotiated in 1982 was increased to 10¢. (2) This is supplemented by a 50¢ per hour accrual for overtime hours

[7] GM and the UAW settled first in 1984. The Ford-UAW Agreement on the instant matters differs somewhat from the GM-UAW Agreement, principally: A GM allocation of 4¢ to health and safety training versus Ford's 2¢; a UAW-Ford employee assistance plan, which includes a "wellness" health promotion component; a UAW-Ford joint labor studies training component; and the configuration and interrelationships of various joint committees.

[8] Local Training Funds were introduced in the GM 1982 Agreement, and were additional to basic EDTP. GM provided 10¢ for this. In 1984, this was changed to a 5¢ nationally administered "reservoir" and 5¢ pure local training funds.

worked in excess of 5 percent of straight time. (3) Together, the 10¢ and the overtime 50¢ constitute the "national" funds. (4) An additional 2¢ per hour worked is accrued for health and safety training, but expenditures must be approved by the Joint Governing Body of the EDTP. (5) The Local Training Funds (5¢ per hour worked) are separate and are accrued locally with expenditures approved locally, within certain limits. The Joint Governing Body issues guidelines and oversees expenditures.

These funding/program relationships are shown in Figure 1 for the brave of heart. All funds are maintained as book accounts. They are clearly considered incurred "package" costs. Should the EDTP be discontinued, the accrued funds, including those to be accrued during the contract term, would be subject to negotiation or to allocation in cash to employees. Unspent and unaccrued Local Training Funds would not be subject to negotiations or disbursement. It is estimated that the 1984 Agreement will generate three to four times the amount generated in the 1982 Agreement, or approximately $120 million over the next three years versus the former $28 million (30 months).

Obviously, this is a complicated picture, but one need not know all the details to understand its general thrust. With the 1984 changes, the UAW-Ford initiative has become more than even its former very comprehensive and flexible employee development and training program. It has grown into a system supporting a broad range of human resource development needs. The joint operation and control of funds gives it a very special power for launching and carrying out innovative efforts.

This is not the place to describe this broader, multifaceted approach, nor to speculate on its accomplishments or prospects. Despite the many demonstrated successes of the core EDTP and of other joint processes, some are concerned that internally Ford and the UAW may be moving too fast, in perhaps too many directions. And there is some concern that they may face problems in blending some potentially destabilizing forces. But that is for the company and the union to manage jointly.

For the moment, at least, it appears that the broad funded approach to a wide range of human resource efforts is unique to the top auto companies. In the case of Ford and the UAW, it embodies the success of our joint activities to date and represents a new direction and scope of joint efforts of the future: a system of human resources support.

Observations

The preceding categories that have been used to group new employee development and training directions are arbitrary classifications, to be sure. The discrete groupings do not exist as such, and reality overlaps. Still, the categories are serviceable enough, if not taken too literally, in helping us understand what is going on.

There are some major industry areas where very little has happened, and it is worthwhile to reflect on why this is so. Steel and certain related primary industries have been devastated by shutdowns and restructuring, yet we have noted only modest movement toward joint training. Two explanations are given: in view of the sea of red ink, there is no money for these added initiatives, and for active employees there is little prospect for career advancement since even further rationalization (fewer jobs) lies ahead.

Airlines have been convulsed by competitive shakeouts, price wars, and technology, yet little has occurred in the arena of joint training. In many situations, actual pay reductions are being negotiated, and this is hardly an atmosphere for adding entirely new cost programs. Also, the structure of bargaining militates against it. Companies deal with several unions, each representing different skill levels (e.g., pilots, attendants, mechanics),

with varying prospects for outside placement or for internal advancement. Then too, operations are widespread geographically, with pockets of small employment, making it difficult to organize service delivery of intensive training programs. Trucking faces the same situation of disruption, diversity of units, and geographic spread. In addition, an association bargaining structure and a health and welfare funding system may make it difficult for individual employers to see the value of moving in joint training directions.

All of these are no doubt valid explanations of why, in many situations, similar environments do not generate similar responses. It must be noted, however, that the auto companies and the communication industry were facing many of these problems when they undertook their training and retraining commitments. In the final analysis, equally critical factors may be the ideologies and relationships of the parties.

Negotiating arrangements in joint employee development and training requires different outlooks and expertise from those that characteristically are used in bargaining wages and traditional benefit plans. In the latter case commitments can be explicit, measured, and imitated, and similar provisions can be applied to large numbers of constituents with the expectation of fairly similar delivery and results. Also, training and employee development can affect the very heart of a firm, and those that have not been able to develop trust relationships with their unions may feel joint efforts for them are not possible. Similarly, many unions may not be ready for such efforts because they have no background in working in this manner or because their internal pressures do not permit them to do so.

More than eighty percent of U.S. employment is in small or medium sized companies. Here, technical, structural, and organizational constraints are real. But so is a tendency to underestimate the organizational value of training and education in fostering a cohesive, productive, creative, and adaptable workforce. Once this is realized, there will be increasing attempts on the part of managements and unions to add this new dimension to their labor relations.

There are always multiple interests competing for scarce resources, including time. Some conflicts and interests are deeper and more enduring than others. All adaptation is from within. Leadership shapes responses.

What Lies Ahead

In the second half of the 1980s, we can expect to see a continuation and intensification of collective bargaining efforts in employee development and training. The underlying factors that promoted this in the first half of the decade will provide the broad stimulus. So too will the experience being accumulated in those sectors that have negotiated training and education approaches. Others will look and learn, and collective bargaining mechanisms ensure that employee development programs spread.

There will be great variety, however, reflecting the vast diversity of firms, unions, skills, experience, needs, and potential for success. Developments will not be easy to follow, summarize, or evaluate. Comprehensive, fully joint efforts will remain the exception, not the rule. It will be easier and faster for collective bargaining to pick up individual pieces (e.g., tuition assistance, pre-retirement planning, assistance centers) and to negotiate them in more traditional manners by specifying amounts, duration, eligibility, and costs. Funding arrangements are likely, however, to become more popular as the parties become aware of their value.

If there is continued improvement in the economy, including lower levels of structural unemployment and displacement, there will be a diminution of training activity with respect to laid-off employees. New mechanisms and arrange-

ments will be developed to handle smaller populations, spread over wider areas.

As firms and unions appreciate the power of training and education to upgrade skills and to improve the performance and operation of both organizations, there will be an increase in activity with respect to active employees. The parties will find the issues are too central and too important to be left entirely to the other, or to language alone. Consequently, a good deal of activity will be joint, though not necessarily of the prefunded, fully comprehensive type.

In those places that have, or that initiate, comprehensive joint approaches, there will be an extension of subject matter and an improvement of delivery mechanisms. More attention will be concentrated on the quality of services and results. There will be a gradual blending of general education and training with job specific and career training. Depending on the degree of the parties' successful experience in joint efforts, joint training of varying degrees and types will expand to provide general support for additional aspects of human resource development.

Parties will become more proficient and discerning in assessing employee abilities and aptitudes. This will be necessary as the parties offer more options in education and training to broader segments of the workforce. This will reinforce the value of certain joint decision-making, and approaches to training will be more flexible than in the past. Parties will develop methods for experimenting with new techniques through pilot projects, evaluating the effectiveness of pilot projects and ongoing programs, and changing or discontinuing approaches that fail to meet the needs of employees or the parties.

Parties will work more closely with government and education institutions. Experience accumulated under JTPA will be helpful in this regard. Both displaced and active employees will see unions, managements, communities, and government improve the effectiveness of their interactions in delivering necessary services. Educational institutions are responding to meet the needs of adult learners, and they will become even more responsive as companies and unions seek to use parts of the established educational process to obtain a wide range of education, training, and development services. Private training providers and training associations and consultants will be asked to fashion and deliver services and to work under new arrangements.

Predictions in a field as dynamic and as varied as industrial relations are foolhardy. But here the die is cast. Unions have always supported education. There is a broad realization of the common need to promote industry and company competitiveness. The forces for change are here and are known. Breakthroughs have been made, and experience is accumulating.

While it may be unwise to paint too firm a future, it would be irresponsible to entertain too dim a one. By 1990, John Dunlop will no longer have to characterize training as "one of the untapped, unworked areas of labor-management relationships."

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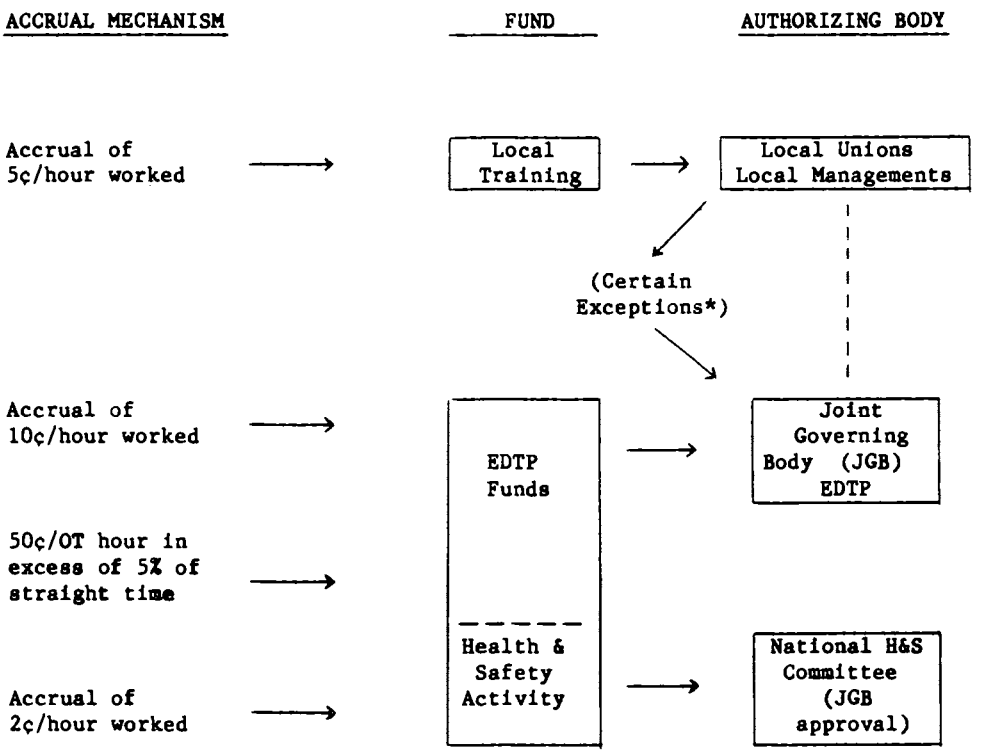
FIGURE 1: Accruals to the UAW-Ford Employee Development and Training Program (EDTP) Negotiated in 1984



* Includes all requests to lease or purchase real property; any purchase of capital items in excess of $10,000 per item; and any situation where agreement cannot be reached locally and either party appeals. Expenditures reviewed by the Joint Governing Body.

[The End]

Discussion: EDTP

By Gary B. Hansen

Utah State University

On the basis of the presentations made by our distinguished speakers from Ford and the United Auto Workers Union (UAW), we can look at the UAW-Ford joint Employee Development and Training Program (EDTP) from either the micro or macro level. At the micro level, we can evaluate what happens when the EDTP is implemented in specific plants and locations during a plant closing or to provide educational opportunities for employed workers. Conversely, at the macro level, we can assess the EDTP in terms of human resource development and/or industrial or social policies at the company, industry, or national level.

Thomas Pasco and Richard Collins have presented an excellent overview of the EDTP and a look at the variety and

extent of services offered. Marshall Goldberg has given us some basic information and perceptive observations about the operations of the Career Services and Reemployment Assistance Centers designed to help laid-off workers in Michigan and displaced workers in plant closures in San Jose, California, and Sheffield, Alabama.

Ernest Savoie has given us a cogent and insightful analysis of current developments in training and retraining arising out of collective bargaining in other industries and a peek at the future agenda for the EDTP from the perspective of Ford. Taken together, these presentations convey a picture of the dynamic UAW-Ford EDTP as a pathbreaking training and development venture.

Because I believe that the philosophy and concepts underpinning the UAW-Ford venture in employee development are of great significance to the nation's economic well-being, I will focus on the macro level of the EDTP and discuss it from that perspective.

During the past decade, informed citizens and groups have expressed a number of concerns about the nation's future. Among the issues receiving considerable attention have been: (1) declines in productivity, major structural changes in the economy, foreign competition, and industrial competitiveness; (2) concern with the education and training systems serving the needs of the nation and its citizens; and (3) increasing concern about workers' quality of life in their places of employment.

The responses to these and other related issues have been extensive and varied. Numerous national commissions, presidential task forces, academic scholars, industry associations, companies, and unions have studied the problems and issued voluminous reports and recommendations. A few of their recommendations have found their way into legislation, policy, and practice. Interestingly enough, nearly every report and study of these problems has contained similar conclusions and recommendations about issues dealing with workers—particularly their education and development, training, management, and involvement in decision-making. To meet the challenges successfully we need:[1] (1) more worker participation in decisions affecting their lives; (2) innovative approaches to work organization that will permit more participation and greater utilization of workers' skills, commitment, and enthusiasm; and (3) opportunities for education and training (worker self-renewal and career education) for workers locked in dull, repetitive jobs.

For workers in declining industries, we need: (1) provisions for timely notice of major impending changes in workforce levels or plant closings; (2) advance planning for workforce reductions through attrition; (3) industry-specific training, retraining, and relocation programs; and (4) programs for community readjustment. We also need greater investment in job-related training and additional incentives to encourage greater commitment to job training and career development among employees and employers.

And we need labor-management cooperation. Labor and management should examine opportunities and incentives for working together to increase the productivity of their enterprise through training and other appropriate areas. Where

[1] These recommendations were abstracted from the following sources: *Work in America: Report of a Special Task Force to the Secretary of Health, Education, and Welfare* (Washington: 1973); *A National Agenda for the Eighties: Report of the President's Commission for a National Agenda for the Eighties* (Washington: 1980); Pat Choate, *Retooling the American Work Force: Toward a National Training Strategy* (Washington: Northeast-Midwest Institute, July 1982); *The American Economy in Transition,* The 63rd American Assembly, Arden House, Harriman, N.Y., November 11-14, 1982; *White House Conference on Productivity: Report of the Preparatory Initiatives,* August 2-4, 1983, Pittsburgh (Washington: U.S. Government Printing Office, 1983); William L. Abernathy, Kim B. Clark, and Alan M. Kantrow, *Industrial Renaissance: Producing a Competitive Future for America* (New York: Basic Books, 1983).

appropriate, voluntary labor-management councils should be established to aid this process and to provide such services as defining training objectives and standards or managing training programs.

We also need to change the attitude of learning in business and industry from "It is what we did in school" to "It is what we do every day to make for a better job and a better life." Finally, we need competent workforce management and the mastery of production, the creation of production systems dedicated to ongoing learning and communication, used in tandem with a skilled and responsible workforce and up-to-date technologies.

American industry's response to these and other recommendations of the commissions and task forces over the past 15 years has not been encouraging. It has consisted of a lot of huffing and puffing, some frenetic activity by a few companies to "do something," and a deafening silence on the part of the majority of firms. Unfortunately, few examples of creative thinking, sustained effort, and innovative programming can be identified. The list of firms that have seriously addressed human resource issues and are dealing constructively with them is miniscule.

The UAW-Ford EDTP

Given the general indifference with which private industry and government received the reports, it is all the more remarkable that a few business firms and organizations have implemented many of the commissions' and task forces' recommendations. Among those on that short, select list are the auto industry (represented by Ford, General Motors, and the United Auto Workers Union) and, joining more recently, the Communications Workers of America and AT&T. Remarkably, the charter of the UAW-Ford EDTP encompasses the essence of what the experts have recommended.

On the basis of my limited knowledge and research, I believe that the creation of the joint UAW-Ford EDTP represents one of the more creative and far-sighted cooperative approaches to human resource development in the private sector in the past two decades. This venture also represents one of the more comprehensive and exciting efforts in employee development and training currently underway in America.

In making these statements, three questions need to be asked and answered: (1) Why and how did Ford and the UAW make the EDTP a reality? (2) Why and how did Ford and the UAW negotiate contract language that addresses nearly all of the major human resource issues cited in the commission reports? (3) What makes the UAW-Ford EDTP exemplary when compared to other jointly developed training and development programs? For complete answers to these questions we need to talk with key personnel from both Ford and the UAW, some of whom are with us today.

While I do not presume to know the full story behind the events leading up to the creation of the UAW-Ford EDTP, my guess is that they would include: (1) the auto industry depression beginning in 1979 which resulted in the subsequent layoff of nearly half of Ford's hourly work force; (2) the threat of Japanese competition and Ford's eye-opening studies of Japanese auto manufacturing systems; (3) a stable, companywide collective bargaining framework which accommodates centralized joint policymaking; (4) the achievement of a level of "trust" in the relationship between the company and union which allows for more creative and risky ventures; and (5) the state of "readiness" of Ford and the UAW as a result of the implementation in 1979 of a new employee relations philosophy known as employee involvement, which rested on the principle that "people have more to offer than the strength of their bodies—that when given the opportunity, the time and the training, they can and will contribute mightily in terms of positive ideas

that solve work-related problems, improve the work environment, and enhance work relationships." [2] The 1982 collective bargaining agreement was another step in the development of the UAW-Ford relationship.

While the five foregoing events encouraged joint union-management measures, I believe a sixth event provided the real impetus to the creation of the EDTP: the presence of far-sighted Ford and UAW leaders who have a vision of what can be accomplished if they work constructively and cooperatively with each other and are prepared to act. Several reasons can be given in response to the question, What does the UAW-Ford EDTP encompass that makes it exemplary? [3]

(1) The EDTP embodies broad and noble objectives. In the words of Ford and UAW officials, the program is "a venture to be revolutionary in scope, dynamic in character, responsive to the personal and career needs of UAW-represented hourly employees of Ford Motor Company, and beneficial to the mutual goals of greater job security and increased competitiveness."

(2) The EDTP is not cut out of whole cloth, but it is another piece in the tapestry of jointism constructed by the parties. It is one of a number of features that were crafted by the company and the union into a broad framework of interlocking arrangements designed to enhance job security, competitiveness, and mutual growth. The EDTP is complementary to and supplements a wide array of other programs and efforts.

(3) The EDTP is more than just a training and development program in the traditional sense. It is intended to be as much a participatory process as a development and training program, providing the employee, the UAW, and the company a voice in a variety of new ways. True joint participation means that all interested parties at the national and local levels must have a meaningful role in the process and must feel responsibility and ownership.

(4) The EDTP deals with all hourly employees including the needs of laid-off workers and the needs and expectations of active employees. Most employers show little concern for either group, a few show concern for one or the other group, but very few show concern for both groups.

(5) The focus of the EDTP is on the individual and is participant driven. Programs and requests for assistance are locally initiated. At the same time, it attempts to keep in touch with reality. There is no guaranteed outcome, the emphasis is on creating opportunities and empowering people to improve themselves.

(6) The creation of the National Development and Training Center with a physical home on the campus of Henry Ford Community College and a joint governing body, consisting of key principals from the union and company, provides a permanent institutional base not normally associated with a program of this kind. The small NDTC staff, jointly led by persons drawn from the union and management, provides support and technical assistance to local EDTP committees and espouses a philosophy of networking to the extent practical with existing educational institutions and local community resources.

(7) The EDTP is undergirded by independent, negotiated financial resources. The basic "nickel an hour" fund (which in 1984 was increased to 10 cents per hour

[2] "Statement" of Ernest J. Savoie, Director, Labor Relations Planning and Employment Office, Labor Relations Staff, Ford Motor Company before the Joint Economic Committee, September 23, 1983, p. 2.

[3] Information on the EDTP in items 1 through 8 is based in part on the following: 1982 UAW-Ford Document Establishing the UAW-Ford Employee Development and Training Program and its National Development and Training Center, Dearborn, Michigan, UAW-Ford NDTC, September 1982; and Ernest J. Savoie, "Effective Partnerships: Employee Development as a Joint Labor-Management Project," *The Work Review* 3 (August 1984).

worked plus 50 cents per hour accrual for overtime hours worked in excess of 5 percent of straight time) provides the NDTC with sufficient money to be proactive, take risks, and leverage resources with other public agencies in the interests of EDTP objectives. The EDTP is not dependent on the vagaries of public funding or mood swings of Congress for its lifeblood. Witness the current disarray in Title III of the Job Training Partnership Act.

(8) The EDTP is a living, growing concept. It was not created to deliver a limited set of permanent or sacrosanct programmatic activities in the same way in every plant or community. The EDTP was given flexibility and freedom to grow and reshape itself over time, based upon the expressed needs of employees and the resources and opportunities available in their communities. The expansion of the EDTP's available resources and other changes in the 1984 collective bargaining agreement demonstrates the validity of this point.

(9) The EDTP works. The results of the first three years speak for themselves. As outlined by Messrs. Pasco, Collins, Goldberg, and Savoie, the programs, the leadership, and the initial outcomes of completed projects all suggest that Ford and the UAW have created a winner.

Future Challenges

What about the future of the UAW-Ford EDTP? Are there any challenges ahead? My answer is yes, there are many challenges ahead, the following.

(1) Company and union commitment and support for the program must be maintained. Changes in company and union leadership could result in a loss of interest and involvement over time, especially in the face of pressures for a "return to normalcy" in company-union relationships during prosperous times.

(2) The momentum, excitement, and sense of high purpose the new venture presented to NDTC founding staff and support personnel must also be maintained. Changes in personnel, growth of bureaucracy, routinizing of services, and complicated procedures come with the passage of time.

(3) We must hold fast to basic principles: flexibility, focus on the individual, keeping in touch with reality, true joint participation and multiple creation, and the desire to "try." These principles are the heart of the EDTP, and must be preserved in order to ensure the vitality of the program.

(4) Effective linkages between the EDTP and the internal industrial training system at Ford must be established. Has industrial training at Ford been modernized and vitalized? Will the efforts of the EDTP and the internal training system be mutually supportive for both, or will they be operated as separate and isolated systems?

(5) Career ladders and promotion opportunities must be developed for workers who take advantage of education and training provided through the EDTP. Will the EDTP contribute to the expansion of human capital for Ford, or will it serve as a vehicle to prepare workers to seek opportunities elsewhere?

(6) Work must be redesigned to accommodate the learning environment and cooperative ethos which EDTP is capable of inculcating. Not all workers can move up a career ladder or be promoted to higher level positions. Can work at Ford be redesigned or organized to take full advantage of and foster human resource development in harmony with the goals of the EDTP?

(7) Expertise and experience must be developed at the local level to use the revenue generated by the new local training funds (accrual of 5 cents per hour worked) wisely and creatively. Local EDTP Committees will have to be careful not to be snookered by charlatans and consultants who have one patent medicine for every problem, whatever its symp-

toms, and are eager to sell it in fancy packaging at premium prices.

(8) Taking on too many additional functions should be avoided. There is a real danger that the NDTC may be given so many desirable new tasks and assignments that it will become fragmented and lose sight of its primary purpose of fostering human resource development.

(9) Effective control and leadership over the EDTP must be maintained. "Professionals" in educational institutions with their own vested interest (and declining markets) should not be permitted to talk NDTC staff and EDTP committees into signing long-term agreements or into buying "off the shelf" courses, which may not be relevant to the real needs and interests of Ford workers. Government officials directing the Job Training Partnership Act programs should not be allowed to subvert or change the program directions in the interests of larger or ill-defined social goals.

(10) Converts to EDTP should be recruited, both internally and externally. Sufficient resources be made available on a continuing basis to share ideas and disseminate information about the EDTP and its philosophy to others in order to have an impact on the larger society. Other employers and unions, as well as some Ford and UAW people, need to hear and believe the word if there is going to be continuing progress.

The UAW-EDTP is unique because no similar program exists in any other industry in the United States at the present time, with the possible exception of the new AT&T-CWA efforts. The EDTP, with its extraordinary principles, dynamic level of activity, innovative funding, and record of success, serves as an exemplary but lonely beacon. It is a prototype of the kind of cooperatively run institutions and new human resource development approaches that are desperately needed in America if we are to be competitive in the world economy of the 21st Century.

I am not as optimistic as some about achieving progress throughout the rest of the economy. The decade is half over and, with a few notable exceptions such as those discussed by this panel, training remains "one of the untapped, unworked areas of labor-management relationships" in American industry today. It is my hope that Ford and the UAW will continue to lead the way and that other firms and industries will "see the light" and learn from their experience.

[The End]

Negotiated Approaches to Job Security

By Sheldon Friedman

Research Director, International Union, UAW

In the 1984 round of auto negotiations, there was no higher priority on the UAW's side of the table than to achieve meaningful improvements in our members' job security. This paper is an attempt to analyze the developments which led to the emergence of job security as our number one bargaining priority. It goes on to describe some of the pertinent results of those and other recent major UAW negotiations.

By way of background, as recently as 1978, the U.S. auto industry and its workers were riding the crest of more than 30 years of robust secular market growth.

Autoworker productivity rose sharply over this period, far more rapidly than the norm for all manufacturing, but output grew even faster. As a result, in early 1979, on the eve of the second oil shock, there were more production jobs in the U.S. auto industry than at any other time in our nation's history.

To be sure, there had been major employment fluctuations in the auto industry prior to 1979, but these had been largely cyclical in nature. The collective bargaining approach to these serious but generally temporary unemployment problems was typified by the development and continual improvement of programs like SUB (supplemental unemployment benefits). On the economic policy front, the UAW called for full employment and the programs necessary to achieve it, such as Keynesian stimulus, direct federal job-creation, and accommodative monetary policy.

But by the latter part of the '70s, it became clear that the economic environment had changed radically and, it would appear, permanently. A mature market and stagnant economy reduced the trend rate of long-term auto sales growth. Robotics and other new technology, coupled with the new and different methods of manufacturing, heralded a productivity revolution. Most important of all, greatly intensified worldwide competition, most notably from Japan, became for the first time a significant threat to domestic auto production. The interplay of mature market, new technology, and greatly intensified global competition painted a bleak jobs picture, long-term.

To make matters worse, against the backdrop of this difficult environment of structural economic change, there was an abdication of governmental responsibility unprecedented since the Hoover Administration. Numerous programs which could have cushioned the blow to workers and communities from structural economic change were eliminated or cut to the bone, including unemployment compensation, trade adjustment assistance, federal jobs programs, and training assistance. Tight money drove interest rates to near record levels, thereby crippling the economy while helping boost the U.S. dollar to astronomical heights, precipitating a massive crisis in our international trade. Auto imports from Japan were unregulated until April 1981, after every major European nation had slammed the door tightly shut at far lower levels of import penetration than were tolerated by the U.S. Now, with the Reagan Administration's decision to allow the Voluntary Restraint Agreement to expire effective March 31, 1985, even this modest degree of protection is gone.

This incredibly difficult environment, characterized by rapid structural economic change coupled with virtual abdication of governmental responsibility, placed an unprecedented burden upon the UAW's collective bargaining and, not surprisingly, made job security the number one bargaining priority. Even with last year's relatively strong sales recovery, the auto companies have 28 percent fewer hourly workers than they did in 1978. Roughly three-fifths of the jobs lost since that time have not been restored.

The impact on affected autoworkers has been devastating. According to a recent survey undertaken by the Social Welfare Research Institute at Boston College in cooperation with the UAW and funded by the U.S. Department of Commerce, unemployed autoworkers in Michigan sustained income declines of 61 percent as individuals and 42 percent as households. Among those on layoff who previously had any savings, 43 percent had used up their entire life savings by the time of their interview. After a year or more on layoff, there was no one in the sample who had not used up at least 80 percent of his or her savings. Moreover, 58 percent of the laid-off workers were without medical coverage from their employer, a figure that would have been even higher but for improvements made

during the 1982 early negotiations. Twenty-eight percent had no health insurance whatsoever.

Faced with this crisis, the UAW fought back on the political front with proposals for domestic auto content along the lines of those in effect in more than 30 countries around the world. The UAW called for a comprehensive, democratic industrial policy with its ambitious and far-reaching "Blueprint for a Working America" proposal. In collective bargaining, job security was the UAW's top priority in 1982 and again in 1984.

JOBS Program

The centerpiece of pattern 1984 auto negotiations with General Motors was the Job Opportunity Bank-Security (JOBS) program. In addition, the union secured a commitment for continued domestic small car production and pioneered a new business venture fund, intended to create nonauto jobs to help replace auto jobs which have been or will be lost. The corporation committed to recommend to its Board of Directors to proceed with domestic production of "Project Saturn," a new family of General Motors small cars, reportedly providing 6000 direct jobs.

Howard Young of the UAW described the content of these programs, including the JOBS program, in some detail in his paper, "The 1984 Auto Negotiations: A UAW Perspective," presented at an earlier session. I will elaborate on some aspects of these programs.

The basic principle underlying the JOBS program at GM is as follows. Demand for labor is influenced by some factors, such as the rate of introduction of new technology or decisions about the degree of vertical integration (represented by "make-or-buy" or sourcing decisions), which *are* under direct control of the company and by other factors, such as sales volume fluctuations due to market conditions, which are *not*. This distinction is not clear cut in practice; pricing and advertising decisions under company control obviously affect sales volume. But in the case of the auto industry, these factors tend to be outweighed by macroeconomic considerations such as disposable income, import penetration, etc. In the end we therefore had to agree that even a corporation as big as General Motors wasn't directly responsible for the bulk of its sales volume fluctuation. But they *were* responsible for decisions to introduce or delay introduction of new technology, or to buy rather than make vehicles or component parts.

With regard to job loss caused by sales volume fluctuations, income security will continue to be provided by means of existing programs such as SUB and GIS (guaranteed income stream). But in the case of jobs lost as a result of new technology or outsourcing, the twin employment scourges of the latter 1980s and beyond, *job* security will be provided, in the sense that workers who would otherwise be displaced as a result of these decisions will not hit the streets. For purposes of the JOBS program, technology was broadly defined as any change in product, methods, process, or means of manufacturing that reduces "job content" of existing work at a location.

The commitment to protect the job security of workers affected by negotiated productivity improvements was especially important. It signaled that management finally understands that workers have little incentive to improve productivity if the net result is to work themselves out of a job.

Howard Young discussed how "bank" slots are created and filled in the JOBS program, but he did not address the question of how slots are cancelled. Bank slots are cancelled as a result of attrition (for reasons other than discharge), job creation that results from new business (rather than increased volume of *existing* business, which may temporarily empty the bank but does not permanently cancel bank slots), and permanent transfer of bank workers to other company plants to

fill vacancies created by nonvolume-related reasons. If the parties mutually agree that the JOBS bank at a given location is not likely to be drained within a reasonable time (for example, in the case of a closed plant remote from other company locations), then two other new special programs can be activated. Seniority-related lump-sum severance pay, ranging from $10,000 to $55,000, can be offered to workers at the location who are not eligible to retire. Alternatively, for workers aged 55 through 61 with ten or more years of seniority, special early retirement can be offered.

The JOBS program is administered by special joint local, area, and national committees made up of an equal number of UAW and company representatives. This joint approach encompasses all phases of the program's administration, including determination of the number of slots at every location's JOBS bank, movement of workers into and out of bank positions, decisions about appropriate assignments for workers who are in bank slots, and decisions to activate special programs to help empty the bank.

The program does not directly limit the company's right to make decisions to outsource work or introduce new technology, though there are other contractual safeguards that spell out procedures that must be followed, such as provision of advance notice, data, and (in the case of outsourcing) an opportunity for the union to reverse or revise the decision. However, though the company retains the right to make outsourcing and new technology decisions, the JOBS program does significantly increase the cost to the company of eliminating jobs as a result of such decisions. This should enhance significantly the priority of job security as a factor in auto company decision-making.

Job Content Preservation

A different approach to job security was pioneered during International Harvester negotiations. Harvester has been shrinking rapidly since 1980. Since that time, more than a dozen of its U.S. plants had been sold or closed. As in auto, job security was therefore the UAW's highest collective bargaining priority.

The resulting Job Content Preservation Program aimed to protect UAW job content of International Harvester products against adverse impact from company decisions such as outsourcing, overtime usage, and new technology. The basic principle of the program is a commitment by the company to a minimum guarantee level of straight-time UAW hours, based on a calculation which relates the level of this commitment to the amount of product which the company sells. The guarantee level is therefore adjusted for sales volume fluctuations. It is also adjusted in recognition of the company's need for future productivity increases.

The first step is to calculate for a base period (the year ending March 31, 1985) UAW hours per unit of sales, which involves a separate calculation for each of the company's major business segments (trucks, engines, castings, parts, etc.). The resulting figure for job content per unit of sales volume, adjusted for productivity growth, then becomes a target for subsequent six-month measurement intervals.

Target hours are compared with actual straight-time hours during the six months. If there is a shortfall, it must be corrected during the subsequent six months, for example, by recalls, reduction in overtime, assignment of workers to training programs, or return of work that had previously been outsourced. In the event the shortfall still has not been corrected, it becomes a fixed obligation which must be met in a manner determined by mutual agreement of the parties during the next measurement period. For example, the parties might agree to allow the company to meet its obligation by means of additional paid time off.

The Harvester approach penalizes outsourcing, since "sales" for purposes of the

target hours calculation include captive imports and other non-Harvester-UAW built products. Overtime usage is also penalized, since only straight-time hours will be compared against the target in determining whether there is an hours "shortfall."

Another approach to job security that deserves to be mentioned is the concept of an "investment guarantee." For example, in 1983, Ford Motor Company requested economic concessions at its Rouge Steel subsidiary. The company claimed that if concessions were not made, it would not make the investments necessary to assure continued viability of the steel-making facility. The union was able to achieve a written commitment by the company to make the necessary modernization investments. That commitment was backed up by a provision which allowed the union to revoke economic concessions if it believed that the company was not making responsible progress on the modernization investments.

In conclusion, as both the General Motors and International Harvester programs show, the UAW has made significant job security gains in recent negotiations, against the backdrop of an extremely difficult economic and government policy environment. Other important new programs have included domestic small-car production commitments, new business venture funds, and investment commitments.

Much more needs to be done on the job security front, but much of that can only be accomplished politically, by means of proper national economic policies. For example, the UAW has developed a contribution to the industrial policy debate, our "Blueprint for a Working America." It has never been used and is in perfectly good shape in the event economic sanity breaks out. Moreover, it is high time to tackle the issue of the standard workweek, which has not been reduced legislatively in this country in roughly 50 years.

Meanwhile, we will continue to work in collective bargaining to improve the job security of our members. I hope that this review of recent UAW experience provides a good antidote to arguments by some in our society that collective bargaining has outlived its usefulness. Perhaps it will also be a good antidote to the view that job security is nothing more than a euphemism for "thin economic settlement."

[The End]

Recent Developments in Employment-At-Will

By Jack Stieber

Michigan State University

In December, 1979, I organized and participated in the first IRRA session dealing with the issue of employment-at-will under the title "Due Process for Nonunionized Employees." [1] Since then, there has been a virtual avalanche of articles in professional journals and news stories on this subject, including my Presidential Address in December, 1983.[2] This reflects the increased importance of this issue and the growing recognition by industrial relations scholars and practi-

[1] Jack Stieber, "Due Process for Nonunionized Employees," *Proceedings of the 32nd Annual IRRA Meeting*, December 28-30, 1979, pp. 155-186.

[2] Jack Stieber, "Employment-at-Will: An Issue for the 1980s," *Proceedings of the 36th Annual IRRA Meeting*, December 28-30, 1983, pp. 1-13.

tioners, labor lawyers, and the courts that the century-old doctrine allowing employers to terminate employees at will (with or without a reason) is in need of further examination.

In this paper I intend to discuss some of the recent developments in the evolving debate over the employment-at-will doctrine. But first I will briefly summarize the major points made in my previous papers.

(1) Based on BLS reports, it appears that about three million employees are discharged for cause each year by private sector employers in the United States. Discharge is much more prevalent in this country than in any other industrialized nation, almost all of which provide statutory protection against unjust dismissal.

(2) Some 60 million U.S. employees are subject to the employment-at-will doctrine, and about 2 million of them are discharged each year without the right to a hearing by an external impartial tribunal. About 150,000 of these workers would have been found to have been discharged without just cause and reinstated to their former jobs if they had had the right to appeal to an impartial arbitrator as do almost all unionized workers.

(3) During the last decade the courts in many states have recognized exceptions to the employment-at-will doctrine. About half of the states now permit employees who claim that they have been fired for refusing to violate a public policy or in violation of an implied employment contract to have their cases heard by a jury. But only a very few states have held that all employment contracts are subject to the good faith and fair dealing requirements governing most other contracts.

(4) Despite the growing willingness of the courts to reexamine the employment-at-will doctrine, the recognized exceptions have serious limitations. The public policy and implied contract exceptions are applicable only to a minute proportion of all employees who are discharged for cause. The typical reasons for which workers are fired do not fall within either of these exceptions. The exceptions are much more likely to serve as the basis for a court suit by dismissed executives and managerial employees than by hourly workers or lower level salaried employees who make up the overwhelming majority of discharged employees.

(5) Unionization, voluntary employer programs, and judicial action are improbable solutions to the employment-at-will problem. This has led to consideration of legislation to protect employees against unjust discharge. Bills have been introduced in several states, but none have come to a vote since 1975, when such a bill was defeated in Connecticut. Opposition has come primarily from employers and trial lawyers. Unions have not opposed legislation but have not made it a priority item on their legislative agenda.

Discharge Data

In 1982, the International Labor Conference organized by the ILO adopted a "convention" providing that employment of a worker shall not be terminated except for a valid reason. The United States government and employer delegates joined Iraq, Saudi Arabia, Lebanon, Brazil, and Chile, as the only delegates voting against this convention. The United States also abstained on a companion "recommendation" dealing more specifically with valid and invalid reasons for termination.

Explaining his vote, a U.S. employer delegate said: "the U.S. business community is opposed to this erosion of the principle of termination of employment at will . . . We stand alone with this type of system, and in view of this we will oppose the convention and abstain on this resolution." [3]

In 1984 the Australian Conciliation and Arbitration Commission, which has jurisdiction over some 40 percent of all

[3] *BNA Daily Labor Report*, No. 121, June 23, 1982.

employees, issued an award providing that no dismissal shall be "harsh, unjust, or unreasonable." The 60 percent of Australian employees subject to state jurisdiction already had similar protection against unfair dismissal. *The Sydney Morning Herald* described the award as "probably the most important since Justice Higgins's Harvester decision of 1907." [4]

My earlier estimate on the frequency of discharge for cause was based on unpublished BLS data for manufacturing industries indicating an annual discharge rate of 4.6 percent during the period 1959-1971. We now have discharge data for Michigan employers based on a survey by the School of Labor and Industrial Relations of Michigan State University and national data from a study published by the Bureau of National Affairs in 1985.

The MSU data are based on responses from 265 Michigan employers stratified by industry, size, and union-nonunion status.[5] The discharge rate for nonoffice employees was 6.8 percent as compared with 5.3 percent for office employees. Discharge occurred most frequently among service employees (10.5 percent) and was lowest for employees in financial organizations (3.7 percent). The rate in manufacturing and construction was 4.8 percent.

For both nonoffice and office employees, the discharge rate was twice as high for nonunion as for unionized employees, 8.3 percent and 4.4 percent, respectively, among nonoffice workers, and 5.5 percent and 2.6 percent for office employees.

The most recent discharge data come from a survey conducted by the Bureau of National Affairs among members of BNA's 1983-84 Personnel Policies Forum (PPF).[6] The PPF includes 300 personnel and industrial relations executives, representing both large and small enterprises in many branches of business and government from all sections of the United States.

The BNA survey found that for 141 employers reporting discharges the discharge rate was 1.3 percent. The discharge rate for nonunionized employers was 1.8 percent, which was about double the rate of .9 percent for unionized employers. The average number of employees discharged per employer in 1983 was 21.

These data provide a response to the often asked question as to whether the magnitude of the discharge problem for at-will employees is such as to warrant the attention that this issue has been receiving. Though there is considerable variability in the results from different sources, we believe that the figures support the conclusion that there is indeed a problem affecting large numbers of employees. Particularly significant is the finding in both the MSU and the BNA studies that nonunionized employees are discharged for cause about twice as often as those covered by collective bargaining agreements.

Recent Court Cases

Thousands of suits claiming wrongful discharge are brought in state and federal courts each year. California leads the states in the number of cases decided and in the size of awards to plaintiffs. One study of decisions rendered in California from October 1979 to January 1984 found that, of the 51 cases that went to trial, plaintiffs won 70 percent and awards averaged $178,184 for the 36 cases in which awards were granted. Nineteen cases contained punitive damages averaging $533,318.[7]

[4] *The Sydney Morning Herald*, August 11, 1984.

[5] R. Block, J. Stieber, and D. Pincus, "Collective Bargaining and the Labor Market for Discharged Workers: A Preliminary Analysis," unpublished paper, March 1982.

[6] *Employee Discipline and Discharge*, PPF Survey 139, January 1985, unpublished data prepared for author, based on Table 9, p. 23.

[7] *San Francisco Examiner*, September 3, 1984.

