INDUSTRIAL RELATIONS RESEARCH ASSOCIATION

Proceedings of the 1991 Spring Meeting

April 25 - 27, 1991

Chicago, Illinois

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1991 Spring Meeting

April 25-27, 1991
Chicago, Illinois
Edited by John F. Burton, Jr.

Industrial Relations Research Association
7226 Social Science Building, University of Wisconsin
1180 Observatory Drive
Madison, Wisconsin 53706 U.S.A.

Reprinted from the August, 1991, Issue of

LABOR LAW JOURNAL

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Commerce Clearing House, Inc., Chicago, Illinois 60646

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Proceedings of the 1991 Spring Meeting

Industrial Relations Research Association

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Library of Congress Catalog Card Number: 50:13564

ISBN 0-913447-50-1

INDUSTRIAL RELATIONS RESEARCH ASSOCIATION SERIES

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PROCEEDINGS OF THE SPRING MEETING (Fall Publication)

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Industrial Relations Research Association Spring Meeting

April 25-27, 1991 Chicago, Illinois

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PREFACE

1991 SPRING MEETING

INDUSTRIAL RELATIONS RESEARCH ASSOCIATION

The Spring Meeting of the Industrial Relations Research Association was held in Chicago on April 25-27, 1991. The Chicago Chapter of the IRRA graciously agreed to host the meeting after a decision of the IRRA membership and Executive Board required a change from the original site of Scottsdale, Arizona. Strong leadership for the Spring Meeting was provided by Mary Wright, Chapter President, and F. Donal O'Brien, Executive Board member and Chapter Advisory Committee Chair. Program plans were developed by Helen Elkiss and Helen Higgins Kelly. On behalf of the IRRA Executive Board, I extend our appreciation to the Chicago Chapter.

The Association's 1990 research volume, NEW DEVELOPMENTS IN WORKER TRAINING, provided the topic for one session. Another program focused on the implications and solutions of developing workplace skills. Ray Marshall, 1977 IRRA President, and Secretary of Labor in the Carter Administration, developed this topic further. In his luncheon address he summarized the findings of the Commission on Skills of the American Workforce.

Reflecting the Association's commitment to Spring Meeting programs that are valuable to practitioners, the program included sessions on interest arbitration, current trends in arbitration, public sector boards' impact on arbitration, and grievance mediation. Practitioners and academics alike were challenged in an address by Bernard Delury, Director of the Federal Mediation and Conciliation Service, with his question: "Collective Bargaining—Will the Process Survive the 1990s?"

An area of significant concern in the Southwest is immigration reform and its impact on the U.S. labor market. A well-developed session on this topic, which had been planned for the Arizona meeting, was included in the Chicago program.

I am sure that many of these topics will be addressed further in the meetings of the IRRA in New Orleans, Louisiana, January 3-5, 1992, and in the 1992 Spring Meeting in Denver.

The IRRA is grateful to the LABOR LAW JOURNAL for again publishing the Proceedings of the IRRA Spring Meeting. I also wish to thank Jeanette Zimmerman, Marion Leifer and Marge Lamb for preparing these Proceedings for the publisher.

John F. Burton, Jr.
Editor-in-Chief

America's Choice: High Skills or Low Wages

By Ray Marshall

Mr. Marshall is with the University of Texas at Austin.

The main theme of my presentation is that the choice for the United States, or any other high-wage industrialized country, is either to maintain a highly skilled work force or to compete by reducing wages. This is the case because companies can compete either by reducing wages or by improving productivity. Under modern technical and economic conditions, high-wage companies (or countries) that want to compete on terms that make it possible to maintain and improve incomes must improve the skills of all their workers, not just those in managerial, professional, and technical jobs.

In a 1990 report, the Commission on the Skills of the American Workforce (CSAW), which I co-chair, found that relative to six other countries studied (Japan, Singapore, Germany, Sweden, Denmark, and Ireland), very few American companies have moved to the high-wage option.[1] This report was based on over 2,800 in-depth interviews in 550 companies in a broad cross section of industries. Information from these interviews was supplemented with written material and interviews with numerous experts and public officials.

This paper will first review the changes in the American economy that have reduced our economic competitiveness, present the principal findings about foreign experiences, and outline the CSAW's recommendations for improving the performance of American companies and workers. To provide context for this, however, it is instructive to review the strengths and weaknesses of the American economy as we enter the last decade of what economic historians will probably regard as the "American century." [2]

Strengths

The main strengths of the American economy are:

1. A relatively high average level of income and productivity. Despite gains by other countries, in terms of purchasing parity, the United States still has the highest per capita income of any major industrial country. The relative position of other countries when compared to the United States (U.S.=100) for 1973 and 1988, included Canada at 83 and 94; West Germany at 69 and 72; Japan at 59 and 73; Sweden at 74 and 76; and the United Kingdom at 67 and 69. [3]

2. A higher job growth than in most other industrial countries, although employment growth was much slower between 1979 and 1988 than in previous business cycles (1.68 percent versus 2.5 percent for 1973-79 and 2.24 percent for 1967-73).

3. Moderate inflation during the 1980s, despite a very feeble increase in productivity growth; this was due in part because of high unemployment, lower energy prices, and declining real wages.

4. The world's strongest basic science and higher education systems.

5. World class business organizations and considerable wealth based on our past successes.

In short, despite our problems, we are still the world's strongest economy and therefore have the potential to maintain our preeminence. In my view, however,

[1] Commission on the Skills of the American Workforce, *America's Choice: High Skills or Low Wages!* (Rochester, NY: National Center on Education and the Economy, 1990).

[2] I should stress, however, that these remarks are my own and do not necessarily represent the thinking of the other members of CSAW.

[3] L. Mishel and D. Frankel, *The State of Working America* (Armonk, NY: M.E. Sharpe, 1991).

without some fundamental changes in federal economic and human resource development policies, American wages and incomes are likely to continue to polarize.

Weaknesses

1. Serious systemic problems. While some observers attribute our huge trade deficits, stagnant growth in productivity and incomes, and declining market shares to macroeconomic factors or natural catch up by other countries, the MIT Commission on Industrial Productivity's (CIP) detailed international assessment concludes, I think correctly, that "U.S. industry . . . shows systematic weaknesses that are hampering the ability of many firms to adapt to a changing international business environment."[4] In particular, the Commission observed six such weaknesses, including outdated strategies, neglect of human resources, failures of cooperation [between labor and management and between companies and their suppliers], technological weaknesses in development and production, government and industry working at cross purposes, and short-time horizons. The CIP found that the United States had positive trade balances in only two of eight key manufacturing industries it studied, chemicals and commercial aircraft. Those with growing negative balances include automobiles, consumer electronics, machine tools, semiconductors, computers and copiers, steel, and textiles.

2. Slower wage growth than any other major industrial country. U.S. incomes, already the most unequal of any major industrial country, became even more unequal during the 1980s. Hourly compensation in manufacturing for all employees increased only 0.32 percent in the United States between 1978 and 1988, while the production worker compensation fell by -0.41. These rates were the lowest for any major industrial country. In other countries, the rates for all employees, as opposed to production workers, were as follows: Canada, 0.8% to 0.58%; France 2.1% to 2.15%; West Germany, 2.37% to 1.89%; and Japan, 2.08% to 0.92%.

The index of per capita gross domestic product (GDP) growth in the United States for 1979-88 was 86 compared with a weighted average of 100 for nine other major industrial countries.[5] In a comprehensive study for the Economic Policy Institute, Mishel and Frankel found that real compensation for American workers fell by 9.7 percent between 1980 and 1989, while wages and incomes became more unequal—only the top 25 percent of wage earners experienced wage increases during this period. Real wage losses were particularly large for blue collar, male, young workers, and for those without college educations. Family incomes were maintained during the 1980s mainly because more women worked longer hours and in different kinds of jobs.

Family incomes, nevertheless, became much more unequal. The top 20 percent of families' average incomes increased by 33.2 percent between 1977 and 1990, while the lowest 60 percent lost income, with the bottom 20 percent losing 9.5 percent. According to a variety of measures of income distribution (Atkinson, Gini, and Theil), the United States had more of an unequal distribution of income from 1979 to 83, than any of the ten industrial countries studied. Norway and Sweden had the most equal, followed by West Germany. (Japan was not part of this study, but the country also has relatively equal income distribution.)

The main reasons accounting for the widening income distributions in the United States include more regressive fed-

[4] Suzanne Berger et al., "Toward a New Industrial America," *Scientific American*, June 1989, pp. 39-47. See also M.L. Dertouzes, et al., and the MIT Commission on Industrial Productivity, *Made in America* (Cambridge, MA: MIT Press, 1989).

[5] Mishel and Frankel cited at note 3 above.

eral, state, and local fiscal policies; declining real wages; and a relatively large shift in income shares from labor to capital, mainly because of higher interest incomes and lower wages. Between 1979 and 1989, capital's share of national income increased from 14.9 percent to 19.3 percent, while labor's share fell from 74.6 percent to 71.9 percent, and proprietors' share fell from 10.4 percent to 9.6 percent. Labor's share is at its lowest level for the postwar period.

It also is disturbing that the proportion of the work force earning poverty wages increased from 25.7 percent in 1979 to 31.5 percent in 1987. From 1979 to 1982, 22.4 percent of children and 17.1 percent of U.S. adults had poverty-level income, the highest of any major country for both categories.[6] When these relative rates are converted to absolute poverty to adjust for purchasing power, the United States still had a larger proportion of children in poverty than any country studied, except Australia.

Over 60 percent of the drop in hourly compensation for American workers has been due to a shift of employment to lower-paying occupations. Between 1981 and 1987, industries with expanding employment had average annual compensation of $21,983, as compared to $32,387 for those with shrinking employment. A difference of $10,404, the largest in the postwar period. Other reasons for lower compensation include weaker unions, international competition, and the shrinking real value of the minimum wage. Using market exchange rates instead of purchasing power parity, U.S. compensation for all employees in 1988 ($16.89) was below that of Sweden ($19.46), the Netherlands ($19.45), West Germany ($18.93), and France ($18.13), but above Japan ($15.05) and the United Kingdom ($11.84).

3. Lower annual productivity growth between 1960 and 1989. Lower, even though the United States still has the highest average level of productivity for any major country. The U.S. growth rate was 1.21 percent, compared to 5.17 percent for Japan, 3.78 percent for Italy, 3.12 percent for France, 2.87 percent for West Germany, 2.16 percent for Sweden, 2.14 percent for the United Kingdom, and 1.82 percent for Canada.

4. Serious competitiveness problems. Problems that resulted from the failure of the United States to develop a system to educate and train non-college bound workers and a failure of most of our companies to develop strategies that will improve productivity, quality, and incomes. This weakness will be discussed below.

The Causes of Our Economic Problems

The basic cause of our economic problems, relative to our own past and the recent experiences of our strongest competitors, is that we are having difficulty changing from the kind of economy that made America preeminent to an economy that requires very different policies, skills, institutions, and work organizations. The United States is growing out of a largely self-contained economy where success was determined mainly by an abundance of natural resources, mass production, and economies of scale. This type of economy made it possible to achieve relatively rapid growth in productivity and personal incomes. Mass production created self-reinforcing cycles, whereby improvements in one industry (e.g., steel) improved other industries (e.g., autos), and, as a result, greatly improved our standard of living.

A major problem for the mass production system was periodic depressions because the productive capacity was greater than the ability of consumers to buy. Unfettered markets and the mass

[6] Australia and Canada had overall rates of 12.2 and 12.6 percent, respectively, while West Germany, Sweden, and Norway had relatively low rates (5.6 percent, 5.2 percent, and 5.2 percent, respectively).

production system also tended to produce growing inequalities in wealth and income. In the 1930s, however, federal policies (especially the strengthening of collective bargaining, minimum and prevailing wages, and income support systems) intervened to help moderate both of these problems, ushering in what is probably the longest period of equitably shared prosperity in history.

This mass production system was run by better educated managerial, professional, and technical workers, who gave orders and made plans. Most front-line production work was organized to require little more than basic skills, and the schools were organized like factories to mass produce workers with those skills. This system, with its supportive public policies, made it possible for people with limited education to earn middle-class incomes. This, however, is no longer possible.

The main forces eroding the mass production system have been technological change and more intensive international competition. Advancing technology has rendered the traditional mass production system obsolete. It has done so by introducing more flexible manufacturing processes and shorter production runs, thus eliminating traditional economies of scale. Internationalization has robbed the American market—in fact the entire American economic system—of its uniqueness. Traditional economies of scale depended heavily on the ability to control the large internal American market. American companies no longer control that market, not even among the goods and activities in which they have technical advantages. Mass production companies relied on productive systems that used relatively unskilled workers and standardized technology. In a more competitive internationalized world, companies cannot pay American workers fourteen dollars an hour to do work that relatively well educated Korean or Taiwanese workers will do for two or three dollars an hour. In an internationalized world, standardized technology can go anywhere, and it has. Americans will have great difficulty competing under these circumstances.

Technology also has changed the nature of work itself. Machines increasingly have the capability of doing more of the direct work on goods and services, and more of the human work is becoming indirect. This is an important point because indirect work requires different skills from the routine, direct work that was performed under the mass production system. Information technology makes more data available to everyone, and the question of what one does with the data becomes a key determinant of economic success. If workers know how to impose order on chaotic information, they can use data to improve quality, solve problems, communicate with more precision, and thereby greatly increase the value of goods and services. In fact, technological innovation has always involved substituting knowledge and skills for physical resources. This is most apparent in American agriculture, where physical resources (e.g., land, labor, and capital) have not increased since the 1920s and yet output has tripled and quadrupled depending on the crop.[7] Why? Not through increases in labor, land, or capital, but through improved knowledge and technology. And that is what is happening throughout our economy.

Indirect work is also more likely to involve teamwork, and so a premium is attached to communications and interpersonal skills. Technology likewise requires problem solving and innovation. Learning thus becomes a major job skill. The old learning done on the job was routine. Workers learned by doing and by observation. Americans harbor a strong bias

[7] Theodore Schultz, *Investing in People: The Economics of Population Quality* (Berkeley: The University of California Press, 1981).

toward that kind of learning. The new internationalized information world requires more abstract education. More and more of our work requires the manipulation of symbols or abstractions. Innovation and creativity, which by definition involve that which can be seen only in the mind's eye, are both abstract. Workers who want to earn high wages will increasingly have to learn to deal with abstract concepts.

The efficient use of modern technology requires that decisions be decentralized as much as possible (to the point of production), whether in the workplace or the classroom. Information technology is not used very effectively in a centralized system. When used most efficiently, information technology is a democratizing and decentralizing process, and will therefore change the nature of work. It places a premium on flexibility and reduces the need for bureaucracies. One of the main functions bureaucracies perform is to control information flow, and machines can do this better than people. Bureaucracies also supervise and give orders. With advanced technology, it is more efficient to include more workers in productive decisions, so that fewer bosses and inspectors are needed.

Essentially, then, we must choose between two strategies for competition. We can compete the way we have been doing, by reducing our real wages, or we can compete by becoming more productive and paying more attention to quality. To do the latter, we need more effective and participatory management systems. If we want to have high incomes, we cannot simply use standardized technology. Low-skilled workers and standardized technology will inevitably lead to noncompetitiveness and low wages. We can try to combine low skills with high technology if we assume, as some managers and scholars have, that high technology does not necessarily require high skills. This option might produce somewhat higher wages, but the evidence suggests that the high tech/low skill combination is not much better than the first option. It certainly implies lower wages than those that would result from combining high-skilled workers with high technology. Workers can develop and use leading edge technology much more effectively if they are well trained and educated and if they have the ability to use higher-order thinking skills to constantly improve technology on the job.

All this, of course, requires a high quality work force. How are we doing with our work force? Nobody knows. We know we have serious problems, but we have no good measures of work force quality. We cannot base our measurements on years of schooling because schooling is not synonymous with education. We cannot base them on our expenditures because relative to expenditures and years spent in school, we stand very high in the world. We do, however, continue to rank low for expenditures on elementary and secondary education (in terms of our GNP),[8] and our most serious problems lie in this area. We also rank very low on most measures of educational achievement, especially in math and science.

A good orienting hypothesis is that we are world class at the top, among professional, technical, and managerial workers, but have serious problems throughout the rest of our work force. Why do we do so well at the top? Because our colleges and universities are still world class. We spend a larger proportion of our gross domestic product on higher education than does any other country. We likewise maintain a world-class scientific system and we have always imported large numbers of well-educated immigrants. Finally, a few of our corporations have developed world-class learning systems because they have discovered that training is one of their highest yielding investments.

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[8] M.E. Rasell and L. Mishel, *Shortchanging Education* (WDC: Economic Policy Institute, 1989).

Why does so much trouble persist among the remainder of our work force? First, because the percentage of American children living in poverty is much greater than that of Japan or most major West European countries.[9] And, with some remarkable exceptions, poor families are not good learning systems. Second, our mass production schools were designed to meet the needs of an earlier agricultural and industrial economy and are not world class in terms of today's needs. Third, we probably maintain the worst school-to-work transition system of any major industrialized country. Finally, our system includes a considerable number of low-wage jobs at which very little learning takes place. American policy makers have been more concerned about the quantity of jobs than the quality.

The Commission on the Skills of the American Workforce

As noted, CSAW found that 95 percent of major American companies cling to the mass production organization of work. The Commission also found that a much larger proportion of companies in the other countries studied are shifting to more competitive systems. The most successful companies in the United States and other countries share the following characteristics:

1. They are quality driven and therefore establish closer and more cooperative relations with customers and suppliers. Quality, best defined as meeting customers' needs, becomes much more important in market-driven systems. Mass production systems, by contrast, are producer driven and have more adversarial relations with suppliers, who are played off against each other through price competition.

2. They have lean management structures that promote horizontal cooperation, participative management styles, and decentralize decisions to the workplace. This contrasts with the hierarchical, segmented mass production approach to management. Lean management systems improve quality, productivity, and flexibility by decentralizing decisions to frontline workers with broadened responsibilities, and eliminating supervisors and other indirect workers who are no longer needed.

3. They stress internal and external flexibility in order to adjust quickly to changing technology and markets. The mass production system seeks stability through rules, regulations, and contractual relationships. High performance organizations achieve stability through quality, productivity, flexibility, and positive incentive systems.

4. The most successful enterprises give high priority to positive incentive systems designed to relate rewards to desired outcomes. Such incentives are important because the efficient use of leading-edge technology gives workers considerable discretion.[10] Mass production systems stress negative (punishment and layoffs) or even perverse incentives that make it more difficult to achieve desired outcomes, as when workers believe improving productivity will cost them their jobs. Mass production hierarchical arrangements, fragmented work, and adversarial relations, discourage the kind of cooperation required for high levels of quality and productivity. Positive incentives used by high performance organizations include bonus compensation systems, internal cohesion, fairness and equity, job security, and the ability to participate in decision making.

5. High performance organizations develop and use leading edge technology through constant improvement on the job and by adapting advanced technologies produced elsewhere. They understand that standardized technologies imply competing mainly according to wages.

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[9] J.L. Palmer, T. Smeeding and B. Torrey, eds., *The Vulnerable* (WDC: Urban Institute Press, 1988), chapter 5.

[10] Shoshona Zuboff, *In the Age of Smart Machines* (NY: Basic Books, 1988).

6. These enterprises give heavy attention to education and training of front-line workers. The mass production system stresses education and training mainly for managerial and technical workers. The most successful organizations know that higher-order thinking skills are required for high performance and the development and use of leading-edge technologies.

7. One of the most controversial aspects of high performance production systems is the role of labor organizations. My own view is that the right of workers to organize and bargain collectively is an important requirement for a high-performance system. It is no coincidence that high-performance companies in other industrialized countries that take market shares from American companies usually have strong worker organizations, such as work councils, other shop floor organizations, and trade unions. It is unlikely that workers will "go all out" to improve productivity unless they have independent sources of power to protect their interests. This is especially true in the transformation of traditional mass production systems where workers have feared that going all out to improve productivity might cost them their jobs. It is, moreover, difficult to maintain cooperative relationships between parties of unequal power. Sooner or later, the stronger party will be inclined to assert unilateral control and end the cooperative relationship, such as what happened to the so-called employee representation plans during the 1970s.

Finally, labor-management relationships contain elements of both cooperation and conflict. Adversarial relationships are therefore both inevitable and functional. The trick, of course, is to prevent conflict from making the relationship so adversarial that both sides are worse off. The greatest danger in the American setting is that a diminished right of workers to organize and bargain collectively will, in the long run, make positive incentive systems difficult to sustain.[11]

What We Found in Other Countries

CSAW found that enterprises in other countries were much more committed to high performance work organizations than most of their American competitors. Despite very different cultures and social systems, these other countries have adopted the same goals and strategies. Though implementation varies widely, they all agree on the following fundamental principles:

1. The need for national consensus-based policies to actively promote high performance work organizations that can maintain and improve incomes.

2. High academic expectations for all young people, whether college bound or not.

3. Well developed school-to-work transition systems to provide young people with solid, recognized occupational skills.

4. Public labor market organizations to provide training, information, and placement services for all workers. The United States invests much less in employment and training policies than other countries. In 1987 for example, we invested only 0.9 percent of GDP in these programs compared to 5.9 percent in Denmark, 4.8 percent in Ireland, 3.7 percent in France, 4.2 percent in Sweden, and 7.2 percent in the U.K.[12]

5. These countries all value the skills of front-line workers very highly. Companies and governments are strongly committed to providing lifelong training and employment opportunities to workers. American companies spend between 1 and 2 percent of company payroll on training, with two-thirds going for management, while companies in leading foreign countries spend up to 6 percent of their payrolls on train-

[11] For an elaboration on the consensus decision processes in the firm and in public policy making, see Ray Marshall, *Unheard Voices* (NY: Basic Books, 1987).

[12] Cited at note 1, p. 64.

ing and devote a significant share to front-line workers. Less than 10 percent of American non-college educated workers receive any formal training. These other countries finance company-based training through general revenue or payroll taxes.

High performance organizations understand that learning is one of the most important things happening at work. They also understand that adversarial relations with workers, suppliers, or public officials induced by a preoccupation with price instead of quality competition, are major barriers to learning. They therefore structure these relationships to create positive incentives to share information and to facilitate learning.

The Commission did not analyze all of the reasons why so few American companies are pursuing the high performance option, but the factors include:

1. Inertia because traditional mass production systems and their supporting institutions were both more successful and more deeply entrenched here than elsewhere.

2. The United States has no national strategy to be a high-income country and therefore has not created incentives and disincentives for companies to make the necessary investments to become high-performance organizations. Indeed, our policies and financial institutions discourage investments with high capital costs, uncertain and erratic economic policies, ideological commitments to market forces, relatively unfettered business decision making, and an aversion to public goals and strategies. Other countries have adopted high-skill strategies because it is clear to them that the alternative is lower and more polarized wages, which will threaten democratic institutions as well as living standards. Leaders in these countries often argue that companies that do not pay wages high enough to sustain workers and their families are being subsidized by governments or workers. As a consequence, in these countries, collective bargaining and government regulation limit a company's ability to pursue low-wage options.

3. We are especially handicapped by the absence of a coherent human resource development strategy to give front-line workers the kind of thinking and learning skills required for high-performance work organizations.

Recommendations

If the United States wants to remain a world class, high-income country, we must build consensus for that outcome and develop the strategies to achieve it. It is naive to assume that these outcomes will result from "natural" forces or passive strategies. Unlike our major competitors, the United States has no process to facilitate consensus. Adversarial relations like ours focus attention on differences, however small. Consensus processes, on the other hand, focus on and encourage cooperation to achieve common objectives.

In addition to developing consensus building mechanisms, the United States should develop macroeconomic policies to achieve a better balance between production and consumption by encouraging higher levels of investment in physical and human capital. We must also develop strategies to translate our world-class science into world-class commercial technology.

To facilitate the development of a highly skilled work force needed for high-performance work organizations, CSAW advanced five major recommendations:

1. A new educational performance standard should be set for all students to meet by age 16. This standard should be established nationally and benchmarked to the highest in the world. Students passing a series of performance assessments that incorporate this standard would be awarded a Certificate of Initial Mastery (CIM). Such a standard would provide greater incentives to students, better information to employers, and a way to

provide success indicators for restructured schools.

2. The states should take responsibility for assuring that virtually all students achieve the CIM. About 20 percent of our students drop out of high school. We cannot give up on these students, because they will constitute one-third of our work force growth during this decade. Through new local employment and training boards, states using their federal assistance should create and fund alternative learning systems for those who cannot attain the CIM in regular schools. Once these alternative learning systems are in place, children should not be allowed to work before the age of 18 unless they have attained the CIM or are enrolled in a program to attain it.

3. A comprehensive system of technical and professional certificates and associate degrees should be created for the majority (70 to 75 percent) of our students and adult workers who do not pursue a baccalaureate degree. The standards for these certificates and degrees should be defined by business, labor, education, and public representatives. These programs should combine general education, the development of occupational skills, and should include a significant work component. All students should have financing for these programs. It would be a wise public investment to guarantee everyone attaining a CIM, four years of education and training in accredited institutions. This system could be patterned after the very successful GI Bill of Rights, which provided education and training to millions of veterans after World War II.

4. All employers should be given incentives and assistance to invest in the further education and training of their workers and to pursue high productivity forms of work organizations. The Commission proposed a system whereby all employers would invest at least 1 percent of payroll for this purpose. Those who do not wish to participate would contribute to a general training fund. Public assistance should be provided to help employers to move to high-performance work organizations.

5. A system of employment and training boards should be established by federal and state governments, together with local leadership, to organize and oversee the proposed school-to-work transition programs and training systems. These boards could consolidate many of the fragmented, incoherent, and largely ineffective councils and advisory committees that currently characterize many contemporary human resource development activities.

Conclusions

Taken together, the Commission's recommendations provide a framework for developing a high quality education and training system closely linked to high-performance organizations. Such a system would give the United States a formidable competitive advantage. Clearly, however, the status quo is not an option. We will either become a world-class country of high skills or a fragmented country with low wages for most, and high-incomes for the highly educated few. This outcome implies declining national power and a diminished quality of life for everybody.

[The End]

Collective Bargaining: Will the Process Survive the 90s

By Bernard E. DeLury*

Mr. DeLury is Director of the Federal Mediation and Conciliation Service in Washington, DC.

I must begin my presentation to you with a confession. I have been a student of industrial relations, a labor representative, a management representative, a state labor official, an assignment secretary of labor, and now, as Director of the FMCS, this is the first national meeting of the IRRA that I have ever attended.

That admission, which I seriously hesitate to make, is not by any means an admission that I have been unaware of the value and important work of IRRA. I have been a user of your materials and publications. I am a member and I have attended your local chapter meetings. I have spoken before many of these chapters, with the most recent presentation last Tuesday. I can assure you, it will not be my last.

I admit that this is not an auspicious way to start a talk before a group as important as the IRRA. I chose to begin this way for a number of reasons. First, in spite of my realization of the importance of this organization, I, like many of my fellow practitioners, have allowed the valuable opportunity that this organization represents to slip through my fingers because of the pressure of other duties. Because you are an important source of information and contacts for people like me, I encourage you to re-double your efforts to inform and even attract us to membership. While I realize this group has its beginnings in the halls of academia, you have become an important resource for practitioners as well.

To my knowledge, this is the only neutral, professional association in industrial relations in the United States. There is simply nothing else available to people like myself, as practitioners, that approaches the IRRA in currency, competence, and content.

Because I believe that industrial peace in the United States, which I am charged to maintain and promote as Director of the FMCS, is dependent, in good part, on the competence of industrial relations practitioners, I feel it is essential that as many of them belong to this organization and any others like it.

One of the board members of the Washington, D.C., Chapter, a management practitioner, once said that the D.C. Chapter was one of the best kept secrets in town. He was speaking both of the quality of the programs and the fact that not enough people were aware of the value of its meetings.

The same can be said of you. I therefore encourage you both at the national and local levels to re-double your recruiting efforts to attract curmudgeons like me. We, and you, will be the better for it.

A second reason I made such a beginning was to acknowledge the fact that FMCS, as an organization, has become quite dependent on the IRRA. Many of our senior staff in Washington and many of our mediators around the country are long-time members and have been officers of your national and local organizations, and I encourage that. At FMCS we are always seeking ways to involve labor and management in discussions of common concern on neutral grounds. For our mediators, the IRRA serves that purpose very well.

* The views presented in this article are the views of the author and not of the U.S. Government.

I am aware that at least one of your chapters, and certainly more in other parts of the country, was founded by mediators who were seeking to provide labor and management with a neutral forum. So, on behalf of the service and of the mediators, I want to thank you for all that you have accomplished and all that you are.