Michigan has experienced a sizeable increase in wrongful discharge cases, most of them after the 1980 *Toussaint v. Blue Cross and Blue Shield* decision by the Michigan Supreme Court.[8] Other states (in almost all areas except the South, where employment-at-will is still strictly observed) have also seen increased court suits claiming wrongful discharge. But even in California, Michigan, and other states where the courts have been moving away from rigid adherence to employment-at-will, the number of cases actually going to trial is quite small. Most cases are still dismissed at the lower court level, and appeals are denied on the ground that a legitimate claim under a recognized exception to at-will employment has not been demonstrated. There are undoubtedly many suits settled out of court, but there is no information available on such cases.

Most cases during the last few years have followed the well established pattern of earlier landmark decisions. However, some have broken new ground or promise to do so in the future. In *Garibaldi v. Lucky Foods, Inc.*, the Court of Appeals ruled [9] that the Taft-Hartley Act does not preempt a fired employee's claim under state law that he was wrongfully discharged for reporting his employer's intention to deliver adulterated milk. An arbitrator had previously ruled that the employee, a member of the Teamster's Union, was discharged for just cause.

The U.S. District Court for Southern California remanded to the state court a wrongful termination suit brought against General Dynamics Corporation. The Court found that the suit was not preempted by Section 301 of the Taft-Hartley Act.[10] The Illinois Supreme Court ruled that a tort action for retaliatory discharge for filing a Worker Compensation claim is available to union as well as nonunion employees. The Court said: "It would be unreasonable to immunize from punitive damages an employer who unjustly discharges a union employee, while allowing the imposition of punitive damages against an employer who unfairly terminates a nonunion employee." [11]

These cases are significant because they extend to unionized employees the same right to sue for wrongful discharge as is available to at-will employees. In what appears to be a contrary ruling, the 11th Circuit held that a claim under state law against a union for intentional infliction of emotional distress is preempted by federal labor law when the identical facts would support an unfair labor practice charge under the Taft-Hartley Act.[12]

A further broadening of the scope for wrongful discharge suits was indicated by the Oregon Supreme Court in a decision allowing victims of sexual harassment to seek punitive damages for wrongful discharge in addition to seeking reinstatement and back pay under a state antidiscrimination law. This was the first time that a State Supreme Court had ruled that an employee had a common law right to sue for punitive damages when there was a statutory remedy available.[13]

In *Goins v. Ford Motor Co.*, the Michigan Court of Appeals held that there is a public policy exception to the Employment-at-Will doctrine where an employee is discharged for filing a worker's compensation claim against a previous employer.[14] In a similar ruling, the Illinois Supreme Court expanded the doctrine of prohibited retaliatory discharges

[8] 408 Mich 579, 292 NW2d 880 (1980).

[9] 100 LC ¶ 10,814 (CA-9, 1984).

[10] *Harper v. General Dynamics Corp.*, (DC-Cal), No. 84-1448-G(I), November 27, 1984.

[11] *Midgett v. Sackett Chicago, Inc.*, 102 LC ¶ 55,492 (Ill SCt, 1984) October 19, 1984.

[12] *Carter v. Sheet Metal Workers International Association*, 100 LC ¶ 10,810, 724 F2d 1472 (CA-11, February 13, 1984).

[13] *Hobien v. Sears Roebuck and Co.*, TCS 7905-02100/CAA 2256/SC S 305/3 (Ore SCt, October 13, 1984).

[14] 131 Mich App 185, 347 NL02d 184 (1984).

by holding that a company violated the state's public policy in firing an at-will employee who had filed a worker's compensation claim against a prior employer.[15]

In what may well be a claim involving the largest number of employees in a single case, 600 former employees filed suit charging that Atari Inc. laid them off despite earlier assurances of job security. A Santa Clara Superior Court judge ruled that the case must go to trial and that the suit was not preempted by the National Labor Relations Act. The employees seek back pay, compensation and other expenses, and $10 million in punitive damages.[16]

To counter wrongful discharge suits claiming violation of an implied contract or expressed company policies, some consultants and attorneys have been advising employers to have employees sign an agreement stating that they may be terminated at any time with or without cause. The Michigan Court of Appeals has indicated that such agreements may provide a valid defense against a wrongful discharge claim. The Court held that an employer could properly change its employment policies by requiring an employee to sign an agreement stating that employment could be terminated with or without cause, even though the employee had allegedly been told when she initially accepted employment, 7½ years earlier, that she could continue to be employed as long as her performance was satisfactory.[17]

The Montana Supreme Court affirmed an award of $150,000 in damages to a probationary employee. It ruled that probationary employees are owed a duty of good faith and fair dealing just as are regular employees.[18] These rulings suggest that, with some exceptions, court decisions are moving in the direction of widening the scope for wrongful discharge suits.

Legislation

The two states with the most legislative activity designed to prohibit unjust discharge are Michigan and California. A 1983 Michigan bill provided for notification to an employee of the reasons for discharge, mediation by the Employment Relations Commission, and, if mediation failed, the right of appeal by the employee to final and binding arbitration.[19] The arbitrator would be selected jointly by the employer and the employee from a list provided by the MERC, and his or her fee and expenses would be shared equally by the parties. The arbitrator's fee for study and decision writing was limited to twice the number of hearing days. The arbitrator could sustain the discharge, reinstate the employee with full, partial, or no back pay, or order a severance payment to be made to the employee. The arbitrator's award was reviewable by the circuit court only for the reason that the arbitrator exceeded or did not have jurisdiction, the award was not supported by competent, material, and substantial evidence, or was secured by fraud, collusion, or other unlawful means.

An employer with a grievance procedure providing for impartial, final and binding arbitration would be exempt from coverage under the Michigan Bill. A discharged employee who filed a court action against his or her former employer was barred from seeking relief under the act. The act would apply to employers of ten or more employees. To be eligible to seek relief, an employee must have worked for an employer for at least 15 hours per week for six months and not be protected

[15] *Darnell v. Impact Industries, Inc.* (Ill SCt, No. 59525, December 12, 1984).

[16] *Carson v. Atari, Inc.* (Cal SCt No. 530743, March 19, 1984).

[17] *Ledl v. Quick Pik Food Stores, Inc.*, 133 Mich App 583, 340 NW2d 420 (1984).

[18] *Crenshaw v. Bozeman Deaconess Hospital* (Montana SCt No. 84-128, December 6, 1984).

[19] Michigan House Bill No. 5155.

against unjust discharge by a collective bargaining agreement, civil service, or tenure. Managerial employees and others with a written employment contract of not less than two years were not covered.

The original California bill introduced in February, 1984, followed closely the majority recommendations of an ad hoc committee appointed by the State Bar of California.[20] It contained many provisions similar to those found in the Michigan bill.[21] Major differences included: a requirement that both the employee and the employer deposit $500 with the State Mediation and Conciliation Service to help pay for the costs of administering the act; the definition of employees as those employed for two or more years for an average of 20 hours per week; the provision of attorney fees and costs to a prevailing plaintiff or to a prevailing defendant where the charge was made for vexatious reasons or for the sake of harassment.

In the course of consideration, the California bill was amended so drastically that William Gould, Stanford University Professor of Law, who had served as co-chair of the State Bar Committee, withdrew his support from the bill charging that the amendments "are completely antithetical to our recommendations and make a mockery of any attempt to arrive at a balanced approach which would take into account the interests of both employer and employee." [22]

In 1985, two bills were introduced in the California legislature taking directly opposite approaches.[23] Space does not permit discussion of these bills, except to note that one appeared designed to satisfy employers and that the other seemed to go beyond the State Bar Committee recommendations in providing protection against unjust discharge to employees.

In both Michigan and California, employers and employer organizations opposed statutory protection against unjust discharge. Despite some extremely generous awards by juries to discharged employees, employers seem to prefer implementing personnel procedures and policies to avoid or reduce their liability in wrongful discharge cases, rather than extending protection against unjust discharge to employees generally, even though the remedies available under arbitration would be much more limited than those awarded through the judicial process.

Unions in Connecticut, California, and Michigan have either supported or not opposed unjust discharge protection legislation.[24] Curiously, employer associations, academicians, and some arbitrators seem to be more concerned than unions over the added difficulty that such legislation might present to union organizing. On the other hand, unions have not actively lobbied for or pressured pro-labor legislators to support unjust discharge legislation.

In California, vociferous opposition to legislation has come from the trial lawyers who represent plaintiffs and defendants in wrongful discharge suits. Removal of such suits from the courts to arbitration would deprive attorneys of generous fees, whether they represent plaintiffs on a contingency fee basis or defend employers against compensatory and punitive damage claims often running into six and seven figures. Obviously, fees to be derived by representing relatively high salaried employees, who have been discharged, far exceed possible income from

[20] "To Strike a New Balance," Report of Ad Hoc Committee on Termination at Will and Wrongful Discharge, Labor and Employment Law Section of the State Bar of California, February 8, 1984.

[21] California Assembly Bill No. 3017, February 14, 1984.

[22] Letter from Professor Gould to Members of the Labor and Employment Committee, May 2, 1984.

[23] California Assembly No. 1400, Senate Bill No. 1348.

[24] See for example, Resolution No. 34, adopted by the 15th Biennial Convention of the California Labor Federation, AFL-CIO.

suits involving hourly and low salaried workers.

Conclusion

Recent developments have made me somewhat less optimistic than I was at the start of this decade that the Employment-at-Will doctrine would be replaced by unjust discharge legislation in one or more states. A major obstacle to legislation has been the publicity given by the media to extremely large awards by juries in a relatively small number of cases. These reports give the impression that the system is working to protect employees generally against unjust discharge.

The facts are quite the opposite: the system works only for those employees who can make a case under the relatively narrow exceptions recognized by the courts in about half the states. These employees are generally those who have been dismissed from managerial or other high paying jobs and who can afford to sweat out court suits, which may take several years before they are finally resolved. Left unprotected are the vast majority of ordinary workers, who are fired over run-of-the-mill workplace incidents or charges unsupported by sufficient evidence to convince an arbitrator or other impartial tribunal that they were discharged for just cause. These employees will not be protected against unjust discharge until legislators recognize that a law may be in the public interest, though it may not have the support of any special interest.

[The End]

The Revision of Employment-at-Will Enters a New Phase

By Theodore J. St. Antoine

University of Michigan Law School

The most significant development in the whole field of labor law during the past decade was the growing willingness of the courts to modify the traditional doctrine of employment-at-will. Applying either tort or contract theory, or both, judges in some thirty jurisdictions declared their readiness to blunt the worst rigors of the rule that an employment contract of indefinite duration can be terminated by either party at any time for any reason.[1] These dramatic breakthroughs evoked almost universal acclaim from disinterested commentators, primarily on the grounds of simple justice.[2] Now we may be entering a new phase of consolidation, refinement, and even retrenchment. I should like to take stock briefly of where we stand, highlight some of the more important legal and practical strategies of the moment, and speculate a bit about the longer-range future.

Courts first breached the solid wall of employment-at-will in cases where an employer's discharge of an employee con-

[1] Charles G. Bakaly, Jr., & Joel Grossman, *Modern Law of Employment Contracts* (New York: Harcourt Brace, 1983); Henry Perritt, *The Law of Wrongful Dismissal* (New York: Wiley, 1984).

[2] Robert G. Howlett, "Due Process for Nonunionized Employees: A Practical Proposal," *Proceedings of the 32d Annual Meeting, Industrial Relations Research Association* (Madison, Wis.: IRRA, 1980), p. 164; Cornelius Peck, "Unjust Discharge from Employment: A Necessary Change in the Law," 40 *Ohio St. L. J.* 1 (1979); Jack Stieber, "The Case for Protection of Unorganized Employees Against Unjust Discharge," *Proceedings, supra*, p. 155; Clyde W. Summers, "Individual Protection Against Unjust Dismissal: Time for a Statute," 62 *Virginia L. Rev.* 481 (1976).

stituted an egregious affront to public policy. In one instance, a worker was fired for refusing to commit perjury at his employer's behest.[3] Another employee was dismissed because he declined to participate in an illegal price-fixing scheme.[4] Today, I think only the most timid or hidebound court would hesitate to sustain a cause of action if a discharge violated a fundamental public policy enunciated by the legislature. On the other hand, despite some extremely broad language in the opinions of certain courts, notably California's, I do not believe that there is a square holding by any court that an employer may not fire an employee without a positive showing of just cause, unless there is a contract provision to that effect.

Potentially the most expansive recent decision in the area of public policy is *Novosel v. Nationwide Insurance Co.*[5] The Third Circuit, purportedly applying Pennsylvania law, found actionable an employee's discharge for refusing to join his employer, an insurance company, in lobbying in favor of no-fault legislation. The court concluded that "a cognizable expression of public policy" could be derived from the free speech provisions of either the Federal or State Constitution. Ordinarily, of course, constitutional guarantees operate directly only against governmental action and not against that of private parties. If free speech constitutional protections are to be considered expressions of public policy binding on private employers, the obvious next step is for some imaginative lawyer to contend that procedural due process constitutional protections are likewise binding on private employers. I myself doubt that these constitutional arguments will go very far.

In the last few years, the courts have turned increasingly to contract theory as a basis for wrongful discharge actions. A number of courts concluded that an employer's statement of policy as set forth in personnel manuals or employee handbooks, or an employer's oral or written assurances to employees at the time of hiring, could be found to constitute an express or implied contract that an employee would not be discharged except for "just cause." [6] Contract theory has the advantage that more cautious courts can tell themselves that they are merely enforcing the parties' own agreements. At the same time, it follows logically that an employer may generally eliminate an employee's cause of action in contract by an express disclaimer of any right to continuing employment.[7]

Employers are getting mixed advice about the elimination of existing "just cause" policy statements in personnel manuals. Some lawyers believe that it cannot be done, at least as to current employees who have relied on such assurances in the past. New and adequate consideration may be necessary in any event. Others warn that removing such protections would be bad for personnel relations, regardless of its legal effectiveness.

Employer liability for almost any wrongful dismissal could be established by pressing to its theoretical limits the implied covenant of "good faith and fair dealing." [8] So far, however, this rather novel use of the contractual good faith doctrine has been largely confined to situations involving long-time employees,

[3] *Petermann v. Teamsters Local 396*, 38 LC ¶ 65,861, (Cal Ct App, 1959), 344 P2d 25.

[4] *Tameny v. Atlantic Richfield Co.*, 27 Cal 3d 167, 610 P2d 1330 (1980).

[5] 99 LC ¶ 55,419, 721 F2d 894 (CA-3, 1983).

[6] *Pugh v. See's Candies, Inc.*, 171 Cal Rptr 917 (Cal Ct App, 1981); *Toussaint v. Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 292 NW2d 880 (1980); *Weiner v. McGraw-Hill, Inc.*, 57 NY2d 458, 443 NE2d 441 (1982). For contrary views see *Heideck v. Kent General Hospital*, 446 A2d 1095 (Del, 1982); *Mau v. Omaha National Bank*, 299 NW2d 147 (Neb, 1980); *Halsell v. Kimberly-Clark Corp.*, 29 EPD ¶ 32,939, 683 F2d 285 (CA-8, 1982).

[7] *Novosel v. Sears, Roebuck & Co.*, 495 F Supp 344 (DC Mich, 1980); *Crain v. Burroughs Corp.*, 31 EPD ¶ 33,535, 560 F Supp 849 (DC Cal, 1983).

[8] See "Protecting At Will Employment Against Wrongful Discharge: The Duty to Terminate Only in Good Faith," 93 *Harvard L. Rev.* 1816 (1980).

especially if they were fired without legitimate reason or were fired to prevent their collecting commissions on a pending deal.[9] Other theories that have been employed in discharge cases include fraud, intentional or negligent infliction of emotional distress, and even "negligent performance" of contract duties in failing to apprise an employee adequately of a decline in the quality of his work.[10]

There are several significant practical differences depending on whether a particular court suit is grounded in contract or in tort. For example, the statute of limitations will ordinarily be longer for a contract, especially a written contract. But compensatory and punitive damages are likelier to be available in a tort action. Punitive damages have boosted jury awards to as high as $4.7 million for a single employee.

Federal Preemption

A legal issue that has moved to the fore in unjust discharge cases in the last couple of years is the extent to which state causes of action may be "preempted" or displaced by federal labor law, including the federal law governing union contracts. Where the "public policy" sought to be protected is the right to engage in union activity, the courts have surely been correct in holding that the NLRB has exclusive jurisdiction.[11] But the problem becomes more complicated, and the solutions more obscure, when an employee who is covered by a grievance procedure in a collective bargaining agreement is fired for filing a safety or health complaint with public authorities.[12] In the past, the U.S. Supreme Court has generally taken a fairly liberal attitude toward upholding state regulation in such areas as employment discrimination, unemployment compensation, and similar welfare concerns.[13] I think that the Court would be so inclined here as well.

Many of the early headline-making decisions modifying the at-will-employment rule were appeals from trial court dismissals of complaints. In the initial stages of the new dispensation, too, plaintiffs in a state like California won as many as 90 percent of the discharge cases that went to juries, with the average award being $450,000.[14] But just as the antitank gun was the preordained response to the tank, more sophisticated defense tactics were inevitable in the wake of these first employee triumphs. One of the most effective weapons is a more carefully drawn and constraining set of instructions to juries.

In a leading California case, eventually won by the defendant, the court was persuaded to instruct that the jury could not substitute its opinion for the employer's as to whether the plaintiff's work performance was satisfactory, and that "just cause" for termination meant "a fair and honest cause or reason, regulated by the good faith of the employer." [15]

Employers now are also practicing preventive law. I have previously mentioned the possibility of their purging personnel manuals of potentially troublesome policy statements. Some go so far as to note

[9] *Fortune v. National Cash Register Co.*, 373 Mass 96, 364 NE2d 1251 (1977). See also *Cleary v. American Airlines, Inc.*, 168 Cal Rptr 722 (Cal Ct App, 1980); *Contra, Murphy v. American Home Products Corp.*, 58 NY2d 293, 448 NE2d 86 (1983).

[10] *Chamberlain v. Bissell, Inc.*, 31 EPD ¶ 33,367, 547 F Supp 1067 (DC Mich, 1982).

[11] *Vienstenz v. Fleming Companies*, 94 LC ¶ 13,628, 681 F2d 699 (CA-10, 1982), cert denied 95 LC ¶ 13,851 (SCt, 1982).

[12] Compare *Garibaldi v. Lucky Food Stores*, 115 LRRM 3089 (CA-9, 1984) (no federal preemption in report of spoiled milk) with *Olguin v. Inspiration Consolidated Copper Co.*, 117 LRRM 2073 (CA-9, 1984) (federal preemption in mine safety report).

[13] See for example *Colorado Anti-Discrimination Commission v. Continental Air Lines*, 47 LC ¶ 50,798, 372 US 714 (1963); *New York Telephone Co. v. NYS Department of Labor*, 440 US 519 (1979); *Teamsters Local 24 v. Oliver*, 36 LC ¶ 65,161, 358 US 283 (SCt, 1959).

[14] Cliff Palefsky, "Wrongful Termination Litigation: 'Dagwood' and Goliath," *62 Mich B J 776* (1983).

[15] *Pugh v. See's Candies, Inc.*, (on remand), cited at note 6. The plaintiff prevailed at the jury trial in *Cleary v. American Airlines, Inc.*, 168 Cal Rptr 722 (Cal Ct App, 1980) (on remand).

explicitly on job applications that any contract entered into will be terminable at any time at the employer's sole and absolute discretion. Another device increasingly favored is the severance pay settlement. A discharged employee will be offered a reasonably generous severance payment, in return for which the worker must waive all future claims based on his employment or its termination. My assumption is that all these approaches, if not unconscionably overreaching in a particular situation, will be sustained.[16]

A final element in this counterattack is an academic backlash exemplified by Chicago's redoubtable Richard Epstein.[17] Professor Epstein's essential argument is that employment at will is the market place's most efficient allocator of human resources, and that ultimately it is in the best economic interest of both employer and employee. Even the fired worker realizes this, deep down inside. I am reminded of an ardent defense of natural law theory, to which I was subjected in my youth, that got so carried away with its espousal of the benign order of things as to suggest that the squirrel, even as it struggles helplessly in the talons of the hawk, somehow recognizes that what is happening is all for the best. I was dubious then, and I am dubious now.

What Professor Epstein and some others neglect, or minimize, is the overarching question of justice. Conceptually, there is nothing to be said in favor of an employer's right to treat its employees unfairly or arbitrarily. Practicalities, of course, are the rub. Recognition of a wrongful discharge action will limit employer flexibility and may add to the cost of doing business. Frivolous claims will be inevitable. Once past the egregious instances of employer injustice, some courts will flounder without guidelines in trying to define the boundaries of public policy. Emotional juries will be induced to award massive and excessive damages. Lastly, it will be argued that the need for radical measures has not really been demonstrated; the vast majority of employers treat their employees fairly.

On balance, I think the equities tilt toward the individual employee. Recognizing a wrongful discharge action will impose some additional burdens on business; failing to recognize it will perpetuate the economic and psychological devastation visited annually on about 100,000 nonunion, nonprobationary workers who are fired without just cause.[18] American business would not be placed at a competitive disadvantage in the international markets. The United States remains the last major industrial democracy that has not heeded the call of the International Labor Organization for unjust dismissal legislation.[19]

The Future

I shall now turn to my concededly fallible crystal ball for a few words about the future. The courts, at least in the more progressive states, have gone about as far with unjust discharge actions as they are going to go. They will entertain suits alleging serious violations of accepted public policy. They will hold employers to their unretracted word not to fire except for good reason. But ordinarily they will not impose an affirmative obligation on employers to prove just cause to support a discharge. They will not subject nonunion firms, as a matter of common law, to the same requirement exacted contractually from nearly every employer party to a collective bargaining agreement. The next move is therefore up to the legislatures.

A few years ago, I was hopeful that by the mid-80s the business community itself

[16] Cited at note 7.

[17] Richard A. Epstein, "In Defense of the Contract At Will," 51 *U. Chicago L. Rev.* 947 (1984). See also Richard W. Power, "A Defense of the Employment at Will Rule," 27 *St. Louis U.L. Rev.* 881 (1983).

[18] Jack Stieber, cited at note 2, pp. 160-161.

[19] Association of the Bar of the City of New York, Committee on Labor and Employment Law, "At-Will Employment and the Problem of Unjust Dismissal," 36 *The Record* 170 (1981).

might opt for just cause legislation, with cases being handled by arbitrators rather than judges and juries, and with relief being limited to backpay, severance pay, and possibly reinstatement, rather than compensatory and punitive damages (the latter of which, especially, may be unsuited to the labor field). Unionized employers should regard this as a matter of indifference. Nonunion employers would be freed of the nightmare of multi-million dollar jury verdicts, and perhaps would even feel they had neutralized a principal union selling point in organizational campaigns.

I was much too sanguine. I gravely underestimated the force of ideology. Many business people cannot seem to surrender the illusion that they are still absolute masters of their work force, even though the discharge of any black (or white), or female (or male), or person between 40 and 70, and so on, already may subject them to proceedings before some federal or state tribunal (and often several).

As so frequently happens with a progressive social proposal, the attitude of organized labor may be critical as to its likely adoption. Unions, understandably, have been ambivalent about just-cause legislation. They are worried lest it destroy one of their major drawing cards. But organized labor could profit immeasurably by refurbishing its image as the champion of the disadvantaged. Second, and perhaps more practically, a universal rule against dismissal without cause should prove beneficial to unions in their organizing drives. Now, when a union sympathizer is fired in the middle of a campaign, it must be established by a preponderance of the evidence that the discharge would not have occurred but for the exercise of rights protected by the National Labor Relations Act.[20] That is frequently a burden too heavy to bear.

With a just cause requirement generally applicable, it would be up to the employer to show that some specific, acceptable basis existed for the discharge. Finally, I believe there is a strong likelihood that just cause standards might well act more as a spur than a hindrance to union organizing. The promise of fair treatment would be held out to employees; the promise could remain a tantalizing and unrealized dream, however, unless there was the means to actualize it. Constant, effective representation and advocacy is the surest way to ensure any right. That is a lesson public sector unions have already learned in representing employees in civil service proceedings.

Protection against unjust discharge is fast acquiring the force of a moral and historical imperative. Statutory relief for this long-neglected abuse of the unorganized worker should now become a top item on the agenda of conscientious legislators and the whole industrial relations community. The prevention of arbitrary treatment of employees may not only be the humane approach; it may also be good business. We (author) lavish attention on the Japanese way of management, on the almost paternal relationship between Japanese employers and their employees, and the lifelong careers guaranteed many workers in Japanese companies. We should be prepared to entertain the proposition that there may be a marked correlation between a secure work force and high productivity and quality output.[21] It would be a fine irony if justice was simply the frosting on the cake.

[The End]

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[20] *NLRB v. Transportation Management Corp.*, 97 LC ¶ 10,164, 103 SCt 2469 (SCt, 1983).

[21] Ezra F. Vogel, *Japan as Number One: Lessons for America* (Cambridge, Mass.: Harvard University Press, 1979), pp. 131-57; Richard T. Pascale & Anthony G. Athos, *The Art of Japanese Management* (New York: Warner, 1981), pp. 131-237. Cf. Special Task Force, Dep't of Health, Education & Welfare, *Work in America* (Cambridge, Mass.: MIT Press, 1973), pp. 93-110, 188-201.

Automation and Its Impact on the Labor Force and the GM-UAW Saturn Project

By Joseph F. Malotke

GM Division, International Union, UAW

The measure of intelligence of any organization is its adaptability to change. The UAW recognizes that automation is the way of the future if we are going to be competitive on the world market.

Automation is reducing the need for manpower at an ever increasing rate as we strive to increase productivity, thereby reducing cost, improving quality, and increasing volume. The influx of robots and other forms of new technology is swelling the unemployment rolls in heavy industry. New technology creates jobs in the manufacturing sector as well as jobs in the hi-tech field, which has grown at an almost exponential rate in recent years.

But this alone will not take up the slack of lost jobs. The hi-tech industries are not job producers, and if we concentrate on hi-tech, more jobs will go overseas. Of more importance is the legacy we leave the next generation. In a society that has compressed the need for the human factor, where will the youth of tomorrow gain employment?

In Saturn, we believe that to automate for the sake of automation does not make good business sense. When you consider the capital investment required for robots or other automated systems, you have to look at the variable labor cost as an alternative. Automated equipment is limited! On the other hand, people, if properly trained, can and have taken costs out of an operation when given the opportunity. Technology is the way of the present as well as the future, but we need to use it wisely and strike a balance.

But the present as well as the future is not all that bleak. There are areas where we are currently addressing this problem. There are ways to achieve a measure of security for the present, as well as the future, workforce as they are impacted by new technology. One way is for labor and management to work together. In one of our GM plants, labor and management collectively embarked on an endeavor to become competitive in quality and cost.

They began by informing the workforce of the need for improvement in the rate of increase in productivity, which is essential to being world competitive. They did this by sharing with the workforce what the competition was doing as well as their own business posture. They encouraged each employee to submit innovative ideas on how their jobs might be improved. When a suggestion was accepted and resulted in one or more people being displaced, these people were transferred to a department that was created for the sole purpose of retaining those displaced by a robot or displaced by a better method. They were then reassigned to another job in the plant rather than being laid off in the traditional way.

The traditional philosophy, in current use in many plants, stifles innovation because workers fear job loss. If we continue down this path, we will never achieve the increased productivity that is so vitally needed if we are to remain world competitive—and we will become the second or third industrial nation, a position we can ill afford.

The president of one of the foreign auto companies stated his underlying fear when he said, "If Americans with their individualistic and entrepreneurial philosophies ever begin to work together as a team, they will out-think, out-design, and out-produce anyone in the world, and my company would be in trouble."

People are our most valuable asset, and it's only through the combined efforts of labor, management, and government (and, of course, academia) that our country can achieve any goal it sets for itself. America must once again prove to the world that we can rally behind a cause when our national interests are at stake.

[The End]

Appropriate Automation: Thoughts on Swedish Examples of Sociotechnical Innovation

By Peter Unterweger

UAW Research Department

Technological innovations can be the basis of revolutions in production, but they do not by themselves determine the course of change. Programmable controllers, NC machine tools, and robots are used in all industrialized nations, but the way in which industrial processes are organized can differ markedly. It is commonly observed that the hardware in U.S. and Japanese plants is rather similar and that it is the work organization from which the Japanese advantage derived. Even within the same nation, great differences can be found in the way technology is applied.

The social aspects of the production system are critical in determining its ultimate efficiency. Industrial process designers usually have great faith in, and knowledge of, the technology but pay only scant attention to the social systems that will be using it. The main concern usually is to get the hardware right; the people can always be made to fit, one way or another.

The economic considerations in process design are a second problematic factor. Historically, the division of labor has played a central role. Adam Smith already demonstrated its advantages in his example of the pin factory. But he forgot to include one of the biggest advantages for the capitalist: by subdividing complex tasks, it was possible to substitute cheap labor for expensive labor[1]. Frederick Taylor expanded on this theme by emphasizing the division of mental and physical labor and by stressing its importance in controlling the production process and the labor force.

It is interesting to note that the real ancestor of mass production is not Adam Smith's pin factory but the putting-out system (cottage industry). Division of labor, even then, was far more appropriate to cheap, rural, low-skill labor than to the more expensive, skilled labor of towns that was regulated by the guilds. The first great expansion of textile manufactories took place in the countryside. Only later,

[1] David Landes, "What Do Bosses Really Do?" *ASSA paper*, Dallas, Texas (December, 1984).

when woman and child labor became available, did the setting become more urban.[2]

The increasing division of labor was mirrored in the increasing use of special purpose machinery. The rise and maturation of modern, mass production industry was based on the development and diffusion of machinery dedicated to specific tasks. Not until the invention of the electronic computer did an alternate line of industrial development that relies on general purpose (i.e., flexible) machinery and, more generally, skilled workers, become a real possibility.

The key elements of the traditional approach to process design are the simplification of complex tasks and the removal of decision-making power from the workforce engaged in "direct labor." This approach, while perhaps practical and (at least in the past) profitable, ignores some basic needs of human beings, most fundamentally that work tasks are a means of self-realization. However great or limited a worker's physical or mental capacities may be, work must provide scope for the exercise of both, if it is to be satisfying.

As a matter of fact, work and the social system built around it must serve as a vehicle for the attainment of some personal objectives that are not necessarily congruent with the primary purpose of production. This function of work can be ignored, but only at a price. Taylorist work-design practices deny the importance of mental labor and worker satisfaction. They treat workers as passive objects of management control. But workers will have their input into the process either explicitly through use of their intellect and by participation in decision-making or, when there is no opportunity for such, by poor performance, high absenteeism, and increasing turnover. These symptoms may be suppressed as long as educational levels are low and material insecurity is high, but as living standards and education progress, they increasingly surface.

Sociotechnical Alternatives

These problems became obvious in all advanced industrial countries by the late sixties. Then, they were a cause for concern; now, the new international competition is energizing attempts at their resolution. Some nations, such as those of Scandinavia, got a head start on this movement, and so it is useful to look at their efforts.

They began by recognizing the fundamental importance of the social system in the production process. Here is what Pehr Gyllenhammar, the President of Volvo, set down as the guiding principles for the construction of the new Kalmar plant: "The objective at Kalmar will be to arrange auto production in such a way that each employee will be able to find meaning and satisfaction in his work.

"This will be a factory which, without any sacrifice of efficiency or the company's financial objectives, will give employees opportunities to work in groups, to communicate freely among themselves, to switch from one job assignment to another, to vary their work pace, to identify with the product, to be conscious of a responsibility for quality, and to influence their own working environment.

"When a product is made by people who find meaning in their work, it must inevitably be a product of high quality." [3]

Volvo's Kalmar plant has received much international attention, but Sweden's other auto maker, Saab-Scania, also has a long history of work practice innovations.[4] In 1984, they began production of the model 9000, a completely new

[2] *Ibid.*

[3] Stefan Aguren et al, *Volvo Kalmar Revisited: Ten Years of Experience: Resources, Technology, Financial Results*, Efficiency and Participation Development Council, SAF, LO, PTK, Stockholm, Sweden, 1985.

[4] The summary of Saab-Scania developments is from Jan Helling, "Innovations in Work Practices at Saab-Scania," US-Japan Automotive Industry Conference, Ann Arbor, Michigan (March, 1985).

design, that will be built in the same body shop that will continue to build the older model 900. Flexible manufacturing is usually considered to be most applicable to batch production, but Saab-Scania is applying it in a mass production industry.

Before embarking on work reorganization, Saab tried QWL-style solutions to their problems. Industrial relations became more responsive to workers, and there were cosmetic changes in the work place, etc., but the results were meager. Thus, they began to look at the way work was done in their plants.

In 1971, the first autonomous work groups were formed in the door welding operation. Interestingly enough, new hardware was not involved in the change. The traditional work design of the body shop was simply rearranged. Instead of having individuals working under the direct supervision of a foreman, work was carried out in teams that performed direct as well as indirect production tasks. Work boundaries were established, and definite end products that one group could deliver to the next were identified. The most important change was that many service and technical functions, which were previously performed by departments outside the production department, now became part of the blue-collar team's responsibilities. In short, the production department grew in size and importance.

It was found, however, that the production line concept was too restrictive for the pursuit of this path, and so the assembly line was abandoned to allow further development of a social concept. In 1974, a new "parallel-production" system was started in the grinding and body-adjusting operation, which later spread to other operations. As bodies came down the line, they were moved into separate, parallel work areas in which work teams completed the entire operation and then put the body back on the line.

The eight team members worked in groups of two, with three such groups doing direct production work, one utility standby to cover absences etc., and the team representative who was free to do the indirect tasks related to the operation (inspection, minor repairs and maintenance, and meeting with supervisors). Among the interesting features of this system are job rotation and pay equality. The team representative's job was rotated weekly, and his pay was the same as the other workers'—the incentive for doing this job was freedom from direct production work. Another interesting feature was a sort of group-pay-for-knowledge program. The group could increase its pay by assuming more indirect tasks.

Up to then, some physical rearrangements had taken place, but new technologies had played only a minor role in work redesign. In 1978, 19 robots for welding the bodies were introduced. Since the monotony of the line is no problem for robots, they were arranged in that fashion. The human workers on that line were still organized in teams, but the greatly increased technical complexity of the system posed new problems—the outside service departments were gaining in importance.

Saab's response was to create their "matrix groups"; teams of about 17 workers, of which 12 did direct work and four rotated into indirect work. The team representative concept was retained, but now the average time between tours became 15 weeks—too long it turned out. To deal with the increasing technical complexity, and to allow job rotation to function, at least two team members were trained in the various specialist, indirect tasks such as maintenance, robot programming, etc. Group-pay-for-knowledge was also retained even though particular skills now resided in particular team members.

Still, Saab felt that they had come to a sort of watershed; the greater complexity of the system was leading in the direction of giving more and more functions to tech-

nical specialists. Was it not logical to use the technology to capture ever more functions formerly done by blue-collar workers, to give the new, increasingly complex work to service specialists and white-collar technicians, and to develop a more hierarchical, centralized work organization? On the other hand, they could continue on their prior course, but this would require additional training, subdivision of complex systems, and distribution of control.

Their decision, implemented in 1984, was to simplify the complexity, despite the introduction of 66 additional robots. The line was cut, and boundary conditions with buffers for each work group were established. The group size was reduced to 12 to allow for more frequent rotation, and the computer system was decentralized to give the work groups greater control over their activities.

But are these systems really working, or are they limited experiments designed to appease the critics? In Saab's view, their approach is working. They expect that in the future, the boundaries that separate blue-collar from white-collar work are likely to be shifted outward again to include yet more indirect tasks. Of the 750 workers in their body shop, only 5 percent work in traditional work environments, and more than 70 percent are in "matrix" groups. In addition, team methods have been extended into final assembly; the new model 9000 will be produced entirely on a flexible system that consists of a number of minilines. At 120,000 units a year, Saab is a small producer, but they are competing effectively in their market segment and hope to gain additional market share with the quality that their flexible systems produce.

Volvo's Kalmar plant, a different application of a similar approach, has been operating for ten years and has just undergone an extensive evaluation by the Development Council, a labor-management body charged with promoting the best in innovative work practices and productivity improvements[5]. They pronounced Kalmar a success; assembly costs are the lowest of all Volvo plants and quality is high. In the 1977-83 period, labor hours per car dropped by 40 percent. Defects have declined by 39 percent, and inventory, which turned over 9 times in 1977, now turns over 21 times per year.

The workers' attitudes were investigated by means of a survey which showed that: "The overwhelming majority of employees at Kalmar feel that the work organization . . . is either 'good' or 'fairly good.' The jobs are deemed to be better than those on a traditional assembly line. However, even though the jobs are consistently given high ratings, many employees feel that assembly work gives too little room for the exercise of initiative and for personal growth in the job."

The Workerless Factory

Volvo and Saab have production facilities that are highly automated, but they are not workerless. On the contrary, a more highly skilled workforce plays a critical role in production. In North America, there is much emphasis on the development of the workerless factory, which perhaps is the ultimate logic of the traditional approach to work design. It is significant that this goal is receiving so much attention when much of the technology, especially the software component, and the sensory capabilities of machines is, at best, at a rudimentary stage of development.

The existing highly automated, flexible manufacturing systems hardly ever work as well as their designers envisioned.[6] Usually much more human intervention is needed than originally contemplated, and startup times are much longer than antic-

[5] Aguren, cited at note 3, p. 12.

[6] Bryn Jones, "Technical, Organizational, and Political Constraints on System Re-Design for Machinist Programming of NC-Machine Tools," IFIP Conference, Riva del Sola, Italy (September, 1982).

ipated. Furthermore, a truly automatic, workerless operation is probably prohibitively expensive to create.[7] Thus, instead of striving to replace workers at all cost, technology should be designed to effectively utilize the skills and knowledge of the workforce. Equipment should free people to do the things that they do best. The sociotechnical work design should provide an appropriate mix of repetitive and challenging, physical and mental labor. This is an extension of Saab's principle that technology should be used to free production workers from direct tasks to permit them to do more indirect work.

There is still another reason for opting against the model that would deskill production work and ultimately eliminate it. Doing so would create a technocracy that is out of touch with the actual process of production. It is questionable whether the complicated process of parts production and assembly will ever be reduced to the kind of science that will allow effective previsualization and predetermination of the entire process. Thus, there will continue to be a role for people with hands-on experience of the manufacturing and assembly technologies in the development of new products and processes, and in the management of the unforeseeable, but inevitable crises that arise in production processes. The deskilling of production work and its attempted elimination destroys the system that prepares workers for these functions. The workerless factory may turn out to be the ultimate in inflexibility.

Summary

Several conclusions are suggested by the foregoing discussion. First, work organization schemes that are based on increasing the division of labor may have been effective for the relatively low skilled, materially insecure workers of the past, but they are not effective today, unless, of course, we intend to return the social conditions of these earlier times. In addition, the new, more flexible production systems would seem to require a more broadly skilled workforce for their effective use.

Secondly, the social system that surrounds the production hardware is at least as important as the hardware in constraining or promoting productivity. Gains will be increasingly hard to come by, unless the social system is included in redesign. A gradual evolution of sociotechnical structures is preferable to crash efforts.

Finally, designing technology with the primary aim of eliminating workers is counterproductive. Workers are more flexible than programmable automation. Humans who are experienced in production and knowledgeable in the technological system, who can ponder problems, manipulate components, follow hunches, and have inspirations, are likely to be far more effective than a technocracy that must rely on abstract theories of automated design and manufacturing. Even artificial intelligence systems can only regurgitate the rules of thumb derived from existing knowledge. The continual expansion of knowledge requires hands-on experience.

[The End]

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[7] Howard Rosenbrock, "Designing Automated Systems—Need Skills Be Lost?" *Science and Public Policy* (December 1983).

New Technology and Labor-Management Relations at Ford Motor Company

By E. E. Wise

Labor Relations Department, Ford Motor Company

I welcome the opportunity to share with you the exciting evolution of technology and labor-management relations at Ford and at the Dearborn Engine Plant. First, let me speak briefly about the environment in which we find Ford. It is one of continuous change, change driven by complex technological, social, and economic forces. For more than 80 years, Ford has created and adapted to change. But today, as we compete in the worldwide marketplace, the imperative for continued change and improvement is stronger than ever before. For example, by the end of 1983 the North American auto industry had spent an estimated $80 billion on retooling and renovating its manufacturing and assembly plants (more money, by the way, than it took to put a man on the moon).

The Dearborn Engine Plant has participated fully in this industry-wide revolution. Over a two and one-half year period, 1978-1981, we spent more than $590 million to transform the plant from an antiquated producer of V-8 engines into one of the most modern four-cylinder engine manufacturers in the world. And the improvements continue. Last month we completed the conversion of our plant from a producer of 1.6 liter to 1.9 liter engines.

At each stage in our development, we have introduced more new technology. In 1980, we installed state-of-the-art automation that was hard-line, or not easily adapted for new applications. Since 1980, we have increased dramatically our deployment of robots and flexible automation units. By 1990, we expect to have 70 such units. Our goal is to maintain our plant's position on the leading edge of innovation in engine manufacturing. If we do not preserve that position we will be squeezed out of the market by our domestic and international competitors.

Our challenge for the 80s and beyond is to insure the complete integration of human and technological resources. Several factors are considered when deciding where to use new technology in the production process. We look for jobs that are repetitive and physically demanding, jobs that strain even the most vigorous employee. And of course we also seek applications of technology that reduce operating costs and improve process capability, productivity, and quality.