For myself, I intend to mend my ways by taking my own advice and becoming even more active than I have been. I expect to have a long career in this business and I will depend increasingly on the quality of your programs and membership. I am, and intend to become, an even better supporter of your organization. Thanks to all of you for inviting me to be with you at this meeting.

For the next few minutes, I would like to talk about the process of collective bargaining and its future as it relates to all of us.

Something very ordinary happened in my office three weeks ago that started me thinking about collective bargaining all over again. A reporter from the Bureau of National Affairs, who was writing an article on the declining number of strikes, came in to see me.

We reviewed the statistics. In 1986, FMCS handled over a thousand cases in which there were work stoppages. In 1990, we had 711 work stoppages. The Bureau of National Affairs reported 821 work stoppages in 1990, as compared to 850 in 1989. The Bureau of Labor Statistics, which reports on strikes involving 1,000 or more workers, counted only 45 strikes.

The reporter asked me the reasons for the continuing decline. I have some ideas about the reasons, which I'll share with you in a moment. However, it occurred to me later that the reason people are interested in strike activity is that they see it as part of a larger question: What is the condition of collective bargaining in the United States? It is as if we are measuring the health and viability of collective bargaining by the number of strikes we are experiencing. I'd say that is a poor measure at best.

Last fall, I attended a dinner in Washington, D.C., honoring the collective bargaining process. Interestingly enough, there were 1,200 leaders from labor, management, government, and academia from all over the United States and from other countries. It was an important event. Important enough for President Bush, with all of his concerns about the Middle East, to videotape a message to that crowd. At one point in his remarks, the President underlined the purposes implicit in the national collective bargaining policy of our country when he said: "The collective process is a proven framework for workers and employers to reach their goals together . . . to resolve difficult management-labor problems, without management by decree."

There were several other speakers from labor and management, among others. A number of them indicated they thought collective bargaining was going through a difficult period, that the process was in trouble. Based on my experience as a negotiator, up until a year ago, and on my experience as Director of FMCS during this last year, I can agree with only a part of that.

Those of us who are using the process may be having some difficulties in collective bargaining because of changing pressures and circumstances, but it is my impression that collective bargaining itself remains a strong and useful process and that it is still as adaptable, as flexible, and as useful as ever. The problem is not with the process. The problem is with those of us who use the process or who try not to use the process.

Understandably, practitioners take reports of high visibility negotiations like Greyhound, the Daily News, and other disputes as indicators of the health of bargaining. But I look at the 27,000 bar-

gaining situations in which our mediators were involved last year and I see the majority of the negotiators in the United States using the process very much as they did in the past.

I look at the 7,000 cases in which the parties used mediation and were able to reach settlements, and I look at the 700 cases in which there were work stoppages and realize that most of them ended in agreement. The bottom line is that work stoppages account for only 3% of the cases in which mediators were involved.

It is true that union wins in representation elections declined another 2% in the first six months of 1990. New contract wins fell by 1.6% in the same period. But it is also true that union membership remained at 17 million over the last several years. The recent report that union membership had declined to 16% of the work force reflects a growth of the work force and not a drop in the absolute number of union members. The real number of union members has remained constant over the last several years.

My point here is not to dismiss the decline of unionization; rather, it is to warn against dismissing unions as a factor in industrial relations. It remains, however, that most of the large firms critical to the economic life of the United States are unionized in whole or in part.

Frank Doyle, the Industrial Relations Vice President of General Electric, said at a meeting I attended in Washington last week that "The '80s was the decade of management." He went on to say that he expected bargaining would pick up in the '90s. He was echoing our own expectations at FMCS about the next ten years.

What happened in the '80s? We all know about the conditions that impacted upon us these last ten years. We had deregulation, increased competition from our neighbors and from abroad, the introduction of new technologies, unfavorable trade balances, and an uncertain economy. Late in the fall of last year, we agreed we had a recession, which had been stalking us for at least twelve months. All of this created an uncertain economy and management and unions were among the first to reflect that uncertainty.

This last decade was when we had wage freezes and take backs, we had two-and three-tier arrangements, we had plant closings, mergers, and leveraged buyouts. We had the beginnings of striker replacements.

Some economists, expecting a positive effect on the economy from the successful resolution of the war in the Gulf (and we all thank God for the early resolution of those hostilities), expect a short recession with very mild growth on the other side.

All of this adds up to a continuing uncertain climate for industrial relations. It is no wonder that some people, looking at collective bargaining without thinking about that uncertain environment, might think that the process is not as vigorous as it was in the past. One *New York Times* reporter wrote recently that an assignment to the labor beat was like being assigned to K.P. in the army.

But that is not what I expect for the next ten years. Changes will continue to come at us fast and furious. This means we won't have the tranquil and predictable climate we had in the past. While the period of uncertainty may not be over, I think labor and management will return to the bargaining table more accustomed to the climate of uncertainty and will begin to deal with issues through some form of collective bargaining.

What kind of bargaining might we expect? It is clear that a number of parties around the country have discovered the advantages of more cooperative relationships. They have been introduced to the notions of joint problem solving and the values of working together on a variety of issues they see as matters of common concern. Such a movement has not exactly swept the country. The greater majority of bargainers have retained their

traditional approaches to the bargaining table.

How are we to think about two apparently opposite views and approaches to collective bargaining? It would appear that cooperative approaches to labor-management relations represent the very best means of dealing with issues that are important to the people represented, and traditional collective bargaining uses the more narrow, adversarial approaches that limit the scope and creativity of bargained settlements.

At FMCS, we do not see these alternatives in such black and white terms. Our view of the various processes is shaped by the experience we have with the parties. There are situations all over the United States in which negotiators are using one form of bargaining, either traditional or collaborative, or some combination of both, with great advantage.

Let me reflect a moment on traditional collective bargaining. This is a process that was designed by the parties themselves to enable them to address issues. It is not a process designed by some government type, academic, or social scientist. Collective bargaining was custom designed by the parties in each situation to deal with their own circumstances and needs. Traditional collective bargaining still has that local, customized character.

The collective bargaining process, in its simplest form, was intended to be a structure for negotiations between representatives of labor and management who held different positions. The central characteristic of that process is, and always has been, compromise.

Traditional collective bargaining, while it is built on a framework of adversarial relations, was never intended to be a form of industrial relations warfare. Rather, it was a structure within which the parties would express their needs in the form of demands and then begin the task of working out a series of concessions and exchanges ending in a package they could live with. There is nothing about traditional collective bargaining that automatically leads to strikes or lockouts.

In my experience with collective bargaining, it does provide a continuity of relations. It does develop a history of experience, and it does allow the representatives of labor and management to have an ability to deal with new issues as they administer their agreements.

As President Bush said, traditional bargaining is and has been a means for labor and management to work out solutions to their industrial relations problems. It is for these reasons that many of the parties continue to use this traditional process. It works for them. In my view, that form of collective bargaining has had elements of cooperation built into it even though no one ever thought to call it that.

There is a spectrum in our American experience with traditional collective bargaining. In its worst form, it is combative, adversarial, and win-lose in nature. But these characteristics apply in relatively few cases. More often, there is dialogue, there are elements of understanding, and there is an intention to seek peaceful resolution to issues.

Traditional bargaining will not work when the parties, one or the other, have no intentions to agree. Traditional bargaining will work when there is communication, an understanding and appreciation of the position of the other side, responsibility, and a trust and willingness to work out mutually acceptable solutions. Interestingly, those are the same ingredients we hear about when people talk about labor-management cooperation.

Labor-management cooperation in its various forms has finally gotten a toehold in American industrial relations.

In describing these new processes, some people make them sound like the very opposite of traditional bargaining in the place of a win-lose situation; joint problem solving instead of a power-based relation-

ship. At FMCS we have a different view. We applaud the development of cooperative relations between the parties. We do not think of labor-management cooperative efforts as a new form of relationship at all. Rather, we think of cooperation as the possible goal for most relations: a continuation, an extension, a perfection of the relationships of the parties.

A moment ago, I used the word spectrum in describing the range of relationships possible in traditional bargaining. I believe that the real end of that spectrum is labor-management cooperation in whatever form the parties find useful.

All of this means that we at FMCS see cooperative efforts as a part of the collective bargaining process and not something apart from collective bargaining. At FMCS we see ourselves as available to the parties wherever the parties see themselves on that full spectrum of bargaining. We also see ourselves as taking our cues from the parties as to where they want to be in that range of possibilities. The mediators will provide information, offer suggestions, and even be available for training and technical assistance to the parties should they want to improve their relationships and their processes.

The bottom line is that FMCS acts on the fundamental belief that the process belongs to the parties. We might inform them of other possibilities, but ultimately it is the role of the parties to choose which of the processes they want to use.

The value of the mediator, in addition to experience and neutrality, is the ready availability of knowledge and training whenever the parties want to advance the process they are using. The mediator will suggest, as alternatives to strikes and lockouts, the use of labor management committees, action teams, and ad hoc task forces.

If considering labor relations of the '90s, it would be a serious error for labor or management to view a mediator as a sign of their inability to deal with the issues or with collective bargaining. Rather, the mediator is intended to be an aide, an expander of the range of possibilities, a carrier of techniques that other parties have used successfully.

The 1990s will be a challenge for all of us. It will be a challenge for labor and management as they face a range of new issues, some of which we might not even conceive of right now. The success or failure of labor and management in the '90s will be in their selection of a procedure to deal with the issues, and their resolution to stick with those procedures. There must be a commitment to the process they choose for themselves.

I am optimistic that collective bargaining will be successful as a framework for labor management in the '90s. I think the parties today are better informed and better equipped. More than any other time in our history, both parties can deal sucessfully with the issues they will face.

At the outset of my remarks, I promised to return to the question of declining strike incidence and to share with you some of my thoughts on the reasons for the decline. Some of those reasons relate to what I said about uncertainty; some relate to the fact that both labor and management were trying to preserve things related to their existence, previously won gains, and jobs.

But the reason I would put more stock in the belief that both labor and management are better informed these days than they have ever been in the past, includes the fact that labor understands, in most instances, what is happening in the economy and in competition; conversely, employers understand about markets and productivity and quality and workers' needs. Both sides, to a good extent, know what the other side knows. While that may not solve the problems, it does spell more responsibility in negotiations.

I think industrial relations and collective bargaining will survive the challenges of the 1990s, and so will we if we use these processes. I offer our mediation help in making that prediction come true.

[The End]

Union Characteristics and Union Political Action

By John Thomas Delaney and Marick F. Masters

Professor Delaney is with the University of Iowa, and Professor Masters is with the University of Pittsburgh.

Unions have long used collective bargaining and political action as a means to secure economic progress and social justice for American workers and their families. Decline in the percent of unions organized in the United States over the past four decades, however, has both weakened the bargaining power of unions and increased the importance of organized labor's political activities. Some observers have even argued that the survival of the union movement depends upon the success of organized labor in the political arena.[1] Ironically, the decline in union membership has unfavorable political implications because it generally predicts a smaller union voting bloc, fewer union campaign workers, and relatively lower campaign contributions. But there is evidence that some unions have been particularly successful in achieving political goals during the past several years, and Federal Election Commission (FEC) records indicate that aggregate union campaign contributions have risen in each two-year election cycle.[2]

Consequently, it is appropriate to examine differences in political efforts and success across unions. This paper presents a narrow and preliminary analysis of relationships among selected union characteristics, and the scope of union political action and union political outcomes using newly available data covering the years 1987-1990. The analysis builds on our earlier studies of the influence of environmental and union structural characteristics on political outcomes, by including measures of union officials' perceptions of their political effectiveness, objective indicators of political action, and updated information on a union's characteristics and administrative structures.

In general, organized labor uses a variety of strategies and tactics to influence politics at all levels of government. For example, unions endorse candidates for elective office and rally grass-roots electoral support for those candidates, in addition to making financial contributions through their political action committees (PACs). In a nominal sense, there is evidence suggesting that unions may have significant political influence. For example, more than 60 percent of the union-endorsed candidates won election to the U.S. House and Senate during the years of 1978 to 1988.[3] Similarly, during the 1987-88 election cycle, Federal Election Commission records indicate that PACs affiliated with labor unions contributed nearly $36 million to candidates for federal office. Moreover, "in-kind" union political efforts on behalf of endorsed can-

[1] B. Aaron, "Future Trends in Industrial Relations Law," *Industrial Relations*, 23, Winter 1984, pp. 52-57.

[2] J. T. Delaney and M. F. Masters, "Unions and Political Action," *The State of the Unions*, eds. G. Strauss, D. G. Gallagher, and J. Fiorito (Madison, Wis.: Industrial Relations Research Association, 1991, forthcoming).

[3] M. F. Masters, R. S. Atkin, and J. T. Delaney, "Unions, Political Action, and Public Policies: A Review of the 1980s," *Policy Studies Journal*, 18, Winter 1989-90, pp. 471-80.

didates are often much more substantial and less obvious than other union political activities. For example, more than 10 million phone calls were made on behalf of candidates and more than 80 million politically oriented mailings were sent by union officials to members during the 1976 election.[4]

The role of organized labor in politics, however, is more complex than such data reveal. A gap often exists between nominal electoral successes and subsequent legislative victories, as indicated by the fact that few obviously "pro-labor" bills were passed by Congress in recent decades. Further, there is substantial variation in political activity and interests across unions, although labor as a whole is closely tied to the Democratic Party.[5] Some unions maintain a sizable political program and agenda, while others focus on a much more limited set of objectives. These differences explain in part why some unions are more successful than other unions in the political arena. Consequently, an understanding of these differences will provide an important basis for informed speculation on the future of union political action.[6]

Data Sources

The data analyzed in this study were compiled from three primary sources. First, information on contributions made by union PACs to candidates for federal office was collected from reports published by the FEC. Second, information on the number of registered lobbyists employed by each union in the sample was obtained from records compiled by Arthur Close and his associates.[7] Third, data on union characteristics, union leaders' preferences for and evaluations of political activities, and other political action measures were obtained from the National Union Survey (NUS).

The NUS, undertaken with support of the AFL-CIO, collected responses of national union leaders and staff members who completed a 25-minute telephone survey conducted by the Iowa Social Science Institute in July and August of 1990. The target population for the NUS included the 150 national unions in the United States that engage in collective bargaining. The survey yielded 275 structured interviews with representatives of 111 national unions, or 74 percent of the target population. It is noteworthy that 68 percent of the responding unions provided interviews with more than one union official and 86 (77 percent) of the responding unions were affiliated with the AFL-CIO.

The NUS was designed to measure several attributes of national unions, including strategies, centralization of decision making, administrative structure, environmental scanning, and insiders' estimates of perceived union effectiveness. The survey also solicited information on the degree to which unions used various methods and techniques in organizing and servicing their members. Because multiple responses were available for some unions, a union-level response to questions involving opinions or estimates was obtained by averaging the responses of all individuals representing each union. For other questions, where only one "correct" answer could exist (such as the existence of an associate membership program), union-level responses were assigned using one of three methods. In about 75 percent of the union-level assignments the multiple respondents provided identical answers or there was only one respondent

[4] See cite at note 2 above for a discussion of the scope and success of different union political approaches.

[5] J. D. Greenstone, *Labor in American Politics*, 2nd ed. (Chicago: University of Chicago Press, 1977).

[6] See J. T. Delaney et al., "The Effects of Union Organizational and Environmental Characteristics on Union Political Action," *American Journal of Political Science*, 32, August 1988, pp. 616-42.

[7] For information on data see Federal Election Commission, *FEC Reports on Financial Activity: Final Report: Party and Nonparty Political Committees, Volume III. Nonparty Detailed Tables.* (Washington, D.C.: Federal Election Commission, from various years). Arthur Close (ed.), *Washington Representatives: Who Does What for Whom in the Nation's Capital?* (Washington, D.C.: Columbia Press, various years.)

per union. In about 15 percent of the cases, where complete agreement did not exist among respondents within unions, a majority-rule method was used to make union-level assignments. In the case of ties, we selected responses of the highest ranking officials within the subject area of the question (such as the Director of Legislative Affairs for questions on legislative activity).

The NUS data were combined with the PAC contribution and lobbyist data sets on a union-by-union basis. The resulting data provide cross-section measures of union characteristics, political activities, and political effectiveness covering the years 1987-1990. Although the nature of the data preclude an assessment of the causal link between union characteristics and political activities, the data do permit the development of an overview of current union political practices.

Political Action Measures

In this paper, we analyze four objective and three perceptual measures of union political action and effectiveness. The total amount of contributions made by a union's PAC(s) to federal candidates, with that amount divided by union membership, provides an indicator of political activity and support. Union PACs raise virtually all of their funds from the voluntary contributions of union members. In addition, the number of registered lobbyists employed by each union in total, and on a per-member basis, provide another objective indicator of union political action. In general, unions employing relatively more lobbyists are more likely than other unions to be active in the political arena.

Union leaders' perceptions of political effectiveness were drawn from the NUS. For each union, one perceptual measure is provided by responses to a question on the involvement of rank-and-file members in achieving legislative or political goals as reported on a five-point scale ranging from (1) "not involved at all" to (5) "extensively involved." Another measure is provided by the extent to which union officials agreed with the statement that their union was successful in terms of advancing the legislative and political interests of members, as reported on a five-point scale that ranged from (1) "strongly disagree" to (5) "strongly agree." Finally, another measure of political activity is provided by union leaders' estimates of the frequency with which their union emphasizes the importance of political activity to members. This measure used a five-point scale ranging from (1) "not at all" to (5) "very frequently."

Union Characteristics

Research has suggested that differences in the attributes of unions (i.e., membership size, industry of primary jurisdiction, and organizational structure) contribute to the observed variation in labor's political efforts and outcomes.[8] Indeed, some of our prior work revealed positive associations between measures of union political outcomes and several union characteristics, including membership size (though the relationship was nonlinear), relatively democratic decision-making structures, primary jurisdiction in the public sector, and the proportion of female union members. On the other hand, political involvement measures were negatively associated with measures of the proportion of union members employed in the union's primary jurisdiction, and the extent to which a union represents heterogeneous workers (measured by accounting for male and female, white and nonwhite, and blue collar and white collar workers).

This analysis focuses on similar union characteristics. The approach is somewhat selective, but it is necessary given the wide variety of union characteristics measures available in the NUS, the usefulness of a baseline for comparative purposes, and space constraints. Although we

[8] See cites at notes 5 and 6 above.

expect to confirm earlier findings, adjustments made by unions in response to recommendations of the AFL-CIO's Committee on the Evolution of Work may have reduced the variation in political involvement across unions.[9]

The most salient characteristics or attributes of unions are not completely obvious. Accordingly, the NUS gathered many measures of union characteristics. For this analysis, we focus on a number of straightforward measures of union attributes, including the size (number of members) of the union and whether or not the primary jurisdiction of the union was in the public sector.

Because the Committee on the Evolution of Work urged unions during the 1980s to make changes designed to improve their success, we look at five measures of union attributes constructed by combining responses to various NUS items. Indices of the existence of innovative practices, environmental scanning, membership involvement in union decisions, homogeneity of union membership, and perceived effectiveness of the union in achieving its goals, serve as indicators of the structure and characteristics of unions.[10]

Results

Table 1 presents correlations between the union characteristics and selected union political involvement measures. In general, the correlations are consistent with findings of studies using data from prior years, but the results are more modest than earlier findings.[11] For example, we do not report results for measures of the percentage of female union members and concentration of members in a union's primary jurisdiction, because they were virtually uncorrelated with the political measures. Overall, however, the findings tentatively suggest a direct relationship between the attributes of unions and union political action.

Results show that union size is positively related to all political action measures (except those standardized on a per-member basis). In three cases, public sector union status is positively correlated with political involvement measures. In two instances, the measure of union heterogeneity is positively associated with political action measures. Most of the union characteristics display stronger associations with the perceptual measures of union political involvement and success than with the objective measures of political outcomes (17 of the 21 correlations between union characteristics and political action measures are statistically significant). Moreover, in every instance but one, significant correlations were positive.

The Table 1 results also extend prior research. There is at least partial support for the notion that unions' political emphasis and success are positively related to their adoption of innovative practices, perceived overall union effectiveness, and membership involvement in union activities in general. The findings may imply that internal union changes designed to invigorate the rank-and-file do stimulate the political involvement of unions and members. This, in turn, may indicate that unions' adoption of changes proposed by the AFL-CIO's Committee on the Evolution of Work enhances labor's political position. Moreover, the findings tend to support speculation that union political action will likely increase in coming years.[12] (Whether increased union political involvement will produce politi-

[9] The Committee on the Evolution of Work was created by the AFL-CIO Executive Council in August 1982 to recommend internal reforms that would help invigorate the labor movement. The Committee issued reports on "The Future of Work," and "The Changing Situation of Workers and Their Unions," in 1983 and 1985, respectively.

[10] A complete description of these indices is available from the authors.

[11] Note that modest zero-order correlations were also reported in earlier studies. In those studies, stronger results were obtained when multivariate statistical methods were used.

[12] See "The Future of Unions as Political Organizations," *Journal of Labor Research*, 11, Fall 1991, forthcoming.

cal success, however, cannot be ascertained from the results.)

Conclusion

The results of our empirical analysis confirm that the attributes or characteristics of unions influence the nature, extent, and success of labor's political involvement. The fact that correlations between union attributes and perceptual measures of political action were consistently stronger than those with objective measures of political action, may suggest that there is a gap between the sentiments of union officers regarding the importance of political action, and both the unions' and union members' actual commitment to political activity. If this is true, unions have more ground to make up in the operation of their political programs than union leaders suggest. Making up that ground is important for a variety of reasons.

First, papers presented in this session illustrate that the political environment influences (at least to some extent) the process and outcomes of collective bargaining and concerted activities, as well as the adjudicatory processes of the National Labor Relations Board. Although these results may be unsurprising to some observers, they underscore the importance of union political activity. Political involvement plays a critical role in the establishment, maintenance, and reversal of public policies and regulations affecting unions. For example, as union leaders know all too well, the fact that the presidency has been in the hands of a Republican for 18 of the past 22 years has meant that administrative agencies and the judiciary have become increasingly conservative since the 1960s, creating a situation that is not especially inviting to unionism.[13]

Second, because the economic environment has become more competitive in the past few decades, collective bargaining and concerted activities have generally yielded poorer results than would otherwise be expected (though not in every case). This has elevated, at least temporarily, the importance of political action as a union tactic.

Third, unions face conflicting forces in their efforts to achieve political success. Indeed, these forces may impede labor's political efforts. For example, the opinions of members are divided on some of the most prominent current political issues, such as gun control, abortion rights, and affirmative action programs. Such divisions make it difficult for union leaders to select a political agenda that is generally satisfactory to the rank-and-file. At the same time, the agenda chosen by union leaders will crucially influence labor's future political success.

In general, the relationship between union characteristics and union political action shows that attention to a union's administrative structure, approaches, procedures, and demographic characteristics of its members may provide a key to understanding political diversity across the American labor movement. That understanding, in turn, may provide insight into organized labor's future political success.

[13] *Id.* For a discussion, see cite at note 2 above.

TABLE 1

CORRELATIONS BETWEEN UNION CHARACTERISTICS AND UNION POLITICAL ACTION MEASURES

UNION CHARACTERISTICS	Campaign Contributions		Number of Lobbyists		POLITICAL ACTION MEASURES		
	Total	Per-Member	Total	Per-Member	Rank-and-File Involvement in Political Action	Index of Union Political Success	Index of Union Emphasis on Political Action
Union Innovation Index	.031	−.007	.116	.009	.308***	.315***	.283***
Environmental Scanning Index	−.048	−.079	.115	−.055	.113	.284***	.127
Union Effectiveness Index	.121	−.199	−.022	−.214*	.344***	.323***	.209**
Membership Participation Index	.204	−.071	.272***	−.030	.435***	.283***	.447***
Number of Union Members	.786***	−.119	.550***	−.147	.280***	.252***	.291***
Membership Heterogeneity Index	.157	−.204	.155	−.199	.257**	.169	.266**
Public Sector Union	.120	−.073	.299***	−.046	.161*	.236**	.062

Notes: ***Significant at the .01 level; **significant at the .05 level; * significant at the .10 level (two-tailed tests). Sample size ranged from 48 to 110 across the variables in the table.

[The End]

The Economy, Strikes, Union Growth, and Public Policy During the 1930s *

By Michael Goldfield

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Examination of strikes, their causes, and their impact on political life has been a long-time interest of social scientists and industrial relations specialists (See Kornhauser et al., 1954; Hyman 1975, 1984; Hibbs 1986; and Rubin 1986. For recent reviews of the economics literature, see Graham 1986; Kennan 1986; and Card, 1990). Labor militancy in the United States during the 1930s has been of special interest to researchers for a number of reasons: (1) It was extremely high. (2) Unlike most other periods of large-scale strike activity, the 1930s militancy came during the U.S.'s most severe depression, contrary to the predictions of almost all business cycle theorists (including John Commons). (3) The strike activity during this period seems closely related to the successful unionization of basic industry. (4) It also appears to be related to the passage of a number of pieces of path-breaking labor legislation.

Economic business cycles, strikes, union growth, dramatic changes in public policy: Which caused which? Can a plausible model of the relationships be presented? I will argue that an approach that combines detailed historical analysis with statistical modeling provides the best possibility for sorting things out and developing some plausible working hypotheses. The material that follows is a report of ongoing work based on preliminary historical investigation and data collection, and on exploratory attempts to model the data.

On the surface, the 1920s and the 1930s seem to provide definitive proof that strikes and economic prosperity bear no relation. After reaching historic levels from 1916 to 1920, strike rates plummeted and remained quite low throughout the 1920s (See Figure 1). Union membership also declined substantially during the 1920s (See Table 1). The economy, on the other hand, grew dramatically during this period. After the 1929 stock market crash, the U.S. economy entered its most severe depression, with high unemployment (some estimates suggested 20-25%), diminished GNP, and lowered industrial production. The depression began to end in late 1939, as war orders poured in from Europe.

In contrast to the economy, strike activity and union growth, particularly from 1933 to 1938, rose dramatically. Thus, general trends between 1921 and 1938 suggest that economic growth moved in the opposite direction of strike activity and union growth. Attempts to cover these anomalies by using dummy variables in econometric models seem theoretically unsatisfactory.

Some Initial Hypotheses

Historical evidence indicates that unions were largely crushed in the early 1920s. The 1919 and 1920 organizing attempts in steel and packing houses were defeated, union gains in mining and cloth-

* Partial support was received from the Jonathan R. Meigs Fund of Cornell University and the Cornell National Supercomputer Facility.

ing were reversed, and little headway was made in newly emerging industries, including automobile, electrical, and petroleum. The political and legal environment also became increasingly hostile. There was little broad public support for unions (see e.g., Bernstein 1960:83-90), and expanded production, economic growth, and increased labor-market leverage was insufficient to overcome the obstacles posed by well-organized, determined anti-union employers and the political and legal environment.

Several important things changed early in the 1930s. First, there was extensive social protest that began almost immediately after the 1929 stock market crash. Over a million people demonstrated against unemployment and for relief in the first several months of 1930 (see Goldfield 1989b, 1990 for more detailed argument and references). African-Americans, radical farmers and sharecroppers, students, intellectuals, and the aged, protested and marched in large numbers. Secondly, influential left-wing, third-party organizations emerged at the state and local levels challenging both Democrats and Republicans for political hegemony. The most significant of these were the Minnesota Farmer-Labor Party, the Wisconsin Progressives, Upton Sinclair's EPIC (End Poverty in California) organization, and various Commonwealth and nonpartisan league formations. In addition, Louisiana Senator Huey Long's share-the-wealth movement was generating enough support nationally in its challenge of President Franklin Roosevelt, to worry the latter's advisors. These phenomena, as Table 2 suggests, are dramatically reflected in the changing composition of Congress.

Monthly data show no further decrease in strike rates between the 1929 stock market crash and the end of 1932. Historical evidence suggests that many desperation strikes, which were especially pronounced in mining took place in the early 1930s as wages were cut and conditions worsened. A reasonable hypothesis is that the declining working conditions and wages, the general state of social protest, and the new political and legal environment provided a more fertile soil than the 1920s, in terms of an increase in strike activity and union growth. Beginning in early 1933, not only do strike rates begin to increase, but historical evidence suggests that a number of key strikes (particularly in the auto industry around Detroit) were successful. This increase in strikes also appears highly correlated with an upturn in the business cycle. A simple model tells the story. Taking the unadjusted monthly figures for strikes and auto production, we may hypothesize the following model:

$$Y = A + BX + e.$$

In the equation, Y is the number of strikes per month, A is an intercept, XY is the number of automobiles produced per month, B is its coefficient, and e is an error term. Estimating this model with data from 1916 to 1950 does not yield either a significant relationship or a reliable estimate. Estimating the model, however, from 1932 to 1939 gives a highly significant coefficient (t-statistic of over 5.0). These results are presented graphically in Figures 2 and 3. The models can be improved by a variety of means, including lagging the strike data by several months, substituting other business cycle indicators, and seasonably adjusting both series, but the crude model illustrates the point.[1]

Thus, I provisionally hypothesize that business cycle factors are not by themselves sufficient to stimulate union growth or strike activity (e.g., in the 1920s). Once the conditions for such activity exist (as they did in the 1930s), the

[1] I chose to use the auto production figures since automobile strikes and union growth, along with the activities of mine workers, were the pacesetters for all worker militancy and union organizing in the 1930s. Seasonal adjusting, of course, presents special problems of its own.

business cycle becomes an important influence and a central constraint on the limits and possibilities of worker militancy. While not a universal cause of strikes and unionization, upswings in the business cycle may be important local factors.