Let me describe an application that meets these criteria. In addition to engines, our plant builds 99 percent of the fuel tanks that go into Ford cars and trucks. We are currently constructing a new automated fuel tank welding line. Normally, some employees would be required to load and unload fuel tank panels on that line. Those jobs are extremely repetitive, fast-paced, and not without hazards because the panel edges are very sharp. On the new welding line, robots will do the loading and unloading. They will perform a tedious and hazardous task efficiently.

Ford and the Dearborn Engine Plant have not introduced those improvements unilaterally. We consult regularly with the UAW on changes that have an impact on our employees. The relationship between the company and the union is of critical importance as we work together to address the needs of our workforce and meet the competitive challenges of the industry.

At our plant we use many channels of communication to discuss impending changes and issues. On a quarterly basis, plant and union officials sit together under the aegis of the Mutual Growth Forum, a body created by the 1982 collective bargaining agreement. The Forum strengthens our relationship through systematic fact-finding and advance discussion of business and technological developments. A second formal communications channel is our weekly technology meeting, in which the industrial relations and industrial engineering managers and local union officials discuss imminent changes and how to implement them with minimal negative impact on the employees. And finally, our Employee Involvement (EI) process, jointly managed by company and union, enhances communications by according employees a role in the decision-making and problem solving processes in their work areas.

The introduction of new technology has important implications for human resources management and the labor relations. First, as I have just related, the company and the union are striving to talk more clearly with each other and to understand the special needs of each party more now than ever before in our 44 year relationship. Second, new technology demands skilled, knowledgeable people. To meet this demand, the company and union have introduced a host of basic skills, human relations, and technical courses.

At the Dearborn Engine Plant our education facility includes the UAW-Ford Employee Development Center, which teaches basic literacy skills and high school equivalency courses and the Learning Center, which provides basic and advanced technical training.

Ford and the UAW are committed to minimizing the effects of job loss due to automation. The Dearborn Engine Plant has an experienced workforce. One-fifth of our production employees and 14 percent of our skilled tradesmen are age 55 or older. Seventeen percent of our total workforce has 30 or more years of seniority. Thus the normal attrition of a maturing employee population will cushion the impact of new technology.

For displaced employees not approaching retirement, the UAW and the company negotiated in 1984 the Protected Employee Program. The cornerstone of PEP is that no employee with one or more years of seniority will be laid off as a result of the introduction of technology, outsourcing, or negotiated productivity improvements.

You may be wondering how all of this change has affected our quality. The results have been very satisfying. For 1984 as compared to 1980, there was a 55 percent reduction in customer reports of things gone wrong in Ford cars and trucks. For the Dearborn Engine Plant, repairs per 100 engines sold have decreased 65 percent since 1981 to a level that is competitive with the best foreign engines. These impressive quality gains are directly attributable to conscientious and involved employees working with the latest machine technology.

I have shared with you our experience in the auto industry of the 1980s, a period of unforeseen innovation in technology and labor-management relations. It is clearly evident to those of us in the industry that our technological advances could not have been successful without a concerned and sophisticated workforce and the sage advice of the UAW.

[The End]

Labor-Management Relations for Survival

By Neil DeKoker

Manager, Business Planning and Systems Integration, SATURN Corporation, GMC

I have been asked to comment on the subject of new technology and its implications for labor-management relations. I assume, from the fact that I am not deeply schooled in the field of labor relations, that you are not interested in the traditional labor relations perspective. Therefore, let me state briefly my feelings about what we are doing in the SATURN Corporation to properly blend people with the new technology of SATURN.

To survive in our rapidly changing world, it is essential that all people (salaried, hourly, skilled, unskilled, direct, indirect, and whatever other boxes we like to put people in) are given the opportunity to excel in the workplace. SATURN believes that an essential element for success is the creation of an environment at work that supports learning new things, supports growing as a person, supports becoming all that you can.

Rapidly changing technology demands that, to survive, all of us must continuously improve our performance, or we will be replaced by a competitor who has become better at meeting the needs of our customers. Improving our performance does not mean working harder. That is the old way. Today, improvements must come from finding better ways to perform our jobs, both as individuals and as groups of individuals. This can best be achieved by everyone working as a team toward common goals. Instead of only a few people being paid to think and the rest being paid for their bodies from the neck down, everyone's ideas are needed to work on developing and applying new technology and on improving existing methods and approaches to remain competitive.

In the past, people progressed faster than technology. Today, technology is progressing faster then we can keep up with. More than ever before, new technology demands greater training and education for everyone, both initial and ongoing, in technical skills as well as social skills. By social skills we mean teamwork, group interaction, and problem-solving skill development. Technical skills must also include business financial skills and statistics.

The impact of increasingly complex technology means that people trained in this technology cannot be readily replaced and, in fact, are the competitive edge for survival. Therefore, management's greatest responsibility becomes its people. Traditional bottom-line management with quick fixes for reducing overhead is no longer the key to success. In fact, managers who mishandle people must be quickly reassigned.

It is not the responsibility of a separate personnel or labor relations organization to handle people issues. Rather, it is the manager's primary responsibility. For example, managers should determine the training needs with their employees to enhance team effectiveness. It is not a job for a separate training department.

In planning for the future of the enterprise, human resource development must be an integral part of the strategic planning process in conjunction with the product, technology, investment, and marketing considerations. Our human resources are too vital to be left to chance. The bottom line for successful labor-management relations in today's highly technical, internationally competitive environment is a strong organizational philosophy regarding the value of people. As an example, SATURN has created a philosophy of what we believe about people and how we must act out that belief if

we are to be successful and achieve our mission. This philosophy is stated in part as follows.

As important as advanced technology is to SATURN, we believe that increased effectiveness must come primarily from improved human relationships and the careful integration of people and technology. We, therefore, will keep the needs of our customers, fellow SATURN members, suppliers, dealers, communities, and the public-at-large uppermost in our business deliberations.

To meet each other's needs, we will involve all people in decisions that affect them and create a sense of belonging in an environment of mutual trust, respect, and dignity. We believe that all of us care about our jobs, will support what we help create, and want to share in any success. We will develop the tools, training, and education for each employee, recognizing individual skills and knowledge. We believe that we are creative, motivated, responsible employees who understand that change is critical to success.

The SATURN team enthusiastically accepts the challenge to use all possible innovation to produce small cars in this country that are fully competitive with our worldwide competition. We recognize this opportunity would not exist without the confidence that GM and the United Auto Workers have demonstrated in SATURN, and we recognize our continuing responsibilities to both organizations.

In summary, breaking down traditional barriers between labor and management and mutually recognizing our strong interdependence are what we believe to be the significant keys to our survival. Just as the use of only a part of the total human is no longer appropriate for success, the total involvement of all of the stakeholders in the enterprise, including the unions that represent our employees, is essential. We believe that SATURN represents a true partnership in jointly developing and implementing a strategy for success.

[The End]

The Evolving Welfare System

By Sar A. Levitan

The George Washington University

Half a century has elapsed since the United States embarked on the development of its welfare system. Driven by the devastating impacts of the Great Depression, the architects of the New Deal designed a structure that would provide a measure of economic security to all Americans. In doing so, they followed in the footsteps of other industrialized nations.

Broadly defined, the American welfare system as it evolved over the years is the product of a sustained drive for greater economic security by all income groups and not merely a vehicle for providing assistance to the poor. Through social insurance programs, tax expenditures, and human capital investments, government aid reaches far into the ranks of middle and upper-income America. Federal social welfare policies not only seek to prevent extreme deprivation among the most disadvantaged but also attempt to cushion the impact of economic misfortune and uncertainty on more advantaged and affluent members of society. The resulting "safety net" has been remarkably successful in shielding diverse segments of the population from the full

brunt of the vagaries and hardships implicit in a free market economy.

Despite these achievements, however, the system has failed to gain universal acceptance. In recent years, attacks on the welfare system have grown more strident and shrill. Critics have sought to link rising incidences of crime, drug abuse, divorce, and other social ills with federal social welfare interventions, and some have even claimed that the welfare system is the direct cause of an alleged unraveling of the American social fabric and moral fibre.

As a result of these assaults, the terms "welfare," "mess," and "crisis" have become virtually inseparable in contemporary public discourse. Criticisms of the welfare system have emanated from diverse sources. Liberals have found fault in the absence of federal standards for a comprehensive system of income support and constraints on the more aggressive use of government powers to improve the quality of life. Conservatives contend that the welfare system has grown too large and unwieldy, frequently undermining the very objectives that it is designed to achieve. Under attack from all sides, the image of the welfare system as irrational, unmanageable, and in need of immediate and wholesale reform has come to dominate popular wisdom in the mid-1980s.

The notion of a "welfare crisis" is enhanced by tendencies to define the American welfare system narrowly as providing cash and in-kind assistance only to the poor. Without a perceived stake in the system, the middle class majority responds quickly to suggestions that "welfare" is a mess—too costly, mismanaged, unfair, and in many cases undeserved. When the welfare system is defined more realistically to include the host of entitlements and protections against economic insecurity available to the nonpoor, perceptions of crisis and prescriptions for sweeping retrenchment lose much of their appeal.

A balanced and objective analysis would reveal that reports of a "welfare crisis" are greatly exaggerated. Removed from the distortions of budget battles and political ideologies, the record of federal social welfare interventions suggests that the system is a rational and necessary response to emerging societal needs and has functioned relatively well under the pressures of competing interests and conflicting demands.

The Quest for Economic Security

Viewed in the context of societal goals first articulated half a century ago, the welfare system has nearly achieved its fundamental objectives. Most of the destitute have been assured at least a meager stipend to meet basic needs, and the percentage of Americans living in poverty declined dramatically during the three decades following World War II. Social security and medicare have removed the greatest threats to solvency in old age. Workers forced into idleness have gained temporary support through unemployment compensation programs, and disabled workers are protected by insurance which provides medical care and basic income. Tax expenditures and federally sponsored financial institutions have enabled unprecedented numbers to purchase their own homes. Favorable tax policies have spurred the growth of private health insurance, and government regulations have guaranteed employees that their private pensions would be available upon retirement. Finally, substantial public investments in education, training, and employment have enabled millions to enter or remain in the mainstream of the U.S. economy and thereby reaffirmed the promise of opportunity, which lies at the heart of American society.

The role of the welfare system in enhancing economic security across diverse income groups is clearly reflected in its historical development. The cornerstone of the system, the Social Security Act of 1935, was crafted in response to the

great uncertainties and hardships imposed by the Great Depression and was designed primarily to insure a basic income during the "golden years" or when forced idleness strikes. Unemployment and old age insurance provide the bulk of protection against deprivation, while means-tested assistance to the poor was restricted to small numbers of widows and single mothers with dependent children, the aged, and the blind. Subsequent expansions of the social security system (including aid to dependent orphans in the waning days of the New Deal era, support for the disabled under Eisenhower, federally-financed health insurance under Johnson, and improved retirement and disability benefits under Nixon, Ford, and Carter) further increased the use of public funds to minimize economic insecurity, without regard to personal income.

Contrary to today's view of the welfare system as synonymous with aid to the poor, public attention did not focus on the plight of the impoverished until the late 1950s, more than two decades after creation of the social security system. Following World War II, social policy was preoccupied with helping veterans adjust to civilian life by subsidizing their training and education. The help was offered to all veterans without regard to their economic status. In the 1950s, amidst optimism that rapid economic growth during the postwar period could bring prosperity to the least advantaged, federal policy also focused on economic development efforts within depressed areas rather than direct assistance to those in need.

The persistence of poverty despite rising affluence during the 1960s prompted expansion of cash support under the Aid to Families with Dependent Children (AFDC) program for the nonaged poor, including liberalization of eligibility requirements and enhanced benefits that rose more rapidly than average earnings. The federal government also accepted responsibility for expanded direct aid to impoverished aged, blind, and disabled persons through the establishment of the Supplemental Security Income (SSI) program in 1972. Substantial additional help for the needy, including the working poor, was authorized with the creation of the food stamp program in 1972 and its expansion during the recession in 1974. The working poor were also helped by wider coverage of the minimum wage and unemployment insurance laws during the Carter administration.

In-kind assistance has also been offered to low-income Americans when necessary to compensate for market inadequacies and to insure that public funds would be devoted to the fulfillment of basic human needs. Low-income housing programs were initiated when it became evident that income support alone would not serve as a short-term remedy for an inadequate private housing stock. Health care coverage under medicaid represented further acknowledgment that cash stipends could not guarantee access to essential services in an efficient manner when individual needs are not directly related to income. In some cases it was easier to persuade Congress to provide in-kind help rather than cash assistance. For example, food stamps gained political support both as a response to the cry of hunger and malnutrition as well as a boost to the U.S. farm economy.

Because assistance to the poor is commonly viewed as "unearned," it attracts the greatest political attention and controversy. Yet means-tested aid constitutes only a sixth of the total transfer payments provided through the broader welfare system and less than a tenth of total federal outlays go to the poor. The federal share of the AFDC budget, commonly associated with "welfare," accounts for only about two percent of federal income transfers and total outlays for the program (including state and local contributions) represent 0.5 percent of personal incomes in the United States. An analysis of in-

kind benefits within the welfare system would yield similar results with large portions of aid (including indirect subsidies) for housing, health care, and other supportive services directed to the nonpoor.

As a matter of policy as well as politics, the American welfare system has never identified income maintenance as an appropriate long-term response to economic misfortune and deprivation. The initiatives of the Great Society were founded upon the premise that only a *two-pronged* assault on poverty could lead to greater economic security for the poor: income support to meet immediate basic needs coupled with attempts to expand economic opportunities amd change institutions in order to promote long-term self-sufficiency. Guided by this philosophy, the Great Society sought to stimulate public investments in education and training, seeking to open doors to permanent employment for the disadvantaged. During the late 1960s and 1970s, federal support for educational programs (ranging from primary and secondary schools to vocational and postsecondary education) and job training initiatives increased substantially. All segments of American society shared in the fruits of these investments, although they have not been sufficient to provide alternatives to long-term dependency for a minority of the nation's poor.

The development of diverse tax and sectoral policies not commonly associated with the welfare system further illustrates the extent to which federal social welfare policies have reduced economic insecurity for all income groups, rather than aiding the poor more narrowly. Tax exemptions and expenditures are now designed to enhance personal economic security in areas ranging from home ownership to employee benefit programs and individual retirement accounts.

A wide array of credit programs, supplemented by price supports for many agricultural commodities, also attempts to promote economic stability by aiding financially-troubled businesses. Disaster assistance routinely offers some measure of protection against natural calamities, while trade adjustment assistance and import restrictions have been employed to minimize economic disruptions associated with international trade. Certainly these federal interventions differ in important respects from the social investments and transfer programs typically linked with the welfare system. The point here is simply that a wide range of federal initiatives is part of a quest for the economic security and well-being of all Americans, and that it is this push for security more than any narrower effort to help the poor that defines and sustains the modern welfare system.

The broad layer of additional security provided by the welfare system and related federal initiatives has contributed to greater economic stability since World War II, even though periodic recessions persist. The American public's resistance to major retrenchments attests to the broad support for these reforms and virtually guarantees that an extensive welfare system serving as a buffer against economic uncertainty is here to stay. Indeed, some measures of protection against economic misfortune and aid to the poor are rational and necessary responses to rising societal affluence. Just as private insurance to reduce financial risk becomes more affordable and attractive as personal income increases, government policies to spread or "socialize" the risks of a free market system become more prudent and popular with growing national wealth.

Furthermore, the potential for humanitarian aid to relieve deprivation and longer-term investments to help the disadvantaged become contributing members of society also increases with rising national income. In the absence of federal interventions through the welfare system, the gap between rich and poor would tend to widen in an advanced economy, generating unacceptable income disparities and

straining the fabric of an open, free, and democratic society.

Even in the conservative political climate of the late 1970s and 1980s, the welfare system has continued to respond to changing concepts of need and economic security amidst rising affluence. For example, in 1979 Congress enacted financial support for residential heating costs in response to rising energy prices. Subsidies for phone service in the wake of the AT&T divestiture have also gained growing acceptance as part of our definition of "basic needs" for low-income Americans. A parallel extension of the welfare system's scope has occurred in the realm of income security for the nonpoor with the adoption of new tax expenditures for individual retirement accounts. These changes are clear reminders that the welfare system is still evolving, responding to changing economic and social conditions, while also reflecting the higher expectations and aspirations of an increasingly wealthy nation.

Lessons of the Past

What of the alleged failures of the modern welfare system? To be sure, federal interventions in the complex realm of social policy have brought their share of frustrations and excesses. Yet the more important issues are the extent to which social welfare policies and programs have been revised to reflect the lessons of the past and the standards by which progress in the welfare system is measured. A balanced and reasonable assessment suggests that we have learned from our mistakes—some inevitable, others the result of overly ambitious efforts—during two decades of frequently bold innovation, and that past gains have been generally encouraging in light of the ambitious and competing goals set out for the modern welfare system.

The designers of the emerging welfare system, from the New Deal to the founding of the Great Society, tended to underestimate the deep-seated problems associated with poverty. The authors of the Social Security Act in 1935 assumed that needs-tested public assistance would wither away as younger workers became fully covered by social insurance—an expectation that was shattered by changing demographics and steadily expanding welfare rolls and benefits during the postwar period.

Similarly, a central premise of President Johnson's War on Poverty was that investments in education and training, civil rights protections, and community organizations representing the have-nots could dramatically lift this generation's poor out of deprivation and ensure their children a decent lift, but cycles of poverty and dependency have proved considerably more intractable. Yet it became increasingly clear that there are no easy answers or quick solutions to discrimination, economic deprivation, and other social ills. As some of the experiments turned out to be counterproductive as well as politically divisive, the ensuing disillusionment sorely taxed the nation's will to sustain the welfare system in pursuit of steady but incremental gains.

Because many social problems have proved more pervasive and persistent than originally believed, the welfare system has been forced to rely upon more varied and costly strategies for their long-term amelioration. Such comprehensive, long-term approaches frequently involved offering preferential treatment to targeted groups at the cost of legitimate aspirations of the more fortunate. It has proven extremely difficult politically to defend these actions. Social programs requiring high initial investments and yielding delayed or cumulative benefits have often been abandoned, victims of public resentment and insufficient commitments of funds over too brief a period of time.

Furthermore, every solution to deep-seated social ills created new problems. Even when government interventions have achieved their intended results, the

process of change in some instances has generated unwanted side effects and posed new problems for policymakers. One clear lesson provided by the experience of the past two decades is that the search for remedies to complex social problems is inherently difficult, particularly when the process involves helping the have nots to compete effectively with those who have made it. In a democratic society, those who have gained privileged status generally have the clout to abort such changes.

The experience of recent decades suggests that the federal government must proceed on several fronts simultaneously if it is to be successful in efforts to alleviate poverty. For example, the training of low-income workers is unlikely to have a significant impact on overall poverty levels or welfare caseloads when provided amid high unemployment or in declining economic regions, unless suitable employment and economic development programs are also initiated.

In contrast, although income transfers address the immediate needs of the poor, they do not result in lasting improvements in earnings capacity and self-sufficiency unless complemented by public efforts to enhance the skills of recipients and to alter the institutions which trap them in poverty. The interdependence of these antipoverty strategies can create the appearance of failure when individual initiatives are viewed in isolation, particularly when concomitant interventions necessary for their success are not undertaken. At the same time, the benefits of comprehensive approaches are cumulative and can far exceed the potential of isolated efforts.

One of the clearest lessons arising out of America's experience with the modern welfare system is that poverty cannot be eliminated solely through a reliance upon income transfers. Income maintenance certainly is an essential component of any antipoverty effort, but a strategy relying upon transfers alone can neither enhance self-sufficiency nor avoid conflicts in labor markets.

In a society in which wages for millions of workers are too low to lift them out of poverty, the provision of adequate cash assistance to the nonworking poor, if unaccompanied by incentives to supplement assistance with earnings, inevitably raises serious questions of equity and generates strong political opposition among taxpayers. In addition, income transfers large enough to lift low-income households above the poverty threshold, if not tied to work effort, would trigger large drops in labor force participation or force massive public expenditures to the nonpoor in order to preserve acceptable work incentives. The political and economic realities have contributed to the demise of successive guaranteed income schemes during the past two decades and demonstrate the need for federal strategies that assist both the working and dependent poor.

While the rhetoric of the Great Society and subsequent initiatives often placed heavy emphasis on the expansion of economic opportunity for the less fortunate, this promise has never been fulfilled through a sustained and adequate commitment of societal resources. Many of the dilemmas posed by the modern welfare system (perverse incentives discouraging work by welfare recipients, neglect of the needs of the working poor, high youth and minority unemployment, and burgeoning costs of universal entitlements) arise from an inadequate emphasis on the extension of economic opportunity in current policies.

Beyond fundamental guarantees of equal access and civil rights, the welfare system's attempts to broaden opportunity have relied upon relatively small and frequently sporadic investments in job training, public employment, compensatory education, and meaningful work incentives. These initiatives, despite yielding promising results, have fallen far short of their necessary role as equal partners with income maintenance in advancing the

goals of the welfare system. To help the millions of the unskilled and deficiently educated, it is necessary to recognize that work and welfare go together as an appropriate public policy.

The difficulties associated with the expansion of economic opportunity through the welfare system are substantial, ranging from the technical and economic to the cultural and political. Certainly, the heavy reliance upon transfer programs in recent years reflects the fact that assurances of income security tend to be less threatening to established interests and therefore easier to adopt than broader efforts to open avenues to self-support and economic advancement. Yet if the nation is to avoid the debilitating effects of its emphasis on income maintenance, there is no alternative to reviving the promise of opportunity in America. When the nation discards today's prevailing negativism, it should turn to this urgent task of broadening access to opportunities for work and self-advancement for all Americans.

We Can Do Better

Recognizing that the welfare system is here to stay and that it will continue to evolve, difficult questions and challenges for the future remain. Much concern is presently focused on the perceived inability of American society to afford the broad range of commitments to economic security already enacted at the federal level. The clamor to rein in public expenditures has profound implications for the political base and stability of the welfare system, generating lasting tensions between universal and means-tested provision of benefits. Finally, and perhaps most importantly, the appropriate roles of federal, state, and local governments, as well as the private sector, in the modern welfare system have been called into serious question in recent years, requiring establishment of a new consensus regarding the legitimacy and optimal scope of federal efforts to bolster the economic security of all Americans.

The affordability of the welfare system is, except in the extreme, essentially a normative judgment reflecting society's willingness to forego some measure of personal consumption and alternative public outlays in exchange for greater collective security. In some cases, the exchange of current income for future economic or national security is relatively direct (social insurance programs requiring prior contributions or investments in defense supported by higher taxes). In other instances, the decision to sacrifice personal income represents a hedge against unforeseen misfortunes or hardships, an awareness that "there but for the grace of God, go I" (disaster relief, food stamps, and medicaid).

For the most targeted, means-tested initiatives, public expenditures are humanitarian attempts to relieve deprivation and enlightened acknowledgments of the broader societal benefits associated with reductions in poverty. All these societal choices are predicated on an awareness of societal affluence, on the belief that the nation can afford to defer a portion of today's consumption for tomorrow's economic or national security.

Without question, the potential for reasoned assessments of society's capacity to support social investments and protections has been diminished in recent years by the fiscal policies of the Reagan Administration. By combining rapid increases in defense spending and deep reductions in the federal tax base, President Reagan has intentionally created budget conditions in which social welfare expenditures appear unaffordable. Both historical and international comparisons suggest that, with the adoption of responsible fiscal policies, the American welfare system has not exceeded the bounds of affordability. With the exception of Japan, the United States has devoted a smaller proportion of its gross national

product to social programs than any other advanced industrialized nation.

The Reagan fiscal policy has failed to address the crucial legitimate issue regarding the future affordability of the welfare system. It concerns the optimal social investment or protection against economic uncertainty through entitlements and tax expenditures for the nonpoor while still fulfilling our societal responsibilities to those in need. The rise of federal social welfare expenditures during the 1970s was primarily the result of dramatic increases in the cost of non-means-tested entitlements such as social security and medicare. Between 1970 and 1984, means-tested programs accounted for one-seventh of the $337 billion rise in total transfer payments. Coupled with open-ended subsidies for middle and upper income groups through credit and tax policies, ranging from student assistance to interest and retirement savings deductions, the principle of universal eligibility in many social welfare programs has clearly strained resources available for other components of the welfare system.

Burgeoning universal entitlements are gradually becoming a focus of potential spending cuts in the continuing budget difficulties precipitated by the Reagan Administration. The current debate is hardly conducive to a thoughtful restructuring of the broader welfare system, framed as it is by the artificial pressures of misguided fiscal policies. Yet, in some perverse fashion, the problem of massive federal deficits may provide the political will for a much-needed reexamination of the balance between help for the needy and subsidies to the more fortunate in the welfare system. By curtailing expenditures for lower-priority initiatives aiding the nonpoor, the Reagan budget reductions of the mid-1980s may create opportunities for the emergence of a more efficient and effective welfare system in the years ahead.

The conflict between goals of targeting and universality within the welfare system can never be fully resolved. Without question, universal provision of cash assistance and social services engenders broad public acceptance and a strong base of political support, as illustrated by the evolution of social security, medicare, and veteran and college loan programs. Yet, the extension of federal aid without regard to income necessarily expands vastly the costs of government interventions and dilutes their effectiveness in helping those most in need. On the other hand, as Wilbur Cohen has often remarked, programs which are narrowly targeted to serve poor people inevitably become poor programs. Thus, the challenge is to strike a balance between the goals of targeting and universality that gives every American a stake in the welfare system while still allocating the requisite resources for those who need them most with due regard to the dignity of recipients.

The Reagan Administration's rhetorical crusade to focus federal aid on those with greatest need has not been unfounded. Despite the difficulty of judging the appropriate balance between targeting and universality, a strong case could be made by 1980 that too large a share of scarce federal resources was being diverted into benefits for the non-needy. Unfortunately, the administration's response to this imbalance has proven to be narrow, inequitable, and devoid of vision.

Eligibility for programs aiding the poor has been restricted to the most needy as a means of slashing federal outlays. However, no broader effort to shift resources from universal entitlements or subsidies for the affluent to means-tested programs serving low-income Americans has been undertaken. Only this year, with opportunities for significant budget savings from means-tested programs seemingly exhausted, has President Reagan challenged the flow of aid to middle and

upper-income households through the broader welfare system.

The Reagan Administration has similarly clouded the perennial debate over the appropriate sharing of social responsibilities among federal, state, and local governments as well as the private sector. The Reagan program, under the banner of "New Federalism," has aggressively sought to shift responsibility for the administration and financing of social welfare initiatives to the states. The Reagan Administration has also relied heavily upon the conviction that social welfare efforts, whenever feasible, should be left to private voluntary efforts. This perspective, founded on ideology rather than empirical evidence, has been useful in buttressing attempts to reduce federal expenditures but precluded a balanced and reasoned assessment of appropriate public and private roles in the modern welfare system.

Taking the principle of subsidiarity (i.e., the belief that the federal government should not undertake functions that can be performed by a lower level of government or private groups) to the extreme, opponents of federal intervention seek to obscure the reasons why much of the responsibility for the welfare system has fallen upon the federal government. Contrary to idealized notions of community responsibility, state and local governments in prior decades consistently failed to marshal the will and the resources to alleviate poverty and expand economic opportunity for the most disadvantaged.

By definition, the poorest states and localities faced the most severe problems while having the least capacity to redress them. Competition among states and localities also has discouraged responses to pressing social needs prior to federal intervention, as these smaller jurisdictions have attempted to attract new businesses and industries by holding down tax rates and public expenditures. Finally, because the federal government relies upon more equitable financing structures and a broader revenue base than state or local jurisdictions, its capacity to support large-scale income maintenance and human resource programs is far greater. For all these reasons, any effective welfare system must include a central federal role in setting national priorities, providing direction for equitable policies and program development, and generating the resources necessary to meet social welfare goals.

These principles are not inconsistent with the belief that decentralized program administration can be an appropriate response to regional diversity and bureaucratic inefficiency. In some realms, community decisionmaking and program administration are crucial to the effectiveness of the welfare system, ensuring that interventions are tailored to local needs. Strategies for assisting the disadvantaged that are well suited for conditions in the South Bronx may have little relevance to the problems of rural Appalachia. The existing structure of federal programs in education, employment and training, economic development, and a host of other areas already reflect this need for local control over the specific form and substance of social welfare initiatives.

Given the unwillingness or inability of state and local governments to marshal adequate resources for the amelioration of social problems, the hope advanced by President Reagan that the private sector can fill the breach created by federal retrenchments appears even less credible. The nation's voluntary agencies and associations certainly have not proven able to compensate for losses in federal aid through greater reliance upon private philanthropy. As a detailed Urban Institute study of some 6,900 nonprofit organizations across the nation has documented, private social welfare agencies have fallen far short in their attempts to fill gaps left by domestic budget cuts.

Furthermore, the business community is neither equipped nor inclined to accept responsibility for the wide array of problems confronting the nation's disadvantaged. Even in areas where the private sector presumably has a direct and immediate interest, such as occupational training under the Job Training Partnership Act, the evidence shows that industry molds social programs to serve its own profitability goals, ensuring quick and efficient placements to minimize training costs to fill job vacancies while investing little to develop skills among those most in need. The broader public interest cannot be either adequately protected or promoted through a reliance on private sector initiatives alone.

The need for a strong federal role in the welfare system is clear, and yet public understanding of this federal responsibility has been undermined by the virulent anti-government ideology of the New Right and nourished by President Reagan. Thus, the most pressing question for the future of the welfare system may rest upon the nation's ability to regain confidence in government responsibility for the welfare of the citizenry and belief in the legitimacy of collective action to meet societal needs. If America's political leadership continues to denigrate the federal government as a vehicle for advancing the common good, further progress in strengthening and improving the welfare system (as well as in other legitimate and proper realms of government responsibility ranging from protection of the environment to safety in the workplace) will remain stymied. However, through a clearer understanding of past experience, the nation can rekindle its faith in the ability of the welfare system to provide not only income for the poor but also greater opportunity and equity for all Americans. In this era of retrenchment, no challenge is more important than refreshing our memory of past accomplishments and refocusing our vision for the years ahead.

[The End]

Defend and Change: The Welfare System in the Longer Run

By S. M. Miller

Boston University

Poor people and ordinary citizens need their own Office of Management and Budget so that they can see how well or poorly programs are functioning and which ones should be protected because they are useful. The Stockman "cut and slash" approach should not be the dominant way of looking at governmental expenditures. For many years now Sar Levitan has been the ordinary citizen's OMB, marshaling data and analysis to inform the nation about what are useful and unuseful programs from the viewpoint of social justice and social efficiency. He has made a signal contribution to the Republic.

A limitation in the Levitan-as-OMB approach is that it tends to restrict its time horizon to the next election or two. While I do not denigrate shorter runs or elections, I believe that a longer term perspective is needed. The dialectical unity that the two of us together might offer has yet to be forged.

Disquieting Issues

While I agree with Levitan's generally positive analysis of the welfare system, I am more inclined than he to note many disquieting issues. One is that there are *many welfare states.* No definite, unidirectional pattern of evolution of social programs exists. Politics, demography, and economic circumstances determine the pattern in various countries. For example, the United Kingdom, which has long striven to limit means-testing, now has over 30 percent of the population receiving some kind of income-tested benefit. Harsh economic conditions and a harsh regime have led to this result. Countries differ in their pattern of expenditures. Some are high on educational expenditures, while others spend relatively more on medical programs.

No sure evolution of programs exists; we cannot be confident that what is in place will grow or even remain stable. A deep recession in the United States might lead to severe pressures for cutbacks in social programs, including the so-called universal program of social security. The welfare system has no unassailable and secure trajectory toward expansion and improvement.

Second, social programs or the welfare system are mainly about women. Most of the aged are women, particularly those who are the "older older" (those beyond 85). Most medical care involves women, both as recipients and as guardians of the health of their children. Today's poverty largely visits women: witness the attention to "the feminization of poverty." Race issues criss-cross here because it is falsely believed that the majority of poor women are black. The political, social, and economic as well as the organizational implications are largely disregarded. We do not shape the welfare system so that it will be of particular benefit to women.

Third, being poor today is a worse condition than it was two decades ago. The poverty line, set by the standards of 1956-59, is increasingly inadequate in measuring what is needed to maintain a very modest standard of living. Even if in-kind benefits are cashed out and added to the income of low-income citizens, the number and percentage who are poor have grown since 1979. Between 1969 and 1980, the real value of average Aid to Families with Dependent Children benefits declined by 56 percent. In many states the AFDC benefit is far below the poverty line for that family composition. In Massachusetts, for example, the average AFDC family receives a benefit that is 46 percent below the official poverty line for the nation. Half of all black children are growing up in poor families. The numbers with incomes that are less than half of the official poverty line are growing. They live in deep, deep poverty. These figures are most disturbing.

Fourth, welfare system programs have to change. They are plagued by red tape, often create prolonged dependency, treat clients in a punitive way, and serve as modes of social control. These problems have deeper roots than Levitan seems to believe. They are difficult to change, for punitiveness and inhumanity are ways of keeping down the number of beneficiaries.

The United States is in danger of becoming an increasingly split society. High unemployment and long-term unemployment exist despite economic growth and new-job creation. The good jobs for less educated blue-collar workers, the "missing middle," are declining. (I stress here the lessened availability of good paying jobs for those who are not well endowed with educational credentials.) So-called "market incomes" are being distributed in an increasingly inegalitarian way; it is public income, transfer payments, that limits this private market tendency to increasing inequality.

The confusion about income distribution and social stratification was apparent in the 1984 Presidential election, when only two classes were said to exist in

the United States: "the poor" and "the middle class." Are those families with incomes of $15,000 a year living at middle-class levels today? Are families with incomes of more than $200,000 a year (and effective accountants) also middle class? This conceptual-political blurring of deep differences in society does not prevent increasingly sharp splits in levels of living and outlook from occurring within American society.

Sixth, as Levitan says, both jobs and transfers are needed. But transfers have to be larger to deal with the new poverties of our contemporary scene. Further, the quality of jobs is important, as many of the jobs available to less attractive workers offer low wages that do not bring households decisively above poverty conditions. We have to demand more of both the transfer and job spheres.

Seventh, support for social programs has been eroding. A contributing factor is that expenditures on the welfare system increased mightily in the 1970s with little attention to explaining why this was happening. An intellectual vacuum occurred, which conservatives and neo-conservatives filled with their denunciations of the welfare system as inefficient and counterproductive.

The success of this attack is surprising, since the longitudinal data of the Panel Study of Income Dynamics at the University of Michigan show that over a 10-year period a quarter of U.S. households received some form of means-tested public assistance (defined as AFDC, food stamps, and housing aid). That high percentage should indicate that most of us have received aid or know someone who was aided by this form of the welfare system. A positive attitude should follow. But that does not seem to be the case, as social welfare programs are pummeled from many sides.

The immediate character of the debate centers on the history of the last two decades. The success of Charles Murray's *Losing Ground* cannot be explained by the engineering of a media blitz, although that is important. A receptive audience is out there. It will be interesting to see if the critics of Murray's totally negative assessment of the Great Society and its aftermath are able to make a dent in the respect accorded the book. The critiques of Levitan, Greenstein, Jencks, Moynihan, Rein, and Harrington should force a reevaluation of the argument of Murray and others. But will it? Many want to believe that the welfare system is a disaster. Those concerned about the plight of the poor have not done an effective job, although they have slowed the Reagan budgetary onslaught on vulnerable populations.

The longer term picture is not favorable. By deed as well as by words, the welfare system is being undermined. For example, the development of Individual Retirement Accounts (IRAs) reduces confidence in the public system of social security. Many younger contributors to the social security system do not believe that there will be a social security check awaiting them when they retire. They see the waning of public social security and the expansion of privatized schemes. The self-interested support for the welfare system is weakened. The underlying issue is: what do we owe one another in a split society? Liberals and progressives do not have a confident, attractive reply.

What to Do?

In the difficult situation facing those concerned about the plight of the poor and the character of American society, what should be the lines of development and regrouping? Both defense of and changes in welfare programs must be considered. The effort should not be to defend programs that we objected to in the past. There should not be a total acceptance of social programs nor a desire to restore them to what they were before. There is a need to change programs as well as to defend principles and restore outlays.

Unlike Levitan, I believe the change requirement is key.

New ideas and approaches are needed to simplify and debureaucratize programs, to build neighborhood involvement. New types of programs are needed like that offered by Irwin Garfinkel of the Institute for Research on Poverty at the University of Wisconsin: a federal family allowance for one-parent families partially funded by a tax on the missing parent. The benefit levels in the welfare system have to be raised. People are falling behind. Families headed by women are particularly suffering today.

Levitan's call for the restoration of the overlap of work and welfare is very important. Low-paid workers need the additional support of transfer benefits if they are to manage in today's economy and society. A dual strategy is needed which seeks to promote and improve employment and to use the welfare system benefits as a way of promoting incentives to work. Under the Reagan regime, pay bars additional help from the welfare system. Since most low-paid jobs have inferior or no fringe benefits, a national medical program is important.

A more flexible and imaginative use of transfer benefits should be encouraged. Unemployment insurance benefits should be easily transformed into capital that can be used for investment in a small-scale enterprise or public assistance payments into inducements to employers to hire disadvantaged workers. Steps along these two lines are occurring in several states, but more widespread action and creative adaptations are desirable.

Economic changes are also necessary. The issues that confront the welfare system cannot be improved without improving the job situation. Economic policies and structures dominate the welfare system. Less unemployment is crucial. Social policies cannot undo what economic policies fail to accomplish. Quality jobs are needed to reduce the need for social programs.

The rate of growth in gross national product is an inadequate indicator of the functioning of the economy. What kind of growth occurs, the content of GNP, is crucial in affecting the situations and life-chances of people. What is particularly needed is a job-centered growth that will produce the numbers and kinds of jobs that are needed today. This perspective has political appeal since it would connect those concerned with employment and a more equitable income and wealth distribution to those with a more "green" orientation, those concerned with environmental protection.

Political education and awakening are needed. As mentioned earlier, much misinformation and ignorance exist about the social welfare system and the experience of the past two decades. Social scientists like Sar Levitan are doing an important job in trying to set the record straight.

The case for social programs is not firmly established. Many programs are compensation for vulnerable people suffering welfare penalties in the interest of societal objectives. A prime case is the use of rising unemployment as a policy measure to combat inflation. That pro-unemployment policy creates poverty and the need for compensating social programs. Awareness of the obligation to provide social aid is not deeply understood.

Nor are most of us aware that we are, in one way or another, beneficiaries of government. Sectoral policies of the federal government provide benefits to those involved in the defense, agricultural, and financial fields. "Yuppies" are created by the defense boom and governmental inducements to speculate in financial manipulations. Our individual successes are frequently made possible by what government has done. Government is often the means of achievement for those who contend that it is the obstacle to individual enterprise. Since 40 percent of U.S.

households currently receive benefits from the social welfare system, the likelihood is that all of us are beneficiaries over our lifetime.

Unfortunately, analysis and data of this type do not seem compelling. A major reason (self-interested blindness and deafness are, of course, others, as is propaganda) for the ineffectiveness of such presentations of reality is that the moral case for one society is not made, except for a few like Governor Mario Cuomo. While some fear of unrest is important in bringing attention to the plight of the vulnerable in society, action is most likely when a moral case is established for why we should be concerned for one another's well-being: that we are, indeed, our brother's and sister's keeper, "one for all and all for one." Narrow econometric criteria of societal success that center on a thin measure of efficiency and an inadequate statistic of economic improvement must be countered with more basic conceptualizations and measurements of how well the economy and society function. In short, an intellectual job has to be done that challenges the foreshortened market view of life.

An intellectual job, of course, will be inadequate if it does not have political resonance. Levitan continues to write important books which he contends go unread and unnoticed. While that is not wholly true, there is some validity in the feeling of many liberal social scientists that even political friends do not pay much attention to their output. The media in general find it easier to use the outpourings of conservative writers. At the political level those concerned with today's undermining of the welfare system should be mobilizing more groups than the aged or unions in the defense of some programs and in advocating change in others.

More than Patch-Up?

As Levitan implies, this may be a political time when only patch-up and resistance to cuts are possible. But supporters of the (or a) social welfare system have to begin to move toward a longer term agenda and politics. One reason is that changes in the system are desirable, not only to win support and counter criticism, but because they are needed.

A second reason is that a period of potential positive reform is both likely and prone to ineffectiveness. Today's strong conservative drive will at some point run out of steam, and an opening for more positive change will become feasible. Therefore, it is important to realize that the United States is a basically conservative nation with short periods of remission in which liberal reform becomes possible. Those periods like the New Deal of 1934-37 and the Great Society of 1964-67 have to be well used, for they do not occur frequently or stay available for long.

That situation requires that those concerned with positive social change begin now to rework and refine the social agenda so that it is more just, more effective, and available when the opening occurs. Such an agenda also shortens the time of waiting for such an opening. Conservative critics of the welfare system are well off the mark in many of their contentions. However, they are on target when they charge that the welfare system needs changes. The lines of development that Levitan has laid out for us are important, but a more basic job has to be done. That is why I advocate Defend and Change.