The Impact of Labor Legislation and Public Policy

While the economic business cycle seems to have played an important causal role during the 1930s, the major public policy changes seem to have had little significant impact on monthly strikes.[2] This finding seems particularly striking with respect to the National Labor Relations (or Wagner) Act. The strike wave beginning in 1933 continued at similar and increasing levels throughout 1934, 1935, and 1936 (see Figure 1). It appears that no significant increases in strike activity or union growth accompanied the enactment of the NLRA, which passed the Senate on May 16 and was signed into law July 5, 1935.

The reason for this is clear from the historical context (See Goldfield 1989b, 1990 for detailed argument). Until upheld by the Supreme Court on April 12, 1937, in the *Jones and Laughlin* case, the Wagner Act was largely symbolic. It was openly flouted by employers, unions brought few cases before it, and hardly any union growth took place under its auspices. Strikes and union growth increased dramatically in late 1936 and early 1937, with successful attempts to organize basic industry.

The Flint, Michigan strike (December 30, 1936 to February 11, 1937) was the crucial turning point. An even more dramatic piece of evidence was the change in monthly sitdown strikes from 1936 to 1938. The rapid increase in the number of sitdown strikes, especially in a March 1937 strike was clearly a response to the Flint victory, and efforts to find a cause through the passage of legislation would have been a mistake. The more interesting question is the degree to which the sitdowns and the early 1937 union breakthroughs helped influence the upholding of the NLRA by the Supreme Court in April 1937.

The lack of impact for labor legislation is suggested by what happened after the NLRA was upheld and successfully in place. By late 1937, both strikes and union growth were stagnating. Thus, other factors seem far more important to the fate of union growth or stagnation than strong labor legislation. In particular, one might note the dramatic economic slowdown that began in the fall of that year as further evidence of the importance of the economic business cycle. In accord with the hypotheses that the business cycle is an important and causal influence, one must be cautious about attributing too much causal power to the business cycle downturn in late 1937, although it undoubtedly played a role in slowing both union growth and strike activity.

There are several other related factors that may have reinforced the effect of the downturn. Of utmost importance is the formal split between the AFL and the CIO. It is referred to by many historians as a "civil war." The conflict between the two organizations began during this period, the raiding of each other's memberships, and the undermining of each other's support, in particular the well-known account of the AFL undermining the CIO.

The split had a number of ramifications that changed the political environment to the detriment of unions. Political cooperation became impossible. The split, for example, deeply affected the Minnesota Farmer-Labor Party, as AFL unions, still firm supporters in early 1937, withdrew their support in 1938 (Vallelly

[2] Previous researchers (see Wallace et al., 1988) who have attempted to examine the impact of public policy changes using yearly strike data have relied on too coarse of an instrument.

1989:127-38). In many cases, the AFL backed pro-business candidates, when more liberal ones were supported by the CIO. Later, the AFL began cooperating with pro-business groups in attacking what it saw as a pro-CIO NLRB. The AFL organization also aided the Congressional Smith Committee in its attempts to weaken the NLRA (Gross 1981:85101). This conflict diverted union energies from organizing and emboldened employers undermined public support for unions, which dramatically altered the political environment. Further, one might note that President Roosevelt adopted a more negative attitude after the Flint strike, in an attempt to distance himself from the increased labor militancy. Finally, the growing conservatism of both the mainstream and Communist CIO leaders must be reckoned as a contributing factor to the slowing of labor militance and union growth. It is reasonable to hypothesize that these additional factors, whatever relative importance one accords them, only served to reinforce the weakened state of labor due to the late 1937 economic slowdown.

Additional Comments

There are a number of problems with the modeling of strike and sitdown data for the 1930s. One special feature is that the 1937 sitdown and strike wave, particularly for the first half of the year, are such outliers to the economic model that a final explanation must rely heavily on detailed historical analysis. The same, of course, could be argued about union growth. It is clear that union growth and strike militancy are hardly linear processes. Moreover, in 1937, they are not even adequately represented as exponential processes with an underlying contagion or diffusion structure. Rather, the dominant metaphor is one of an explosion, perhaps the building up of grievances and capabilities that finally break through and burst forth. The reason for this may well be that employer resistance is difficult to overcome in a piecemeal fashion. Advances in union growth seemed to have occurred on a large scale in 1937, only when the magnitude of militancy became so high that many employers finally concluded that it would be simpler to settle and recognize a union than to have their workplaces seized.

It should be noted that strike rates and strike waves are not always good indicators of union growth and success. For the 1930s, however, the detailed monthly strike data are not a bad surrogate for union growth.[3]

What Caused the Public Policy Changes?

Although there were many precursors (Bernstein 1950), it was the 1935 Wagner Act that marked the most decisive change in public policy towards unions. It has been of great interest to many social scientists to understand why the Act passed (see Goldfield 1989b for a discussion of this debate and references). Here, historical analysis is indispensable, for even with a broadly defined dependent variable, such as changes in public policy that might include the 1932 Norris LaGuardia Act, section 7(a) of the 1933 National Industrial Recovery Act, the NLRA, the 1947 Taft-Hartley, and the 1959 Landrum-Griffin Act, there exist too few instances for a compelling model. Still, quantitative data are also wary to tell the complete story. My current working hypothesis for why the NLRA passed Congress is as follows:

1. The Depression brought on extensive unemployment and lowered standards of living for a large part of the population.

[3] It is an important feature of the 1930s strikes (including the sitdown strikes) that a large percentage of them were over demands for union recognition. Such strikes became more and more successful and may be seen as a coincident indicator for union organizing. The NLRB was not used until after *Jones and Laughlin*, and few employers voluntarily recognized unions. It is also important to recognize that union membership data for this period is only available on a yearly basis. Even this data, given the flux and competition within the union movement, is probably rough at best.

2. This led to a) widespread social protest beginning in early 1930; and b) massive disaffection with the government, especially with Republicans, as reflected in national elections beginning in November 1930 (see Table 2).

3. For reasons suggested in Part II, including the business upturn in key industrial sectors beginning in early 1933, a militant workers' movement emerged. The period 1933-35 had higher rates of strike incidence than any years since the early 1920s. Union growth surged. Especially important is that many of the central strikes and union drives were led by radicals.

4. The above factors caused a great deal of alarm among the country's elites, a concern reflected in numerous public statements, including those given in Congressional hearings. The dilemma facing policy makers included New Deal politicians who were beholden to the constituents who elected them, constituents who expected their representatives to provide relief to those who were hurt by the Depression. Clearly, industrial workers were among this latter group. Whether because of legitimate concern for their well-being or for opportunistic reasons, total disregard of the problems of workers was not an unproblematic option for New Deal Democrats and liberal Republicans (the vast majority of the country's congressional representatives in 1935). The option of large-scale repression, which had been used in the past by other administrations, was also fraught with dangers. In addition, repression and a refusal to deal with newly organizing workers was an option that had so far been carried out extensively by corporations and local authorities, and in some important respects had backfired. While it had kept many workers from unionizing, it had discredited more conservative AFL officials whose cautious, cooperative approach had gained nothing for workers from intransigent employers. More importantly, it gave greater credibility and significant leadership to leftists, particularly the Communists, who advocated a more militant and radical approach that had proven successful in a number of highly publicized campaigns.

These complicated concerns are reflected in the NLRA hearings. A growing consensus among liberal politicians began to emerge, advocating that the best way to satisfy the legitimate demands of workers was to preserve order, prevent high levels of strike activity, slow the spread of communism, and diffuse serious challenges to the capitalist system by creating a government-supported legal environment where moderate forces, particularly the AFL leadership group, were protected and not so disadvantaged. Hence, certain moderate political elites were in favor of the NLRA because they thought it would strengthen the hand of the AFL. Lloyd Garrison, the chairman of the pre-NLRA National Labor Relations Board argued that "I am for it as a safety measure, because I regard organized labor in this country as our chief bulwark against communism and other revolutionary movements .... I think that those employers who are out to strangle organized labor are simply playing into the hands of the extremists.[4]

In a sentiment echoed by diverse people during the NLRA debate, Representative Connery responded to the testimony of Dr. E. R. Lederer, who represented the Petroleum Industry's opposition to the bill. Rep. Connery stated: "Dr. Lederer, I believe personally that the big corporations, like the Standard Oil Company, the Shell Oil Company, and these big textile industries, and the automobile industry, are very short-sighted .... They regard us as enemies of the employers, as actually being inimical to the employers, when we are not. What we are trying to do, Dr. Lederer, is to save those corporations

[4] March 15, 1935, NLRB 1985:1505.

from communism and bloodshed, and, Dr. Lederer, the [g]overnment wants them to give labor of the United States a fair deal. The American Federation of Labor, to which you referred, is the bulwark that is holding back communism in the United States among the workers, by having them in organized units where they can be self-respecting American citizens and have a chance to bargain collectively for their rights. They are keeping men in line who, if they did not have that union, would say all right, we get no protection from the government. We are slaves to our employers. Let us go out like they did in Russia and let us turn the government upside down and take the money away from these fellows .... I am surprised that the big employers cannot see that, and do not regard the committee as their friend rather than an enemy." [5]

For these and other reasons, it is plausible to conclude that worker militancy, the growing strength of radicals within the union movement, and the political conjuncture of the mid-1930s, led to the passage of the NLRA. The hypothesis can be extended, I would argue, in explaining the upholding of the NLRA in April 1937 by the Supreme Court, and the less favorable public policy environment that emerged in the years that followed.

Conclusion

I have tried to show that the economic business cycle was one important cause and constraint in the rise and fall of the strike waves of the 1930s, along with various important political factors. As opposed to any other periods, these strike waves were closely related to the rapid growth of union membership during the 1930s. One causal factor that seems to be less important than it has been in many accounts is the dramatic changes in public policy. Rather, public policy change seems to be an effect, rather than a cause, of strike activity, union growth, and the increased influence of radicalism within the working-class movement.

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[5] April 4, 1935, NLRB 1985:2789.

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Table 1: Union Membership
1897-1948 *
(Selected Years)

Year	Wolman Series	BLS Series
1897	447	
1900	868	
1901	1,125	
1904	2,073	
1912	2,452	
1914	2,687	
1916	2,772	
1917	3,061	
1918	3,467	
1919	4,125	
1920	5,048	
1921	4,781	
1922	4,027	
1923	3,622	
1929	3,443	
1930	3,393	3,401
1931	3,358	3,310
1932	3,144	3,050
1933	2,973	2,689
1934	3,609	3,088
1935		3,584
1936		3,989
1937		7,001
1938		8,034
1939		8,763
1940		8,717
1941		10,201
1942		10,380
1943		13,213
1944		14,146
1945		14,322
1946		14,395
1947		14,787
1948		14,319

* Number of members in thousands.

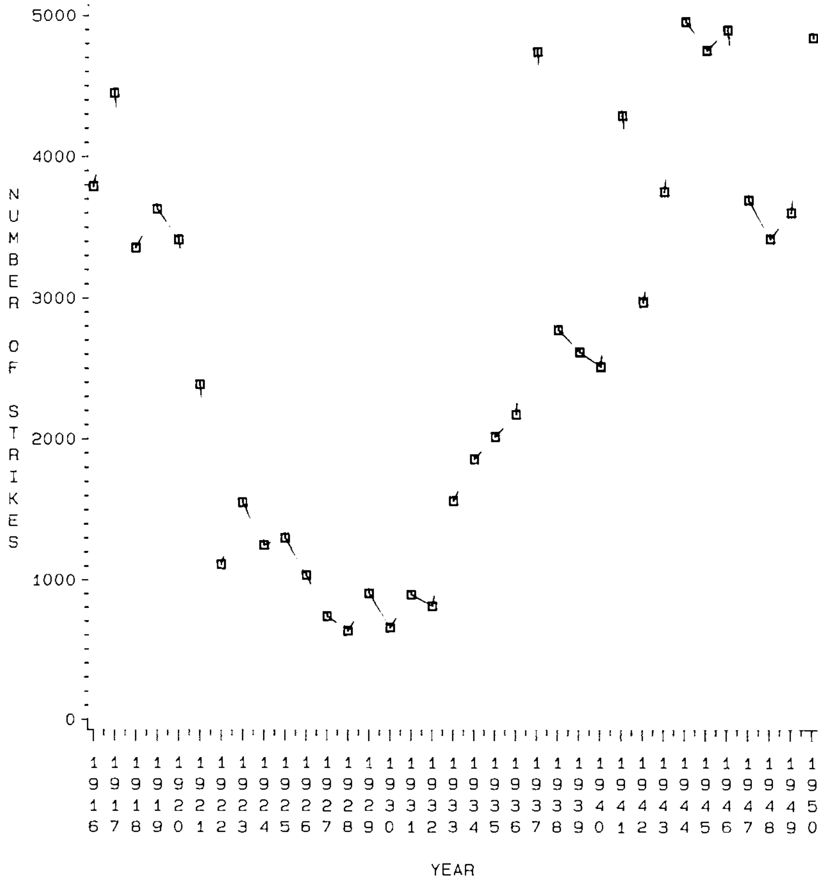
Source: See Goldfield (1989b).