[The End]

The Changing Role of Universities in Industrial Relations Training

By Charles M. Rehmus

Cornell University

Let me begin by stating a conclusion. It is not one which is very palatable and may not be true for us all. It is probably controversial and is intended to spark a discussion. I believe that labor-management relations is no longer central in many university industrial relations programs. My conclusion stands primarily on the usual two legs. The first is that labor-management relations, defined as the interactive process by which unions and employers jointly negotiate the set of rules governing work life, is no longer central to much of our teaching and research. The second leg is that much of what we do teach, and certainly most of the published research in our field, is no longer understood or considered very relevant by labor and management practitioners in our field.

I need point only briefly to the basic cause of this change. Since most of our university industrial relations programs were initiated, the organized labor movement has declined to the point where its survival as a major economic institution is being questioned. When unions represented a third of the work force, as they did in the 1950s, we all assumed that collective bargaining would and should be preserved and fostered and that labor-management relations in the United States would continue to evolve into a mature and stable system. History has proven otherwise. Instead, we have seen a steady and progressive decline in the extent of union organization, which now represents only a fifth of the industrial work force. In absolute terms the labor movement has fewer members today than it had in 1945.

In the place of this traditional democratically-bargained system has emerged what some refer to as "a union-free system." Management has begun as never since the 1940s aggressively to resist unions. Voluntary union recognition is practically a thing of the past and is often replaced by a few sophisticated and many unsophisticated and only marginally legal campaigns to influence and constrain nonunion votes. Where the union does win elections, the bargaining tactics used by many managements have encouraged strikes, and those same employers often make contingency plans and implement them to continue operations during the strike. This tactic too has led to conversion of a number of what were once union operations into nonunionism.

With respect to wage determination, we have seen the breakup of a reasonably structured system of key bargains, pattern following practices, and long term agreements that steadily increased compensation by means of COLA clauses and annual improvement factors. Concession bargaining has become an effective force for breaking up these established wage patterns and achieving far more localized wage determination.

Unions have been unable to offset these losses through victories of any kind, either in representation elections, on the picket line, or at the voting booth. Despite Lane Kirkland's contentions to the contrary, labor emerged badly battered from last year's Presidential election, tagged even by some of its friends as a "special interest" group. Finally, for the last several years, union wage hikes have trailed inflation and the pay increases given nonunion employees. If this trend continues, union members will lose their 15 or so percent wage advantage over nonunion workers, which has been organized labor's biggest

attraction in terms of gaining new members.

It is not my purpose to predict the future or suggest means whereby organized labor might reverse these trends, much as I hope it may do so. For today's purposes, what is important is the extent to which university industrial relations training programs have reflected these trends. Wayne Horvitz told us in his IRRA presidential address last December that business school leaders, either in anticipation of or response to their clients' wishes, "have downgraded their offerings in labor history, labor economics, and collective bargaining." Regardless of its cause, this trend is simply a response to the contemporary labor market for industrial relations majors and graduates. At Cornell, and at several other universities of which I have reasonable knowledge, while we have not downgraded any of our traditional labor relations offerings, the demand for courses and faculty in the fields of personnel, human resources administration, and organizational behavior has roughly doubled in the last decade. Our students have found that these are the fields in which job opportunities lie.

Again at Cornell, in the most recent five year period, from 1980-84, 60 percent of the graduates of our professional master's degree program have found work in the field of personnel management, as opposed to only 38 percent who found work in labor-management relations. Among the latter I include all graduates who went to work for unions, in corporate labor relations programs, and in governmental labor law and labor relations positions. And all of these together still represent only a third of the available jobs.

Among our undergraduates the data are even more striking. Of those who went from our baccalaureate program directly to work, almost three-quarters obtained personnel positions, while only one in five have gone into jobs having anything to do with labor relations. Demand for our graduates remains strong, but it is not to work in jobs for which we traditionally thought to prepare them.

The central focus of our field is increasingly shifting away from labor-management relations and over into what we now identify more broadly as human resource administration. Today's trained industrial relations graduates must know a whole range of subjects (employment law rather than labor relations law, the many facets of personnel evaluation, participative work systems, interpersonal dispute resolution techniques) all subjects that have relatively little to do with labor-management relations and far more with the intelligent administration of personnel systems, union and nonunion alike. College departments echo these shifts in emphasis by renaming themselves, dropping Industrial or Labor Relations from their title to substitute such names as Human Resources Administration or Organizational and Human Resource Studies. Doctoral candidates increasingly reverse their programs, substituting majors in personnel for those in industrial relations, the latter becoming a minor field. The academic labor market now provides about a ten percent premium to those who make this choice.

Nor do I suggest that only symbolism is involved. The changes are concrete and important. For example, the two most important, lively, and controversial issues that concern us all today have almost nothing to do with labor-management relations. They are identified by the phrases "employment at will" and "comparable worth." Both have arisen without having been initiated or subsequently captured either by employers or by most of organized labor. Their future, despite the fact that both have tremendous potential impact on labor and management alike, apparently will be determined for the most part independently of the collective bargaining process. In short, exciting issues still are emerging in our field, but

refocusing is necessary if we are to be in the vanguard of developments.

Behavioral Emphasis

To turn to the second leg of my conclusion, our graduates of today are increasingly being trained in a behavioral rather than institutional curriculum. This means that far too many of them have been taught that the only acceptable procedure for drawing conclusions about the practical impact of unions on any other related variable (wages, productivity, employee satisfaction, or whatever) is to develop a multi-equation model embedding some measured degree of unionism on estimated quantities of the subject of related interest. If John R. Commons and his associates or, more recently, Slichter, Healy, Livernash, and theirs, had their missions explained to them in such terms I dare say all would have turned in frustration to subjects permitting greater freedom of method and of more interest and relevance to their concerns.

I am not denigrating behavioral research, for I often admire the apparent precision of microanalytic results that confirm or challenge institutionalist hypotheses and tentative conclusions. I am decrying an increasing tendency I see among industrial relations specialists (whether initially trained in economics, sociology, psychology, law, or business) to assume that there are two kinds of researchers and the twain need never meet or speak. Both kinds of specialists face a problem inherent in their chosen methodology. The inductive approach of those who test theory against actual behavior by means of descriptive case studies cannot reliably predict the future. The deductive approach that tests general social science theories through aggregating individual behaviors cannot provide explanations for the behavior of organizations, which are the actors in most of what is really interesting in industrial relations.

Our ordinary failure to couple institutional and behavioral approaches into unified research projects and to work together to our joint benefit has led to a steadily increasing divergence between the academics, graduate students and faculties, and the practitioners to whom we ought to speak and hope to influence. Practitioners say that social science jargon ordinarily obscures what we write. Even when we explain it, they often fail to see its pertinence or usefulness to their problems. I take no comfort from the suggestion of some that this is a passing problem; that the next generation of practitioners who have been trained in behavioralism will understand and accept the results of modeling. I think not. In fact, many of our best graduates, whether of 1972 or 1982, are most vocal in criticizing the jargon they read and questioning the relevance of much of today's research findings. They challenge the assumption that social scientists can be trusted only when they use computers and not when they watch and question people at work.

I hope I am not bathed in the rosy glow of a fondly remembered institutional youth. I am certain that we must find a way to unite the research of those who crunch numbers and the others who generalize from experience to theory if we are to continue as a respected field that trains sought-after graduates. The limitations of induction and deduction are clear, but they should not make those who pursue either method total strangers.

Returning to the point at which I began, even if we are increasingly training young men and women for personnel jobs, I am not suggesting that we should quietly acquiesce in what Freeman and Medoff called "the slow strangulation of private sector unions." Programs in industrial and labor relations *are* different from the programs of management schools. We cannot and do not emphasize only the role of management within the employee organization. But saying this is not enough. Industrial relations training must evolve and grow at several levels if it is to retain an important place within the uni-

versities and as a source of desirable graduates.

At the plant level, we must suggest ways in which union leaders can play a constructive role in the current context of new systems of work and participation. Most innovation in this area has been taking place in the nonunion sector. The union sector must match the gains that have been made with these new "high commitment" systems if it is to remain competitive. Since these new systems clearly enhance productivity and apparently job satisfaction as well, they will gain in popularity. Bread and butter unionism thus far has seemed unable to compete successfully with team productive efforts, increased pay for greater knowledge and greater flexibility, and other gain sharing arrangements. This is not to say that unionism cannot do so or that we cannot help to suggest ways by which this might come about.

At a somewhat different industrial level, it is truly remarkable to see the kinds of adjustments in compensation costs that have been generated without warfare, even in many unionized situations. But it is easy to recognize why most union leaders are unwilling to take backward steps and pay the political costs often extracted if they do. Again, we should be able both to help them and to predict the future costs of the means, such as two-tier pay scales, that are increasingly being used to help union employers remain competitive.

Finally, although unions have a genuine self interest in helping American industry regain its competitive edge in technology, new products, and world markets, they do not appear very active in providing such help. I do not criticize contemporary union leaders on this score, for it is rare for them to be asked to collaborate with management on such issues. But here, too, if we are not to continue wandering wearily downhill, university industrial relations programs must suggest to the next generation of potential union and management leaders that their joint future is more likely to be successfully enhanced by collaborative techniques than by countinuing resort to traditional pressure tactics.

I am neither optimist enough to think that the brave new world is close at hand nor pessimist enough to conclude that all university industrial relations programs are doomed if they do not participate in the developments I describe. I do finally conclude that our future training and research role must evolve quite differently if our growth and contribution in the next generation is to equal that of the past.

[The End]

The Rise, Decline, and Resurrection of American Labor Law: A Critical Assessment of the NLRA at Age Fifty.

By Leonard R. Page

Associate General Counsel, UAW

We will be doing a fair share of reminiscing and pontificating this summer about the 50th Anniversary of the National Labor Relations Act. The labor

spokesman will decry the anti-union decisions of the Supreme Court and the National Labor Relations Board. Management apologists, in turn, will talk about the necessary corrections of past excesses and a return to reality and common sense. Of course, we all know that when the 55th Anniversary comes up with the Democrats back in power, we can play the record back in reverse. What a fine testament to predictability and consistent justice under law. What a way to ensure full employment for labor lawyers.

The title of our program is also very poignant: "The Rise, Decline And Resurrection Of American Labor Law: A Critical Assessment Of The NLRA At Age 50." Sometime during my lifetime, I look forward to the resurrection of the NLRA. If not a dead letter, the NLRA is certainly gasping for breath. I know that some respected management attorneys may dismiss these comments as excessive political rhetoric. However, labor has been demanding more effective remedies and reduced delays for many years prior to this Administration. I respect the purposes, mechanisms, and the career employees of the NLRB.

President Reagan demonstrated his regard for the NLRB by leaving two of the five Board positions vacant for so long, helping create the huge backlog of unresolved Board cases. The Reagan appointments have transformed the NLRB from a system which simply did not deter flagrant violators to the present Board, which is seeking to unravel the meager protections workers once had. Yet, when we dare to state the obvious, that the emperor is not wearing any clothes, management covers its eyes with the flag of the NLRB as an institution and claims we are destroying the existing labor-management climate through public voyeurism. Well, shield your eyes because the NLRA is but a naked pronouncement of rights riddled with delays and ineffective remedies. To be blunt, the NLRA is simply not fulfilling its stated objectives.

NLRA Inadequacies

In fact, the objects of the NLRA have been largely forgotten in bureaucratic nonenforcement, Reagan Board hostility, and mistaken judicial rulings. As Section 1 and Section 7 of the Wagner Act provided, the NLRA was intended to promote three basic worker rights: (1) the right of employees to organize and form labor organizations; (2) the right to bargain collectively with employers; (3) the right to strike, picket, and engage in other forms of concerted activities to advance these rights. The overall purpose of these rights was to encourage collective bargaining.

The NLRA's built-in opportunities for delay and its totally inadequate system of remedies are a bad joke played on the American workers. Any employer can delay an NLRB election for months by choosing to litigate frivolous unit or voter eligibility issues. Under the Reagan Board, the election campaign itself is now wide open. Factual misrepresentations are permitted, so are repeated references to strikes, violence, plant closings, and reduced wages and benefits. Almost anything common sense would view as a thinly veiled threat, the NLRB now calls a simple prediction or statement of fact.

Let me give you one example of the type of line drawing being done by the current NLRB. In *Tri-Cast Inc.*[1] the employer, during an election campaign, told its employees that if the union was voted in, the employer would "have to run things by the book." Now my naive barometer of reality tells me that this employer was threatening that things would get tougher and work rules would be more strictly enforced if employees voted for the union.

Not so, say Chairman Dotson and his associates: There is no express or implied

[1] 1984-85 CCH NLRB ¶ 17,201, 274 NLRB No. 59.

threat here. All *Tri-Cast* did was explain to employees that, when they select a representative, the relationship that existed between employees and management will not be as before. And, if the workers still vote for the union, the employer can be guaranteed anywhere from three to five years of unremedied delay before a Court of Appeals renders an enforceable bargaining order. I have one election case that the UAW won in 1975 that is still in litigation.[2]

Discharges of leading union activists still continue to be used as the primary union-busting tactic. In 1984, there were 1.5 proven violations of Section 8(a)(3) for each NLRB election conducted. Despite over 50 years of established illegality, discipline for union activity continues to be the highest volume of unfair labor practice activity. Moreover, the 1984 figure of improper discipline for union activity would be doubled or tripled but for the fact that the burden of proof in these cases rests, not on the employer as it should, but on the worker. Workers experience employer coercion and intimidation in almost every NLRB election. But, if an employer blunders and interferes with free choice in an NLRB election, my gosh, the NLRB says the employer gets another chance to scare the workers away from the union in yet another NLRB election.

And, if the employer really goofs and commits serious unfair labor practices, the NLRB may get around to imposing a bargaining order after several years of litigation. This, of course, assumes that the union was able to acquire majority status before the employer began to violate the law. In *Gourmet Foods*,[3] the current Board ruled that no matter how pervasive the employer's violations, a bargaining order can only be imposed if the union has achieved majority status. Even then, less than 15 percent of such bargaining orders result in a permanent bargaining relationship lasting for three labor agreements.

What does this law-breaking cost employers? At the moment, the only costs are heavy attorney fees and possibly some back-pay. But given the alternative of providing decent wages and job security under a negotiated collective bargaining agreement, the choice is just too easy for most employers. And yet, this season, we will hear speaker after speaker applaud this system as an exemplary replacement for the violence and labor wars of the 1930s. Well, from my perspective, more JUSTICE was rendered in the 1937 "illegal" Flint Sit-ins than the Reagan/Dotson NLRB has managed to dispense.

The shortcomings of the NLRA were worsened by new employer tactics and increased delays in enforcement, which led to union efforts for labor law reform by the mid-1970s. These essentially procedural reforms would have increased the likelihood that serious employer lawbreaking could have been remedied under the NLRA. These measures would have only made it more difficult for law-breaking employers. The widespread hostile employer opposition to any form of labor law reform signalled the end of the veneer of employer acceptance of unions and even further strained the framework of labor relations.

With this background, it is possible to more accurately assess the Reagan Board's recent actions as well as the courts' interpretation of the NLRA during the 1980s. This assessment shows that both the NLRB and the courts have failed to recognize the goals of the NLRA and failed to protect workers from employer law-breaking.

Supreme Court Hostility

The widening gap between the law and justice starts at the top. The Supreme Court decisions in *First National Mainte-*

[2] *NLRB v. Aquabrom Division of Great Lakes Chemical Corp.*, 102 LC ¶ 11,219, 746 F2d 334 (CA-6, 1984).

[3] 1983-84 CCH NLRB ¶ 16,352, 270 NLRB No. 113 (1984).

nance and *Bildisco*[4] show this court's hostility to the concept of collective bargaining. In *First National Maintenance Corp.,* the Court held that employers have no duty to bargain over partial closings of operations. There are three excerpts from the Court's analysis which I shall dwell on.

First, the Court observed that Congress did not intend that labor would become an equal partner in the running of the business enterprise. Since when did anyone ever argue that the duty to bargain gave unions a veto power or resulted in making the unions an equal partner?

Next, the Court said employers must be free from the constraints of the bargaining process in order to make a profit. Profits are great, but since when did profitability achieve constitutional status such that clear statutory obligations could be ignored? Does this statement mean that there is no duty to bargain when an employer is losing money? Wait until you see what the NLRB has already read into *First National Maintenance* in its *Otis II* and *Gar Wood*[5] decisions.

Let me turn the argument around. What if I had been on the Supreme Court in an illegal strike case and had chosen to read out a statutory restriction in favor of labor's prime objectives: "Unions must be free, of course, from the constraints of no-strike clauses and statutory secondary boycott restrictions in order to assure decent labor agreements for their members"?

Finally, the Court opined that collective bargaining should only occur when the benefits to be gained by the collective bargaining process do not outweigh the burdens. The Court then appointed themselves to be the social engineers of where the balance was to be placed. Did not Congress already perform this balance in enacting the NLRA? Where are these "strict constructionists" when we need them to enforce the statutory duty to bargain over wages, hours, and working conditions?

In *Bildisco,* the Supreme Court held that a debtor in possession does not commit an unfair labor practice by unilaterally modifying or terminating the labor agreement after a petition in bankruptcy is filed, but before the court acts on a petition to revoke the contract. In reaching the decision, the Court gave great weight to the policies underlying the Bankruptcy Act and no weight to the policies of the NLRA. No effort was made to accommodate the two. Fortunately, Congress immediately reacted and modified the Bankruptcy Act to eliminate the precedent. The *First National Maintenance* and *Bildisco* decisions show the Supreme Court to be antagonistic to the practice of collective bargaining.

I do not have the time to deal with every anti-worker decision of the Board; nor will I deal with reversals of so-called new precedents created by the Carter Board. The current line of most management attorneys is that the Dotson Board is simply correcting a few of the excesses of the prior Carter Board. If only that were true. The Reagan Board has gone far beyond reversing new precedents of the Carter Board. The Reagan/Dotson Board has far exceeded the expectations of even the wildest Right-to-Work or Heritage Foundation union-hater. It has reversed more long-standing precedents than any previous Board.

In *Milwaukee Spring II,*[6] the NLRB reversed a six-year old precedent and held that an employer does not violate Section 8(d) of the NLRA by threatening to relocate work unless the union reopens the labor agreement and accepts concessions.

[4] *First National Maintenance v. NLRB,* 452 US 666 (1981). *NLRB v. Bildisco & Bildisco,* 100 LC ¶ 10,771, 104 SCt 1188 (US, 1984).

[5] *Otis Elevator II,* 1983-84 CCH NLRB ¶ 16,027, 269 NLRB 162 (1984). *Gar Wood—Detroit Truck Equipment Inc.* 274 NLRB No. 23, 118 LRRM 1417 (1985), appeal pending CA-6.

[6] 1982-83 CCH NLRB ¶ 15,317, 265 NLRB No. 28, 1983-84 CCH NLRB ¶ 16,029, 268 NLRB No. 87, appeal pending CA-DC.

Section 8(d) was the Taft-Hartley amendment which says neither party can be forced to bargain or reopen a contract during its term. It was passed at employer insistence because unions had demanded reopening negotiations in response to post-World War II inflationary pressures. The legislative history shows that Section 8(d) was designed to stop forced bargaining for a contract, regardless of the changing circumstances. The NLRB ignored this legislative history and in its decision even applauded itself because, in its view, *Milwaukee Spring II* encouraged the mid-term collective bargaining which Section 8(d) was intended to prevent.

In *Otis Elevator II,* the NLRB reversed twenty years of precedent and held that employers do not have to bargain over relocations of work unless the decision "turns on labor costs." The Board cited *First National Maintenance* for this proposition, even though this issue was specifically mentioned and not addressed by the Court.

I submit that Congress intended employers to bargain about all subjects that directly affect or settle any aspect of the employment relationship. The *Otis* decision now claims that the employer's reasons or motivation, factors obviously subject to manipulation, are key to mandatory bargaining.

Let me demonstrate how ridiculous the *Otis* rationale is by reciting the facts of the recent *Gar Wood* decision. The employer performed truck service and reconstruction and sold some truck parts. The UAW represented a small group of four welders and mechanics. Gar Wood, without notice to the union, subcontracted out the truck service work to a previous competitor. Gar Wood continued selling parts with one UAW employee. The competitor hired a former Gar Wood supervisor and a former employee who, without interruption, continued doing the same identical work in the Gar Wood location with the same machinery and equipment. The subcontractor naturally paid lower wages and benefits and did not recognize the UAW. The subcontract stated that the subcontractor would rent space and equipment from Gar Wood and provide "services as an independent contractor as requested by Gar Wood for customers of Gar Wood." The Board held that Gar Wood did not have to bargain about the decision to subcontract because it was, like *First National Maintenance,* going out of business.

To assert that a decision to subcontract, which involves no change in capital structure and is subject to cancellation by either party on short notice, is the same as a decision to permanently go out of business is straight out of George Orwell's "1984." Tell the former Gar Wood employees who are still doing the same work at the same facility, under the same supervision, with the same equipment, but for two dollars an hour less, that Gar Wood has gone out of the truck service business. Better yet, Mr. Dotson tells Gar Wood customers, who continue to deal with Gar Wood (not the subcontractor), that Gar Wood has gone out of business. The new reality of the new Board is pure Newspeak.

The Wagner Act was passed in 1935 because Congress found that employer refusals to recognize and bargain with unions created labor disputes and sometimes violence. As a nation, we decided peaceful resolution of disputes through collective bargaining was preferred to the labor wars. My point is, it is the absence of bargaining which gives rise to labor disputes and violence. But that is what this Board obviously wants. They appear to be embarked on molding a new concept of collective bargaining: How to help employers avoid it—whether it be in the context of union election victories or in mandatory discussions at the bargaining table.

And, just what is so onerous about bargaining about such decisions? Contrary to the conclusion of the Supreme Court in

First National Maintenance, the duty to bargain does not begin to create anything like an equal partnership. All it requires is timely notice and that an *opportunity,* a *chance,* be given the union to talk the employer out of the decision. Once bargaining is completed, the employer is free to implement the decision.

Why should not decisions to relocate operations, subcontract work, and close down plants be subject to such advance discussions? If *Gar Wood* and *Otis* stand up, such decisions will hereafter be made behind closed corporate doors with no opportunity of any kind for public review. I do not think such a result will bode well for workers, communities, or our society.

And, don't give me that hogwash about needs for secret and efficient decision-making. Employers have to comply with much more stringent plant closing laws in every other foreign country. Yet, the hemorrhaging of American jobs to these foreign subsidiaries has not diminished.

Protected Activities

The NLRB is cutting back not only on the scope of bargaining but also on the scope of "protected concerted activities." in *Meyers Industries,*[7] the NLRB reversed a ten-year old precedent and held that an employee's complaint over job problems was not concerted and hence protected unless the employee's complaint was specifically authorized by fellow employees.

In *Meyers,* a truck driver made repeated complaints about driving a particular truck with bad steering and brakes. He discussed the truck/trailer with other employees and was present when another employee made a similar complaint about the same vehicle. Finally, after an accident with the truck/trailer, he refused to drive it and contacted state safety officials. The company discharged him for "calling the cops all the time."

The precedent reversed by *Meyers* focused not on the identity of the complaining party but rather on the nature of the complaint. Thus, if the complaint was a matter of common concern to the employee group it was considered protected. Another protected right which the Dotson Board is eroding is the right to strike. Incidentally, the current incidence of workdays lost due to strikes is lower now than at any time since World War II.

In *Neufeld Porsche-Audi,*[8] the Board reversed long-standing precedent to hold that a union cannot restrict their members' right to resign at any time, whether just prior to or during a strike. Section 8(a)(1)(a) of the Act, however, specifically recognizes a union's right to impose reasonable rules on its membership. The Board decision obviously ignores the statute and seriously impairs a union's ability to conduct an effective strike. The issue is currently pending before the Supreme Court.

In *Clear Pine Molding,*[9] the Board reversed over 20 years of consistent Board precedent to hold that picketers' verbal threats by themselves could be a basis to deny reinstatement to a striker. Until this decision, every Board had held that threatening statements must be accompanied by "physical acts or gestures that would add meaning to the words." The Board now holds that any verbal statements by themselves that "reasonably tend to coerce or intimidate" non-strikers are grounds for denying strikers their jobs. I suppose this is another example of the new reality of the Board. I submit to you that scabs taking jobs from strikers have never expected to cross picket lines free of verbal taunts.

[7] 1984-85 CCH NLRB ¶ 17,120, 268 NLRB No. 73, remanded 102 LC ¶ 11,346 (CA-D of C, 1985) SCt.

[8] 1983-84 CCH NLRB ¶ 16,436, 270 NLRB No. 209 (1984).

[9] 1983-84 CCH NLRB ¶ 16,083, 268 NLRB No. 173 (1984).

In *Indianapolis Power and Light,*[10] the Board reversed a ten year old line of cases to hold that a broad no-strike clause waives an employee's statutory right to honor stranger picket lines. The right to engage in so-called sympathy strikes is specifically reserved in Section 8(b)(4)(D) of the Act. In *Buffalo Forge,*[11] the Supreme Court recognized sympathy strikes as a separate legal right and held that such strikes cannot be subject to the same injunctive relief otherwise available when the no-strike clause of the contract is not honored.

It simply does not follow that where a union agrees not to strike in exchange for a labor agreement that it also intended to waive its legal rights to honor the legal picket line of another group of employees not covered by its labor agreement.

I have a sign in my office which urges: "The time for reasoned discussion has passed, now let's get down to senseless bickering." I really don't expect any action on labor law reform, but I do grow weary of the bickering. Employers obviously want a weak National Labor Relations Act. I find debating the fairness of the current NLRA much like arguing over apartheid. Why dignify the issue? I'm sick of hearing the Reagan NLRB and Supreme Court explained by means of cute phrases like "just another swing of the pendulum" or a "long awaited return to reality." Let's talk a little reality: Reality is that no amount of elevated debate or enlightened discussion will convince those in power to surrender their current advantage. Reality is that the NLRB is no longer encouraging and protecting the practice of collective bargaining. Reality is that workers trying to organize today are better off taking their chances in striking for recognition than to trust their fate to the NLRB. Finally, reality is that workers have no friend in the White House, the Supreme Court or the NLRB, and that sad fact will only be reversed through the political process. That true NLRA resurrection day will someday come, I assure you.

[The End]

The NLRA at Age Fifty

By Peter G. Nash

Mr. Nash is a senior partner in the Washington office of Ogletree, Deakins, Nash, Smoak and Stewart, a management labor law firm. He served as General Counsel of the NLRB from 1971-1975, and as Solicitor of the U.S. Department of Labor from 1970-1971.

There are some today who contend that the NLRA has passed its prime and that collective bargaining is not the viable alternative to industrial strife that it was in the 1940s, 1950s, and 1960s. These detractors note that union membership nationwide is in decline, that most unions find it extremely difficult to organize non-union workers, that fewer and fewer unions can mount effective strikes, and that an ever-increasing number of labor contracts embody employee concessions, "give backs," or *status quo* agreements.

It is comforting (as well as politically appealing) for many of these detractors to blame the present NLRB, although that Agency's recent decisions have not, in my view, had any appreciable impact upon

[10] 1984-85 CCH NLRB ¶ 17,040, 273 NLRB No. 211 (1985).

[11] *Buffalo Forge v. Steelworkers,* 78 LC ¶ 11,487, 428 US 397 (SCt, 1976).

the ability of unions to organize, bargain, or strike. Indeed, I have long held that unions organize, bargain, strike, and function best when they have captured the hearts and minds of the workers they seek to represent, not when they litigate or even win NLRB cases. And unions most often gain employee support when they "produce" as effective representatives; that is, when they deliver better wages, benefits, and working conditions through the bargaining process.

I do share the doubts of the NLRA naysayers about the continued and long-range effectiveness of the NLRA and the process of collective bargaining it was intended to foster. However, my reasons for concern are somewhat different from theirs.

Congress enacted our nation's basic labor law (the National Labor Relations Act) in 1935 to reduce industrial strife and its interference with commerce between and among the several states. In doing so, Congress proceeded upon a simple assumption. It judged that employees were less likely to become frustrated and thereafter engage in strikes and other conduct, which are disruptive of business and commerce, if those employees were granted the right to an effective voice in establishing their own wages, hours, and working conditions. Thus, if the employees at a particular work site could sit down with their employer and help design the working conditions that made sense for those employees at that location (given the particular work being done by them and the particular business needs of their employer), and if those employees could match their employer's economic muscle in that bargaining by the threat or use of a strike, then those employees would be less likely to become frustrated and lash out against their employer and its business.

In enacting the NLRA, Congress implemented that theory by protecting the rights of employees to support, form, and join labor unions, by requiring employers to bargain wages, hours, and working conditions with those unions that represent a majority of that employer's workers, by granting and protecting the right of employees to pool their economic power in strikes supporting their bargaining positions, and by providing that any resulting collective bargaining agreement between those represented employees and their employer would be court enforceable.

Under this Congressional scheme, employees and employers would bargain those employment terms that best fit their own needs and desires. However, Congress was aware of the fact that for this system of bargaining to work, government would have to restrain itself from legislating required employment terms. If government became too involved in establishing work place standards, the employees and their employers would have less and less about which to bargain. Further, even the working conditions left uncontrolled by government but desired by employees might not be available from an employer who simply could not afford to add to his legally required wages, fringe benefits and other working conditions.[1]

In sum, the NLRA established a system of free collective bargaining which was designed to work best, if at all, if government stayed out of the work place and let employees and their employers freely bargain their own employment terms.

Government Regulation

Since 1935, however, there has been evidence that Congress and the several

[1] *Local 76, International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 78 LC ¶ 11,476, 427 US 132 (1976); *H. K. Porter Co. v. NLRB*, 62 LC ¶ 10,696, 397 US 99 (1970); *NLRB v. Insurance Agents' International Union*, 39 LC ¶ 66,239, 361 US 477 (1960); *Local 24 of International Brotherhood of Teamsters v. Oliver*, 36 LC ¶ 65,161, 358 US 283 (1959); *Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Wisconsin Employment Relations Bd.*, 19 LC ¶ 66,194, 340 US 383 (1951); *Hill v. Florida*, 9 LC ¶ 51,208, 325 US 538 (1945).

states have concluded that collective bargaining has not effectively met the needs of a majority of American workers. That disillusionment with the bargaining process has prompted the legislation of several needed work-place standards. The weakening of unions and bargaining coincident with the growth of these otherwise reasonable legislated solutions to real work-place problems has confirmed what Congress assumed in 1935: unions and their business of collective bargaining can not really thrive unless government steps out of the work place.

To illustrate, we need to review only a few examples of government regulation of American working conditions. Thus, for example, prospective employees are governmentally protected in their quest for jobs against discrimination based upon race, color, creed, sex, national origin and age by Title VII of the Civil Rights Act of 1964, Executive Order 11246, and the Age Discrimination in Employment Act. Indeed, those employers who contract with the federal government must take affirmative steps to seek out and hire minorities, women, the handicapped, and Vietnam veterans (Executive Order 11246; Vocational Rehabilitation Act; Vietnam Era Veterans Readjustment Assistance Act) and government-approved apprenticeship programs require similar outreach for minorities and women (Affirmative Action—Apprenticeship, 29 CFR Chapter 30). In addition, all prospective employees are, of course, protected from the wage competition of immigrant labor by the Immigration and Nationality Act.

Once hired, employees are now subject to almost "cradle-to-grave" governmental protection and control in the work place. Their health and safety is governmentally monitored under the Occupational Safety and Health Act and the Federal Mine Safety and Health Act. Minimum wage and overtime premium payments are guaranteed by the Fair Labor Standards Act. Women are to receive pay equal to men for the same work under the Equal Pay Act. Those who work for the suppliers of goods, services, and construction to the federal government are guaranteed the payment of prevailing wages and/or special overtime premiums by the Davis-Bacon Act, the Service Contract Act, the Walsh-Healey Government Contracts Act, and the Contract Work Hours and Safety Standards Act. Those who work in our railroad and urban mass transit industries receive substantial, governmentally guaranteed, wage and job protections under the Interstate Commerce Act, and the Urban Mass Transit Act.

Employee benefit and pension plans are protected and insured by the Employee Retirement Income Security Act. Employee jobs and wages are protected from wage garnishments by their creditors under the Consumer Credit Protection Act. Employees injured on the job receive compensation payments through worker's compensation laws and those who are laid off receive unemployment compensation with additional payments if their job loss is the result of foreign competition under Unemployment Compensation and trade adjustment assistance programs. Those who leave jobs to serve in the armed services retain job return rights (Veterans Reemployment Rights) and those who retire receive social security retirement benefits.

Over one quarter of working Americans who work for government have extensive job right protections under civil service laws. In an ever-growing number of states, employees are no longer employed at "the will" of their employer, but may be discharged only "for cause." [*E.g., Cancellier v. Federated Dept. Stores,* 672 F2d 1312 (CA-9, 1982); *Fortune v. National Cash Register Co.,* 364 NE2d 1251 (Mass. 1972)]

Finally by way of example, there have been occasions in our recent history when the federal government has frozen wages or capped wage increases for employees (*e.g.,* the Nixon "Phases" I, II and III).

Bargaining Less Relevant

In sum, these few examples, plus scores of other federal, state and local laws and regulations, have so filled the American work place that little room has been left for free collective bargaining. I do not mean to imply that the various work place requirements mandated by governments are unnecessary or unwise. However, what those governmental actions do evidence is an ever-growing body of public and governmental opinion that free collective bargaining has but a limited role in establishing work place standards. As that opinion is manifested in more and more legally required work place standards, unions and their business of collective bargaining become less and less relevant to the American workers.

Thus, for example, many unrepresented American construction workers may well be asking themselves why they need a union to bargain their wages when the Davis-Bacon Act already requires their employers to pay prevailing area wages on government construction work. What would workers in highly competitive industries do with a union when their employers (who must provide social security, expensive worker's compensation, a minimum wage of $3.35 per hour, and expensive short-term funding of early vested retirement plans) can afford little, if any, more benefits—particularly if those employees live and work in a state that protects them from discharge for other than "just cause"? And if employees see little need for representation, collective bargaining begins to evaporate, and the significance of the NLRA, which encouraged that bargaining process, diminishes.

I do not wish to over-argue this thesis. There are clearly many other reasons why bargaining and the National Labor Relations Act may be less relevant now, 50 years after enactment, than they were in 1935. Those reasons include: the disinterest of the younger worker in any form of organization membership; a more mobile work force; the continuing flight of business to areas of the country where unions have not historically been highly regarded; a growing anti-union atmosphere in the country resulting, in part, from the excesses of a few; the emergence of worker-oriented management throughout the country; tough economic competition, which has resulted in organized workers receiving smaller percentage wage increases than nonunion workers, etc.

However, in assessing the reasons why the NLRA and collective bargaining are not what they were 50 years ago, it is at least worth asking whether Congress was right in 1935 when it judged that collective bargaining could flourish only if government stayed out of the work place. The record of ever-increasing government involvement in the work place in the intervening 50 years and the concurrent reduction in union membership and bargaining power indicate that it is at least possible that Congress was right.

[The End]

The NLRA at Fifty: From Youthful Exuberance To Middle-Aged Complacency

By Charles B. Craver

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When the National Labor Relations Act (NLRA) [1] was enacted in 1935, Congress specifically noted in Section 1 that "[t]he denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest . . ." [2] Congress further noted "[t]he inequality of bargaining power between employees who do not possess full freedom of association . . . and employers who are organized in the corporate [form] . . ." As a result of these concerns, it was declared to be the policy of the United States to alleviate these problems "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives . . . for the purpose of negotiating the terms and conditions of their employment . . ."

The propriety of this theme was recognized by the Supreme Court when it sustained the constitutionality of the NLRA: "Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer." [3]

For millions of American workers employed by private sector enterprises, the NLRA has provided significant rights. Almost twenty million employees are currently represented by labor organizations,[4] and millions of other workers have exercised their right, either informally or through formal Labor Board elections, to remain unorganized.[5] Some union supporters might suggest that individuals who have decided not to select a bargaining agent have not truly asserted their rights under the NLRA. Such a narrow viewpoint should not be accepted. To the extent that unorganized workers have determined, free from any employer coercion, that they would prefer to continue their respective employer-employee relationships without the assistance of bargaining representatives, they have simply exercised their protected right to remain unorganized.

During the past fifty years, millions of employees have taken advantage of the NLRA right to influence their wages, hours, and working conditions through the collective bargaining process. Negotiation procedures and grievance adjustment mechanisms have permitted them to participate in management decisions, which have affected their employment environ-

[1] 49 Stat 449 (1935); 29 USC 158-168 (1976).

[2] *Ibid.*

[3] *NLRB v. Jones & Laughlin Steel Corp.*, 1 LC ¶ 17,017, 301 US 1 (1937).

[4] See *BNA Daily Labor Report*, No. 185, September 24, 1984, p. A-1. See also Craver, "The Vitality of the American Labor Movement in the Twenty-First Century," *U. of Illinois Law Review* 633 (1983).

[5] The right of employees to refrain from organizational activities and to oppose the selection of a bargaining representative was added to Section 7 of the NLRA as part of the 1947 Taft-Hartley Amendments. See 29 USC 157 (1976).

ment, economic benefits, and job security. Millions of collective agreements have been negotiated, most without resort to any work stoppages. Despite the fact that the duty to bargain defined in Section 8(d)[6] does not compel either party to agree to any proposal or require the making of any concession, organized employers and representative unions have achieved innumerable accommodations of competing interests pertaining to a plethora of topics.

Empirical evidence suggests that workers who have selected bargaining agents have enhanced their individual economic benefits.[7] Similar studies indicate that many unorganized personnel have received indirect financial gain from the labor movement, since their employers have endeavored to provide benefit packages competitive with those enjoyed by unionized employees.[8] However, excessive emphasis should not be placed merely upon the economic gains achieved by labor organizations. Through the "collective voice" exerted by organized groups, workers have been able to advance important non-economic interests.[9] Contractual provisions generally preclude discipline except for "just cause," while other clauses typically establish orderly layoff and recall procedures and require the application of objective criteria to promotional opportunities.

Where employees are not satisfied with the manner in which contractual terms are applied, they may invoke grievance-arbitration procedures. During contract administration meetings, parties are usually able to negotiate mutually acceptable resolutions of outstanding grievances. Where no such accords can be achieved, neutral arbitrators may be asked to determine the controverted issues. The availability of such procedures prevents arbitrary employer action and guarantees workers the ability to obtain impartial decisions resolving labor-management disputes. Without the rights and protections created by the NLRA, such orderly grievance adjustment systems would not exist as pervasively as they do today.

During the first several decades of the NLRA, Labor Board and court rulings judiciously protected the Section 7 right of employees to form, join, and assist labor organizations and to select exclusive bargaining agents. Worker participation in management decision-making through the collective bargaining process was inexorably expanded. As the NLRA has become an established institution, however, decisions have begun to erode some statutory protections, and the ability of aggrieved parties to invoke NLRB authority has been diminished. The reluctance of the Board, the courts, and even Congress to recognize the need for more effective remedial alternatives has precipitated increased unfair labor practice violations. The continued emphasis upon the traditional adversarial model of industrial relations has retarded the adoption of more innovative cooperative employer-employee ventures. This article will examine these developments.

Youthful Exuberance

During the formative years of the NLRA, the basic statutory rights extended to employees and to representative labor organizations were expeditiously defined and enforced. Forms of overt intimidation were substantially reduced, as coercive threats and discriminatory treatment were administratively rectified. Employer-dominated employee committees were quickly challenged under Section 8(a)(2), with such "company unions" being disestablished pursuant to Labor Board directives.[10]

[6] 29 USC 158(d) (1976).

[7] R. Freeman & J. Medoff, *What Do Unions Do?* (1984), pp. 43-77 and studies cited therein.

[8] *Ibid.* pp. 151-153.

[9] *Ibid.* pp. 194-210.

[10] See R. Gorman, *Basic Text on Labor Law*, pp. 197-198 (1976).

As the NLRA evolved into a more mature institution, more subtle forms of employer restraint were proscribed. For example, pre-election benefit increases that might reasonably induce workers to vote against representation were prohibited, even where there was no proof that the employer intended to impermissibly influence the election process.[11] Companies were precluded from discharging employees for alleged misconduct occurring during organizing drives where no unprotected behavior actually occurred. Since the alleged misconduct would be inextricably intertwined with the protected organizing activities, it was thought that such erroneous terminations would have a chilling effect upon the exercise of protected organizing rights.[12]

The definition of protected "concerted activity" was expanded to include individual conduct which was found to advance the employment interests of other employees.[13] The Labor Board even determined that conduct not constituting an unfair labor practice could provide the basis for setting aside election results, where the challenged action might have prevented a truly fair representation election.[14] As a result of this doctrine, elections that might have been influenced by pre-election misrepresentations were vacated where there was a material misrepresentation of fact that emanated from a party in a position to know the correct facts, and where the opposing party did not have sufficient time to correct the misstatements before the balloting.[15]

Legal principles were developed to protect the true desires of employees involved in organizing campaigns. Where employers refused to assent to union requests for voluntary recognition based upon claims of majority support and the employers subsequently engaged in impermissible tactics designed to dilute the majority strength that had been obtained by the organizing unions, remedial bargaining orders would be issued.[16] Conversely, where recognition was extended to unions that did not in fact enjoy majority support, the responsible parties were held liable regardless of their good or bad intentions.[17]

Although Section 10(c) of the NLRA, as amended by the Taft-Hartley Act, provides that the NLRB shall not order the reinstatement of any employee who has been terminated for cause, the Labor Board recognized that this rule should not preclude reinstatement orders in all cases involving worker misconduct. Where serious employer unfair labor practices provoked acts of unprotected misbehavior by employees protesting the unlawful employer action, the Board would balance the seriousness of the worker misconduct against the seriousness of the employer violations. If the employer unfair labor practices were far more serious than the unprotected employee responses, reinstatement would be directed to prevent the employer from benefiting from its illegal conduct.[18]

Employees who selected an exclusive bargaining agent were expressly provided under Section 8(d) with the right to negotiate over "wages, hours, and other terms and conditions of employment." Although no specific definition of mandatory bargaining topics was included in the NLRA, administrative and judicial decisions rec-

[11] See *NLRB v. Exchange Parts Co.*, 48 LC ¶ 18,677, 375 US 405 (SCt, 1964).