Table 2: Congressional and Senate Elections 1928-1938

Year	1928	1930	1932	1934	1936	1938
House						
Dem	163	216	313	322	333	262
Rep	267	218	117	103	89	169
Other	1	1	5	10	13	4
Senate						
Dem	39	47	59	69	75	69
Rep	56	48	36	25	17	23
Other	1	1	1	2	4	4

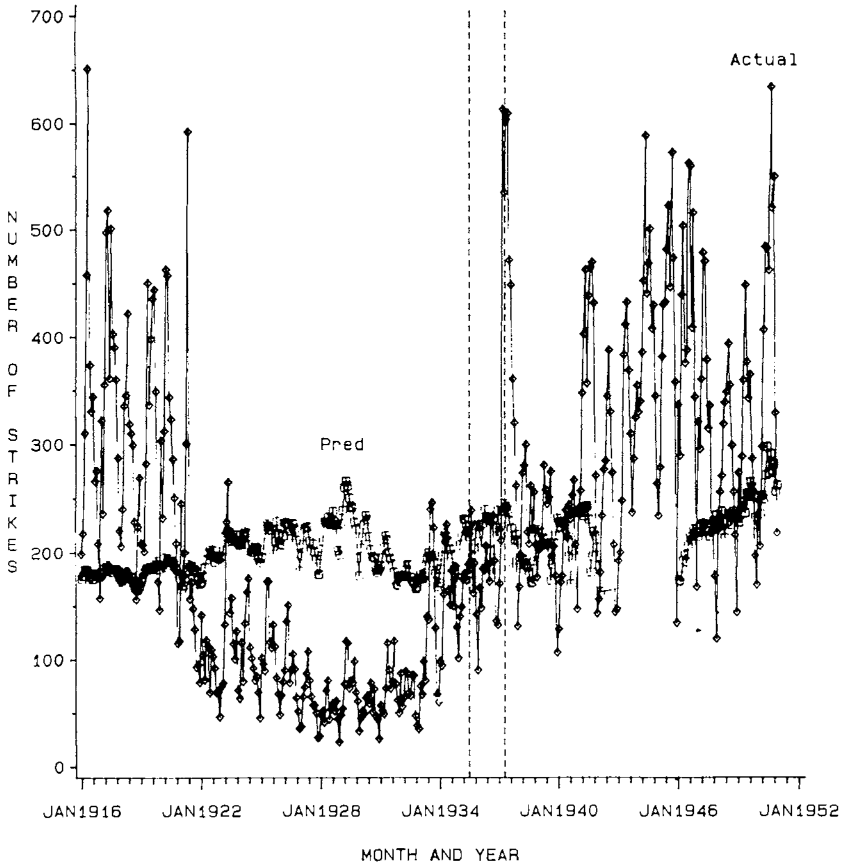
Note: The House after the 1934 elections included 13 Progressive Republicans, 3 Minnesota Farmer-Laborites, and 7 Wisconsin Progressive Party candidates. The Senate included 10 Progressive Republicans, 1 Farmer-Laborite, and 1 Progressive. Source: See Goldfield (1990).

FIGURE 1.
STRIKES PER YEAR – 1916 TO 1950



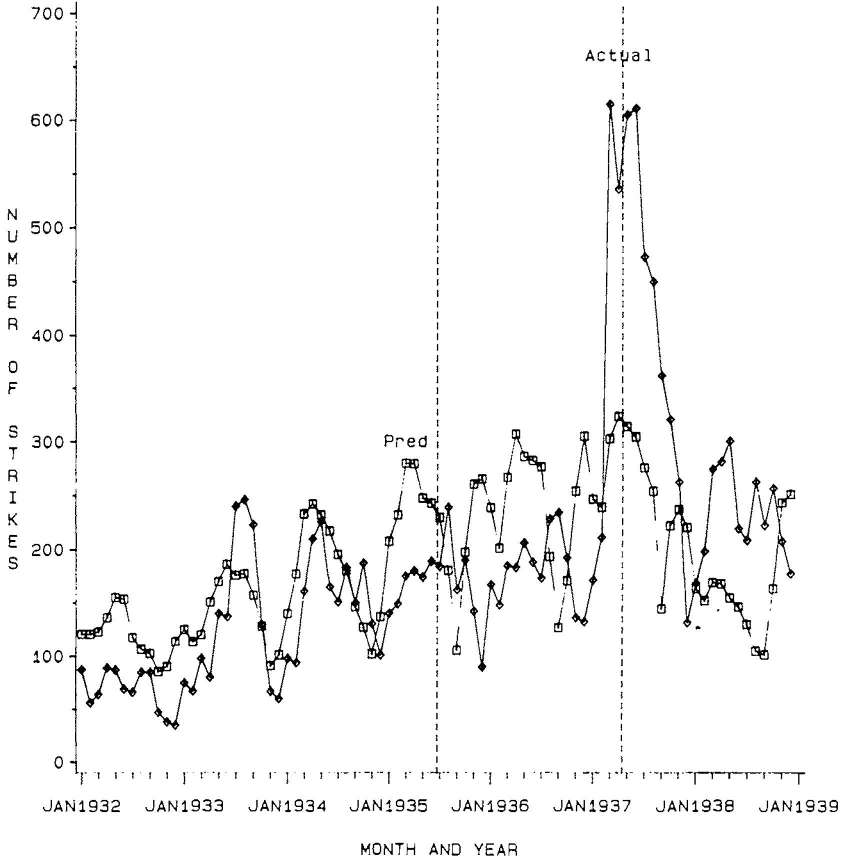
SOURCE: COMPILED FROM BLS DATA.

FIGURE 2
STRIKES BY MONTH – 1916–1950
Y = A + BX + e



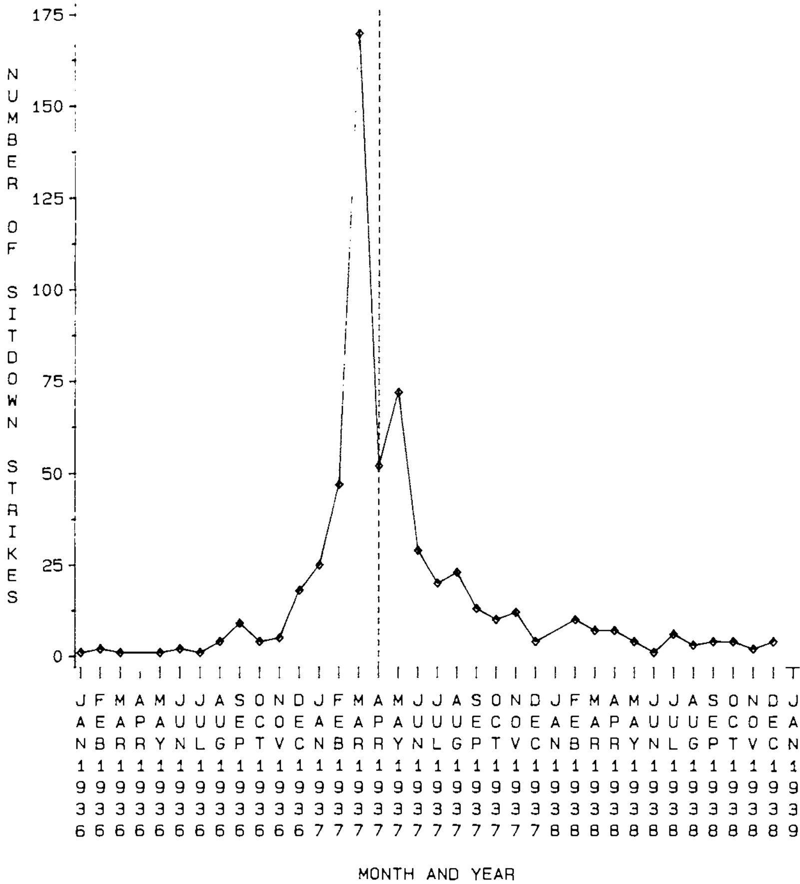
SOURCE: BLS, AUTOMOBILE MANUFACTURERS ASSOCIATION

FIGURE 3
STRIKES BY MONTH – 1932–1938
$Y = A + BX + e$



SOURCE: BLS, AUTOMOBILE MANUFACTURERS ASSOCIATION DATA

FIGURE 4.
SITDOWNS PER MONTH – 1936 TO 1938



SOURCE: COMPILED FROM BLS DATA.

[The End]

Partisanship in the NLRB and Decision Making in Regional Offices

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Decision making in the National Labor Relations Board (NLRB) is conditioned by law, discretion, tradition, precedent, and contextual influences. This decision-making environment provides ample opportunity for addressing considerations other than merit. It is precisely this absence of clearly defined constraints, boundaries, and rules that has led to rising concern in recent years about the ever-increasing political bias in NLRB decision making.

There have been a number of empirical studies that present evidence that political bias exists in the NLRB. Cooke and Gautschi (1981-1982) found that the presidential appointment process had a substantial impact on the board decisions concerning unfair labor practices from 1955-1977. Delorme and Wood (1981), however, found that from 1955-1979, NLRB decisions were only more pro-union under Democratic administrations. Under Republican administrations, Board decisions tended to be neutral.

Further, Moe (1985) examined voting behavior on unfair labor practices cases brought before the NLRB from 1948-1979. Moe found that partisan bias exerted the greatest influence on regional *staff case* filtering decisions. He found that the regional office caseload had an important effect on the NLRB's ability to provide ideological direction to its regional staff. When the board was perceived as pro-labor, the number of complaints filed by labor increased. The greater the relative tendency of labor to file cases, the less pro-labor were the staff's filtering decisions.

These studies provide evidence that the main impact of partisan bias occurred when direction was being provided to regional staff for deciding which cases to dismiss, urge withdrawal, or grant hearings. Nevertheless, the NLRB's success in communicating its preferences is limited by the precarious political position of the regional office staff. On the one hand, staff filtering is very important in determining the cases that reach the board's level in the first place. A Democratic-dominated Board implies that a sympathetic review would be a reasonable expectation on the part of the regional staff, as well as for unions. On the other hand, the regional staff must also serve employer interests. Regional staffs may balance their decisions to reflect a standard rejection or acceptance rate, in order to minimize conflict between the office and the clientele and between the clientele themselves.

Coalitions in the NLRB

Thus, empirical studies of partisan bias in the NLRB suggest that clientele and regional offices react to changing voting coalitions on the Board. Unfortunately, none of these studies include data about the Reagan appointees. This is important because President Reagan departed from a number of traditions practiced by other presidents concerning NLRB appointments. Prior to the Reagan administration, presidents traditionally appointed members who met with approval of both labor and business interests and reappointed such members. President Reagan broke with this tradition. He neither sought the approval of labor unions nor

did he reappoint members (Brownstone 1986-87). This shift is meaningful because there is evidence that members who are reappointed to the Board are more likely to be pro-labor (Delorme et al., 1975). Such a departure introduces unknown members and thus influences the ability of claimants to plan a Board strategy.

As seen in Table 1, out of the eight sets of NLRB members, only two sets were dominated by Democrats and the 1961-1970 set had the longest, most stable membership. There were no changes in Board appointments during that time. One black liberal Republican, Jenkins Jr., stayed on the board from 1963 until 1983 and a liberal Democrat, Fanning, stayed on the board from 1957 to 1982.

In addition, for the first time in decades, the Board was composed of three Democrats, one liberal black Republican, and one female Republican. This suggests that the dominant ideological bias on the Board was moderate to liberal even when Democrats did not control or dominate Board membership.

Until 1981, each set of board members included at least two Democrats and one liberal Republican. After 1981 and until 1983, there were no Democrats on the board at all. Instead of appointing a Democrat, President Reagan appointed one Independent member and the rest Republican. Further, from 1983 to 1985 there was a substantial turnover on the Board. A woman Democrat was appointed in 1983. Jenkins was removed and the Independent member was replaced by another Independent. The board was always dominated by Republicans and the remaining membership split between an Independent member and a Democrat during that time. Only at the end of the Reagan Administration was the Board dominated by Democrats but chaired by a Republican.

Given the nature of Reagan's changes in the Board's ideological disposition, it is clear that historically the board has had a strong sympathetic labor voting block until 1981. Until that time, the boundaries and biases were fairly predictable. After that time, regional staff could not easily accumulate consistent, reliable knowledge about Board preferences due to the rapid turnover and the resulting changes in the Board's ideological balance of power.

Further, there is substantial evidence that the Reagan NLRB departed from standard Board practice by using with increasing frequency "icing" or "freezing" to forestall pro-union or encourage pro-business cases. This is a device used by the Board involving all cases it wishes to decide contrary to precedent, until a case with a more favorable fact pattern is sent for review (Brownstone 1986-87; Kauffman 1987-88). In 1983, the House Subcommittee on Government Operations found that this practice was responsible for the large backlog of cases pending at the NLRB, the sharp drop in the decision output of the NLRB, and an inordinately large number of policy reversals among those decisions it did process (Brownstone 1986-87). In addition, the Reagan Board repeatedly asked federal circuit courts of appeals to return the cases to the Board for reconsideration. This action was highly unusual for the NLRB and questionable given the enormous backlog of cases occurring at that time (Gold and Supton 1986).

Such practices by the Reagan Board have increased uncertainty among business and labor interests and quite possibly among regional staff. This reduced certainty has three possible effects. One, it encourages challenge to the rules by business; two, it reduces the impact of legal rules on behavior of both business and labor; and three, it places a burden on those who act in compliance with the rules only to have the rules change to their detriment (Kauffman 1987-88). In this regard, these practices interfere in regional staff routines and with their established patterns of decisional output.

Union Complaints and Access

If there ever was a time when the Board could impress its criteria upon the filtering process within its regional offices, it should be most noticeable in the Reagan years. I investigated this possibility by examining regional staff decisions on unfair labor practices. Section 8A of the National Labor Relations Act prohibits coercive acts by an employer against employees, such as firing employees engaging in union activities. Section 8B of the Unfair Labor Practices Act defines illegal activities committed by unions as activities such as secondary boycotts. The data were taken from the National Labor Relations Board unpublished master data files on unfair labor practices. This master data file contains 736,256 cases completed in regional offices from 1964 to 1988.

To more fully grasp the importance of partisan bias and access to remedial action by the Board, I examined the relative percentages of union complaint dismissals and withdrawals to those of business complaints. Because the filtering process is so important to achieving standing for remedial action and perhaps subsequent Board review, the rate of dismissals and withdrawals signals the willingness of the regional office to pursue continuing problems of either labor or management. On average, the percentage of all cases dismissed is 24 percent and cases withdrawn is 23 percent. Of those cases dismissed, union complaints comprise 66 percent of the total number dismissed, while those cases that are withdrawn comprise 68 percent of the total number withdrawn. This means that on average, approximately 47 percent of all cases handled by the NLRB regional offices are dismissed or withdrawn. Over three quarters of the time, it is union and not employer complaints that are dismissed. Hence, unions generally have less access to the hearing process, when measured by dismissals and withdrawals, than employers, regardless of which party dominates the NLRB.