[12] See *NLRB v. Burnup & Sims, Inc.*, 50 LC ¶ 19,316, 379 US 21 (SCt, 1964).

[13] See for example *NLRB v. Interboro Contractors, Inc.*, 57 LC ¶ 12,388, 338 F2d 495 (CA-2, 1967).

[14] See for example *Dal-Tex Optical Co.*, 1962 CCH NLRB ¶ 11,202, 137 NLRB 1782 (1962).

[15] See *Hollywood Ceramics Co.*, 1962 CCH NLRB ¶ 11,849, 140 NLRB 221 (1962).

[16] See for example *Joy Silk Mills, Inc.*, 85 NLRB 1263 (1949), enforced 19 LC ¶ 66,021, 185 F2d 732 (CA-DC, 1950); *Snow and Sons*, 1961 CCH NLRB ¶ 10,678, 134 NLRB 709 (1961), enforced 46 LC ¶ 17,846, 308 F2d 687 (CA-9, 1962).

[17] See *Intl. Ladies Garment Workers Union v. NLRB*, 42 LC ¶ 16,978, 366 US 731 (SCt, 1961).

[18] See *Kohler Co.*, 1964 CCH NLRB ¶ 13,452, 148 NLRB 1434 (1964), affirmed 51 LC ¶ 19,649, 345 F2d 748 (DC D of C), cert denied 52 LC ¶ 16,664, 382 US 836 (SCt, 1965).

ognized the prerogative of representative unions to insist upon discussions pertaining to such fringe benefits as vacations,[19] pension plans,[20] group insurance programs,[21] and paid sick leave provisions.[22] Many other obligatory subjects were similarly determined, including employee discounts,[23] rental fees in company-owned housing,[24] safety rules,[25] employee workloads,[26] grievance procedures,[27] layoff and recall rights,[28] and certain subcontracting decisions.[29]

By the late 1960s and early 1970s, labor organizations appeared to enjoy the right to expect bargaining with respect to most topics that had any meaningful impact upon worker interests. The pervasive scope of mandatory bargaining was noted by one writer who observed in 1966 that "[a]lthough there are still some subjects which are still considered voluntary or permissive, the mandatory classification has been expanded to include almost every conceivable activity, exceptional as well as restrictive, which even minutely affects wages, hours, and other terms of employment." [30]

Middle-Aged Complacency

As the NLRA has evolved from a youthful Magna Carta for workers and representative labor organizations to a more staid middle-aged institution, Labor Board and court decisions have eroded some of the important rights previously recognized. For example, the *Hollywood Ceramics* [31] doctrine, which precluded serious misrepresentations preceding representation elections, was rejected in favor of a laissez faire approach. Although the Labor Board initially vacillated with respect to this issue,[32] it finally decided that misleading campaign statements will no longer provide a basis for challenging election results.[33] This new rule permits employers who oppose union organizing drives to issue false factual statements that might induce some employees either to think that a collective bargaining agent is not needed or that the organizing union and/or its leadership would not be reputable bargaining representatives.

The Supreme Court indicated in *Gissel Packing* that, where flagrant and pervasive employer unfair labor practices have significantly deterred employee organizing efforts, the NLRB might, in extraordinary circumstances, issue a remedial bargaining order even in the absence of a demonstration that the union ever achieved maajority support.[34] This exceptional rule was premised upon the belief that the trade union would have been able to attain majority strength had it not been for the chilling effect of the outrageous employer conduct. Since the need

[19] See *Phelps Dodge Copper Corp.*, 101 NLRB 360 (1952).

[20] See *Inland Steel Co. v. NLRB*, 15 LC ¶ 64,737, 170 F2d 247 (CA-7, 1948), cert denied 336 US 960 (1949).

[21] See *W.W. Cross & Co. v. NLRB*, 174 F2d 875 (CA-1, 1949).

[22] See *Singer Manufacturing Co.*, 24 NLRB 444 (1940), enforced 4 LC ¶ 60,357, 119 F2d 131 (CA-7), cert denied 313 US 595 (1941).

[23] See *Central Illinois Public Service Co.*, 1962 CCH NLRB ¶ 11,814, 139 NLRB 1407 (1962), enforced 48 LC ¶ 18,592, 324 F2d 916 (CA-7, 1963).

[24] See *American Smelting and Refining Co. v. NLRB*, 406 F2d 552 (CA-9), cert denied 395 US 935 (1969).

[25] See *NLRB v. Gulf Power Co.*, 56 LC ¶ 12,258, 384 F2d 822 (CA-5, 1967).

[26] See *Beacon Pierce Dyeing & Finishing Co.*, 121 NLRB 953 (1958).

[27] See *NLRB v. Boss Manufacturing Co.*, 3 LC ¶ 60,342, 118 F2d 187 (CA-7, 1941).

[28] See *United States Gypsum Co.*, 94 NLRB 112, amended 97 NLRB 889 (1951), modified on other grounds 206 F2d 410 (CA-5, 1953), cert denied 347 US 912 (1954).

[29] See *Fibreboard Paper Products Corp. v. NLRB*, 50 LC ¶ 19,384, 379 US 203 (1964).

[30] Comment, "Subjects to be Included Within Management's Duty to Bargain Collectively," 26 *LA. Law Review* 630 (1966).

[31] 1962 CCH NLRB ¶ 11,849, 140 NLRB 221 (1962).

[32] Compare *Shopping Kart Food Market*, 1977-78 CCH NLRB ¶ 18,048, 228 NLRB 1311 (1977) with *General Knit of California, Inc.*, 1978-79 CCH NLRB ¶ 15,317, 239 NLRB 619 (1978).

[33] See *Midland National Life Insurance Co.*, 1982-83 CCH NLRB ¶ 15,072, 263 NLRB 127 (1982); see generally J. Getman, S. Goldberg & J. Herman, *Union Representation Elections: Law and Reality* (1976).

[34] See *NLRB v. Gissel Packing Co.*, 60 LC ¶ 10,150, 395 US 575 (1969).

for an efficacious deterrent to such flagrant employer unfair labor practices had to be balanced against the right of employees to be free from representation by a non-majority labor organization, very few minority bargaining orders were ever issued.

In *Conair Corp.*,[35] the Labor Board agreed to issue such a remedial directive to rectify the continuing impact of extreme employer unfair labor practices which included: "Numerous threats of plant closure, discharge, and the loss of benefits; numerous promises of increased or new benefits; coercive interrogation of employees; numerous acts of soliciting employee grievances with promises to remedy the same; grants of numerous benefits to employees; creating the impression of surveillance; the failure to give timely reinstatement to 36 unfair labor practice strikers; and the outright discharge and refusal to reinstate 16 other unfair labor practice strikers."

The United States Court of Appeals for the District of Columbia Circuit declined to enforce the Board's remedial order, since it concluded that any departure from the principle of majority rule should be left to Congress.[36] In its recent *Gourmet Foods, Inc.*[37] decision, the NLRB accepted the D.C. Circuit's *Conair* rationale, and it indicated that no future nonmajority bargaining directives would be permitted.

The Labor Board decided last year to narrow the Section 7 protection to be afforded to individual employees who protest adverse employment conditions. Although the Supreme Court almost contemporaneously sustained the propriety of the "constructive concerted activity" doctrine which had been recognized in the *Interboro Contractors*[38] case and which extended statutory protection to individual workers who complained about matters of presumed interest to fellow employees, the NLRB's *Meyers Industries*[39] holding has substantially restricted the scope of NLRA coverage available under the *Interboro* concept.

Individuals who question safety conditions or file complaints with state or federal regulatory agencies will no longer be insulated from retaliatory discipline under the NLRA unless they either act in direct concert with other workers or assert rights codified in existing bargaining agreements. Unrepresented personnel who are not covered by a collective contract and who are not careful to associate themselves with other workers will be unable to challenge resulting discharges under the NLRA. "Taken by itself, . . . *individual* employee concern, even if openly manifested by several employees on an *individual* basis, is not sufficient evidence to prove concert of action."[40]

Another recent Labor Board decision has overturned the so-called "provocation" doctrine, which had been applied in cases like *Kohler Co.*[41] to protect employees who engaged in non-flagrant misconduct in response to serious antecedent employer unfair labor practices. In *Clear*

[35] 1981-82 CCH NLRB ¶ 19,008, 261 NLRB 1189 (1982).

[36] *Conair Corp.*, 99 LC ¶ 10,741, 721 F2d 1355 (CA D of C 1983).

[37] 1983-84 CCH NLRB ¶ 16,352, 270 NLRB No. 113 (1984).

[38] 1966 CCH NLRB ¶ 20,308, 157 NLRB 1295 (1966), enforced 57 LC ¶ 12,388, 388 F2d 495 (DC-2, 1967). This basic doctrine was accepted by the Supreme Court in *NLRB v. City Disposal Systems*, 100 LC ¶ 10,846, 104 SCt 1505 (US, 1984). See also *Alleluia Cushion Co.*, 1975-76 CCH NLRB ¶ 16,451, 221 NLRB 999 (1975).

[39] 1983-84 CCH NLRB ¶ 16,019, 268 NLRB No. 73 (1984).

[40] *Ibid.* (Emphasis in original); See also *Sears, Roebuck & Co.*, 1984-85 CCH NLRB ¶ 17,039, 274 NLRB No. 55 (1985), holding that the right of employees to request representation at investigatory interviews they reasonably believe may result in discipline under *NLRB v. Weingarten*, 76 LC ¶ 10,662, 420 US 251 (1974), is no longer available to nonunion workers as had been previously recognized in *Materials Research Corp.* 1982-83 CCH NLRB ¶ 15,031, 262 NLRB 1010 (1982); see generally Craver, "The Inquisitorial Process in Private Employment," 63 *Cornell Law Review* 1, pp. 16-24 (1977).

[41] 1964 CCH NLRB ¶ 13,452, 148 NLRB 1434 (1968), affirmed 51 LC ¶ 19,649, 345 F2d 748 (CA D of C, 1965), cert denied 52 LC ¶ 16,664, 382 US 836 (1965).

Pine Mouldings,[42] the Board determined that workers adversely affected by NLRA violations should seek administrative redress instead of resorting to unprotected self-help measures. Under this new theory, strikers who protest extreme employer unfair labor practices will forfeit their right to reinstatement if they are induced to engage in overly exuberant behavior.

Appellate courts might reasonably question the propriety of such a rigid rule. "[W]here an employer who has committed unfair labor practices discharges employees for unprotected acts of misconduct, the Board must consider both the seriousness of the employer's unlawful acts and the seriousness of the employees' misconduct in determining whether reinstatement would effectuate the policies of the Act. Those policies inevitably come into conflict when both labor and management are at fault. To hold that employee "misconduct" automatically precludes compulsory reinstatement ignores two considerations which we think important. First, the employer's antecedent unfair labor practices may have been so blatant that they provoked employees to resort to unprotected action. Second, reinstatement is the only sanction which prevents an employer from benefiting from his unfair labor practices through discharges which may weaken or destroy a union." [43]

When the doctrines enunciated in *Clear Pine Mouldings* and *Gourmet Foods* are combined, it becomes clear that immoral employers, who are willing to ignore their legal obligations under the NLRA, can significantly disenfranchise employees who are endeavoring to exercise their protected rights. A particularly anti-union company could direct its supervisory personnel to apprise it of any incipient organizing efforts. It could readily ascertain the names of the primary union organizers and terminate them in a very public and humiliating manner. This visible action would substantially discourage further organizing activity by the remaining workers, since it would probably take two to three years before a judicially enforced reinstatement order could benefit the organizing leaders who were illegally discharged.

If the employer was fortunate, its openly provocative method of termination might even precipitate some unprotected response from the discriminatees which would cause them to forfeit their right to reinstatement under *Clear Pine Mouldings.* Such overtly intimidating conduct by the employer would also be likely to prevent the achievement of majority strength by the affected labor organization. The *Gourmet Foods* doctrine would thus preclude issuance of any remedial bargaining order. Although such a pervasive unfair labor practice violator would undoubtedly incur sizable legal fees, and possibly some backpay liability, it might simply conclude that such costs would be insignificant compared with the economic costs and loss of management freedom that might be associated with a unionized workforce.

Mandatory Bargaining

Even where employees do select an exclusive bargaining representative, they may find themselves with less influence than organized workers previously enjoyed. Recent NLRB and court decisions have narrowed the scope of mandatory collective bargaining. The Supreme Court had recognized in *Fibreboard Paper Products Corp. v. NLRB*[44] that many economic considerations that affect managerial decisions should be subject to the bargaining process, to provide employees with the opportunity to respond to employer concerns

[42] 1983-84 CCH NLRB ¶ 16,083, 268 NLRB No. 173 (1984).

[43] *UAW Local 833 v. NLRB,* 44 LC ¶ 17,403, 300 F2d 699 (CA D of C 1962), cert denied 45 LC ¶ 17,648, 370 US 911 (1962).

[44] 50 LC ¶ 19,384, 379 US 203 (1964).

and to permit the negotiation of mutually acceptable accommodations that would protect worker interests. However, in *First National Maintenance Corp. v. NLRB,*[45] the Court retreated from the expansive *Fibreboard* rationale.

While holding that a management decision to close part of a business does not constitute a mandatory subject for bargaining, the Supreme Court majority used language which could potentially prevent employee participation in many important management decisions: "Management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business. It also must have some degree of certainty beforehand as to when it may proceed to reach decisions without fear of later evaluations labeling its conduct an unfair labor practice . . . [I]n view of an employer's need for unencumbered decisionmaking, bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business."

In *Otis Elevator Div. of United Technologies,*[46] the Labor Board relied upon this *First National Maintenance* balancing test to determine that a union does not have the right to expect bargaining over an employer's decision to transfer production from one facility to another, where such a managerial judgment is not premised upon labor cost considerations which might be amenable to resolution through the bargaining process. If employers wish to avoid future negotiations over such decisions, they need only articulate motivating factors unrelated to labor costs. Through such a disingenuous device, they might be able to convince the Labor Board that the need for unencumbered managerial decision making outweighs the speculative benefits that might be derived from collective negotiations.

Several different trends, which have become evident during the past ten to fifteen years, threaten to seriously undermine the ability of aggrieved workers and labor organizations to invoke the unfair labor practice authority of the NRLB. They concern the undue modesty of the Labor Board which has induced it to extend excessive deference to grievance-arbitration procedures.

In *Spielberg Manufacturing,*[47] the Board decided that it would defer in unfair labor practice cases to prior arbitral determinations involving the same basic circumstances where the proceedings were "fair and regular, all parties had agreed to be bound, and the decision of the abitration panel [was] not clearly repugnant to the purposes and policies of the [NLRA]." When factual issues are in dispute, such deference reasonably enhances the federal policy in favor of labor arbitration, and it prevents unnecessarily duplicative litigation.

The *Spielberg* deferral policy was significantly expanded in *Olin Corp.*[48] wherein the Labor Board enunciated new standards to be applied when deciding whether to accept a previous arbitral determination: "We would find that an arbitrator has adequately considered the unfair labor practice if (1) the contractual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. . . .[W]ith regard to the inquiry into the 'clearly repugnant' standard, we would not require an arbitrator's award to be totally consistent with Board precedent. Unless the award is 'palpably wrong,' i.e., unless the arbitrator's deci-

[45] 91 LC ¶ 12,805, 452 US 666, 101 SCt 2573 (1981).

[46] 1983-84 CCH NLRB ¶ 16,181, 269 NLRB No. 162 (1984).

[47] 112 NLRB 1080 (1955).

[48] 1983-84 CCH NLRB ¶ 16,028, 268 NLRB No. 86.

sion is not susceptible to an interpretation consistent with the Act, we will defer.

"Finally, we would require that the party seeking to have the Board reject deferral and consider the merits of a given case show that the above standards for deferral have not been met. Thus, the party seeking to have the Board ignore the determination of an arbitrator has the burden of affirmatively demonstrating the defects in the arbitral process or award."

These new rules will make it exceedingly difficult for parties to challenge prior arbitration decisions that may not be entirely compatible with NLRA policies. The burden of proof has been transferred from the party seeking acceptance of the previous arbitral findings to the party opposing such acceptance. The mere fact that the arbitrator's interpretation or application of NLRA principles has not been consistent with established Labor Board doctrines is no longer controlling. So long as the arbitral determination was not "palpably wrong," it will be entitled to NLRB affirmation.[49] This expansive deference will cause the development of inconsistent legal principles that may not provide individual employees with protection as broad as that envisioned by Congress when it enacted the NLRA.

Where unfair labor practice charges are filed that raise issues that might be resolved through available contractual grievance-arbitration procedures, the Labor Board will frequently refuse to hear the controversy. Under the *Collyer Insulated Wire*[50] doctrine, if the respondent is willing to have the dispute submitted to the arbitral process, the Board will usually withhold its authority and direct the parties to utilize that means of adjudication. In *General American Transportation Corp.*,[51] the NLRB appropriately recognized that such arbitral deferral is particularly proper where Section 8(a)(5) or 8(b)(3) refusal to bargain charges are involved. In such cases, the rights of the representative labor organization as an institution will be determined, and the resolution of the underlying contractual question, which will simultaneously dispose of the unfair labor practice issue, will be made in the forum the parties established for such disputes.

However, where individual rights are raised under provisions such as Section 8(a)(1), 8(a)(3), 8(b)(1)(A), or 8(b)(2), the interests of the aggrieved employee might not coincide with those of either the employer or the representative union which control the arbitral process. Application of the *Collyer* policy to such cases might sacrifice the individual rights Congress so carefully established in Section 7 of the NLRA. The Labor Board had acknowledged this distinction between cases concerning individual rights and those involving organizational rights in *General American Transportation* wherein it indicated that *Collyer* deferral would be restricted to Section 8(a)(5) and 8(b)(3) charges.

In *United Technologies*,[52] the Board revitalized the previously discarded *National Radio Co.*[53] doctrine, favoring deferral in Section 8(a)(1), 8(a)(3), 8(b)(1)(A), and 8(b)(2) situations. This policy reversal effectively deprives allegedly coerced individuals of access to the administrative agency that Congress created to resolve unfair labor practice cases. The Labor Board should reconsider its overly modest belief that grievance-arbitration procedures are a wholly adequate substitute for NLRB jurisdiction.

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[49] But cf. *Jones Dairy Farm v. UFCW Local P-1236*, 102 LC ¶ 11,362 (CA-7, 1985), wherein the court refused to enforce, in a Section 301 suit, an arbitral award that was substantially based upon a subsequently overruled Board precedent.

[50] 1971 CCH NLRB ¶ 23,385, 192 NLRB 837 (1971).

[51] 1977-78 CCH NLRB ¶ 17,831, 228 NLRB 808 (1977).

[52] 1983-84 CCH NLRB ¶ 16,027, 268 NLRB No. 83 (1984).

[53] 1972 CCH NLRB ¶ 24,474, 198 NLRB 527 (1972).

A return to the *General American Transportation* approach would guarantee individual employees the right to have their claims presented by independent Labor Board attorneys before the tribunal which both possesses substantial NLRA expertise and whose members have not been selected by the employer and labor organization involved. A continuation of the *United Technologies* rule, on the other hand, may increasingly preclude a neutral determination of the underlying legal issues, since many representative labor organizations may be unable to afford the costs of arbitration. Where a union declines to invoke arbitration because of bona fide monetary constraints, or some other non-arbitrary, good faith consideration, the NLRB will apparently still refuse to assert jurisdiction.[54] Such a result is hardly consistent with the unfair labor practice authority Congress extended to the Labor Board in Section 10 of the NLRA.

Lack of Remedial Efficacy

The last decade has witnessed a significant increase in employer antipathy toward the organizational and collective bargaining rights of employees. Many companies have retained sophisticated anti-union consultants who use behaviorist theories to convince workers that labor organizations are not beneficial for them either professionally or personally. An expanding number of employers have even evidenced a willingness to utilize clearly unlawful tactics to preserve their unorganized status. This phenomenon might reasonably be attributable to the fact that the relatively minimal costs associated with unfair labor practice liability are substantially outweighed by the overall costs these employers associate with employee unionization. This is particularly the case when the moral and systemic ramifications of such illegal conduct are ignored.

There has been a geometric increase in the number of employees unlawfully discharged because of their support for labor organizations. In 1957, 922 Section 8(a)(3) dischargees were directed reinstated in NLRB proceedings, while, by 1970, the number of such discriminatees had risen to 3779. By 1980, the number of such illegally terminated individuals exceeded 10,000. In fact, during 1980, one out of every twenty employees who voted in favor of union representation in Labor Board elections was illegally discharged, presumably the primary organizers. Labor Board reinstatement orders are frequently ineffective, since only about 40 percent of unlawfully terminated workers actually accept reinstatement offers, and of those who do, approximately 80 percent leave their employer within two years.[55]

Although employers who engage in significant unfair labor practices during organizing drives may find themselves encumbered by remedial bargaining orders (assuming the adversely affected unions can demonstrate that they did obtain majority support despite the employer violations) only about 35-40 percent of labor organizations that obtain such remedial bargaining directives ever achieve collective contracts.[56] Furthermore, the more vigorously an employer opposes the effectuation of such a remedial order, the less likely the chance that the labor union will be able to obtain a bargaining agreement.[57]

Even where employers do not engage in coercive tactics and unions successfully attain certified status, this does not guarantee fruitful negotiations. Recalcitrant employers can simply refuse to accede to worker demands. Even if they so do in complete bad faith, the most they need

[54] See *United Beef Co.*, 1984-85 CCH NLRB ¶ 16,910, 272 NLRB No. 7 (1984).

[55] The above data are from Weiler, "Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA," 96 *Harvard Law Review* 1796 (1983).

[56] *Ibid.*

[57] See generally Wolkinson, "The Remedial Efficacy of NLRB Remedies in Joy Silk Cases," 55 *Cornell Law Review* 1 (1969).

fear in the short run from the NLRB is a cease and desist order which will take several years for the petitioning labor organization to obtain and have enforced.[58] By the time meaningful relief is provided, crucial organizing momentum is lost, and union effectiveness is often irretrievably diluted.

If the proliferating negation of NLRA rights is to be reversed, more effective remedial approaches must be contemplated. To deter the crippling impact of Section 8(a)(3) discharges, Congress should consider the adoption of a "liquidated" damages provision, similar to that applicable under the Fair Labor Standards Act and the Age Discrimination in Employment Act, which would permit double backpay awards to illegally terminated workers.[59] To help minimize the loss of organizing momentum associated with such unlawful discharges, the NLRB should make greater use of Section 10(j) injunctions, pending final Board adjudications, to insure that discriminatees will be expeditiously returned to their former positions for their fellow employees to observe. Where employers indefensibly refuse to bargain in good faith with newly certified unions or labor organizations which will certainly become the recipients of remedial bargaining orders, the Labor Board should similarly be willing to seek Section 10(j) injunctions to force the recalcitrant employers to bargain while the frivolous unfair labor practice proceedings are exhausted.[60]

Where wholly unjustifiable refusals to bargain occur, make-whole relief should be available to place the illegally disenfranchised workers in the economic position they would presumably have attained in the absence of the employer's flagrant disregard for their NLRA rights.[61] If the Labor Board and the courts cannot provide such relief under the current remedial language contained in Section 10(c),[62] Congress should act to provide the NLRB with such authority. To insure that such a monetary remedy could not be used to deprive companies of the right to utilize the Section 8(a)(5) refusal to bargain route in a good faith effort to obtain judicial review of antecedent Labor Board representation determinations, such make-whole orders should only be imposed upon employers whose refusals to recognize designated labor organizations evidence a manifest infidelity to their legal obligations under the NLRA.

During the debates pertaining to the proposed Labor Law Reform Act of 1978, several powerful and respected management organizations vigorously opposed all NLRA amendments that would have authorized more significant penalties for serious unfair labor practice violators. It is surprising to believe that the vast majority of the employers which support such business associations and which generally comply with their obligations under federal and state labor relations enactments wish to have their membership dues expended to protect the interests of those relatively few un-American employers who arrogantly think that they may obtain a competitive advantage over their honest business cohorts by intentionally circumventing the statutory rights of their employees.[63] If reasonable remedial provisions were adopted to deter willful Section 8(a)(3) discharges and deliberate

[58] Once such a Board bargaining order is judicially enforced, continued contumacy by the employer would subject it to contempt liability.

[59] See Section 16(b) of the FLSA, 29 USC 216(b) (1976). The ADEA is enforced through the remedial provisions of the FLSA, except that "liquidated" damages are only authorized for "willful" violations. See 29 USC 626(b) (1976). A similar provision would have been added to the NLRA under the proposed Labor Law Reform Act of 1978 which was not enacted.

[60] See Note, "The Use of Section 10(j) of the Labor-Management Relations Act in Employer Refusal to Bargain Cases," 1976 *Illinois Law Review* 845.

[61] See *IUE v. NLRB*, 426 F2d 1243 (CA D of C), cert denied 400 US 950 (1970).

[62] See *Ex-Cell-O Corp.*, 1970 CCH NLRB ¶ 22,251, 185 NLRB 107 (1970), affirmed 65 LC ¶ 11,586, 449 F2d 1058 (CA D of C 1971).

[63] It is equally perplexing to see union funds being expended to protect the rights of labor officials who have

and flagrant refusals to bargain, the overwhelming majority of employers would be unaffected, except to the extent that their unscrupulous competitors would be deprived of an unconscionable economic advantage.

Need For Future Flexibility

In recent years, an increasing number of employers, either unilaterally or through collectively bargained schemes, have adopted various employee participation programs.[64] These companies have generally recognized that contemporary workers are better educated and more mobile than their predecessors, and that they are less tolerant of job tedium and uncomfortable work environments.[65] They demand the right to participate directly in managerial deliberations that will meaningfully affect their employment destinies.

Shop level quality of work life programs have been developed to provide workers with input concerning their immediate employment situations. Cooperative work groups, consisting of rank-and-file employees and management personnel, discuss production methods and scheduling. These systems have usually been similar to the different types of plans previously adopted in countries such as West Germany, Sweden, Austria, Denmark, and Norway.[66] Such worker participation ventures have challenged the traditional adversarial model of industrial relations. Managers have had to learn to lead through earned respect instead of through autocratic control, while union officials have had to adjust to their less adversarial roles. A few cooperative programs have even included worker representation on corporate boards.[67]

More significant challenges to employers, employees, and labor organizations may result from the recent suggestion by Professor James Medoff that AFL-CIO unions encourage unorganized workers to form their own employee associations to advance their economic and social interests.[68] Many traditional unionists might fear that such institutions might render labor organizations superfluous. Others might conversely recognize that such entities, once successfully established, could benefit the labor movement by providing future organizers with incipient union structures, which could ultimately be transformed into more traditional labor organizations.

The expanded adoption of shop level employee-management committees and election of worker representatives to corporate boards (and the possible future establishment of employee associations by nonunion workers) will challenge one of the fundamental assumptions underlying the NLRA. To guarantee the appropriate separation of labor and management, Section 8(a)(2) proscribes employer domination or support of labor organizations, and Section 2(5) broadly defines the term "labor organization" to include "any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." [69]

If traditional NLRA doctrines are applied in a rigid manner to these innovative employer-employee relationships, cooperative ventures may be severely restricted.[70] On the other hand, if disingenuous employers are permitted to

(Footnote Continued)

been convicted of misappropriating union finances or engaging in similarly opprobrious conduct.

[64] See Craver, cited at note 4, pp. 673-682.

[65] See J. Schmidman, *Unions in a Postindustrial Society* (1979), p. 143; H. Jain, *Worker Participation* (1980), p. 3.

[66] See Craver, cited at note 4.

[67] *Ibid.*

[68] See *BNA Daily Labor Report*, No. 247, December 24, 1984, p. A-6.

[69] 29 USC 152(5) (1976).

[70] See, for example, Schmikman & Keller, "Employee Participation Plans as Section 8(a)(2) Violations", LABOR LAW JOURNAL, Vol. 35, No. 12, December, 1984.

utilize such devices either to weaken existing bargaining representatives or to prevent nonunion employees from organizing, one of the basic goals of the NLRA could easily be undermined.

An appropriate balance was articulated by the Ninth Circuit in *Hertzka & Knowles v. NLRB,*[71] wherein the court decided that an 8(a)(2) violation must "rest on a showing that employees' free choice ... is stifled by the degree of employer involvement at issue." The court further recognized that the automatic condemnation of cooperative schemes "would mark approval of a purely adversarial model of labor relations. Where a cooperative arrangement reflects a choice freely arrived at and where the organization is capable of being a meaningful avenue for the expression of employee wishes, ... it [is] unobjectionable under the Act." So long as cooperative labor-management plans are established in a bona fide effort to provide employees with meaningful participation in the decision-making process and their statutory right to select a bargaining representative is not deliberately discouraged, no violation should be found.[72] Only where employers establish such programs for the purpose of chilling or precluding employee organizing should Section 8(a)(2) be applied.

As other novel management programs are formulated, the Labor Board and the courts should similarly eschew the pro forma application of antiquated doctrines. NLRA provisions should be interpreted and applied in a flexible manner that will permit the development of innovative forms of worker participation, while simultaneously protecting the fundamental statutory right of employees to control their own representational destiny.

Conclusion

During the first several decades of the NLRA, administrative and judicial decisions enhanced the statutory rights of employees and furthered the collective bargaining process. As the NLRA has become a middle-aged institution, new doctrines have begun to erode some of the established statutory protections. Increased employer antipathy toward labor organizations has been permitted to thwart worker desires. The expansion of existing remedies and the adoption of new forms of redress could readily reverse this trend. The modification of other traditional NLRA doctrines should also be accomplished, to permit appropriate innovative forms of employer-employee cooperation to be developed.

[The End]

Discussion: The NLRA at Age Fifty

By Richard N. Block

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The papers presented by Mr. Nash, Mr. Page, and Professor Craver have a common theme: at age fifty, the National Labor Relations Act is not fulfilling its purpose. But the three presenters differ on the reason for this.

Mr. Nash takes a long view, believing that the Act has simply not been success-

[71] 75 LC ¶ 10,334, 503 F2d 625 (CA-9, 1974).

[72] See, for example, Fulmer & Coleman, "Do Quality-of-Work Life Programs Violate Section 8(a)(2)?" LABOR LAW JOURNAL, Vol. 35, No. 11, November, 1984.

ful in meeting the needs of workers. Another way to state this is that unions, operating under the protection of the Act, have been unable to capture the "hearts and minds" of workers, because, Mr. Nash says, they have been unable to produce for employees. As a result, states Mr. Nash, government has taken on the task of protecting individual workers through the enactment of a wide range of labor legislation and through the issuance of court decisions and executive orders that protect individual workers from employer abuses. Little remains for collective bargaining to do, with unionism and collective bargaining now being viewed by workers as unnecessary.

Upon examination, this view is unconvincing. The most impressive union growth period in United States history occurred during the middle and late 1930s, at the same time the first round of protective labor legislation was enacted. More important, most of the legislation to which Mr. Nash refers was enacted starting in the mid 1960s. Yet the union "win rate" in NLRB representation elections started its decline in 1942,[1] and the percentage of the labor force unionized began to drop in 1956.[2] Finally, as an examination of any collective agreement will attest, unions and employers have found a great deal about which to bargain that is not covered by legislation, executive orders, or judicial rulings.

While Mr. Nash may be correct in stating that unions have been unable to win the "hearts and minds" of workers, the data do not suggest a complete rejection by workers of unionism and collective bargaining. For the past decade, unions have won approximately 47 percent of all NLRB representation elections. This is a remarkable accomplishment in view of the access advantages of employers in NLRB representation elections.[3]

Mr. Page and Professor Craver present similar views on the reason for the current problems of unions. Both point to a series of post-1980 decisions of the NLRB that, in their view, have seriously impaired the ability of unions to organize and bargain effectively. Mr. Page and Professor Craver note that the Board will no longer sustain election objections based on campaign misrepresentations, will decline to issue bargaining orders in the context of sustained employer unfair labor practices when the union cannot present evidence of majority status, has placed limitations on the picket line activity of striking employees, has narrowed the definition of concerted activity, and has expanded the rights of employers to shift work without the obligation of bargaining with the union.

Although the adverse effect of these cases on union interests is clear and unmistakable, the longevity of these doctrines is uncertain. The post-1981 NLRB has been extreme in its deference to employer interests.[4] Yet, it remains to be seen whether the Courts will consistently defer to the NLRB.[5] Even if such deferral is forthcoming, it would be expected that many of their decisions will be reversed by subsequent Boards dominated by appointees of a Democratic president. Equally important, and as pointed out elsewhere by Professor Craver,[6] the problems of unions and the collective bargaining system predate the dominance of

[1] Richard N. Block and Benjamin W. Wolkinson, "Delay and the Union Election Campaign Revisited: An Empirical and Theoretical Analysis," in *Advances in Industrial and Labor Relations*, Vol. III, David Lewin and David B. Lipsky, eds. (Greenwich, Conn.: JAI Press, forthcoming).

[2] See, for example, U.S. Bureau of Labor Statistics, *Directory of National Unions and Employee Associations, 1979*, Bulletin 2079 (Washington, DC, GPO, 1980).

[3] Block and Wolkinson, cited at note 1.

[4] See, for example, Steven Greenhouse, "Labor Board Stirs Up a Storm," *The New York Times*, February 5, 1984, Sec. 3, p. 4 and "Former NLRB Chairmen Urge Reforms to Cut Backlog and Improve the Board," *BNA Daily Labor Report*, No. 209, 1984 (October 29, 1984), pp. A7-A10.

[5] See, for example, *Prill v. NLRB*, 102 LC ¶ 11,346, SCt (CA D of C, 1985).

[6] Charles B. Craver, "The Vitality of the American Labor Movement in the Twenty-First Century," *University of Illinois Law Review*, Vol. 1983, No. 3, p. 633.

the NLRB by appointees of Ronald Reagan.

Societal Barriers

What is apparent from these papers, however, is a consensus that it is necessary to look towards the NLRA, the symbol of society's commitment to collective bargaining, as a source of the decline in the collective bargaining system in the United States. It is also important, however, to examine the larger context in which the NLRA operates. Specifically, the Act may be operating with two societal-level barriers that can be, but have not been, overcome within the confines of the NLRA.

The first barrier is the cultural bias toward employer property rights.[7] Using property rights as a foundation, employers have acquired an enormous access advantage vis-a-vis unions in NLRB representation elections.[8] Since empirical evidence indicates that the average NLRB representation election is decided by only eight votes, and since employer election victories are closer than union election victories, it is reasonable to believe that the employer's access advantages are often decisive.[9]

The second major barrier that may not have been addressed within the confines of the NLRA is the need of many unionized employers to adapt to structural economic change by shifting assets towards uses in which the rate of return is greatest.[10] This may mean allocating resources away from unionized facilities or product markets, with substantial adverse employment effects on unionized employees.

In such cases, the assumption of mutuality of interest between the employees and the corporation no longer holds. While the employees need the corporation, the corporation no longer needs all of its employees. The Board's attempts to address this conflict in the years following the *Fibreboard* decision were met with disapproval by the courts, which were unwilling to require corporate employers to negotiate with the union over what they viewed as a basic property right, the adjustment of the asset structure of the corporation.[11]

An implicit but essential assumption underlying the existence of the NLRA is the efficacy of pluralism in the industrial relations system: the view that no single actor in the system should possess sufficient power so that its interests dominate. The question that must be asked is whether, at age fifty, the NLRA has indeed been able to encourage a pluralistic industrial relations system.

[The End]

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[7] See, for example, Richard N. Block, Benjamin W. Wolkinson, and James Kuhn, "Employers Are More Equal Than Unions: The Relative Status of Employers, Unions, and Employees in the Law of Union Organizing," unpublished manuscript, School of Labor and Industrial Relations, Michigan State University and Graduate School of Business, Columbia University, February, 1985.

[8] *Ibid.* and Block and Wolkinson, cited at note 1.

[9] Myron Roomkin and Richard N. Block, "Case Processing Time and the Outcome Representation Elections: Some Empirical Evidence," *University of Illinois Law Review*, Vol. 1981, No. 1, pp. 75-97 and William T. Dickens, "The Effect of Company Campaigns on Certification Elections: *Law and Reality* Once Again," *Industrial and Labor Relations Review*, Vol. 36, No. 4 (July 1983), pp. 560-75.

[10] See, for example, Richard N. Block and Kenneth McLennan, "Structural Economic Change and Industrial Relations in the United States' Manufacturing and Transportation Sectors, 1973-1983," in *The Response of Industrial Relations to Structural Economic Change*, Hervey Juris, Mark Thompson, and Wilbur Daniels, eds. (Madison, Wis.: Industrial Relations Research Association, 1985, forthcoming).

[11] See, for example, *First National Maintenance Corp. v. NLRB*, 91 LC ¶ 12,805 (SCt, 1981), 101 SCt 2573, 452 US 666 (1981).

Promethean Industrial Relations: Labor, ESOPs, and the Boardroom

By Warner Woodworth

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The conventional delineation between the roles of labor and management has simply been that workers do the work while managers manage the business. This historical pattern has, until recently, been agreed to by both parties as the modus operandi for running the modern corporation. A quote from a typical business text illustrates the management view: "The manager ... attempts to merge people and technology into a smoothly functioning system by structuring and restructuring organizational units and the jobs which made up these units—the process of *organization and job design.* On an ongoing basis, he uses *selection and training* devices to find and hire people ... he uses *appraisal and development* mechanisms ... he builds linkages ... through *communications and control* systems. Finally, he uses a *reward system.*" [1]

For its part, labor has focused on operating the union, working through the grievance system, negotiating collective bargaining contracts, and dealing with political issues. When labor has involved itself with corporate governance, it has usually been a post facto response to unilateral actions by executives. While there have been exceptions to this generic description, the overall pattern of the past seems valid.

Currently, however, a shift is occurring that is rather distinctive. On the one hand, many companies are moving toward a more humane, democratic managerial style, as evidenced in recent best sellers such as *In Search of Excellence.*[2] The turbulence of global economics, recessions, and foreign competition has heightened the need for better quality and improved productivity. Hence, managers are emphasizing control of workers less and attempting to create structures that generate new values such as commitment and participation.[3]

Labor too is evolving along similar lines. Rather than simply operating from the traditional labor relations agenda, unions are rejecting the assumption that managers possess divine-like qualities to administer organizations. Labor is beginning to challenge the upper echelon model of managerial rationality, a bias that ignores the fact that workers have brains and skills that could improve corporate functioning. Indeed, a just-released report of the AFL-CIO's Committee on the Evolution of Work, entitled *The Changing Situation of Workers and Their Unions,* declares: "It's not enough merely to search for more effective ways of doing what we always have done .... We must expand our notions of what it is workers can do through their unions."

More concretely, the report recommends that labor experiment with new forms of collective bargaining, address the need for greater participation in workplace decisions, and explore various methods to better represent workers. It is in the spirit of this search for alternative strategies for labor that this article focuses on two important developments: (1) new institutional arrangements involving labor in stock ownership and (2) boardroom governance.

[1] Raymond E. Miles, *Theories of Management* (New York: McGraw-Hill, 1975).

[2] Thomas J. Peters and Robert H. Waterman, Jr., *In Search of Excellence* (New York: Harper and Row, 1983).

[3] Richard Walton, "From Control to Commitment in the Workplace," *Harvard Business Review* (March-April 1985), pp. 77-84.

A New Paradigm of Corporate Governance

There are numerous signals that industrial relations is moving toward a redefinition of labor's struggle. In hundreds of cases, contracts have been negotiated by trading wages for new avenues to economic power. Critics point out that in some instances, concessions have led to too much bludgeoning and not enough bargaining.

However, of growing importance is the issue of parity, i.e. that new collective bargaining agreements be characterized by mutual interests and a tradeoff.[4] The result has been that unions have obtained new rights to corporate information, job security, and participation in decision making. When overall trends are examined, the evidence suggests a growing tendency toward industrial democracy in America, a parallel to what the Europeans call co-determination. This emerging paradigm is characterized by underlying values which emphasize cooperation rather than adversarial relationships. It is premised on the assumption that business decisions are too important to be left in the hands of managers alone. The table captures the participation of labor during the past several years in corporate actions previously reserved exclusively for the managerial domain. [See Table]

[4] Andrey Freedman and William E. Fulmer, "Last Rites for Pattern Bargaining," *Harvard Business Review* (March-April 1982), pp. 30-48.

TRENDS TOWARD U.S. CO-DETERMINATION

DEGREE OF ORGANIZATIONAL POWER
Information Sharing — Consultation — Joint Decision Making

BARGAINING ISSUE	EXAMPLE
Stock Ownership:	
Majority Control	Weirton Steel and Independent Steelworkers; Hyatt Clark and UAW
Minority Stockholder	UPI and the Newspaper Guild; UAW and Chrysler; various airlines, and IAM; trucking firms and the Teamsters
Formal Board-Level Representation:	
Labor representation on the board of directors	Pan Am and Pilot's Association; Western Airlines and its unions
In-plant labor/management committees	U.S. Steel and USWA; UAW and Dana Corp.
Agreements on Strategic Corporate Decisions:	
Advance notice on plant shutdowns	Firestone and URW; GE; Westinghouse
Lifetime employment experiments	Ford and UAW
Moratorium on plant closings and restricted outsourcing	UAW and General Motors
Investment Decisions:	
Pension fund representation	AIW; ICWU
New ventures funds	Ford and UAW
Consultation Regarding New Technology:	
Technology change committees	AT&T and electrical workers
Capital improvements in plant equipment	UFCW and John Morrell Company
Access to Corporate Information:	
Opening of the books	Western Union and telegraph union, Eastern Airlines and IAM
Annual appearance of the union at a board of directors meeting	Uniroyal and URW

The broad array of new levels of labor power suggests impressive consequences. Some of these have led to the blocking of plant shutdowns, saving thousands of jobs, and altering the distribution of corporate power. Labor has influenced the implementation of robotics and other new technologies in a number of industries as

well as obtained advanced information to help shape investment decisions. In some instances, unions now have the right to audit corporate books; while in other cases, not only is information shared, but millions of dollars have been provided in new equity or profit-sharing agreements.

The table suggests that there are three levels or degrees of organizational power. Some maneuvers in this changing labor relations scene can be categorized as obtaining *informational* power, while others consist of a higher order in that they involve joint union/management *consultation.* Perhaps the most significant level of labor's new power is that which requires *shared decision making* in the form of board level co-determination and/or worker ownership. These two themes will be further analyzed below inasmuch as they are growing at such a significant rate in the United States.

Stock Ownership: A Broadening Labor Agenda

Workers' participation in company stock ownership has increased dramatically, mushrooming from 500 companies in the 1970's to over 6,000 today. The forces leading to this new development are numerous—stock as part of a company's benefit program, stock exchanged for wage concessions during the recent recession, and worker buyouts of troubled firms which threaten to shut-down. Employee stock ownership plans (ESOPs) have accelerated with the tax incentives that now accrue to worker-owned firms and lending institutions which finance such programs.

The proliferation of worker involvement in stock plans is substantial. Most predictions of the future suggest that if present trends continue, there will be more workers owning a significant block of stock in their company than there will be members of unions by the end of this century. Since the 1940s, plywood workers in a dozen firms in the Northwest have owned their own mills, outproducing industry competitors by 25 to 30 percent. Although the idea of worker ownership is not new, the rapid growth is. Since 1980, labor has led the move to stock ownership in steel, auto, rubber, and glass industries. In the past 30 months, workers in six trucking firms and five airlines have obtained a sizeable portion of company stock, usually in exchange for some degree of wage concessions.

Indeed, trading dollars for power has been the name of the game ever since the United Auto Workers agreed in 1979 to forego $203 million in wages and benefits in exchange for stock and a seat on the Chrysler board of directors. Recently created ESOPs have been impressive financial transactions, with Parsons, a huge construction company in Southern California, perhaps being the largest at nearly $560 million. While in the Chrysler case, workers only received a minority share of stock, in other instances they have obtained 100 percent ownership. In two companies, at Weirton Steel in West Virginia and Hyatt Clark Industries in New Jersey, union members are now participating in important experiments with industrial democracy.

A serious flaw in many ESOPs is that while a paper transaction has occurred, little else has changed.[5] For instance, the United Textile Workers joined management at Dan River Inc. to block a corporate takeover by Icahn in 1983. Workers obtained 70 percent of the firm's stock, but instead of creating meaningful ownership, management tends to operate business as usual. The union has no formal clout, no board seats, not even the right to participate in on-going decisions. Meanwhile, assurances of solid job security under worker ownership have evaporated

[5] Christopher Meek and Warner Woodworth, "Employee Ownership and Industrial Relations: The *Rath* Case," *National Productivity Review* 1 (Spring 1982), pp. 151-163.

in the face of four recent plant closings and the layoff of 4,000 worker-owners.

Owning stock certificates but having no genuine form of stockholder rights, direct votes, or an ongoing voice in corporate strategy can lead to low morale, reduced productivity, tensions, and costly strikes. In attempting to address this deficiency, a number of unions in worker-owned firms are seeking participation in corporate governance through various strategies. Transport workers, flight attendants, glassworkers, rubberworkers, teamsters, food and commercial workers, steelworkers, and airline pilots all now have board level positions in various U.S. companies.

Seizing the Bull by Both Horns

Stock ownership *and* board representation seem to hold the most promise for labor to impact corporate decisions in a major way. The very idea that workers can run industry turns favorite managerial assumptions on end. Labor strategies, such as these, defy "modern" management theories which hold that executives alone should plan, control, and carry out decisions from their lone perch atop the corporate ladder. What is intriguing is that there is mounting evidence that enterprises that are worker-owned can achieve relative equality, democratic control, and efficient production.

For instance, workers in steel, transportation, and the auto industry have combined ownership with board representation to gain hundreds of new customers, turn around troubled companies, improve productivity, and reduce scrap, establishing records superior to their companies' best past performances. While the outcomes may be convincing, the process by which workers engage in board-level activities may be painful. Research data gathered through participation, observation, and interviews with worker representatives on company boards suggest five steps of development.

At first, there is a feeling of ambiguity and confusion arising from being in two positions: union leader and board member. This period is characterized by quiet observation, acquiescence, and feelings of being unprepared professionally.

In the second stage, union directors may be subjected to condescending advice and co-opting pressures from other corporate officers. There is often a sense of disillusionment and hopelessness, which may culminate in the thought that co-determination is a futile game in which labor is the minority and losing team.

In the third stage, approximately a year into the process, strong verbal protests and the ability to articulate substantive problems from the shop floor push a few small victories into the union corner. Assertive behavior gives labor representatives a growing legitimacy in the eyes of traditional board members, and there is a more balanced overall adjustment to labor's presence in the boardroom.

The fourth stage occurs, with rare exceptions, during the second year, when the process becomes characterized by increasing conflict. Labor representatives push for changes which management and outside directors oppose. Major strain ensues, leading to low morale, distrust, and board splits. Usually, by the beginning of the third year, co-determination leads to stereotyping accusations and tension.

The pattern of split reactions in the fifth stage is not yet clear, due partly to the relative newness of labor participation on U.S. boards. Worker directors in some companies experience a deepening, ongoing struggle; while in other cases, there is a breakthrough to a more reasoned level of accommodation. Most of the evidence suggests a Third-Year Hypothesis which becomes the critical turning point for future board war or peace.

Critique

Problematic issues remain as workers gain stock and board representation. Much of the U.S. approach to co-determination suffers, as does the European expe-

rience, from mere tokenism. Instead of a genuine form of workers' control, labor's presence is often only symbolic. While the argument can be made that symbols are necessary, critics decry the fact that unions have only minority board seats, serve only part time, and lack training in board-level business savvy.

Perhaps more troubling is the union's vulnerability to collusion as a new partner to executives and outside board members. Some observers and many international labor officials worry that worker directors may be co-opted, getting caught up in the predominant interest to make company profits rather than fight for individual worker rights. There is a dangerous potential for stock ownership and board representation to lead to a type of in-house unionism, in which there is the appearance of a board battle, when in reality, labor representatives are simply going through the motions of conflict for political reasons.

An interesting question may be asked as to whether or not labor board membership and stock ownership are only temporary aberrations in the traditional union movement, and in the near future, will revert to the old bread and butter issues. While it may be too early to tell, there is no evidence of regression at present. The concern is that most of these new approaches to labor empowerment derive from threatening economic conditions and concessionary demands. If and when the economy improves, will newly bargained mechanisms for co-determination disappear in exchange for wage adjustments? Will trade unions only seek innovative devices for participation when on the defensive? If so, the broadened goals of current collective bargaining will be restricted and eventually reduced to the traditional concerns of wages and benefits.

The other possibility is that labor will take the offensive and turn tables on the management assault of recent years. The implication here is that when wage demands are more equitably met again, labor will hold onto board member seats and other newly-won forms of organizational power. The European experience would be consistent with this view. As European society became more affluent, there was a greater push for co-determination and industrial democracy, not less. In the U.S., if this is the case, workers will retain inside corporate information and the possibility of having a greater degree of control over financial and production decisions.

The above problems are serious but not insurmountable. For instance, college-level programs could be designed to teach worker directors how to read a profit and loss statement and other needed skills to function more effectively and on an equal footing with traditional directors. Labor representatives could be more aggressive in pushing for membership on key policy-forming board committees instead of simply attending quarterly meetings. Rather than conform to conventional norms, which often lead to rubber-stamp meetings, labor could do much to transform American boards into genuine settings for hard-headed thinking and debate.

Toward Promethean Industrial Relations

A parallel may exist between the current worker-led drive for stock ownership and board level participation in corporate governance and Greek mythology. Early legend has it that the god Prometheus went up to heaven, to the sun itself, lit a torch and brought it back to earth. Stealing fire and thereby giving the human race light and power was among the most heroic acts of all the gods. In so doing, Prometheus, since regarded as the savior of mankind, offended the father of the gods, Zeus, because earthlings now were empowered with fire.

Prometheus has stood the test of time, honored down through the centuries as a rebel fighting injustice and seeking to alter the system of authority. So it is with

labor's interest in radical empowerment today. Co-determination may become a contemporary replay of the ancient saga as unions attempt to wrest power from managerial gods and put this newly acquired force into the hands of workers. Such a strategy would not only ensure a healthy labor movement and give rise to a society of genuine economic democracy; it could also force a new analysis of labor relations that could include an outrageous assertion: that workers have a *right* to corporate governance.

[The End]

In Society: New Representational Roles for Labor and Management

By David Jacobs

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Much scholarship in industrial relations assumes that business unionism as practiced by Samuel Gompers and the American Federation of Labor (AFL) is the form of labor organization that best matches the American environment. Some would argue (for example, Perlman 1951 and Brody 1981, although from different perspectives) that the industrial unionism of the Congress of Industrial Organizations (CIO) failed to alter the basic orientation of American labor. While industrial unionism enlarged the constituency of unionism, it may not have significantly affected the "bread and butter" preoccupations of business unionism. Broad social reform does not appear to have displaced economistic collective bargaining as the central function of American labor.

However one views the legacy of industrial unionism, the continuing decline in the proportion of the workforce organized by unions suggests that business unionism (even if modified by the CIO experience) may not fit the contemporary American environment. It was, after all, the unstable membership of the National Labor Union and the Knights of Labor (contrasted with the apparent resiliency of the AFL) that proved to Selig Perlman (1928) the inadequacy of reform unionism as an organizational model for American labor. Perhaps labor's objective of job control, a measure of worker control over conditions of employment, might be pursued more effectively if business unionism is modified or supplemented.

According to Perlman, job control is the product of negotiated "working rules." This is, of course, not the only available means for job control. The Webbs (1897) argued that "legal enactment" and mutual insurance were as important to union objectives as collective bargaining. David Selden (1980), former President of the American Federation of Teachers, has suggested that increased emphasis by organized labor upon legislative action might be the best approach to mobilizing and representing fast food workers and other workers who are difficult to organize through traditional means. While collective bargaining and negotiated working rules are necessarily central to labor's struggle for job control, it should be obvious that job control and business unionism are not inextricably bound.

The Committee on the Evolution of Work

The Committee on the Evolution of Work, a panel of AFL-CIO leaders and industrial relations academics, was created by the Federation in 1982 to examine labor's prospects in an adverse environment. Given increasing numbers of employer discharges of union activists, a National Labor Relations Board which is skeptical of the benefits of collective bargaining, high levels of unemployment, conscious employer strategies to divert investments to non-union plants, declines in manufacturing employment, and related developments, unions face tremendous obstacles when they seek to maintain or extend organization (Committee on the Evolution of Work 1985).

AFL-CIO President Lane Kirkland (Herling 1985) has explained the obstacles to national organizing and collective bargaining in this way: "To get that [first] contract, consider the hurdles. First you have to get 30 percent of the pledge cards for a showing of interest. Then against ferocious and subtle and sophisticated employer resistance—and after long delays—you have to sustain that level and build on that level of interest and commitment to a 50 percent plus one vote. You then negotiate a collective agreement with an employer who has been fighting you all the way .... You have to do all this in the face of a toothless labor code [Taft-Hartley as currently enforced by the NLRB]."

In its report to the 1985 Winter meeting of the AFL-CIO Executive Council in Bal Harbour, Florida, the Committee on the Evolution of Work (1985) recommended that unions experiment with new approaches to represent workers: "... unions must develop and put into effect multiple models for representing workers tailored to the needs and concerns of different groups." The report suggests that trade unions deal with a hostile environment by devising new categories of union membership to provide representation for workers not currently employed in organized bargaining units. Individuals leaving organized firms might in this way retain membership in their unions and receive some benefits directly from the unions. Other workers who favor collective bargaining in their workplace but have not yet won representation through NLRB-supervised elections, or even workers wholly unfamiliar with bargaining, might still have an opportunity to benefit from unionism. Unions or union-sponsored "employee associations" might provide such services as job training, job information, health insurance, and political organizing to members outside of bargaining units.

The AFL-CIO Executive Council approved this report of the Committee on the Evolution of Work (Herling 1985). These developments are highly significant in two ways. First, Kirkland and fellow leaders of the AFL-CIO appear to be reconsidering the merits of business unionism (or "contract unionism"), narrowly conceived. Second, participating industrial relations academics, most notably Thomas A. Kochan and Robert B. McKersie of M.I.T., are questioning the Commons-Perlman paradigm, according to which business unionism is the ideal and also most practical form of labor organization.

The Women's Trade Union League

The experience of the Women's Trade Union League (WTUL), in the first half of the twentieth century, demonstrates the logic and value of a labor organization seeking to provide representation to employees outside of collective bargaining. The League attempted to exercise political influence and win protective legislation (for example, wage, hour, and safety standards) for women workers with the assistance of a committed public outside traditional unions (Costin 1983).

The WTUL was, of course, committed to collective bargaining as the primary tool for advancing workers' interests. It

was not a dual union movement and was officially recognized by the American Federation of Labor. AFL unions with female members were affiliates of the League. However, the League departed from the AFL model of labor organization in that it sought to represent and mobilize women outside of organized workplaces. The constitution of the WTUL permitted membership for individuals who were not union members but did support the purposes of the League (both poor working women and middle class feminists). This broad membership campaigned for protective labor legislation to serve working women in and out of unions and for the unionization of working women (U.S. Department of Labor Women's Bureau 1953).

The Women's Trade Union League scored successes in its political and organizing campaigns because it was able to mobilize a committed public. The League enlisted the support of feminists and other reformers, some of whom were members, in the struggle for legislative remedies. The League also won broad support for striking women workers. In 1909, for example, the WTUL persuaded men and women of wealth, members of the press, and many in the clergy to abandon their suspicion of organized labor and embrace the cause of striking women in the garment trades in New York City. Theresa Wolfson explained that the League "created and stimulated an aura of public approval for any effort to improve conditions of working women." (Wolfson 1926).

The WTUL was able to develop an effective model of labor organization combining bargaining and legislative strategies because the AFL permitted an exception to its voluntarist orthodoxy relative to women. Samuel Gompers and other AFL leaders opposed statutory remedies for workplace problems that male workers might resolve through collective bargaining. They feared that government programs might diminish the attractiveness of unionism and collective bargaining to workers. However, the AFL leaders did not oppose protective labor legislation for women workers, perhaps because they perceived women to be weaker then men, less committed to the labor force, and less likely to join unions. As a result, the WTUL was free to break with business unionism in its political orientation and in its membership structure (Schneiderman 1929).

The Women's Trade Union League may represent a useful model for the extension of unionism to new constituencies. In its commitment to the representation of workers outside of collective bargaining, it appears to conform to the recommendation of the Committee on the Evolution of Work.

Modern Examples

There are examples of modern organizations that seek to provide employee representation outside of collective bargaining. The High Tech Workers Network is an employee association sponsored by the Communications Workers of America and the United Electrical Workers. It is attempting to publicize working conditions in high tech firms in the Boston area. Its immediate goal is to promote workplace improvements through publicity and lobbying (Medoff 1984).

Nine to Five is an association of clerical workers based in Cleveland. Demonstrators, publicity, and lobbying are tools Nine to Five uses in order to assist clerical workers. This employee association is closely associated with a bargaining-oriented union, Local 925, Service Employees International Union (Koziara and Insley 1981).

Economist James Medoff (1984) has indicated in his report for the Committee on the Evolution of Work that 49 percent of non-union employees would pay modest dues to belong to employee associations like the two described above, according to a Harris poll. I believe that such employee associations would maximize

service to their members and to organized labor if they followed the precedent of the WTUL and other historic labor organizations in three ways. First, membership must be open to workers without bargaining representation in order to involve them in campaigns for legislative remedies, provide them with services apart from bargaining, and prepare them for traditional organizing at a later date. Second, employee associations should devise benefit plans that relieve members of absolute dependence upon employers and demonstrate the value of association. (This recalls the mutual insurance strategy identified by the Webbs and practiced by many craft unions in the past.) Third, these employee associations should combine legislative and bargaining approaches. Statutory remedies for employee concerns might include regulations of video display terminals use, plant closing notification laws, pay equity, protection against unjust discharge, improvements in the minimum wage, and the like.

Voluntarist Arguments

The fear associated with voluntarism that reliance upon statutory remedies might weaken the appeal of unionism to workers deserves further analysis. The Canadian experience may be instructive. Unorganized workers in Canada benefit from broader legal protection than is available to the unorganized in the United States. For example, in some provinces, unorganized workers have access to arbitration in questionable cases of discharge or layoff. Rose and Chaison (1985) report that there is no empirical evidence that these statutory protections have impeded union organizing.

It is clear that statutory protections do not obviate the need for workplace-based unionism and collective bargaining. Labor reforms in recent years in France provide some evidence of this. French labor organizations historically have stressed political action, cooperation with political parties, and legislative remedies, rather than workplace-based functions. Employers consulted with legally mandated plant committees, but not local unions, on a variety of issues. Since the student and worker protest of May 1968, and especially during the Presidency of Francois Mitterrand, there have been reforms promoting collective bargaining with local unions in individual firms, partly in response to workers' particularistic, enterprise-specific grievances (Marshall, Briggs, Jr., and King 1984). National standards obviously do not resolve local problems. Collective bargaining complements the measure of job control achieved by statute.

If workplace improvements are won by political action, it remains necessary for workers in particular workplaces to monitor the enforcement of legislated standards. Without constant pressure, regulators reach accommodations with regulated industries. Employee associations that have stressed political action must also perform this monitoring function to preserve their gains. (Under such laws as the Occupational Safety and Health Act and the Civil Rights Act, employees have the right to protest employer infractions without retaliation). The employee associations' experience with monitoring firm performance might prepare both workers and employers for collective bargaining.

Two additional observations about the utility of statutory remedies are appropriate. To the degree that statutory remedies impose costs and burdens upon all employers equally, not merely those which are organized, the cost advantages and relative flexibility of non-union firms are minimized. Health and safety requirements, wage and hour standards, plant closing laws, and the like increase firm expenses and obligations so that employers may have less incentive to resist unionism.

Finally, labor should benefit from association in the public mind with campaigns to win laws protecting all employees. It is

evident that labor lobbying for civil rights, environmental protection, federal aid to education, and consumer protection legislation has been more successful than labor's efforts to improve the law of collective bargaining (Greenstone 1977, Levitan and Cooper 1984). Union struggles on behalf of labor law reform are perceived to conform to a narrow self-interest, while campaigns for environmental protection, which relate indirectly to collective bargaining, appear to embody the public interest. Political prospects for labor-backed reforms do, I believe, depend upon labor's ability to persuade a sizeable bloc of voters that it represents the public interest, rather than a special interest.

If organized labor, including employee associations, places new emphasis on legislative remedies for diverse employee concerns, there may be important victories (as there were with respect to the Occupational Safety and Health Act and Employee Retirement Income Security Act). In the process, labor may win the support of a committed public, as the Women's Trade Union League did.

Labor and the Democrats

If unions stress political means to represent workers for whom collective bargaining is out of reach, it may be that they will need to work more closely with the Democratic party. The improvement of discipline and coordination among Democratic elected officials and party officers may become increasingly important. President Reagan's defeat of Walter Mondale in the 1984 election suggests the dangers inherent in this political approach. Mondale's opponents in the Democratic primaries, and later Reagan himself, were able to paint Mondale as a tool of special interests on the basis of his early endorsement by the AFL-CIO.

Author and management consultant John Naisbitt (1984) caustically warns: ". . . . the spectacle, beginning in 1981, of the AFL-CIO giving money directly to the Democratic party (under George Meany, contributions were made only to favored candidates) and becoming its key source of financing appears to be another case of dinosaurs mating." The AFL-CIO's financial support for the Democratic party, its intervention on behalf of Mondale in the primaries, its appointment of at-large members to the Democratic National Committee, its ties to current party Chairman Paul Kirk, and the like suggests to some observers that the party and organized labor are inextricably bound, and that they will decline together.

The fortunes of labor and the Democrats may indeed be connected. Both will suffer if they are considered to be special interests by the public. The solution is not for the Democratic party to sever its relationship with labor in an effort to free the party to pursue the "public interest." Nor is it necessary that unions abandon their commitment to Democrats. Rather, labor may improve both its position and that of its favored party if it is able to broaden its base through effective representation of employees unserved by collective bargaining. The broader the constituency served by political means, bargaining, or other union-sponsored benefits, the less likely it is that labor appears to represent a narrow interest, and the more constructive labor's role in the Democratic party becomes.

The above arguments may be overstated. The value of statutory means to job control depends upon the probability that appropriate legislation can be passed. The relative emphasis unionism places on bargaining, legal enactment, and mutual insurance is determined by the character of the environment. It is evident that no single approach is adequate to pursue workers' needs and preserve their gains.

Management and Employee Representation

Management is also experimenting with means to represent employee concerns outside of traditional collective bar-

gaining. In sophisticated non-union firms, management seeks to provide justice privately through internal machinery. The purpose ordinarily is union avoidance, and the means resemble the practices of the welfare capitalism of the 1920s.

Many non-union firms, particularly in manufacturing, have established "complaint systems." Complaint systems (sometimes called grievance systems) are designed to permit employees to voice work-related problems and determine an appropriate solution with members of the management hierarchy. In a few systems (e.g., Polaroid, American Airlines, American Electric), employees may have a qualified right to refer complaints (particularly discharge cases) to arbitration (Kochan and Barocci 1985). Managers install complaint mechanisms so that sources of employee dissatisfaction can be contained and diffused in a way that reinforces managerial control.

Some employers, including American Optical, Singer, General Electric's Aircraft Engine Division, and Boeing-Veritol have established "ombuds" procedures, through which employees may seek the assistance of professional advocates within their firms for the resolution of individual concerns (Kochan and Barocci 1985). The ombudsperson is, of course, an employee of the firm but is empowered to challenge certain management decisions. An individual holding this office must retain the confidence of employees by demonstrating "independence," necessarily somewhat precarious, from top management.

People Express Airlines exemplifies sophisticated non-union human resource management. Most of those who work at People Express are shareholders and work at a variety of jobs as members of self-managing work teams. In keeping with the People Express philosophy, they are referred to as "managers" rather than as employees (Kochan and Barocci 1985). These practices are meant to maximize worker commitment and productivity and preserve the managerial flexibility deriving from non-union status.

The significance of the human resource techniques described above is illustrated by the attention given increasingly to sophisticated non-union human resource management approaches by the Conference Board. Several publications from the Board, which is an information and research service for senior executives, explore the potential for organizational performance of varied schemes for the representation of employee interests.

Consider, for example, Berenbeim's *Non-union Complaint Systems: A Corporate Appraisal* (1980). Berenbeim indicates that many companies have consulted with the Conference Board about implementing complaint procedures. He presents details of complaint systems for non-union employees at Xerox, Levi Strauss, Trans World Airlines, and Northrop Aviation. *Innovations in Managing Human Resources* by Gorlin and Schein (1984) suggests that many executives believe that participative management in small, rural, so-called "greenfield" facilities is an effective deterrent to unionization.

Describing the "greenfield" phenomenon, Gorlin and Schein write: "A new plant is constructed with an eye to installing an innovative human-resources-management design — a participatively managed facility with a minimum of formal supervision and a major reliance on autonomous or self-managed work teams. The plants tend to be located outside of urban areas (in green fields, so to speak) and draw upon labor forces with little industrial experience and minimal or no exposure to unions. This approach seeks to avoid an entrenched work culture which might interfere with new work concepts and procedures."

If management is capable of devising institutional mechanisms to protect the rights of its employees, some would argue, it is also equipped to provide voice to

employees outside the workplace in the broader society. In his *The M-Form Society* (1984), Ouchi suggests that management should do so. He is an advocate of an assertive leadership role for management in society. He believes that economic growth would be enhanced by extensive cooperation among businesses within trade associations so that consensus may emerge on private and public policy. In this context, public goods or "social endowments" ("such as better trained craftspeople and better use of land") would be provided through private planning. Unions would be company-bound and subservient and management the "representative" social force.

Ouchi writes: "It is ... necessary that the labor union be preserved as a form of social organization in our nation, but in its current form it is in danger of extinction. The impetus is not likely to come from the union leader. Instead, the pressure will have to come from the business community and from the union members themselves."

In Ouchi's view, sophisticated management can satisfy the interests of its own employees (through variants of participative management) and preserve public goods (through the collaboration of private interests) with unions in a derivative role. If unions are to reverse this period of decline, they must formulate a strategy to respond to this recrudescence of employer paternalism. Just as welfare capitalism provided some real gains for workers, but was inadequate because it was an initiative of management, modern paternalism may "humanize" the workplace somewhat, but it leaves employees as dependents.

If organized labor seeks to extend representation to workers outside the context of collective bargaining, paternalistic schemes may be subjected to regulation. Labor might lobby for statutes to mandate arbitration in employee discharge cases or otherwise regulate complaint systems. Labor was able to win passage of the Employee Retirement Income Security Act to govern private pensions. Perhaps campaigns to improve other sorts of benefits by regulation will serve a diverse class of workers and, in the process, demonstrate to them the value of organization and collective action.

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[The End]

On the Shop Floor: The Implications of Unions and Employers Seeking to Foster Employee Involvement

By Louis A. Ferman and Sally Klingel

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The growth of working life programs (quality of work life and employee involvement, as well as related forms of worker participation and experiments with new forms of work organization) suggests a revolution in workplace relationships that may go far in laying the basis for new patterns of industrial relationships. Research is beginning to document *how* and *under what conditions* these new workplace relationships can alter traditional processes of industrial relations, such as collective bargaining, union operations, supervisor-worker interactions, management styles of administration, and worker reward systems. Although quality of work life (QWL) programs are designed primarily to mobilize and utilize a broader range of resources in the management system of the enterprise, the end result is to create a new social reality on the shop floor. It is the nature of this social reality that will be addressed in this paper.

Origins

As Joel Cutcher-Gershenfeld notes in his article, over the last decade, the American industrial firm has come under increasing environmental turbulence due to foreign competition, crises in the quality of products, a reduction in the bargaining power of unions, a failure to increase productivity, and the rapid change in technolgical systems in manufacturing. These environmental pressures in the external system of the firm feed into the expectations, role behavior, and needs of different actors at the shop floor level—the production worker, the staff worker, the supervisor, and the union steward. This impact creates tensions, instabilities, and ambiguities at the shop level that cannot easily be dealt with by the traditional mechanisms of industrial relations—the collective bargaining agreement or the system of codified rules that are at the core of any personnel system. Five categories of strain and tension have become prominent at the shop floor level.

(1) There are concerns about the stability of pay and benefits. The mode of give-back bargaining has created uncertainties about pay and benefits for the worker and his/her union representatives, as well as creating a weltanschaung of mistrust and tension between workers and managers. Not only is there worker anger over what has been lost but also apprehension over what benefits, prerogatives, and compensation might be threatened. The response to these past and anticipated concessions might range from "drawing the line" or stonewalling to the participation in cooperative ventures (e.g., reducing wastage or increasing production) to forestall the need for further concessions.

(2) There are concerns about shutdowns. Over the past decade, there have been an unprecedented number of plant closings with a consequent rise in the number of displaced or "unwanted workers." This has become a common threat to supervisors, stewards, and workers. Forestalling a shutdown becomes an objective shared by all on the shop floor and creates a climate for shared, cooperative behavior to increase the possibility of continued operation. Workers, in particular, frequently complain that a closing would have been unnecessary if management had sought advice from workers themselves, since they have a different perspective on production operations and how to achieve efficiencies and quality in the work system. As the shutdowns have become widespread, there is increasing concern that no plant is secure and that only early ameliorative intervention developed by all concerned parties can forestall a shutdown.

(3) As seen in recent bargaining contracts, the issue of job security is a paramount concern to actors on the shop floor. As management seeks to meet the competitive challenges from outside, some operations may be axed and others reduced. In the 1950s, these changes did not create the tensions that they do today because most companies were expanding and workers who were displaced from one operation could be transferred to another. In the 1980s, where the reductions are more pervasive, displacement may indeed mean a permanent layoff from the company so job security becomes an issue of considerable concern.

(4) There are concerns about the introduction of technological change. Most new technology is not simply an upgrading of existing machinery and equipment where past worker skills are still relevant and adequate. The advent of the computer has worked a revolution on the shop floor. Computer Aided Design (CAD) and Computer Aided Manufacturing (CAM) have introduced a new logic of operation into the shop. Past skills may have some relevance, but the new technology frequently results in the elimination of some jobs, changes in the content and skill of other jobs, and redefinitions of job boundaries and compensation. Another significant problem is the integration of this new technology with existing technological systems. This reshaping of the technological system suggests a cooperative involvement of different actors in the shop that has not been necessary heretofore. The resulting stress is most obvious for production workers, who may anticipate job dislocation or the need for extensive

retraining to fit into the new technological system.

(5) There are concerns about the quality of the product. As a result of increased foreign competition, more and more attention is being paid to the improvement of product quality. Quality control has been imposed like never before. Rates of wastage and tolerance of error that were accepted before are now under tight scrutiny. Survival of the firm is frequently described in terms of improving quality of the product. Systems and procedures to improve product quality are critical concerns in the shop. The questions of quality have come to involve not only the supervisor and the engineer but also the worker and the union steward. The major concern is to develop a shorter time frame where product error may be detected and remedial action can be taken.

As I have noted above, these tensions and strains cannot easily be handled through traditional industrial relations mechanisms for the reduction of tensions. Such mechanisms are adaptive to handle *repetitive, uniform* events that occur over time and for which standard responses are possible (e.g., disciplinary problems or inequities in compensation). The tensions and strains to which I have referred are specific to a situation of external turbulence. They have *unique* elements and are *nonuniform* events for which standard responses are *not* possible. These nonuniform events cannot be handled by codified information from above but require ideas and conceptualizations that arise on the shop floor itself; formulated by actors specific to the shop floor situation.

We can describe traditional industrial organization as dominated by *calculative rationality* where the energies of the organization, particularly at the shop floor level, are exerted to develop and implement mechanisms concerned with *formulated rules* of the organization. The emphasis is on paperwork to document the existence and implementation of these rules. In the worker participation organization there is a shift to *generative rationality*;[1] the development of mechanisms to collect *ideas* from the shop level of the organization and to implement these ideas by assuring that supportive resources are available and that channels of communication are open to increase the receptivity of these ideas. It is obvious that generative rationality is an adaptive response both to the turbulence in the external system and to the stresses and strains that develop at the shop floor level.

Where there is a (concepts and ideas that are derived from theories and professional dogma) to grass roots expertise (concepts and ideas that are generated from the everyday experiences of work). The latter expertise does not replace the former. Actually, the actors on the shop floor are dependent on information about what is happening elsewhere, conceptual/theoretical formulations of an issue or problem and the options for action that exist. The building of consensus at the shop level will inevitably use information both from within the shop floor and outside of the organization. Grass roots expertise does not replace elite expertise but is mixed with it to produce a more adequate decision or judgement.

The second consequence is a rethinking of traditional authority preogatives into a system where hierarchical relations are "flattened" and where initiation for interaction may occur from many different actors. The emphasis is no longer on assigning honor and prestige to a particular status but rather to associate these attributes with effective problem-solving or group participation and contributions.

Finally, there is an impact on the role expectations and behavior of various

[1] The authors are indebted to Dr. Ronald Westrum of Eastern Michigan University for his distinction between calculative and generative rationality.

actors on the shop floor. In a system of generative rationality, behavior is oriented toward information gathering, information processing, and implementation of ideas and action proposals that are considered meritorious. Supervisors are less concerned with supervision of employees and more concerned with the coordination of activities that generate and process information on the shop floor. Stewards are less concerned with the filing of grievances and place more emphasis on activities that produce solutions for problems that are considered relevant by their constituents. The workers continue to operate machines, but they are now concerned with issues of product quality, cost containment, and how specific problems may be resolved through the efforts of groups organized on the work shop floor.

Thus, the tensions and strains on the shop floor, a product of the turbulence in the external environment of the organization, lay the basis for a reorganization of the shop floor to provide mechanisms that would be organic to the needs of various actors. The major mechanism is some group-based network of problem-solving that taps into the ideas and options for action by actors on the shop floor.

Role Adaptations

Role adaptations and behavior in a system of generative rationality on the shop floor must emphasize three specific characteristics. The first is *organicity*. The role expectations and behavior must be organic to the needs of actors and not imposed from the outside. Given the latitude to specify problems, there must be some concern with the development of behavior to address these problems. The second is *flexibility*. Actors on the shop floor should be allowed to choose and structure mechanisms that they consider appropriate to the concerns at hand. Imposed formulae are self-defeating. Finally, there must be some concern given to establishing *networks of resources* to deal with the tasks at hand. The most obvious concern here is to increase the range and kind of interactions for actors on the shop floor.

Actors on the shop floor are usually the recipients of interaction, not the initiators. Within the specific department there must be opportunities for actors to initiate action upward. Beyond this, there is the need to extend opportunities for interaction laterally across departmental boundaries. The networking, to which I allude, must restructure role boundaries beyond the artificial limits imposed by traditional job descriptions.

The only rule that makes sense in generative rationality is to set no limits on interactions, because that may interfere with problem-solving. This dictum would establish new paths of communication not previously charted but necessary to solve problems. Actors on the shop floor could have access to other departments where they are closely related to the manufacturing process (machine maintenance) or to the marketing of the product (sales) or to the development of new products (planning).

Let us examine four work roles on the shop floor and see how they may be restructured when moving from calculative to generative rationality. The four roles are: the supervisor, the engineer, the union steward, and the production worker.

Under a system of calculative rationality, the supervisor works with rules to set limits on worker behavior. The goal is to standardize worker behavior within prescribed job boundaries. Major activities involve the transmitting, interpretation, and enforcement of these rules. The supervisor receives orders from above and sends back compliance information and production data. Relationships with counterparts in other departments are structured and formalized, as are relationships with union representatives. Supervisor-steward

contacts revolve around worker grievances or possible contract violations.

In a shift to generative rationality, the superviosr works with ideas, not rules. He is concerned with group performance in problem-solving and the development of action plans. The new supervisory role involves three sets of related activities. The first is the management of group processes to expedite problem-solving. The supervisor is less involved with industrial productivity than with group productivity, although the two are seen as related to each other. The second is the development of resources to make problem-solving possible. In this instance, the supervisory role is one of responding to group needs. Such resources may include specialized information, access to key resource people, or provision of tools/technical processes to expedite the problem-solving. Finally, the supervisor must engage in activities that will insure implementation of group action plans. In this sense, he/she can be a salesperson for the plan, building political arguments and constituencies to influence the top officials of the organization.

Traditionally, the engineer has remained aloof from other actors in the shop. Dominated by a highly specialized expertise, engineering planning was developed in partnership between company engineers and outside consultants. Two circumstances have changed the engineer's role behavior, integrating it with the role behavior of other actors on the shop floor. The first was a serious reduction in engineering planning budgets, reducing the use of outside consultants. To make up for this loss, more and more plant engineers turned to other actors in the shop (supervisors and production workers) for advice and guidance on layout. A side benefit of these contacts was to make grass roots expertise on production layout and a variety of other operations more prominent. Engineers began to see the complementary nature of such expertise to their own concepts and practices.

The second was the need on the part of engineers for a tighter feedback loop on operational problems encountered in the introduction of new technology. It was natural to turn to supervisors and production workers for such information, establishing a series of cooperative contact situations between engineers and other actors on the shop floor. The end result of these cooperative contacts led to the establishment, in many instances, of "launch teams" utilizing diverse personnel with different kinds of expertise to deal with production problems. Thus the teams integrated the role and expertise of the engineering planner with other actors in the shop.

The traditional role of the steward has been to reinforce the provisions of the contract and to attend to grievances from union members. In the context of generative rationality, the role requirements undergo several shifts. The first is an involvement with group problem-solving. Just as the supervisor may act to mobilize company resources to aid in the group problem-solving, so the steward may become involved in mobilizing resources from the union organization. The steward's knowledge both of the company and the union organization may be important inputs into the group regarding barriers and impediments to the solution of a particular problem.

A second shift is the fulfillment of an ombudsman role, acting through the structure of the group to deal with issues and problems that cannot be handled under the provisions of the contract. Finally, the steward may be able through the group structure to provide opportunities for incidental learning that may not be developed in the contract. Generative rationality suggests that the steward can play a larger role in serving the needs of union members through the structure and processes of the group. The group mechanism, far from diminishing the steward's influence, can actually increase it.

Traditionally, the role of the production worker has been characterized by a high degree of passivity in the shop. Successful performance was viewed in the context of compliance with the system of rules. The worker was the recipient of interactions, not the initiator. There was little or no control over work operations or standards.

In the current context of the shop, the worker's attitudes and behavior are undergoing change. The tensions, revolving around uncertainties of job security, the introduction of technological change, and the instability of pay and benefits, has accented the need for more information and some control over decisions that affect the stability of life in the shop. There have always been information channels open to the worker ("the grapevine") but these were informal and subject to considerable error. One may view worker-participation schemes as attempts to build reliable and valid channels of information for the worker. It is this information that becomes a necessary input into the group decision-making.

In the current context of shop floor tensions, the worker role has changed to incorporate four added dimensions, necessary under a system of generative rationality. The first is the assertion of more control through group problem-solving and decision-making. The major shift in control is to legitimatize decisions in terms of group norms rather than compliance with work standards or a system of rules. The second is the opportunities for incidental learning that increases the human capital of the worker. Training in problem-solving is given to make the worker more effective in group tasks, but the skills from such training may be carried over to other activities and thus increase the overall competence of the worker. Third, the nature of problem-solving activity is to extend the social networks of the worker beyond his work group and department. For the most part, worker contacts are in a vertical hierarchy characterized by authority roles. In a system of generative rationality, the worker's networks are extended horizontally across many work groups and departments. The end result is to supply him/her with an extended information and resource network that glues him/her more strongly to the total organization. Finally, the very business of problem-solving gives the worker a more factual and realistic knowledge of the total organization, permitting assessments of issues in terms of the total organization rather than in terms of the more parochial interests of the work group or department.

Conclusion

Turbulence in the external environment of the firm creates a number of strains and tensions at the shop floor level. The shift from calculative rationality (rule centered) to generative rationality (idea centered) should be seen as adaptive responses both to external turbulence and shop level tensions. In turn, generative rationality impacts on the role behavior of various actors on the shop floor, creating a system of behavior that is both more organic to shop floor needs and more flexible in dealing with problem-solving.

[The End]

Reconceiving the Web of Labor-Management Relations*

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Labor-management cooperation in the 1980s, just like labor-management cooperation in earlier eras, does not represent a sudden shift in the institutional interests of unions, employers, employees, or the government. That does not mean, however, that new institutional arrangements (be they joint committees, participation groups, task forces, or others) can be dismissed as inconsequential.[1] Rather, their continual reemergence at different times during this century suggests that traditional, rule-oriented institutional arrangements such as collective bargaining, job-control unionism, grievance arbitration, and others may only be accurate reflections of institutional interests under certain circumstances. Accordingly, the focus of this paper will be on the circumstances when alternative institutional arrangements emerge and the interplay of industrial relations stakeholders[2] during such times.

Specifically, in this paper, I will examine the kinds of institutional arrangements that arise during times of environmental turbulence[3] and decline in the labor movement, which is how I would characterize present times and two earlier periods, the turn of the century and the 1920s. As we will see, tracing these two contextual factors is crucial to an understanding of the continual reemergence of certain institutional arrangements. However, it will also become apparent that a simple one-to-one comparison is not possible since the influence of these two factors is tempered by the cumulative influence of all preceding periods.

Also, it will become clear that the factors that explain the emergence of new structures are not necessarily the ones that explain their endurance or diffusion. This latter point is offered as a direct challenge to the common assumption that crisis-initiated changes depend on the continuation of the crisis to endure. In all, this analysis should not only help clarify relationships between interests and institutional arrangements, but it should also tell something about what life is like for industrial relations practitioners and scholars during a period of turbulence and decline.