Figure 1 shows that the total number of dismissals and withdrawals increased until 1980-81 and then began declining. There is a small decline in both indicators occurring after the change in the party of the appointing president from Democrat to Republican from 1972-73. The pattern returns to an upward trend until 1980-81.

Nonetheless, the percentages of each of these indicators have varied within a very small range until 1980. In Figure 2, the percentage of those cases that were dismissed fluctuated around 66 percent, but slightly declined after 1980. This shows that until 1980, the regional offices were dismissing an increasing number of cases, while staying within a small percentage range. After 1980, the number and percentage of dismissals were lower.

Unlike the pattern of dismissals, the percentage of cases withdrawn does change direction dramatically after 1980. The percentage of withdrawals varied within a much narrower range (around 68 percent) than the dismissals percentages until 1981. This suggests that there has been a change in filing behavior among union claimants in response to the changes in the ideological perspective of the Reagan Board. This is especially true during 1981-1983 when there were no Democrats on the NLRB at all.

Discussion and Conclusions

Figures 1 and 2 show that while the NLRB shifted between Republican and Democratic control, regional office staff decisions and claimant filing behavior remained fairly consistent throughout these shifts, until the Reagan appointments. Given that access to a NLRB review is restricted by regional office decisions to dismiss, and by decisions on the part of claimants to withdraw their complaints, these results support the argument that both the regional office staff and the claimants were responding to changes in the ideological composition of

the Board rather than to the partisan affiliation of the members. Regional offices appeared to have been increasingly reluctant to dismiss union complaint cases under the Reagan Administration's NLRB. Likewise, union claimants have been increasingly willing to withdraw claims rather than risk receiving a pro-business decision or no decision at all by the Reagan Board.

These behavior patterns have a plausible relationship to the increasing number of reversals and policy changes that occurred during 1980 to 1988. Until 1980, there was sufficient continuity from one Board to the next to suggest that regional staff and claimants could and did plan strategy around a probability of winning cases. After 1980, this relationship was disturbed by the Reagan Board's policy reversals and case backlog due to icing or freezing cases. In addition, these changes were amplified by the instability of the Reagan Board's membership, the demise of the labor-sympathetic coalition, and the fact there was little or no Democratic representation.

Further, the graphs show that although voting behavior of the NLRB may have exhibited, according to other studies, fluctuations consistent with partisan bias, such fluctuations were not necessarily instructive to regional offices. Nevertheless, the data do not support the argument that bias exists with respect to partisan shifts until 1981. Until the Reagan Administration, the NLRB contained a pro-labor voting coalition of a liberal Republican and Democrats. Reagan destroyed the pro-labor coalition by not reappointing members and excluding Democrats from the Board until 1983. Until 1980, national trends in union complaint dismissals and withdrawals remained fairly stable. After 1980, changes in filing and filtering behavior reflected the great uncertainty of the Reagan era policy reversals and slowdown in decision output. Hence, bias in the NLRB is more evident during shifts in the ideological balance of power than during change in partisan dominance.

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TABLE 1

NATIONAL LABOR RELATIONS BOARD MEMBERS (5 MEMBERS FOR 5-YEAR TERMS)

1961-1987

Member Name	Years Served	Party	Status
	KENNEDY-JOHNSON		
	1961-70: DEMOCRAT DOMINATED WITH A PRO-LABOR COALITION:		
McCulloch (Chair)	1961-70	Democrat	New
Jenkins Jr.	1963-83	Republican	New
Fanning	1957-82	Democrat	Old
Brown	1961-71	Democrat	New
Zagoria	1965-69	Republican	New
	NIXON		
	1970-74: REPUBLICAN DOMINATED WITH A PRO-LABOR COALITION		
Miller (Chair)	1970-74	Republican	New
Jenkins Jr.	1963-83	Republican	Old
Fanning	1957-82	Democrat	Old
Penello	1972-81	Democrat	New
Kennedy	1970-75	Republican	New
	FORD		
	1975-77: REPUBLICAN DOMINATED WITH A PRO-LABOR COALITION		
Murphy (Chair)	1975-77	Republican	New
Jenkins Jr.	1963-83	Republican	Old
Fanning	1957-82	Democrat	Old
Penello	1972-81	Democrat	Old
Kennedy	1970-75	Republican	Replaced
Walther	1975-77	Republican	New
	CARTER		
	1977-81: REPUBLICAN THEN DEMOCRATIC DOMINATED WITH PRO-LABOR COALITION		
Fanning (Chair)	1957-82	Democrat	Old
Jenkins Jr.	1963-83	Republican	Old
Penello	1972-81	Democrat	Old
Murphy	1975-77	Republican	Old
Walther	1975-77	Republican	Replaced
Truedale	1977-81	Democrat	New
	REAGAN		
	1981-82: REPUBLICAN CONTROLLED WITH NO DEMOCRATS		
Water (Chair)	1981-82	Republican	New
Jenkins Jr.	1963-83	Republican	Old
Zimmerman	1980-84	Independent	New
Hunter	1981-85	Republican	New
Miller, J.	1982-83	Republican	New
	REAGAN		
	1982-83: REPUBLICAN CONTROLLED WITH NO DEMOCRATS MISSING ONE BOARD MEMBER		
Miller, J. (Chair)	1982-83	Republican	Old
Jenkins Jr.	1963-83	Republican	Old
Zimmerman	1980-84	Independent	Old
Hunter	1981-85	Republican	Old
	REAGAN		
	1983-85: REPUBLICAN CONTROLLED BUT NO DEMOCRATS APPOINTED UNTIL 1983 AND 1985		
Dotson	1983-87	Republican	New

Jenkins Jr.	1963-83	Republican	Replaced
Zimmerman	1980-84	Independent	Replaced
Hunter	1981-85	Republican	Replaced
Stephens	1985-90	Republican	New
Babson	1985-89	Democrat	New
Johansen	1985-89	Independent	New
Dennis	1983-86	Democrat	New

REAGAN

1986-87: REPUBLICAN CONTROLLED BUT DEMOCRAT DOMINATED

Dotson	1983-87	Republican	Old
Stephens	1985-90	Republican	New
Babson	1985-89	Democrat	Old
Johansen	1985-89	Independent	Old
Dennis	1983-86	Democrat	Replaced
Cracraft	1986-91	Democrat	New

Source: NLRB (1986)

[The End]

FIGURE 1 11

NUMBER OF DISMISSALS VS WITHDRAWALS
UNION COMPLAINTS AGAINST BUSINESS
NLRB 1964 – 1988

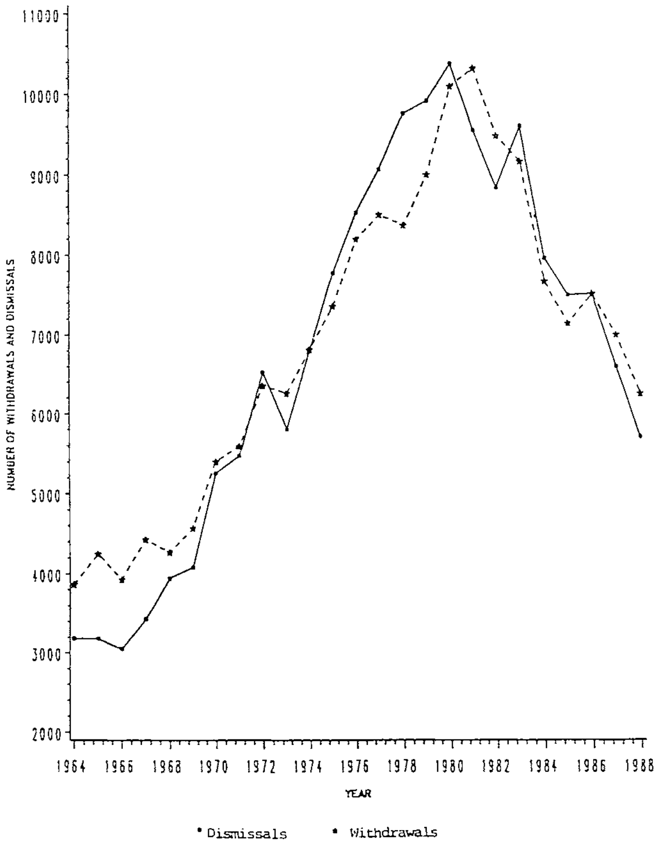
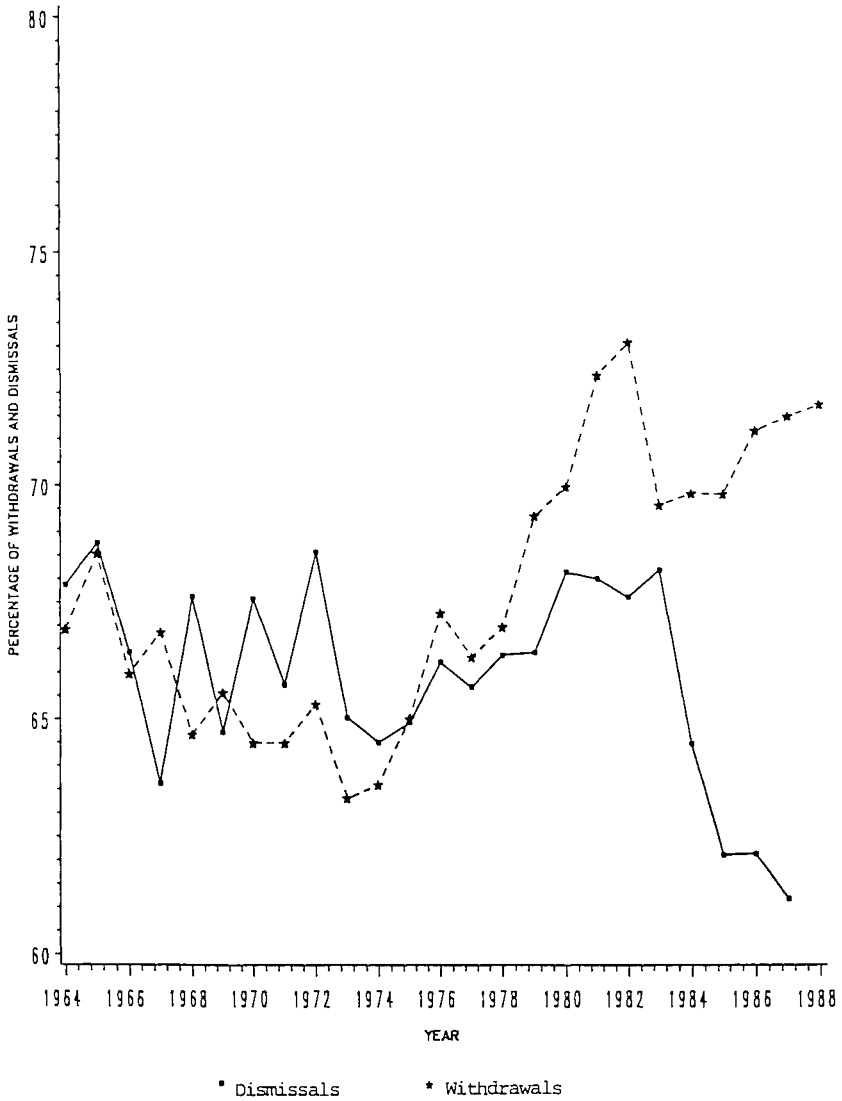


FIGURE 2
PERCENTAGE OF DISMISSALS VS WITHDRAWALS
UNION COMPLAINTS AGAINST BUSINESS
NLRB 1964 – 1988



Empirical Evidence on Political Arguments Relating to Replacement Worker Legislation*

By Cynthia L. Gramm

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The fundamental goal of a strike is to shut down an employer's business operations. The employer is free, however, to attempt to continue its business operations. The major barrier to continuing business operations during a strike is finding an adequate supply of labor to perform the work that is normally performed by members of the striking bargaining unit. Four potential sources of labor are available, including non-bargaining unit employees of the firm, members of the striking bargaining unit who return to work, temporary replacements, and permanent replacements.

The use of permanent replacements has been especially controversial. Although the National Labor Relations Act (NLRA) did not explicitly grant this right to employers in *NLRB v. Mackay Radio & Telegraph Company*,[1] the Supreme Court held that an employer could permanently replace striking workers. Congress is currently considering legislation that would prohibit firms experiencing a strike from hiring permanent replacements for striking workers.

Both proponents and opponents of the proposed ban have advanced strong arguments to justify their positions. This policy debate has raised a number of questions about the empirical foundations of these arguments. This paper examines existing evidence relating to these empirical questions.

Data and Methodology

My empirical analyses use data on two randomly selected samples of work stoppages. The first sample of stoppages is taken from the population of major U.S. work stoppages covering 1000 or more workers. These stoppages were in progress during the period 1984-1988. The second sample is drawn from the population of work stoppages in progress in the state of New York during the same period. The New York population includes stoppages involving six or more workers for the period ending before January 1986, but is limited to stoppages involving 20 or more workers for the remainder of the period studied. Stoppages in the U.S. population were identified in weekly issues of the Bureau of Labor Statistics' publication, *Current Work Stoppages*. Stoppages in the New York population were identified in monthly issues of *Work Stoppages in New York State*, which is compiled by the New York Department of Labor.

The results reported in this paper are based on data from a mail survey sent to a management representative of the firm involved in each stoppage.[2] Only stoppages involving single-firm bargaining units are retained in the samples because the questionnaire focuses on the strategic choices of individual firms and the consequences of those choices.

* This material is based upon work supported by the National Science Foundation (Grant No. SES 8808326) and by the New York School of Industrial and Labor Relations, Cornell University. James McCauley and Paul Mulholland served very competently as research assistants on this project. Any opinions, findings, conclusions, and recommendations expressed in this material are those of the author and do not necessarily reflect the views of the National Science Foundation.

[1] 304 US 333 (1938), 1 LC ¶ 17,034.

[2] I also sent a mail survey to a representative of the union involved in each strike in the two samples, and gathered information about the strikes from archival news reports. I have not yet completed coding and analyzing data from these additional sources.

I pretested an initial draft of the questionnaire using a random sample of 10 stoppages from the national population of stoppages and a random sample of 10 stoppages from the New York population. A questionnaire was mailed to a labor relations manager in the firm involved in each stoppage. Nonrespondents were sent two consecutive reminder letters, with a second copy of the questionnaire enclosed with the second letter. The pretest response rate was 90 percent in the U.S. sample and 30 percent in the New York sample.