In order to examine present-day experience and the experience during two earlier, comparable periods, we will look across what has been termed the three levels of industrial relations activity

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[1] By the phrase "institutional arrangements" I am referring to the forums, vehicles, or structures used by stakeholders to resolve issues arising from divergent interests and/or to pursue areas of common interests. As the term suggests, the focus in this paper is on institutional interests, but the principles have broader applicability.

[2] The key stakeholders, for the purposes of this paper, will be assumed to be employers, employees, unions (in some cases), and the government. These are each seen as having multiple interests. An employer may have interests in lowering costs, meeting schedules, increasing quality, and remaining adaptable. Employees have interests in meeting individual needs, ensuring safety, and maintaining equity. Unions reflect these three interests and add a set of organizational needs. The government and the courts have interests in industrial peace, protecting individual and community rights, and economic vitality.

[3] Environments are seen here as consisting of markets, technology, law, and/or society. Current arguments that U.S. industrial relations entered a period of transition (Kochan, McKersie, and Katz, 1984; Piore and Sabel, 1984; Kochan 1985) identify a confluence of these factors, including a changing legal environment, demographic changes, emerging technologies, shifts in world markets, and changes in social values, as well as changes within industrial relations (such as the increasingly legalistic nature of arbitration).

(Kochan, McKersie, and Katz, 1984). Indeed, one of the goals of this paper is to corroborate the importance, at least during periods of turbulence and labor-movement decline, of looking below bargaining to relations on the shop floor (or its equivalent) and above bargaining to strategic-level decision-making.[4]

Collective Bargaining During Turbulence and Decline

Turbulence in the external environment and a declining labor movement undercut two core assumptions upon which the periodic negotiation of formal agreements rests. Turbulence undercuts the assumption of stability between agreements. Decline in the labor movement undercuts the assumption of approximate equality between the parties.

With an increasing number of turbulence-driven issues that contain potential conflicts of interest, one employer response could be to press a power advantage and reject the principle of the collective negotiation of terms and conditions of employment. This is only possible when there is great inequality between the parties and, if legal protections exist for unions, when the union movement lacks political potency. This choice was reflected institutionally in the 1903 open shop movement (which lasted nearly a decade), in the American Plan of the 1920s, and in today's campaign for a union-free environment. A parallel union response could be to strictly limit responses to the growing number of crisis-driven issues and only discuss such issues in formal bargaining sessions. Even during a general decline in the labor movement, there are always some unions powerful enough to exact such control.

The polar opposite choice for unions and employers is to meet on a more frequent, even continuous, basis to resolve the increasing array of turbulence-generated issues. During the current period, there has been a dramatic increase in the use of vehicles for regular dialogue. These go well beyond the simple notion of a contract reopener or a side-bar agreement. Most visible are the hundreds of joint labor-management committees (*ad hoc* or permanent) established to address new technology, displaced workers, job training, health and safety, and quality of work life/employee involvement (QWL/EI), as well as the emergence of "mutual growth forums" or other vehicles to channel QWL/EI-generated issues that are contractually related. Over fifty community-based labor-management committees now exist along with a handful of statewide joint organizations and dozens of industry-wide committees, all of which seek to foster regular or continuous dialogue to minimize adversarial excesses and to address a whole new set of community-wide or industry-wide issues (Cutcher-Gershenfeld, 1985).

Prior periods also saw the emergence and endurance of similarly continuous vehicles. At the turn of the century, the joint conference in the mining industry, with nearly a thousand local union delegates and about seventy employers, was dubbed by John R. Commons as "an industrial house of commons and house of lords" (Commons, 1934). A crisis in mine safety brought the parties together (literally a turbulent environmental condition generating a new institutional arrangement). In contrast to this notion of constitutional representation, Lewis Brandeis fashioned the Protocol of Peace around the same time as an attempt to substitute conciliation and arbitration for the right to strike. In its initial application to the garment industry, the Protocol was hailed as a social invention comparable to Watt's steam engine or Arkwright's power loom (Gomberg, 1967). The collapse of the Protocol, half-dozen years later, due to

[4] In fact, the election of Ferman and Klingel's, Jacobs's, and McKersie's articles for this IRRA panel, on New Dimensions in Industrial Relations, reflects this view.

disputes over what constituted a grievance and what was a managerial right, even though crisis pressures persisted, indicates that a crisis alone will not explain persistence.

Endurance and diffusion are better viewed as a function of the extent to which an innovation serves the interests of key stakeholders. This is evident in the case of the National Civic Federation established in 1900. This organization and its prototype, the Chicago Civic Federation (set up six years earlier on the heels of the bitter Pullman strike), pioneered the notion of third-party conciliation and mediation of labor-disputes. The National Civic Federation used the influence of its members to help resolve over 100 disputes via informal, on-going dialogue (in much the same way that many area-wide labor-management committees operate today). This organization endured for over a decade, partly because prominent industrialist members such as Marcus Hanna and August Belmont took on the responsibility of persuading peers of the merits of unionism, a clear case of attending to institutional interests.

During the 1920s, joint adjuncts to the bargaining process emerged in the railroad industry (in which over one-third of the railway mileage had gone into receivership) and in the apparel and textile industries (both of which were facing non-union competition). In the railroad industry, Machinist union president William Johnson and Otto Beyer, a former government official, met with many railway officials before finding a receptive ear in 1923 at the Baltimore and Ohio (B & O) under Daniel Willard. Their plan to establish a network of shop floor committees (discussed in the next section of this paper) also featured regular meetings (sometimes referred to as joint councils) of union and management leadership. This overlay of committees and councils on the bargaining process was not only found useful for over a decade at the B & O Railroad (Jacoby, 1981; Mitchell, 1984), but the Chesapeake and Ohio; the Chicago and Northwestern; the Chicago, Milwaukee and St. Paul Railroad; and the Canadian National Railway System also followed this model.

A comparison of one committee in the textile industry and one in the apparel industry further reveals the need for continuous dialogue in the face of environmental turbulence and the resulting long-term implications. In the first instance, a 1927 committee involving the United Textile Workers and the Naumkeag Steam Cotten Co. (Pequot Mills) developed a plan that generated significant cost savings, but it also resulted in the layoff of 153 employees and could not forestall wage cuts in 1931 and 1932.

The workers' response was to vote out the UTW, set up an independent union, and halt cooperative efforts (Gomberg, 1967). In the second instance, a 1923 committee involving the Amalgamated Clothing and Textile Workers Union and the suit manufacturer, Hart, Schaffner and Marx, endured for over a decade during which it was able to make a continual series of adjustments in work rules and piece rates, jointly develop a low-priced line of suits, and implement a joint fund to compensate 150 displaced cutters (Killingsworth, 1963). It succeeded because it not only responded to competitive pressures but also attended to a larger set of employee and employer interests.

During our own era and, as these historical vignettes suggest, during parallel periods in the past, the combination of environmental turbulence and a declining labor movement has been associated with the emergence of a variety of vehicles for continuous dialogue on the terms and conditions of employment. Some of these initiatives are explicitly conceived as alternatives to collective bargaining and strikes, while others are intended as an adjunct to the bargaining process. In either case, the decision to embark on a path of more continuous dialogue is tested

again and again by factors within and outside the process.

Within a process for continued dialogue there are constant tests of the extent to which each side recognizes the legitimacy of the other, reduces posturing during meetings, increases information sharing, participates in problem solving, and is willing to come to a working consensus on decisions. Outside the new institutional arrangement the persistence and possible worsening of environmental turbulence is important, but often more important is individual leadership, the extent to which the structure is seen by key stakeholders as useful in addressing complementary and conflicting interests and, as we will see, the nature of activity above and below the level of collective bargaining.

Worksite Relations During Turbulence and Decline

Life for the turn of the century worker has been described as "dominated by continued, sometimes chaotic change—change that was oppressive as often as it was liberating" (Babson, 1984). In this period, in the 1920s, and today, the turbulence in the external environment was manifest in shifting shop floor relations and changes in work organization. The source of turbulence varies from era to era. At the turn of the century, it centered on issues of safety and deskilling; in the 1920s, issues of workflow and cost reduction were salient; and today, issues of quality and flexibility are often as important as cost and schedule.

The turbulence at the turn of the century saw the disruption of shop floor, group-centered work organization. Both the 1920s and our era have seen a re-emergence and mushrooming of shop floor committees and work groups. The focus of this section of the paper will be the later two periods, especially in contrast to two other periods of environmental turbulence during this century, World Wars I and II, which also brought a plethora of committees and groups.

The turbulence during all four of these periods may be the principal factor prompting the establishment of group-centered initiatives, but the status of the labor movement and the interests of key stakeholders has played a critical role in shaping their subsequent paths. During the two world wars, tight labor markets and government-supported labor movement growth tempered employer interest in productivity-enhancing shop floor activity. A detailed analysis of the 5,000 shop floor committees established during World War II concluded that the majority were unable to address substantive issues as a result of a constant employer defense of management rights (de Schweinitz, 1949). This employer view was reflected in the official response to a comprehensive plan, proposed by UAW President Walter Reuther, to convert auto plants for wartime plane production. Reuther was told that "the only thing wrong with the plan was its source."

By contrast, many of the 1920s committees were far reaching in scope, as indicated by the following list of subjects normally considered by B & O committees in their meetings (Mitchell, 1984): job analysis and standardization; proper storage, care, and delivery of materials; proper balancing of forces and work in the shops; training apprentices; improving quality of work; securing new business for the railroad; securing new work for the shops; measuring output; improving tools and equipment; economical use of supplies and materials; coordinating and scheduling of work through the shops; recruiting new employees; conditions of shops and shop grounds, especially in respect to heating, lighting, ventilation, and safety; and stabilizing employment.

In a 1941 study of this effort, Sumner Slichter found that, although it was difficult to assess direct cost savings, grievances had declined substantially (from 261 in 1922 to 33 in 1928) and that improvements were made in work layout, tool systems, conservation of materials,

routine of work, and working conditions. According to the railroad's own calculations, it earned $197 for every $100 earned by its competitors during the first three years of its cooperative effort. Analysis of workers' earnings at the B & O and on other railroads, such as the Canadian National Railway, indicates that individual earnings too were relatively higher while the joint efforts were under way (Mitchell, 1984).

There are, of course, many present-day parallels to these shop-floor participation efforts (Kochan, Katz, and Mower, 1984). During both eras, the experience of the shop floor committees is not that of a single decision to participate or not but that of a succession of issues, each raising important issues about labor-management relations. A problem-solving group, for example, will first need time to meet, then new skills in problem-solving and communications, then access to people and information, then shifts in supervisory styles, then the security that new ideas will not lead to layoffs, then some sharing of gains, and so on.

Such a succession raises fundamental questions about management rights and can threaten long-standing equity arrangements. As a result, the relationship between shop floor activity and collective bargaining is often one of bumping issues up to the bargaining table (or to various continuous forums). Then the shop floor activity receives either shocks or boosts depending on what happens in the negotiations. The raising of fundamental issues and the back-and-forth process is particularly evident today when, in addition to a host of shop floor committees (variously referred to as problem-solving groups, participation teams, employee involvement groups, quality circles, etc.), we have seen the extensive use of special task forces (Lazes and Costanzo, 1983), autonomous work groups (Trist, 1981), statistical process control groups, and other distinctive arrangements.

Before considering why present activity is deeper in scope than shop floor activity in the 1920s, it is important to examine why activity during both world wars was not nearly so far reaching. Part of this explanation can be found in the lack of government directives since cooperation, where it has occurred outside of wartime, reflects a management commitment to a joint effort and/or a union powerful enough (even if in decline) to insist on a say at the shop floor. But another factor, related to the labor movement's decline during these periods, must also be considered. Both the American Plan during the 1920s and today's campaign for a union-free environment have explicitly urged the establishment of shop-floor committees as an alternative to collective bargaining. These movements suggest, incidentally, an institutional interest in participation on the shop floor. During both eras, the existence of such non-union activity serves as a competitive threat to unionized settings and, in this way, helps drive union innovation.

The debate over the two institutional arrangements, then as now, was extensive and remarkably similar. In 1921, Paul Douglas observed in the *Journal of Political Economy*: "The co-operative features of the relationship between employer and employee . . . need to be developed equally, in order that the size of the pie may be increased as much as possible, and in performing this function the shop committee is invaluable. The relationship of [unions and shop committees], in other words, is properly complementary, and not mutually exclusive. We can only hope that in practice this harmonization will be secured."

Such harmonization was a goal in some of the historical cases discussed here, and it is certainly a goal of many of today's joint efforts. Achieving this goal, however, has strategic implications.

Strategic Decisions During Turbulence and Decline

While the late 1970s and the 1980s have seen the emergence of a broad range of institutional arrangements for union roles in strategic decision making, there are only a handful of parallels in earlier eras. The joint task force set up to develop a new line of suits at Hart, Schaffner, and Marx in the 1920s can be seen as strategic in nature. The overall decision to embark on the B & O plan can also be viewed this way, as can the Civic Federation's urging of the legitimacy of unions. But these select cases do not compare with the wide variety of strategic-level institutional arrangements that we see today. These range from union seats on boards of directors; a handful of fully employee-owned and run firms and an additional 6,000-plus companies with employee stock ownership plans; a variety of community-level vehicles to prevent plant closings and to attract new development; and joint committees established to address strategic issues such as product development, plant design, human resource planning, and new technology.

The range of strategic activity reflects, in part, today's high mobility of capital. The increasing potential of plant shutdowns brings to the fore a set of institutional interests on the part of workers and communities that would otherwise be dormant. Viewed in this way, it is no accident that the most salient vehicles for addressing strategic issues in the 1920s were in the textile and apparel industries, where capital has always been quite mobile. However, mobility alone is not sufficient to explain the emergence of strategic-levels forums; certainly earlier periods of textile migration were not marked by such forums.

Equally important is the relative power of labor. Even if the labor movement is in decline, the more powerful it is, the more significant demands it can make on the way down. Most of today's strategic-level initiatives have indeed been established as *quid pro quos* for concessions or moderation at the bargaining table.

Viewed from this perspective, the turn of the century can be seen as a period when the *quid pro quo* was union recognition. In the 1920s, it was not only union recognition, but also shop floor involvement. Today, where the union is powerful enough (even if in decline), there can be far deeper shop floor involvement and far more strategic-level activity.

During prior eras, the endurance and effectiveness of the new arrangements had less to do with crisis pressures than with the way these arrangements served the respective interests of labor and management. It can be anticipated that the same will be true at the strategic level. At first blush, this suggests that joint strategic activity rests on a shaky foundation since the historic interest of employers has been to closely guard what have been termed management rights, and the interest of employees has been on the more immediate concerns. To an extent, however, such activity has the potential to shift institutional interests.

At the strategic level, pressure for such realignment is furthest reaching in the case of an employee buyout, but present in all cases. The oft-stated justification by management for offering formal roles to labor is to build a stronger interest in organizational effectiveness, while labor's formal goal is often that of ensuring that employee interests figure more prominently in strategic decisions.

Such a shift can be supported by activity at other levels. Continuous dialogue betwen negotiations not only enables more issues to be addressed, but the process encourages discovering what Walton and McKersie (1965) have termed the integrative potential in many more issues. Shop floor participation can not only facilitate accommodation to change, it can serve to redefine management rights and union responsibilities, as well as bump job security, work rule, and gainsharing issues

into the collective bargaining arena. Thus, to the extent that both sides achieve their strategic goals and shift their relations at other levels, there is the potential for such activities to not only be far reaching, but to be long lasting.

Conclusions

It was nearly three decades ago that John Dunlop described industrial relations systems as comprised of actors, with ideologies, operating in various contexts (Dunlop, 1958). The analysis in this paper has touched on all three of the key elements that Dunlop enumerated, but it differs in one important respect. His analysis and most post-World War II industrial relations research conceived of a web of rules binding together industrial relations systems, which could then be viewed as a reflection of the interplay of institutional interests. Underlying this article is the argument that rules are only an accurate reflection during a time of environmental stability.[5] In contrast, during a time of turbulence the appropriate focus should be on the underlying web of relationships, as reflected in various institutional arrangements.

The focus is still on the process by which complementary and competing interests are sorted out and the nature of those interests. It is just not limited to a focus on rule-making and negotiations. Indeed, it is my argument that these are special cases. It is not just during formal and informal rule-making that the integrative or distributive potential of issues can be realized, nor is it just then that the adversarial or cooperative tenor of a relationship matters. Thus, the focus should be on the process and content of problem-solving, dispute-resolution, communications, and other aspects of relations besides rule-making.

Such analysis reveals that the emergence of certain structures can be traced, in part, to functional needs, whether these be for expanded and even continuous dialogue, close feedback loops to solve problems close to the source, or others. However, it is power relationships and other factors that influence whether or not the functional need is filled. Thus, in order for an area labor-management committee to emerge, there must be community-wide issues that cannot be addressed in bilateral bargaining (which could be the area's labor-management climate, industrial development, education, and others). At the same time, it is not likely that such a committee will emerge if power relations between labor and management are seriously out of balance, if there is not strong leadership, if start-up resources cannot be generated, and so on.

For key stakeholders in an employment relationship, life during turbulent times does not center on a single decision either to maintain existing structures and accommodate to a changing environment or to forge new institutional arrangements. Instead, there is a succession of such decisions, each carrying a succession of implications. This is as true for the employer that joins the campaign for a union-free environment as it is for the one that establishes a joint committee to review all decisions on new technology.

In each case where new institutional arrangements do emerge, these can be viewed as setting the outer bounds on employment relations. Some structures constrain the boundaries, and others expand them. In turbulent times, most new structures carry the potential to expand these boundaries, either in the kinds of issues addressed by stakeholders or ways in which issues are addressed. Still, establishing participation committees does not guarantee participation; adding a grievance procedure to a nonunion dispute resolution system does not guarantee due process; seating a union

[5] Even then the meaning of rules may shift at such a gradual pace so as not to be fully reflected in agreements. At a given worksite, for example, the increasingly legalistic nature of arbitration may not have been accompanied by the concurrent, gradual emergence of alternative vehicles for dispute resolution.

representative on a board of directors does not guarantee influence. Again, it is issues of leadership, power, and, most important of all, the fit between the new structure and the interests of the stakeholders that shapes that evolution and endurance of the new structures.

The interests of stakeholders are, of course, complex. Each cannot maximize all of its own various interests, let alone all collective interests. Whether one is studying what life is like within new institutional arrangements or is currently part of such a process, it is critical to maintain a constant sensitivity to the tensions among these interests. That sensitivity is particularly important in times like our own, when so many new institutional arrangements are emerging. As has been suggested elsewhere, this period can be seen as one of choices and challenges (Kochan, 1984). This brief historical comparison suggests not only that we have faced such choices before, but that today's choices are part of a sequence of consistently further reaching innovation occurring during times of turbulence and decline, and that the analysis of these innovations provides a unique window into the very nature of industrial relations.

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[The End]

New Dimensions in Industrial Relations

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In the limited time available, I would like to make some observations about the four preceding articles, based on the findings of our ongoing research at the Sloan School. Currently, with support from the U.S. Department of Labor, we are tracking nine companies and their unions over a two year period of time to better understand how different kinds of innovations in industrial relations unfold during this critical period of the history of labor-management relations.

As the Cutcher-Gershenfeld article indicates, we have found it helpful to develop two other levels of analysis in addition to the traditional one of collective bargaining, namely, the workplace level and the strategic level. My initial comments deal with the workplace level. Most surveys would indicate that some form of quality of work life now occurs in anywhere from 70 to 90 percent of the workplaces and offices represented by unions. Of course, there is a tremendous variety ranging from quality circles to labor management committees to gainsharing plans to many more forms. Thus, when one asks how diffused is the theme of "participation," the answer is: very well indeed.

It is also clear to us that this development of participation is here to stay. Management has the message that participation works, and they are going to insist that this theme be a high priority. In many instances, companies first experimented with new forms of participation in their nonunion plants, and by and large these experiments have been very successful. Consequently, one of the strong driving forces that will keep the subject sustained in union management sectors is the strength of this idea in the nonunion sector. Here is an interesting illustration of where the lead is with the nonunion sector and the union sector is working hard to catch up.

Another fact of life is that workers like participation, and this will continue to drive the story. The biggest hurdle with respect to the continuation and participation at the shop floor level has to do with the role of unions, at least the traditional

role. Our evidence suggests that quality of work life does weaken worker-union relations, at least unions traditionally conceived. Thus, the challenge for unions, given the inevitability of participation on a sustained basis, is to define new roles such as that of a facilitator (or what Ferman called the ombudsman) and to fashion new mechanisms such as steering committees.

The diminished role of unions in the traditional or adversarial sense leads to another conclusion: To survive, unions must develop a compensating role at the top or the strategic level, and across all levels unions must deliver new "goodies," whether this is employment security or support for participation that serves the majority of the members.

Collective Bargaining Level

At the middle level, mainly, what we think of as the terrain for collective bargaining, the major development of the past several years has been concession bargaining. It is amazing to us that this virus continues to spread, and in some industries it has attacked the parties several times. Take airlines, where there appears to be no end in sight for the theme of concession bargaining. To the extent that relative wages in airlines had risen to 40 or 50 percent above what would be the scale produced by market forces, it will take a succession of rounds to bring differentials down to the range of 10 to 15 percent where they can be sustained through the greater productivity and higher quality of workers that are associated with union employment.

For the future, I am certain that we will see a continuation of the themes of localization, enterprise collective bargaining, and the extensive communication that goes with these developments, in other words, acquainting everyone within the local place of employment with the competitive realities that bear on their long run employment viability. Whether we will see some restoration of patterns and the ability of the unions to take wages out of competition is very difficult to predict. Certainly, we will see much more contingency compensation, in other words gainsharing, that will deal with the equity question.

We are studying one location in the metal working industry where the union leaders are wrestling with their role in the post-concession period. They have taken a cut of almost three dollars an hour in compensation costs, and thus far they have seen their role as trying to restore some of the losses. They are frustrated and the situation is lumbering along with very little additional progress in the quality of work life area because everyone feels that they have already "given at the office."

In looking around for a model to guide our thinking about the future, we feel that the experience of unions like the Amalgamated Clothing Workers and the ILGWU are more relevant than the experience of unions that have been viewed as the pacesetters, e.g., the UAW and the Steelworkers. The unions in the first category have coped with foreign competition, nonunion developments in the United States, introduction of new technology, and all the tradeoffs between keeping the firm viable and loss of employment. These are the themes that appear to be pervasive for the foreseeable future, and we need to learn more about how unions in industries characterized by instability and partial organization have survived.

Another reality is that the behavior of unions with respect to economic matters will certainly have a bearing on their ability to organize new workers. One of the strongest correlates in the Lou Harris poll (done for the AFL-CIO Committee on the Future of Work) is that most workers who are not now in unions believe that the arrival of a union would weaken the financial viability of their place of employment. Thus, unions, as they seek to improve their image, will be forced to play a constructive role in terms of the

economic viability of the companies and industries where they are key actors.

Strategic Level

Now, let me move to the highest level, the strategic level. First, we have not seen very many formal developments such as worker or union representative on the boards of directors. Examples that have been given by Warner are interesting, but I think that they will continue to be the exception rather than the rule. Similarly, when we look at the impact of stock ownership, while the numbers are impressive and continue to grow, the evidence is that there is no connection between stock ownership and greater employee motivation, commitment, or anything that really affects day-to-day operations. The latest piece of work in support of this view is an article by Donna Sockell in the Winter 1985 issue of *Industrial Relations.*

The most impressive development and the one hardest to gauge is the extensive amount of informal access by unions to strategic matters. A wide variety of forums, briefings, and consultation have developed over the past several years. From the union's side, this is driven by the need to compensate for a diminished role, especially at the lower level, and to deliver on a very high agenda item for the members, specifically, enhancing employment security. In this city of Detroit, we should acknowledge the fact that the automobile industry has certainly led the way in this regard.

Whether this development will continue is a bit hard to determine decisively. I can point to some factors that probably will weaken the trend, but I can also point to some factors that will strengthen the trend. First, on the negative side, with respect to the strategic level, there is no model on the nonunion side, and hence the development is not being driven as a way of keeping up with the nonunion sector. Also, if there is less turbulence in the environment, then there probably will be less need to have strategic consultation. Finally, on a realistic note, management is instinctively opposed to having unions involved at the strategic level, and, indeed, most of the examples have only emerged as a result of pressure from the environment and the need on the part of management to "invite the workers and their representatives in to share the problems."

On the other side of the ledger, a positive factor is that union leaders have been able to handle the responsibilities and to adapt amazingly well. There are many stories and testimonials by management as to how much decision-making has been improved by virtue of having union leaders involved in high level meetings. Finally, and I think this is a point of great import, the involvement of worker representatives at the highest levels could become a competitive advantage for unionized firms. Recently, I was sitting in a session where some people from General Motors were talking about the process that led to the design for Project Saturn, and alongside me was someone from the headquarters of one of the large high tech firms that represents one of the foremost practitioners of comprehensive personnel policies, which incidentally has remained union-free. After the presentation, he leaned over and said: "For all of our good practices and policies, we have no way of engaging a cross section of the organization in the design of a new product in the way that General Motors has been able to do, because of their collective relationship and the associated ability to mobilize a cross section of the workforce."

In passing, I will just touch on one other important issue. To the extent that participation becomes a permanent part of the scene, then it strikes us that our labor laws are outdated. The old distinctions between mandatory and nonmandatory subjects do not describe what is going on. Nor does the wage and hour law that makes a distinction between exempt and non-exempt employees describe the situation where team mem-

bers can be scheduling overtime for themselves, and the supervisor who normally would make these decisions (being exempt) is very much in the background. Time will tell how we revise the legislative framework to capture the explosion and developments of the 1980s.

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[The End]

The Theory of Industrial Unionism*

By Jack Barbash

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For the half-century since the 1930s, industrial unionism, mostly of the old CIO variety, has been the driving force in American unionism and collective bargaining. The purpose of this article is to highlight an industrial union paradigm, based largely on the CIO experience, to the effect that industrial and craft unions differ fundamentally in their economics, bargaining, governance, and politics. The difference is not only in union structure (one more inclusive, the other less) but in union "cultures." Structure is only a surface difference that expresses more basic differences. The paradigm set out here is an "ideal type." That is, this is the way industrial unionism is supposed to work, when it works.

The CIO made industrial unionism a mass movement. Severing industrial unionism from its historic radical ties, the CIO achieved a synthesis between craft business unionism and what might be called social justice unionism, American style. In business unionism, collective bargaining and efficient union administration are the paramount interests of the union. This much the CIO inherited from its AFL antecedents. Social justice means unionism that goes beyond group egoism to elevate the standards of those who are not so well-off, without displacing collective bargaining, however, as the union's centerpiece. This much the CIO inherited from its left-wing forbears but, unlike them, stopped short of anticapitalism socialism.

Precise definitions are difficult. The industrial or inclusive union takes in everybody in a plant, industry, or group of industries; the craft or exclusive union limits itself to specified, more or less skilled groups. Industrial unions are not limited necessarily to one industry. Craft unit enclaves exist in industrial unions, or a national industrial union can include craft locals, just as craft-oriented nationals frequently include industrial locals and intermediate bodies. The industrial union paradigm in action is most clearly

* Much of this article was written while the author was a Visiting Professor at the University of California, Davis.

demonstrated in industrial local unions covering most or all of the workers in a factory, as compared to the characteristic multiemployer craft local.

Environment and Economics

Industrial unionism is characteristically found in a factory worksite and accompanying properties that have capital-intensive employment, high or middle-range technology, complex industrial organization, and a national or international product market. Craft unionism's environment is the polar opposite. Its nonfactory worksite is marked by low-level, even handicraft technology, local markets, and rudimentary enterprise organization. The complexity of industrial unionism's environment stems from large-scale employment and capital investment which, in turn, breed detailed specialization of functions and intricate organizational systems. Industrial unionism's more complex environment produces a more complex bargaining relationship and a more active and structured shop-floor society than in the craft unions.[1]

Because craft and industrial unions operate in different environments, their economics are also different. Instead of, as crafts do, regulating labor supply to make labor's price, the industrial union undertakes to act directly on the price and utilization of labor, "leaving supply and demand to adjust themselves." [2] The source of craft unions' ability to command high wages is scarcity and skill. The scarcity is created in part by union regulation of the quantity and quality of the labor supply, operating through restriction of entry and kindred means like the closed shop, the hiring hall, and apprenticeship. The skill comes from apprenticeship and other modes of training.

The industrial union mostly regulates the supply of *work* through work rules, leaving the employer's control over hiring to regulate the supply of *workers.* Industrial unionism's main theater of action is the internal labor market of the enterprise, in contrast to craft unionism's regulation of the external labor market. The industrial union has less scope because (1) its employer's greater resources and staying-power permits tougher resistance to union pressure, and (2) the preponderance of semiskilled jobs in the industrial union factory makes regulation of entry impractical.

By contrast, the craft union dominates its *external* labor market, the smaller, weaker craft employers or their associations being less able to cope with craft union power. The source of craft union influence in the external labor market has been its policy to make "effective through a wide area . . . a definition of occupational content (with the necessary training schedules and required achievement levels) which will give wide marketability to the skills" [3] and will support a relatively high wage.

Craft unions organize by making employers conform to union standards on pain of denial of access to a supply of qualified labor. The craft employer is obligated to hire exclusively or mainly through the union hiring hall. This need not always be a hardship, since the good hiring halls are well adapted to the maintenance of an organized labor market for casual employment. The hiring hall is essentially a closed shop. That is, membership in the union is, for all practical purposes, a prior condition for access to it for job referral. The problem of the craftsmen is not so much that they are forced into the craft union but that they are not allowed in to take advantage of

[1] This line of analysis was suggested many years ago by Van Dusen Kennedy, *Non-Factory Unionism and Labor Relations* (Berkeley: Institute of Industrial Relations, University of California, 1955), pp. 30ff.

[2] H.A. Turner, *Trade Union Growth, Structure and Policy* (Toronto: University of Toronto Press, 1962), p. 138.

[3] David Christian, *An Assessment of Apprenticeship* (Washington, D.C.: U.S. Department of Labor, Bureau of Labor Statistics, 1964), p. 73.

the high union wage; and if they were allowed in, in large numbers, the high wage would become unsustainable.

So, in the crafts it is the worker who commonly seeks out the union; in the industrial situation it is the other way around, the union has to seek out the workers. The industrial union has no means of or interest in compelling union membership *before* the worker gets the job so long as there is a "union shop" obligation for new workers to join the union *after* hiring, and the union has a say in the deployment of workers on the shop floor. The craftsman's commitment to his craft and union is practically for life; the industrial worker is committed to his/her job and union only as long as the job lasts.

Equal opportunity problems in the crafts, involving black workers and women, occur at the point of admission to the union and/or referral by the hiring hall. In industrial union situations the problem develops during employment by (1) diverting black and women workers to lower paying jobs, (2) manipulating seniority systems to deny promotion opportunities, (3) denying "fair representation," and (4) denying access to union leadership posts proportionate to numbers.

Government and the civil rights movement have had to apply pressure on both craft and industrial situations to enforce equal opportunity standards. Yet the industrial unions had already traveled part of the distance on their own when they first organized minorities into inclusive industrial unions. Overcoming craft discrimination in admission required government intervention.

Craft skill is indivisible for pay purposes. The craftsman is paid for what he knows, that is, for the unified body of craft or trade skills that he brings to a job, not necessarily for the particular job he happens to be working on. Only rarely is he called on to use the full range of craft skills. The plumber's rate, like the doctor's, derives from his worth as a total craftsman; the plumber's rate does not get cut because at a particular time he is hired to fix a leaky faucet. The industrial worker's rate varies with the specific task or job, according to a negotiated job classification scheme within a larger compensation system.

Craft wage/job structures are not differentiated by detailed specializations. This would undermine the unity of the craft. The important work rules of the craft are prescribed not in the joint agreement but in the union by-laws which, in theory at least, are offered to the employer on a take-it-or-leave-it basis. (The early union craftsmen did not negotiate their terms, they simply posted the rates they would work for.) This is one reason why craft union agreements are simple and small compared to industrial union agreements which can run to hundreds of pages if supplemental health and pension plans are included.

Compensation Structures

Industrial union initiatives helped remake the American compensation structure by broadening and deepening the meaning of wages. The industrial union forced the conversion of the traditionally negotiated wage *rate* into a complex wage and job *structure* and, beyond that, into a compensation structure which not only specified a rate for the job but also specified (1) how jobs and rates related to each other, (2) rate progressions, (3) scheduled hours of work, (4) premium rates, (5) paid holidays and vacations, (6) cost-of-living adjustments, (7) pensions and health care, (8) income and job guarantees, and (9) profit sharing.

The negotiated compensation structure pays not only for work performed but more or less provides for income over a lifetime or however long the job lasts (not so long in recent years). It is exemplified in guarantees, seniority, discharge for cause, health care, and pensions (the last

two applicable to the worker's family as well).

Collective bargaining comprehends not only the negotiation of an agreement but an entire bargaining process including a grievance-arbitration system. Grievance-arbitration becomes a system of accountability under a contract in which the union makes management answerable for its actions. Grievance-arbitration evolved into an "industrial government" and "industrial jurisprudence," as Commons and Slichter taught us many years ago. Collective bargaining, otherwise mainly adversarial, takes on a cooperative cast in grievance-arbitration, because dealing with shop-floor disputes by due process turns out to be in the common interest, however much the parties might haggle over the outcomes.

Collective bargaining negotiates not only the price of labor but labor utilization as well, including how work is to be classified, performed, measured, rationed and how the worker is to be disciplined, transferred, terminated, and retired. The theory being that you cannot protect labor's price unless you also negotiate its utilization.

Industrial unions do not commonly obstruct technological change but seek to share the gains or cut the losses, by way of delay, "red-circling," productivity bargaining, early retirement, separation and relocation allowances, extended transfer rights, retraining, and joint consultation. With their broader base, industrial unions can offset membership displacements in one place with job accretions in others. For craft unions, technological change can mean not only the end of the job but the end of the craft and the end of the union.

In normal times, most industrial unions prefer to leave the initiatives to management so as not to compromise their role as counsel for the aggrieved. The industrial unions reject truly *joint* decision-making, where the parties make decisions together as equals. Most of the time, management never sees it in its interest to urge joint decisions except under conditions of adversity, when all the union could do was share in the losses.

Industrial unionism advanced the process of transforming labor from an almost inanimate commodity into a human commodity with voice in the price of its labor and conditions of sale. Working men and women in this regime are paid not only according to the snippets of work they perform but also according to the cost of maintaining themselves and their families as human groups. In all of the discussion about alienation and the quality of work this function of unionism in humanizing compensation, so to speak, is hardly ever mentioned.

Grievances in the craft-nonfactory situation, as exemplified in the building or printing trades, are resolved almost unilaterally by the union, for most purposes. The craft agreement is simple: Negotiation consists of presenting the union craft rules on virtually a take-it-or-leave-it basis. Administration of the agreement hardly exists "because there is little to administer .... The absence of a grievance procedure is an indication that the determination of compliance or noncompliance with the negotiated scale is a union function and the enforcement mechanism is the one traditional to the trade agreement relationship: the withdrawal of labor." [4]

In many instances, the industrial union carried over pre-union pensions, welfare, seniority, and employee representation. However, under collective bargaining, the terms ceased to be an act of unilateral dispensation subject to rescinding at management's pleasure and became a *right* during the term of the agreement. Under collective bargaining, pensions and health

[4] Archibald Cox, quoted by David Feller, "General Theory of the Collective Bargaining Agreement," *California Law Review* 61 (May 1973), p. 733.

care, for the first time, began to approach something like adequacy.

Given its animus against craft particularism and its power base among the lower skilled, industrial unionism, of necessity, had to take on a redistributive cast. Organizing of the low-paid has had to be subsidized because it never brings in as much as it costs. Also responding to its broader constituency, industrial unions worked to compress the wage structure in favor of the lower end. This later provoked craft countermoves for internal equity which the industrial unionists had to meet, at the risk of compromising industrial union principles. The alternative would have been to let skilled worker units sever from the inclusive unit. The high minimum imparted a redistributive effect to pensions. To the same effect, health insurance benefits have constituted a higher proportion of the earnings of the lower paid than of the higher paid. The redistributive interest of the industrial unions has also extended to its public policy stands.

Power Distribution

Unions have two centers of government: the union hall and the shop floor. The shop floor is relatively more important in the industrial union; the union hall and particularly the local business agent are relatively more important in the craft union. The national union counts for more in the industrial union. The organization of the industrial union is more complex. The larger industrial unions include technical staff functions in accounting, legislation, politics, law, economic research, education and public relations that are rather more developed than in the craft union. The governing of the industrial union has turned out to be a school for power which lower paid workers could acquire in no other way.

The industrial unions allot more resources to systematic legislative, electoral, and political work. In fact, the industrial union movement has taken on the qualities of a "sub" labor party. But the full-dress labor party option was rejected because, as Walter Reuther once said, "a labor party could commit the American political system to the same narrow class structure upon which the political parties of Europe are built." [5] Compared to the craft union's, the industrial union's political and legislative policies reflect its broader base and more central position in the economy.

Industrial unionism has not suffered as much from the deviant strain of racketeering. This is because industrial unionism has nothing much to sell to racketeers and, even if it did, too many people would have to be in on the deal. CIO adherents may have also brought a loftier conception of unionism which inoculated them against the virulence of corruption.

Much of the racketeering in the crafts consists of selling to employers (or "selling out") improper exemptions from the contract or putting job seekers in favored positions in the hiring hall queues. There are no hiring halls in industrial unions. In industrial union situations, management mostly controls the finances of health and pension plans. Industrial unions do not typically confer the kind of broad authority on full-time union officials that craft unions confer on business agents. The typically unpaid shop-floor leadership counts for more in the industrial union than in the craft union. Finally, industrial union enterprises tend toward oligopolies. The competitive pressures experienced by small business, which frequently leads to racketeering, is therefore less urgent.

Industrial unions have not experienced the strain of jurisdictional disputes, i.e., a dispute as to which union's members shall do the work. The closest situation to a jurisdictional dispute involving industrial unions is "contracting out," which pits the "inside" industrial union employees of

[5] *Ammunition*, UAW-CIO, July 1953, p. 31.

the factory against the crafts employed by an "outside" contractor competing for certain kinds of major maintenance and remodeling work.

Industrial unions do compete with one another in representation disputes, i.e., which *union* shall speak for the workers. Both craft and industrial unions have experimented with mechanisms to adjudicate jurisdiction and representation disputes, with some success.

Industrial unionism has, however, experienced communist penetration as deviant behavior in the American context. Industrial unionism's populism, militancy, activist politics, and broad base made it at one time a susceptible target for penetration. Inevitably, the communist fractions pressed the "party line" in the CIO to the point of expulsion.

It has not been possible to limn all of the refinements of the industrial union paradigm. The industrial union's development of collective bargaining would not have been possible without a strategic decision by American business to go along for a time. In turn, the union shock effect impelled management to rationalize and professionalize industrial relations, so that even the larger nonunion sector is now permeated with union-like employee security protections.

No inference should be drawn that makes craft unions the villains of the piece. There was, after all, approximately a century of craft union history in the United States before the 1930s, much of it establishing foundations of unionism relevant to all unions. If the craft union leaders resisted the industrial union drive unduly, they behaved like all wielders of power in human institutions by giving ground grudgingly, even when their time had come. Even so, a few craft union leaders were able to transcend the CIO battle to lend aid and comfort to the industrial union dissidents.

Craft unionism, in a new form, could yet have the last word. Teachers, professors, nurses, police officers, firefighters, social workers, airline controllers, postal employees who populate the public-sector unions have tended to opt for exclusive-type structures which stress unique craft-like or professional identities. However, these are not classic craft unions because the regulation of labor supply operates through civil service and guild-like professional associations. For that matter, the old national craft unions are no longer all that craft-like. For all practical purposes, only the building trades unions remain as craft institutions in the classic tradition, and even they have had to give much ground in recent years.

The Future

Fifty years or so after its eruption, industrial unionism is facing the stresses of another turning point (as is craft unionism but of a different sort), but this time on the down side. The wellsprings of change this time are primarily economic and political. The major economic forces are: (1) a great recession (or really two recessions back to back) and profound structural transformations, including the decline of smokestack industry and the rise of electronic technology, with labor market changes to match; (2) the internationalization of markets and enterprises; (3) inflation as a chronic condition, and (4) an apparent shift in the public and political mood to the right of center.

Economics and politics have encouraged big management to spawn an antiunion strategy in the 1980s that involves not only bargaining tough but also mounting a powerful assault on the union as an institution. This is disappointing for those who had thought that management's experience had made the case for industrial unionism so convincing that, although there were necessary differences over distribution of the net product, there seemed to be no dispute over the legitimacy of the collective bargaining system as such.

The influential left-of-center intellectual has been alienated from the labor movement. In the 1930s and 1940s, the industrial union organizer was the great American hero. The success of industrial unionism has estranged intellectuals to the point where an intellectual Democratic presidential aspirant like Gary Hart could brand the unions as a "special interest" and almost win. It is just possible that the intellectual community has damaged the union image more than employers.

In this new situation, industrial unions' past strengths have become present and future weaknesses. Industrial unionism's ability to compel big industry to share power and profits has injected elements of rigidity into the labor system under conditions of intense global and nonunion competition. The lifetime compensation structure raises unit labor costs so high, it is said, as to price American production out of domestic and world markets. Some claim that labor costs are so high as to price new entry-level minority workers and teenagers out of mass production industry. The hard adversarial style, which was a source of strength when the industrial unions were fighting for life, now stands in the way of necessary cooperation to advance common interests.

Industrial unions everywhere are having to reevaluate the meaning of their militant past in the era of Reagan. It has been a past with revolutionary effects on the American workplace, even though the revolution was not marked by anything like what we think of as the rhetoric and massive upheavals of the classic revolutions.

[The End]

The Historical Significance of the CIO

By Irving Bernstein

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If one casts a long eye backwards over the two-century history of the American labor movement, three dates stand out: 1792, 1886, and 1935. The earliest organization of wage earners to protect their interests was formed by shoemakers in Philadelphia in 1792. The first national association of trade unions to prove durable, the American Federation of Labor, was created in 1886. Eight unions affiliated with the AFL and dedicated to industrial unionism established the Committee for Industrial Organization in 1935. One must note that the two greatest leaders the American labor movement has produced, Samuel Gompers and John L. Lewis, played decisive roles in the two more recent of these great events.

I shall assume that those who read this article are generally familiar with the brief and eventful history of the CIO.[1] Thus, I shall concentrate not upon the events but, rather, upon their significance. This raises the always complex problem of historical causation. I want to stress at the outset that the CIO was only one factor among several in causing the important developments that I shall note. What, then, were the important changes that the CIO helped to bring about within

[1] For the history in detail see Walter Galenson, *The CIO Challenge to the AFL* (Cambridge, Harvard University Press, 1960) and Irving Bernstein, *Turbulent Years* (Boston: Houghton Mifflin, 1970).

the labor movement, the labor force, industry, and the political system?

The first, of course, was to make industrial unionism a paramount trade-union objective. John L. Lewis did not invent the concept in 1935. It had been around for at least half a century. Several important unions, including the United Mine Workers, the Amalgamated Clothing Workers, and the International Ladies' Garment Workers, were already organized either wholly or primarily on an industrial basis. Industrial organization had long been a battle cry of the Left—among the Industrial Workers of the World, the Socialists, the Communists, and less ideological radicals. Many, though a minority, of the AFL leaders themselves either favored or were willing to accept industrial unionism. They included William Green, the President of the Federation, himself a former coal miner and official of the UMW.

The achievement of Lewis and the CIO was to move industrial unionism from the back to the front burner and to turn up the flame. They stressed the important changes that had taken place in American industry in the first third of the twentieth century: huge corporations with vast manufacturing and mining operations; advanced technology; impersonal and often callous management; the erosion of labor's skills; and the employment of large numbers of unskilled and semi-skilled workers, often immigrants, who did not fit the traditional craft structure of the dominant AFL unions.

The argument was irrefutable. This is proven both by the success of the CIO in organizing in the mass-production industries and also by the fact that many AFL unions, including several that fought the CIO when it was part of the Federation, promptly shifted to organizing on an industrial basis under the threat of rival unionism. By the late 1930s, the craft bar to industrial organization had been substantially erased. Traditional AFL unions, like the Teamsters, the Machinists, and the International Brotherhood of Electrical Workers, were as open to industrial unionism as the Steelworkers and the Auto Workers.

Second, the CIO spearheaded the unionization of the unorganized, and its example spurred the AFL into equal and, later, greater efforts. The Wagner Act, particularly after it was held constitutional in the *Jones & Laughlin*[2] and related cases in 1937, smoothed the way for union organizing and, equally important, for employer acceptance of collective bargaining. The consequence was a dramatic increase in membership. There were 3.6 million union members in 1934. By 1941, their number had leapt upward to 8.6 million. According to Walter Galenson, in 1941, the AFL had 4.6 million, the CIO 2.9 million, and independent unions 900 thousand members.[3] As these figures show, the AFL response to the CIO challenge was very effective and, by 1941, the Federation's dominance in size was firmly established.

The overall growth of the labor movement had important differential features. Unionism, for the first time now, significantly penetrated three key industrial sectors: manufacturing; transportation, communication, and public utilities, and mining. Equally important, the number of highly unionized urban nuclei both grew in strength and increased in number. Such historic centers as New York, Boston, Chicago, and San Francisco became heavily unionized towns and, now, were joined by Pittsburgh, Detroit, Cleveland, Milwaukee, and Akron.

Third, the CIO in particular, and the AFL later, brought the immigrants and their children, whose origins were in southern and eastern Europe and who had arrived in large numbers between 1890

[2] *James & Laughlin Steel Corp.*, 1 LC ¶ 17,017, 301 US 1 (1937), NLRB order enforced 1 LC ¶ 18,017, 83 F 2d 998 (CA-5, 1937).

[3] Irving Bernstein, "The Growth of American Unions," *American Economic Review* (June, 1954), pp. 303-304; Galenson, *The CIO Challenge*, p. 587.

and 1914, into the mainstream of the American labor movement. As noted, they provided much of the semi-skilled and unskilled labor in the mass-production industries. The old-line craft unions had no interest in organizing these workers, and the AFL, by lobbying stridently for immigration restriction, had alienated them. The failure of the great steel strike of 1919 was a lesson in the threat of nativist-immigrant cleavage to the American labor movement.

Samuel Lubell has written: "The formation of the CIO marked the fusing of the immigrant and native-stock workers. That is perhaps the telling accomplishment of the CIO. Its political importance can hardly be exaggerated. The mass production industries had been the ones in which racial and religious antagonisms were most divisive.

"By 1935, of course, the immigrants had made considerable progress toward Americanization. But the key to the change was the rise of a common class consciousness among all workers. The depression, in making all workers more aware of their economic interests, suppressed their racial and religious antagonisms." [4]

State Intervention

The CIO, fourth, rejected the theory of voluntarism and, with some misgivings from Lewis, embraced the intervention of the state to protect the interests of workers and unions. For generations, Gompers had taught his followers to distrust government (executives, legislators, and judges) and to rely upon their own unions. He was a great teacher. It was not until 1932, the bottom of the Great Depression, that the AFL finally endorsed unemployment insurance. The Federation still remained ambivalent about the welfare state, which the New Deal erected later in the decade.

While the AFL, of course, supported legislation that directly assisted unions (Section 7(a) of the National Industrial Recovery Act, the 1934 amendments to the Railway Labor Act, and the National Labor Relations Act), a number of its affiliates grumbled over the government's assuming the right to certify unions and, later, over NLRB decisions that went against them.

Although the Federation never came out squarely against the unemployment relief programs (the Civilian Conservation Corps, the Federal Emergency Relief Administration, the Civil Works Administration, and the Works Progress Administration), it did not really support them. Its favorite was the Public Works Administration, which contracted out to construction companies that bargained with the building trades. The AFL was barely involved in the New Deal's greatest monument, the Social Security Act, which, among others, established our old-age pension and unemployment insurance systems. In fact, Federation carping almost prevented the passage of the Fair Labor Standards Act in 1938.

The CIO, excepting only Lewis, fully accepted Roosevelt's welfare state. It had no tradition of voluntarism to shed. However, because most of the New Deal programs were in place before the CIO got into business, its influence became important only over the passage of FLSA. Here, the ambivalence of Lewis was much in evidence. It seems to have arisen from the vestige of his early adherence to voluntarism and to his hatred for Franklin Roosevelt. But Lewis would leave the CIO after the 1940 Presidential election, and thereafter there would be no dissenting voice within the CIO to oppose intervention by the state to help workers.

The fifth important change the CIO introduced was political commitment, at first to Roosevelt and the New Deal and,

[4] Samuel Lubell, *The Future of American Politics* (Garden City: Double Day, 1956), pp. 48-49; Gwendolyn R. Mink, "Old Labor and New Immigrants in American Political Development," to be published by Cornell University Press.

later, to the Democratic Party. The AFL, with rare exceptions, had avoided political entanglements. Gompers had fenced out the Socialists and other third-party adherents with a policy of political neutrality, of rewarding friends and punishing enemies as individuals. While AFL union leaders and their members certainly voted overwhelmingly for Roosevelt, the Federation did not endorse him.

The CIO broke sharply with this tradition during the 1936 Presidential campaign. Its unions, particularly the UMW, poured money into Democratic coffers. Lewis established Labor's Nonpartisan League to mobilize labor support for Roosevelt. In New York, the CIO created the American Labor Party to allow old Socialists to vote for FDR while keeping their distance from Tammany Hall. Over time, CIO political activism spread to the AFL.

Sixth, industrial unionism, both CIO-style and AFL-style, along with the representation policies of the Wagner Act, eroded the principle of exclusive jurisdiction. This had been the bedrock of craft unionism. So viewed, the main function of the American Federation of Labor was to grant a union a piece of paper certifying its job territory. Thenceforth, all work and all workers within that jurisdiction became the property of that union. The wishes of employees or of employers became irrelevant.

As industry changed, these grants became obsolete and a standing invitation to jurisdictional conflict between unions. There were Thirty Years Wars between contestants, for example between the Teamsters and the Brewery Workers and between "Big Bill" Hutcheson's Carpenters and much of the rest of the labor movement. Since the grants of jurisdiction were framed generally and frozen in time, it became impossible to resolve most of these battles rationally, assuming that the unions would accept a third-party decision. The Federation, therefore, either stalled indefinitely in making decisions or caved in to the bigger union.

The CIO and the NLRB undermined this system. The CIO granted new charters of jurisdiction to its own unions that conflicted directly with the old AFL charters. The result was a system of rival unionism, the UAW vs. the Machinists, the International Longshoremen's and Warehousemen's Union vs. the International Longshoremen's Association, the United Electrical, Radio and Machine Workers vs. the IBEW, etc.

Further, as the AFL affiliates became increasingly industrial, they themselves ignored the old grants of jurisdiction. Finally, the Wagner Act paid no heed to jurisdiction in determining representation questions. Under the NLRB's election procedure, the workers themselves in the appropriate unit voted for the union, if any, that they preferred. Before long, the old AFL system of exclusive jurisdiction, excepting craft strongholds like the building trades, was a shambles.

The seventh important change the CIO made was to invite Communists into the mainstream labor movement. Theretofore, the Communist Party had controlled an insignificant rival federation, the Trade Union Unity League. Lewis, who wanted tough and seasoned unionists for the struggles he foresaw, asked organizers from TUUL to work for the CIO. Since this was the era in which Stalin supported the Popular Front, they moved into the CIO and its constituent unions. When asked how he would later pry them out, Lewis quipped, "Who gets the bird, the hunter or the dog?"

Since he left the CIO in 1940, Lewis dropped the problem into the lap of his heirs, who struggled with it for a dozen years. Meantime, the Stalinists established important bases in the CIO itself, in major unions like the UAW, the UE, and the ILWU, and dominated a number of the small organizations. The struggle between trade unionists and the Commu-

nists severely weakened the CIO after World War II. The AFL had no such problem because it had virtually no Communist leaders in its ranks.

Finally, the great growth of unionism spearheaded by the CIO in the thirties profoundly affected the structure and style of American management. The power of the unions and the Wagner Act gradually broke down the formidable resistance of employers to collective bargaining. With time, an increasing number of employers accepted the new system and restructured their organizations to deal with it.

The level at which corporate decisions in labor issues was made moved upwards. Foremen lost the right to hire and fire. The old personnel directors, if they existed at all, became industrial relations directors. As a result of improved education and experience, they became more sophisticated in dealing with unions and with workers. Small employers gathered together in multiemployer bargaining associations to increase their power in bargaining and to improve their expertise. Grievance procedures and arbitration became widely accepted. As a result, wage structures became more rational, workplaces became safer and cleaner, and employees were treated in a less arbitrary manner.

I now want to pull these factors together in a few general conclusions. The first is that the CIO, along with other forces, introduced profound changes in the condition of the American worker, the workplace, the employer, the labor movement, and the political system. There is probably no other period in American history in which so many significant labor developments occurred simultaneously.

The second conclusion, stemming from the first, is that the CIO and its constituent unions were unable to cope with the swift rate of change. Membership grew faster than the availability of competent leaders. Those with the talents for organizing and leading strikes were often incompetent to conduct the day-to-day affairs of their unions. The Communist problem and the Lewis problem contributed to internal uncertainty. The early history of the UAW is an essay in union instability. It seemed almost as though the CIO was created to launch overdue changes and, once they were made, to self-destruct.

The CIO, thirdly, largely remade the AFL in its own image. Between 1935 and 1955, the two federations became very much alike. While they started out as bitter rivals, by the latter date there was little left for them to argue about. Thus, they merged, producing a perfectly logical outcome.

Finally, as with all great historical changes, time is the great eroder. The half century since the creation of the CIO has witnessed the gradual diminution of the importance of the changes introduced so dramatically in the thirties. The questions and, thus, the answers have altered. The labor movement in the era of Ronald Reagan is in a battered and parlous state. I derive only one small satisfaction from that fact, namely, that I am not called upon to deal with it here.

[The End]

Collective Bargaining and Fifty Years of the CIO

By Ben Fischer

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Fifty years ago, the emergence of the Congress of Industrial Organizations introduced a new chapter in American life: the modern, uniquely American labor-management relations system. Prior to the CIO, industrial unionism was sparse. Most unions were organized around crafts; each individual craft in each community had separate relations with employers. Workers with very different skill functions belonging to the same union or negotiating as a group were not the norm. In fact, the idea was condemned by most of the leadership of the American Federation of Labor.

With the advent of the CIO came the invasion of unionism into what had previously been virtually forbidden territory: the major mass production industries. This took place virtually overnight, and issues quickly arose over how legally-mandated labor-management relationships would be engineered in such basic industries as steel, autos, rubber, oil, meat packing, farm equipment, electrical appliances, and a host of others. Years of trial and error followed. The passage of the National Labor Relations Act in 1934 did not produce a fully-hatched labor relations environment. In fact, even when World War II arrived, the shape of the major relationships was still in flux.

While in 1937, U.S. Steel voluntarily recognized the Steelworkers Union, the Little Steel companies resisted by every available means. Riots and deaths connected with the Little Steel strike and other labor disputes were all too common. GM experienced a bitter strike; Ford resisted the UAW for years; Chrysler came close to skipping a year's production rather than meet UAW strike demands. There was violence in the rubber industry. During all this, the courts were involved in charting the legal implications of the new labor legislation.

World War II disrupted the normal evolution of the labor relations adjustment process. Since the military needs make strikes unacceptable, the War Labor Board assumed the right to dictate contract terms, severely proscribe wage increases, and much more. The War Labor Board set in motion the idea that grievances, not settled by the parties, would be resolved by a third party. Many of the persons used by the War Labor Board to arbitrate cases later became the pioneers of a new profession, private labor arbitration. As the agency that settled contract negotiation impasses, the War Labor Board established a number of basic labor relations patterns: union security in basic industries, shift premiums, paid vacations, and systems for establishing stable wage structures, to name just a few.

When World War II ended, the likely direction of bargaining was uncertain. In the fall of 1945, GM believed that its employees would not support a strike, a belief that was decisively disproved. The steel strike a few weeks later was used by the companies to extract approval of price increases by the federal authorities, thus setting a pattern of using labor relations as a tool for price and market strategies.

The following year, 1947, the steel agreement between Phil Murray and Ben Fairless inaugurated a new modern spirit of labor relations. Soon after, the 1948 GM-UAW agreement established what proved to be a 34-year wage pattern for basic industry incorporating a formula suggested by George Taylor, Wharton's

distinguished head and former WLB chairman. It called for an annual "improvement factor," reflecting the overall long-term growth in the economy, plus a periodic review and adjustment of wages to conform to changes in the cost-of-living.

In the succeeding era of more than three decades, wage movements in the economy followed a course that was neither neat nor orderly. Different and even divergent wage movement paths were followed, but the parameters over this period were often dictated by the GM formula or very strongly influenced by it. During these years, bargaining agendas broadened. Negotiated social insurance and pension programs became major labor-management items. The benefits expanded steadily and now exist in the bulk of collective bargaining agreements. Social insurance started as a major item in 1947. Company-financed pensions followed two years later. Supplementary Unemployment Compensation plans (SUB) were launched in 1955 and 1956.

Over a period of less than a decade, many millions of Americans gained the protection of private pensions, private health care plans, and some even won supplementary unemployment benefits. European labor and socialist leaders expressed disapproval, and even many Americans thought these were not appropriate areas for private programs but would be better and more appropriately handled by the public sector.

Today, the coverages are little short of fantastic. Medical insurance is almost universal; private pensions exist for the overwhelming majority of American employees. SUB is less common but has been important to groups such as metal workers and auto workers.

By the 70s, economic euphoria was such that companies and unions were reaching out for new programs: paid dental care, eye care, pre-paid legal services, even auto insurance provisions, and company-paid tuition for employee education. The money was there; fringe benefits were more attractive to workers than a wage increase of comparable size as means to avoid rising income tax burdens.

During this post-war period, other collective bargaining trends and issues developed. An enormous superstructure emerged for the arbitration of grievances. This unique, private, judicial system, unmatched anywhere, has created a multi-billion dollar industry. The National Academy of Arbitrators has become a large professional society with standards, self-governing features, and a growing belief that it is creating a system of law which it modestly labels shop-law.

We should not forget that during the formative days, debate over arbitration was rampant. Until the 60s, both unions and management more often than not opposed or at least questioned arbitration; both doubted that outsiders should meddle in these private relationships. Some labor people saw arbitrators (usually lawyers or professors) as divorced from the workers' environment and as members of the upper class. Employers saw them as impractical, not knowledgeable about business, and most importantly, as people who had never met a payroll.

These cautions did not deter two key relationships. The UAW and GM and US Steel and the USW set up permanent institutional arrangements to use arbitration to settle worker grievances. Now, only a generation later, only a few labor agreements fail to provide for arbitration as the final step in grievance procedure.

Effectiveness of the CIO

The CIO insistence on grievance arbitration has resulted in a profound change in the society's economic environment. While the right to make decisions about the workplace and the work force had been subjected to labor-management discussion, the ultimate authority to decide remained squarely with management. Then came arbitration and with it the

rights of a third party to make the final determinations in a broad range of fundamental management areas.

This one change has been the most pervasive contribution of the CIO era. It has given new and substantial meaning to the notion of industrial democracy. An outstanding example is the issue of discharges. While agreements usually did provide that discharges could be made only for just cause, unions had no means of seeking reversal of a discharge except to strike. This was an impractical, costly route and one that still left the final say to management. It is the system of arbitration that gives meaning to the contractual protections against unjust discharge and discipline.

Beyond this, arbitration has contributed significantly to the whole process of rulemaking. Despite the common clause banning arbitrators from adding to or revising the basis contract between the parties, realism has forced arbitrators to virtually write important portions of agreements. Disclaimers to the contrary notwithstanding, they have had no alternative but to imply contractual obligations, create obligations to follow past practice and piece together disparate contract provisions to justify theories dictated by fairness and good sense.

Outstanding examples of this theme can be found in the way arbitrators have implied restrictions against contracting out, against arbitrary wage rate changes, and interpreting relative ability in seniority clauses to mean a balance between the gap in relative ability and the degree of relative seniority. While collective bargaining may have been intended to create a system of shared power, it was not until arbitration was adopted by the parties that this intention began to take on practical meaning. Intentions often fail to produce results until institutional means of implementation are put in place.

The CIO influence during the post World War II era introduced other important new concepts in bargaining relationships. In major companies and industries, the parties developed patterns of conduct quite different from the traditional arms length, all-out adversarial traditions. A wide variety of systems have been developed for fact-finding by labor-management teams, problem-solving through formal and informal systems, extensive use of consultation between different levels of the institutions and between the parties, complex programs addressing permanent layoffs, a wide range of approaches to employee health issues, efficient ways of handling employee complaints, wider choices of careers provided for employees (an inevitable requirement for a viable civil rights program), and even joint efforts toward key legislative and public policy issues.

Because these developments have taken place over time and tend to deal with technical and experimental programs, there is inadequate awareness of their significance. If an activity is successful, it is quickly taken for granted. Comparing the world as it existed when the CIO was launched 50 years ago with the current one, reveals a story of remarkable progress and dramatic transformation in major aspects of life. In this, the CIO and the unions it spawned have played a vital role.

Many younger observers seem to address the early days of CIO as if they were peaceful. To hear comments on how some companies are now resisting unions, one would assume that unions had been welcomed previously and, once established, had had their way. Management merely reacted, and all was serene. The actual story of persistent conflict and struggle was dramatically different from this mistaken view.

We also like to think that life was easier or better, until the dark days of the 80s exploded all that was good, leaving devastation in its wake. In fact, for many of these 50 years, millions of union members had a tough time on every front,

without significant job security, with no reliable way to even assure the rights agreed to in contracts. Wages were low during most of those years and benefits now taken for granted were still utopian dreams reflected in union policy resolutions.

A review of a few major issues that occupied CIO unions might be useful. For instance, the present preoccupation with job security is traceable to the pre-1980 years of economic growth and opportunity. A whole generation, enjoying the protective coverings traceable to the collective achievements of industrial unions, is suddenly threatened by a degree of economic uncertainty unknown to it. The resulting attention being given to ways to increase job security is a natural consequence.

Another CIO landmark was the system for protecting living standards by adjusting wages to reflect price changes. It is well to recall that the idea behind the General Motors formula was a source of vigorous debate. Many unions feared relating wages to the cost-of-living Secretary of Labor Fannie Perkins, argued persistently with those who advocated such a tie-in. She was fearful that route would tend to freeze real wages.

The current issue concerning comparable worth recalls another subject of persistent debate. In the early CIO days, the issue was wage "inequality," later renamed wage "inequity." Unions sought individual wage rate adjustments by comparing a single wage rate with some handy criterion such as "I work harder," "I produce more," or "This new machine is more complicated." Management sometimes made wage reductions based on the idea that "The machine makes the job easier," especially when dealing with incentive rates.

Seeking individual wage adjustments was a major preoccupation of early CIO union activity. This served both to raise the overall wage level by piecemeal stabs and help recruit members, since there were no forms of union security until the later years of World War II. This experience helped to create job evaluation, an ingenuous American concept. Job evaluation and the job descriptions that went with them (job descriptions are now often classed as work rules) were imposed by management to counter the union push-pull strategy. Today, ironically, some union groups are using this alledegly scientific approach as a tactic in promoting pay equality for the sexes.

CIO unions held widely divergent views on approaches to job rate structure, ranging from the steelworkers' extreme of negotiating and even demanding job evaluation to outright opposition from many unions, which even today oppose formal job evaluation systems and pursue informal and flexible approaches to negotiating wage structures. The pre-CIO labor relations history was varied. The early history found groups of skilled workers cornering a trade in an area and dictating the terms under which their members would be willing to work. Later, railroads were obliged to bargain by law, and a complete set of rules and procedures was put in place, occasionally supplemented by government fiat. The result was the current very difficult state of labor relations in that area.

The CIO era was different. Management first sought to retain all rights except the right to refuse to bargain with the organization chosen by its employees. While the law required employers to deal with employee grievances, not until the post World War II period was it understood that deciding such grievances was not fully within the domain of management. The advent of arbitration was not dictated by law but was arrived at voluntarily by unions and management. The developments that invaded the rights of management came incrementally and in a less than systematic fashion. It is, therefore, difficult to realize how truly revolutionary the past 50 years have been.

We tend to be impressed with codetermination and with worker representatives sitting on boards of directors, but it could well be that the basic democratization of workplace management through bargaining, binding contracts, and final arbitration is far more significant to the worker than even nationalization, to say nothing of codetermination. The legal requirements giving unions in some countries power with regard to broad decisions, concerning resource allocation and basic business strategy, cannot be discounted, but the life and culture of workers and enterprises may well have been changed more fundamentally under our labor-management process, due in goodly measure to CIO innovations.

If one asks whether the American steelworker has more control over his daily life in the plant than the employee of nationalized British steel, my answer would be a resounding, "yes," even though the far-reaching policy matters in Britian are subject to control by a government subject in turn to the political influence of labor, while in the U.S. control is in the hands of owners and managers. The next chapter in labor relations is likely to be the product again of unions that had their birth in the CIO.

The management of enterprise is undergoing radical change. In the auto, steel, electrical equipment, rubber, oil, aluminum, and can manufacturing industries to name only a few, we find bold experiments with new ways of managing and organizing the work force. These efforts clearly are directed toward an unprecedented degree of democratization of the work place. Ironically, it is management that is providing much of the leadership, but it can be argued that the CIO and the unions it spawned set the stage for the current changes. The best way to summarize the impact of CIO is to ask the question: What would America look like today had the CIO somehow never happened and craft unionism had persisted?

The probable answer is: very different. Whether it would be better or worse could be anyone's guess or perhaps would depend on one's own bias. It is not far-fetched to suggest that the enormous progress and affluence achieved in the past generation in some ways results from the pressures, the tensions, and the impact of industrial unionism. We now face very important questions. Can we resume and continue the onward march of the American industrial economy? Will unions in the crucial mass production industries play a role that is meaningful and appropriate to the times?

While unions in manufacturing and mining will tend to be smaller as work forces contract, that does not mean they will be ineffective players in the labor-management scene. There have always been nonunion plants, even in heavily unionized companies. Every nonunion firm that has emerged in any of these industries does not assure that a long-term, nonunion trend has taken hold. New firms tend not to lend themselves to unionization; the future of labor relations in new plants and industries is far from settled.

What will certainly change is the nature of union influence. During the post-war growth and prosperity years, it was relatively natural and easy to pursue policies aimed at standardizing compensation and sharing a growing pie. However, the environment is now different. Businesses are no longer insulated from competition; unions now confront firms that operate in a tough world market. Competition has increased drastically, even in domestic industries.

It is indeed a new world that unions face. Just as 50 years of CIO saw drastic change in labor relations, advancing through several stages, so too the present era and the years ahead will be typified by a very new labor-management environment. While we cannot reliably predict the course of labor-management relations in the remaining years of this century, we

can be sure that great changes are a certainty. This is hardly a time for pining for the good old days. It is rather a new era of fascinating challenge for those who manage the economy as well as those who represent its unionized employees.

[The End]

Discussion: The CIO

By Edward L. Cushman

Wayne State University

All three articles on the 50th Anniversary of the CIO have been presented with competence. I find them disappointing, however, because scholars, other than our authors, could have presented the history of the CIO in similar fashion. These authors were, in the case of Jack Barbash and Ben Fisher, important participants in developing the policies and programs of the CIO, and in the case of Irv Bernstein, a distinguished student and observer of the CIO over these many years. Their special insights were not expressed; hence, my disappointment.

I would like to comment on other omissions which led to my reaction. One is the lack of recognition of the leaders of the CIO. Irv Bernstein mentioned Sam Gompers and John L. Lewis as the two greatest labor leaders. But what of Phil Murray, "Clear it with Sidney Hillman," and others too numerous to mention? Particularly, I call attention to Walter Reuther and to George Meany who put aside their differences to create the merged AFL-CIO. An organization of workers *is* influenced by its leaders and exercises its power through its leaders.

Another omission is the spirit which pervaded the CIO, a spirit of evangelism, a "we-feeling," a conviction that industrial unionism could accomplish much in the fight for social and economic justice.

The last omission is the importance of using legislative halls as well as the bargaining tables to achieve the objectives of industrial unions. The CIO became an important influence in federal and state legislation and in the election of legislators who shared their views.

[The End]

equal employment opportunity

Retired Teacher Awarded Retroactive Promotion

Retroactive promotion to the rank of assistant professor was a proper remedy for discrimination against a female teacher on the basis of sex, the Eleventh Circuit ruled (*Jepsen v. Florida Board of Regents,* 36 EPD ¶ 35,092). The trial court had wide discretion in fashioning a remedy, and the award of back pay and retirement benefits based on the retroactive promotion was not abusive. Because there was insufficient evidence to show that the claimant would have been promoted to full professor, absent the sex discrimination, she was properly promoted to assistant professor. The claimant established that similarly qualified males had been promoted to assistant professor, but that neither she nor any other female teacher was so promoted during the 1950s and 1960s.

U.S. Can Challenge Its Own Consent Agreement

The United States was entitled to align itself with white claimants challenging as reverse bias the operations of a consent decree that the U.S. had earlier supported, a federal trial court in Alabama ruled (*Birmingham Reverse Discrimination Employment Litigation,* 36 EPD ¶ 35,022). The realignment was allowed on the condition that the government support the reverse bias claimants only to the extent that it believed in good faith that the alleged discriminatory actions were not required or permitted by the decree. The U.S. was still required to act in accordance with its obligations under the decree, to which it had been a party.

The issue of testing was severed from the reverse bias case for subsequent trial in the event that resolution of other issues would make further proceedings unnecessary. It was determined that the claimants would not likely succeed on their testing claims, so action on them was postponed to avoid unnecessary discovery expenses.

Promotion of Black Firefighters Is Invalid

The voluntary affirmative action plan of the District of Columbia Fire Department was invalid to the extent that it provided for promoting black firefighters over white firefighters on the basis of race rather than merit, the U.S. District Court in Washington ruled (*Hammon v. Barry,* 36 EPD ¶ 35,087). Promotion of five black firefighters under the plan was voided and reconsideration of the entire plan was required.

The promotion policy of the plan unnecessarily encroached upon the rights of white firefighters who had earned a legitimate expectation of advancement, only to have more recently hired black firefighters promoted ahead of them. Hiring provisions of the plan withstood challenges, however. The court noted that the hiring aspect was remedial and temporary in nature and did not unduly infringe upon the rights of white applicants.

The court also rejected the argument that the use of any race-conscious affirmative action was precluded by the Supreme Court's decision in *Firefighters Local 1784 v. Stotts* (34 EPD ¶ 34,415). That case was distinguishable because it involved a court-ordered plan affecting seniority rights rather than a voluntary plan.

Salary Equalization Was Lawful

The Seventh Circuit ruled that a university was justified in adopting a salary equalization plan that gave pay raises to female but not to male faculty members (*Ende v. Regency University,* 36 EPD ¶ 35,081). Several male faculty members had challenged the pay raises, arguing that they were being deprived of raises on the basis of their sex. In some cases, it was argued, men were being paid less than similarly situated women.

Although the pay scheme resulted in different treatment of men and women, this was not a violation of the Equal Pay Act. Among the defenses allowed for equal pay claims is one permitting pay differentials based on factors other than sex. In this case, the raises were not based on sex but on the fact that those receiving the remedial raises had been underpaid in the past. It is legal to raise the salaries of past bias victims to the amounts they would have received had there been no past discrimination, the court ruled.

Promotion of Black Officers Is Upheld

A challenge by white police officers to an affirmative action plan designed to increase the number of black sergeants and lieutenants was reasonable in light of past discriminatory practices, a federal trial court in Michigan ruled (*Detroit Police Officers Association v. Young,* 36 EPD ¶ 35,094). On remand to determine whether the municipal police department had discriminated against blacks in the past, the court ruled that it had. It was not necessary to relitigate that issue.

The court found that the goal of establishing a ratio of 50 percent black sergeants and lieutenants was reasonable and did not violate the constitutional rights of white officers. The practice of promoting one black officer for each white officer would terminate when equal representation at those ranks had been achieved.

job safety and health

Ruling on Refusal To Shave Is Reversed

Riceland Foods was ordered by OSHA to provide adequate respirators to its employees, following employee complaints of inadequate safety procedures during an ammonia leak. Riceland's resulting respirator training program required that workers be clean shaven on areas where the respirator sealed against the face. Four workers were fired when they refused to shave their beards or accept transfer to areas not requiring the use of respirators.

The Carpenters Union filed a grievance against the dismissals and obtained a favorable arbitration award. The arbitrator held that the fired workers should be reinstated with back pay because Riceland had not established the reasonableness of the rule on facial hair. A federal trial court upheld the arbitrator, but the Eighth Circuit reversed the trial court (Docket 83-1714).

The Eighth Circuit ruled that the collective bargaining agreement limited the arbitrator's authority to determining whether or not the working rules had been violated and specifically prohibited an assessment of whether the discipline was appropriate. The reasonableness of the employer's rule could have only come before the arbitrator if the employees had first obeyed the rule and then filed the grievance procedures.

OSHA Decides Against Biotechnology Standard

OSHA had determined that employees in the field of biotechnology are currently provided with adequate occupational safety and health protection by the general duty clause and several specific standards. Biotechnological processes usually involve conventional chemicals and operations already covered by the agency, OSHA found. OSHA has issued for public comment guidelines designed to clarify the relationship of existing standards to the field of biotechnology and to reiterate commonly employed laboratory safety practices.

Standards that may be applicable include those covering airborne contaminants, access to employee exposure and medical records, hazard communication, respiratory protection, and exposure to toxic chemicals in laboratories (currently in draft and under development). Safety standards of a general nature such as those governing general environment, walking and working surfaces, fire protection, compressed gases, electrical safety, and material handling and storage may also be applicable. Effective programs would include employee training, emergency procedures, and immunization of employees working with known pathogens.

OSHA Decides Against Standard for Waste Sites

OSHA has determined that a specific safety and health standard for hazardous waste sites is not needed, Field Operations Director John Miles told the House Subcommittee on Health and Safety. OSHA concluded that existing construction and general industry standards provide an adequate basis for enforcement, with the modification of respirator standards to provide for use in an outdoor environment. Miles said that OSHA is considering revising its 1983 Field Directive to provide for enforcement of personal protective equipment standards at the sites, even without proof of toxic substance exposure levels above permissible limits.

Because the current targeting system does not give priority to hazardous waste sites, a local emphasis program targeting sites in Idaho is being used as a test to determine the seriousness of the problem and the resources needed for inspection. OSHA is also developing a computerized data base for training, equipment, inspections, technical visits, and recommended solutions for problems posed by waste sites. The interagency response team will also receive increased OSHA support. A work group composed of representatives from EPA, OSHA, NIOSH, and the Coast Guard is preparing a manual for Superfund activities that will provide information on worker protection.

Seamen Not Covered by OSHA

OSHA shipyard standards do not apply to the employment of seamen, the Ninth Circuit ruled (*Kopczynski v. The Jacqueline*, 1985 OSHD ¶ 27,245). The court denied a seaman's claim that his Jones Act recovery for injuries should not have been reduced for contributory negligence. Under the Jones Act, contributory negligence cannot be considered if the employer's violation of a safety standard contributed to the injury. However, there could be no violation of standards because the Longshoremen's and Harbor Workers' Compensation Act and the shipyard standards expressly exclude ships' crew members, who are under the control of the Coast Guard.

The seaman petitioned the Supreme Court (No. 84-1618) for consideration of the issue of whether OSHA jurisdiction extends to working conditions aboard uninspected vessels not actually regulated by the Coast Guard. If Section 4(b)(1) of the OSH Act requires an actual exercise of authority, the petitioner contended, then the absence of Coast Guard regulation of boarding or departure procedures pertaining to uninspected vessels would necessitate the applicability of OSHA standards to prevent a twilight zone of nonregulated activities.

Discovery Ordered on Inspection Plan

A federal trial court in Florida granted to an employer discovery of documents and information on the design and operation of OSHA's entire administrative inspection plan (*Trinity Industries*, 1985 OSHD ¶ 27,255). However, discovery was made subject to the condition that any list of businesses already scheduled for inspection but not yet inspected need not be

produced. In response to the Secretary's action to enforce an inspection warrant, the employer had filed a counterclaim for a declaratory judgment that the entire inspection program was unreasonable and unconstitutional and sought discovery of the documents. The Secretary argued unsuccessfully that discovery should be limited to information contained in the warrant application.

Discrimination Claim Must Be Filed with Secretary

A court cannot hear a discriminatory discharge claim under the Occupational Safety and Health Act if the claim was not filed with the Secretary of Labor, the Second Circuit ruled (*McCarthy v. The Bark Peking*, 1985 OSHD ¶ 27,250). The court reaffirmed dismissal of the employee's claim.

The Supreme Court granted the employee's petition for certiorari on the question of whether painting the mast of a seventy-year old sailing ship used as a museum was maritime employment within the meaning of the Longshoremen's and Harbor Workers' Act. The case was remanded to the Second Circuit, which concluded that such work was covered by the Act and that the employee was entitled to a hearing on the merits of his compensation claim for damages due to the negligence of the vessel.

Employees Cannot Object to Settlement

The Occupational Safety and Health Act does not give employees or their representatives the right to object to a settlement agreement between the Secretary of Labor and the employer, except those challenges related to the reasonableness of the abatement period, the Seventh Circuit ruled (*Allied Industrial Workers*, 1985 OSHD ¶ 27,259). The court held that the administrative law judge had erred in granting the employee representatives a hearing on their objections to a settlement agreement. The decision to settle is an exercise of the Secretary's prosecutorial discretion which preempts Occupational Safety and Health Review Commission jurisdiction to review employee objections to the method of abatement or the penalty imposed. That the Secretary had acceded in the past to Commission review of settlement agreements did not mean that he was bound to accept this assertion of jurisdiction, the court determined.

labor-management relations

LMRA Preempts Bad Faith Tort Claim

A union member's bad faith tort claim against an employer and its insurer for delay in making disability payments due under a labor contract was preempted by the Labor-Management Relations Act, the U.S. Supreme Court held (*Allis-Chalmers Corp. v. Lueck,* 102 LC ¶ 11,395). In a narrow holding, the Court cautioned that the full scope of the preemptive effect of federal law remains to be fleshed out on a case-by-case basis.

The decision reversed a ruling by the Wisconsin Supreme Court, which held that any violation of the labor contract was irrelevant to the issue of whether the employer and insurance company had exhibited bad faith in handling the disability claim. The state court allowed the employee to proceed with the tort claim, even though he had not used the grievance procedure of the collective bargaining agreement.

The Supreme Court noted that the state court assumed that the only right in the contract was the right to receive disability payments. However, it was a matter of federal contract interpretation whether there was an obligation under the contract to provide payments in a timely manner and whether the employer breached such an implied duty. The Court stressed the uniform interpretation of contract terms and the central role arbitration plays in industrial disputes.

The Court declined, however, to hold that every state law action asserting a right in some way related to a labor contract would be preempted by the LMRA. The employee's claim was rooted in contract law and could have been brought as a contract claim under Section 301 of the LMRA, since the duties of the parties were bound by questions of contract interpretation that must be left to federal law.

Committee Favors Equal Access Bill

The House Committee on the Judiciary has issued Report 99-120 recommending the passage of H.R. 2378. The purpose of the bill is to extend certain provisions of the Equal Access to Justice Act, which expired on September 30, 1984. It would also make clarifying substantive and technical amendments and make the amended Act permanent.

The Act was passed in 1980 and provided for a three-year experiment allowing a prevailing party in certain administrative proceedings and civil actions to recover attorney fees and other expenses from the relevant agency. Individuals and small organizations would not, therefore, be financially deterred from defending against or seeking review of unjustified government action. H.R. 2378 would make the following changes.

"Position of the agency" would be broadened to include "the action or failure to act by the agency upon which the action is based." This provision would eliminate the ambiguity of whether "position" refers to the government's posture during the proceeding or to the action that precipitated litigation. The new definition would encompass both.

Determination of whether the government's position was substantially justified would be limited to the record made in the underlying action.

Eligibility would be broadened to include persons with a net worth of no more than $2 million, businesses with a net worth of no more than $7 million, and certain agricultural cooperatives and nonprofit groups.

The agency, rather than the adjudicative officer, would be allowed to decide the fee issue at the agency level, subject to appeal. Other changes would also be made with respect to, for example, the issue of interest payments.

Final judgment would be defined as "a judgment that is final and not appealable, [and would include] an offer of settlement." This definition is important because fee petitions must be filed within 30 days of final judgment, and some courts have held this to mean when the decision was docketed.

The award of fees in Social Security cases would be clarified.

The legislation would apply to cases pending on the date of its enactment and would additionally cover cases filed on or after October 1, 1984, and disposed of before the enactment date.

State Health Care Law Upheld

A Massachusetts law requiring that minimum mental health care benefits be provided to residents insured under general health insurance policies or employee plans was not preempted by federal law, the U.S. Supreme Court held in an 8-0 decision. Two insurance companies argued that the law was preempted by either the NLRA or ERISA, but the court disagreed (*Metropolitan Life Insurance Co. v. Massachusetts,* 102 LC ¶ 55,497).

Some 26 states have mandated benefit laws. The Massachusetts statute required that a health insurance policy provide: 60 days of coverage for confinement in a mental hospital; certain outpatient benefits; and coverage for mental illness in a general hospital no different than that for any other illness.

One of the insurance companies contended that state law interfered with collective bargaining by imposing minimum benefit terms on the parties, forcing them to buy the mandated benefit, provide no health coverage at all, or become self-insured. The court noted that the NLRA is mainly concerned with establishing a fair process for determining the terms and conditions of employment, not with the particular terms of the negotiated bargain. "No incompatibility exists, therefore, between federal rules designed to restore the equality of bargaining power and state or federal legislation that imposes minimal substantive requirements on contract terms negotiated between parties to labor agreements," the Court stated.

Minimum state labor standards affect union and nonunion workers equally, the Court continued, and neither encourage nor discourage the collective bargaining process. The Court observed that several other state laws imposing conditions on employment have withstood scrutiny, such as laws requiring employers to contribute to unemployment and workers' compensation funds, mandatory state holidays, time spent at the polls, and jury duty.

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