Following the pretest, I made a few minor changes in the questionnaire in response to suggestions made by pretest respondents. The revised questionnaire was mailed to labor relations managers in firms associated with 50 stoppages that were randomly selected from the U.S. population and 50 stoppages that were randomly selected from the New York population. The survey procedure was identical to the one used in the pretest. The response rates for the U.S. and New York samples were 52 percent and 38 percent, respectively. Because of the small sample sizes, I pooled the responses of the pretest and second samples from each population. Pooling should not be problematic because both the pretest and second samples were selected at random from the same population.

Thirty-five of the managers in the U.S. sample and 22 of the managers in the New York sample responded to the questionnaire. If the stoppage did not occur during a contract negotiation, it was deleted from the sample. In the U.S. sample, 32 of the responses involved stoppages during contract negotiations and 21 of the responses in the New York sample involved contract negotiation stoppages. Because the small size of my samples prevents me from conducting rigorous hypothesis tests, the findings reported below should be interpreted as suggestive, rather than conclusive.

Permanent replacements were hired in five (15.63 percent) of the 32 U.S. stoppages and in five (23.81 percent) of the 21 New York stoppages. Two firms in each sample reported hiring temporary replacements for strikers.

A 1991 study by the U.S. General Accounting Office (GAO) [3] reports similar findings regarding the incidence of hiring permanent replacements. The GAO study uses Federal Mediation and Conciliation Service (FMCS) data bases of work stoppages beginning in 1985 and in 1989. A random sample of stoppages involving 1000 or more workers and a random sample of stoppages involving less than 1000 workers were selected from both data bases. Telephone interviews with employer and union representatives were used to gather information about the use of permanent replacements. The GAO study found that permanent replacements were hired in 17 percent of the stoppages in both 1985 samples and in 16 percent of the stoppages in both 1989 samples.

Relevant Empirical Questions and Hypotheses

Is the union less likely to survive when strikers are permanently replaced? Proponents of a ban on the use of permanent replacements argue that it is inconsistent with another fundamental goal of U.S. labor policy involving the protection of workers' bargaining rights. Specifically, as Gould has observed, "One particularly pernicious consequence of *Mackay* is that it provides employers with an opportunity to rid themselves not only of workers and pension obligations but also of the union itself." [4] This may happen in one of two ways.

First, once all striking workers have been replaced and trained *all* costs to the firm for continuing to take a strike are

[3] U.S. General Accounting Office. *Labor-Management Relations: Strikes and the Use of Permanent Strike Replacements in the 1970s and 1990s* (January 1991).

[4] W. B. Gould, *A Primer on American Labor Law* (Cambridge, MA: The MIT Press, 1906), p. 102.

eliminated. Consequently, the firm may no longer have any incentive to make concessions. The resulting lack of reciprocity may prevent the parties from settling on a new contract, effectively destroying the bargaining relationship.

Second, hiring permanent replacements may precipitate the decertification of the union. The Taft-Hartley amendments permit the employer to petition for a decertification election when there is a question about whether there should be union representation. Replacement workers, who are likely to vote against union representation, have the right to vote in the decertification election. The replaced strikers, however, who probably are more likely than replacement workers to vote for union representation, may vote in the decertification election *only* if it is held within 12 months after the beginning of the strike. Thus, decertification is a real possibility.

In the U.S. sample, the union failed to survive in two (40 percent) of the five stoppages in which permanent replacements were hired. Whereas only one union (3.7 percent) failed to survive in the subsample of national stoppages in which permanent replacements were not hired. In the New York sample, the union failed to survive in two (40 percent) of the five stoppages in which permanent replacements were hired. In contrast, all (100 percent) of the unions survived in the subsample of New York stoppages in which permanent replacements were not hired. These findings are consistent with the proposition that the union is *less* likely to survive when strikers are permanently replaced than when they are not.

Is a change in policy likely to influence the level of strike activity? Opponents of the proposed legislation have argued that its passage would lead to an increase in strike activity.[5] Proponents, on the other hand, argue that hiring permanent replacements prolongs strike duration.[6] A direct estimate of the effects of a change in policy on strike activity would require an experiment in which bargaining situations are randomly assigned to alternative policies. Because this is not feasible, inferences about the likely effects of the proposed ban must be derived indirectly from the available data.

One approach is to compare duration in stoppages in which permanent replacements are used, to duration in stoppages in which they are not used. Table 1 reports descriptive statistics on how mean stoppage duration varies by replacement strategy. In both samples, mean duration is substantially longer in the subsample of stoppages in which strikers were permanently replaced than in the subsamples in which no replacements or temporary replacements were hired. In the U.S. sample, duration of the five stoppages in which replacements were hired ranged from 28 to 964 days, with a mean of 363.4 days. Whereas mean duration was 63.96 days in the subsample in which no replacements were hired and 72 days in the subsample in which temporary replacements were hired. Mean duration was 20.78 days in the N.Y. subsample in which replacements were *not* hired, 8.5 days in the N.Y. subsample in which temporary replacements were hired, and 139.8 days in the N.Y. subsample in which permanent replacements were hired.

[5] "Statement of the American Paper Institute on H.R. 3936," Legislative Hearing on H.R. 3936 before the House Subcommittee on Labor-Management Relations of the Committee on Education and Labor, House of Representatives, One Hundred First Congress, Second Session (Washington, D.C.: U.S. Government Printing Office, 1990), p. 218-220.

[6] "Testimony of Lynn R. Williams, President, United Steelworkers of America, on an Amendment to the National Labor Relations Act to Prevent Discrimination Based on Participation in Labor Disputes (HR 5936),". Legislative Hearing on H.R. 3936 before the Subcommittee on Labor-Management Relations of the Committee on Education and Labor, House of Representatives, One Hundred First Congress, Second Session (Washington, D.C.: U.S. Government Printing Office, 1990), p. 37-49.

In a second study, Olson[7] examined the correlation between the use of replacements and stoppage duration for major U.S. stoppages[8] in the 45-month period beginning in January 1985. His measure of the use of replacements (a measure that was gathered from news reports and inquiries of the unions involved in the stoppages) did not distinguish between permanent or temporary replacements. Using hazard analysis, Olson estimates a model of stoppage duration with a single right-hand side variable indicating whether or not replacements were hired. He finds that conditional stoppage duration is substantially higher in stoppages in which the firm hired replacement workers.

There are two possible explanations for the apparent positive relationship between the use of replacements and stoppage duration. First, hiring replacements may prolong stoppages. If firms expecting long stoppages are more likely to hire replacements, however, then one also would observe this relationship.

An examination of the Canadian experience also may be useful, because the policy on the use of replacements has varied across provinces and over time. Using data on 7,946 strikes in Canada between 1967 and 1985, Gunderson and Melino[9] found that legislation banning the use of replacements increased strike incidence, as well as conditional and unconditional strike duration. It is important to note that the ban on replacements was enacted in only one province, Quebec, in 1977. Thus, Gunderson and Melino caution that the variable measuring the replacement ban "may be picking up the effects of other changes in that province, which are not controlled for in our analysis." [10]

Would a ban on permanent replacements deprive employers of an ability to operate? Again, this question can only be examined indirectly. The results of my survey suggest that most employers are able to operate through the use of other strategies. Indeed, the most frequently reported operating tactic is the reassignment of the strikers' work to nonbargaining unit personnel. This method was used in 88 percent of the stoppages in the U.S. sample and 67 percent of the stoppages in the N.Y. sample. Moreover, all of the firms in the U.S. sample that hired replacement workers and all but one of the firms in the N.Y. sample that hired replacement workers also made use of other sources of labor, including nonbargaining unit personnel and/or members of the bargaining unit who returned to work before the stoppage ended. Such activities imply that replacements are rarely the sole source of labor available to the employer who seeks to exercise a right to operate during a stoppage.

Respondents who reported that they had attempted to operate also were asked: *At what percent of full capacity did the sites involved in the stoppage operate?* Table 2 reports descriptive statistics on the mean percent of full capacity at which companies were able to operate at struck locations by replacement strategy. Employers reported being able to operate at between 8 and 100 percent of full capacity in the U.S. sample and between 20 and 100 percent of full capacity in the N.Y. sample. In the U.S. sample, operating capacity was highest when temporary replacements were hired, and lowest when no replacements were hired. In the N.Y. sample, there were only slight differences in operating capacity across the three groups, with employers who reported hiring permanent replacement workers

[7] C. A. Olson, "The Use of Strike Replacements in Major U.S. Strikes, 1985-1988," Manuscript, Industrial Relations Research Institute and the University of Wisconsin-Madison, March 1990.

[8] The Bureau of Labor Statistics defines major strikes as those involving 1003 or more workers.

[9] M. Gunderson and A. Melino, "The Effects of Public Policy on Strike Duration," *Journal of Labor Economics*, Vol. 8, No. 3 (1990), p. 295-316.

[10] *Id.*, p. 308.

reporting the lowest mean operating capacity.

Conclusions and Recommendations

The evidence summarized in this paper suggests that permanent replacements were hired in a substantial minority of stoppages. The results of my survey of management representatives involved in stoppages were consistent with one of the major arguments made by proponents of a ban on the use of permanent replacement workers. An argument that is based on the fact that hiring permanent replacements may have adverse effects on both the union's survival and on the length of strike. Additional findings suggest that most employers are able to continue operations without resorting to the use of permanent replacements. Finally, the use of temporary replacements appears to be at least as effective as the use of permanent replacements in increasing the capacity whereby employers can operate during a stoppage. Because sample size limitations have prevented rigorous hypothesis testing, further research is necessary to discover the causal relationships and to estimate more precisely the magnitude of the effects of the use of replacement workers on union survival and on the employer's ability to operate.

The conflicting results generated by the body of evidence investigating the relation between effect of the use of permanent replacements on the magnitude of strike activity suggests a need for further study. A further exploration of the alternative explanations for the positive correlation between conditional strike duration and the use of permanent replacements in U.S. strikes should be conducted in the context of a model in which strike duration and the decision to hire replacements are jointly determined. Such an endeavor would help disentangle these effects. A more careful investigation of the effect of the ban on the use of replacements in Quebec also would be fruitful.

Table 1

Strike Duration by the Employer's Replacement Strategy*

(a) National Sample

Replacement Strategy	n	Mean	s	Min	Max
None	25	63.96	103.97	2	405
Temporary	2	72.00	22.63	56	88
Permanent	5	363.40	375.10	28	964

(b) New York Sample

Replacement Strategy	n	Mean	s	Min	Max
None	14	20.70	17.14	1	61
Temporary	2	8.50	7.78	3	14
Permanent	5	139.80	161.38	12	364

* Strike duration is measured in days. "s" denotes the standard deviation; "Min" and "Max" are the minimum and maximum number of days duration, respectively. In some strikes, the union and employer failed to reach agreement on a new collective bargaining agreement and had ceased negotiating with one another. Defining the duration of the strike is somewhat arbitrary in such cases. I assigned such strikes a duration of 364 days. My justification for this decision is that striking workers who have been replaced lose their right to vote in a decertification election after one year.

Table 2
Operating Capacity** by the Employer's Replacement Strategy

(a) National Sample

Replacement Strategy	n	Mean	s	Min	Max
None	16	57.06	35.86	8	100
Temporary	2	90.00	14.14	80	100
Permanent	3	76.67	40.41	30	100

(b) New York Sample

Replacement Strategy	n	Mean	s	Min	Max
None	7	64.29	34.93	25	100
Temporary	2	65.00	35.36	40	90
Permanent	4	60.00	31.62	20	90

** The percent of full capacity at which the company was able to operate at the sites involved in the stoppage. "s" denotes the standard deviation. "Min" and "Max" are the minimum and maximum number of days duration, respectively.

[The End]

Labor, Politics, and Public Policy: A Discussion

By Andrew Battista

Mr. Battista is with East Tennessee State University in Johnson City.

The panel on "Labor, Politics, and Public Policy" at the 1991 Spring Meeting of the Industrial Relations Research Association reflected the growing awareness of both the importance of politics for unions and industrial relations and the significance of labor for politics and public policy.[1] All of the papers for the panel dealt with the influence of politics on unionization and collective bargaining, an issue area clearly reflecting the balance of power between labor and capital. More specifically, the panel related the decline of organized labor in the United States and its waning size and power as a result of political forces and processes.

The papers by Cynthia Gramm and Diane Schmidt illuminated the obstacles posed to union organizing and bargaining by the federal legal and regulatory environment, focusing on the legal right of firms to permanently replace strikers and on the handling of union unfair labor practice complaints by the National Labor Relations Board regional staff. The paper by Michael Goldfield and the paper by John Delaney and Marick Masters examined the role of politics in overcoming periods of labor decline. The former by taking a fresh look at the 1930s and the latter by considering the current political activity of unions.

Gramm and Schmidt provided more evidence that the legal and regulatory environment now limits the capacity of workers and unions to organize and bargain collectively. Yet this unfavorable legal and regulatory climate is as much an effect as a cause of labor's decline; it reflects a prior and underlying shift in the balance of class and political power in the United States.[2]

Labor has been caught in a vicious cycle. Declining union density and industrial power led to a weakening of labor's political influence, which led to a more inhospitable legal and regulatory environment, which led to further decline in

[1] The panel was organized by Michele Hoyman of the University of Missouri-St. Louis. The papers for the panel were: John Thomas Delaney and Marick F. Masters, "Union Characteristics and Union Political Action"; Michael Goldfield, "The Economy, Strikes, Union Growth, and Public Policy During the 1930s"; Diane E. Schmidt, "Partisanship in the NLRB and Decision-Making in Regional Offices"; and Cynthia Gramm, "Empirical Evidence on Political Arguments Relating to Replacement Worker Legislation."

[2] Thomas Byrne Edsall, *The New Politics of Inequality* (New York: W.W. Norton, 1984); Michael Goldfield, *The Decline of Organized Labor in the United States* (Chicago: University of Chicago Press, 1987).

union representation and bargaining. How is labor to escape this downward spiral? This is especially an issue given the dilemma articulated by Delaney and Masters that the declining scope and power of unionism in the industrial arena makes labor's political action and influence simultaneously more necessary and more problematic.

One possibility raised by Delaney and Masters is to enhance labor's political involvement through conventional forms of political action, such as campaign contributions and lobbying. Well aware of how declining union representation limits the power potential of labor in politics, Delaney and Masters nonetheless hold out the prospect that increased and improved union political action, including greater political mobilization of the union rank-and-file, might alter the legal, regulatory, and public policy environment in ways that would permit an advance of unionism.

While this possibility cannot be ruled out, the experience of the past decade is not encouraging. By the early 1980s the AFL-CIO had developed a strategy for the rejuvenation of labor's political power. This strategy involved forging greater political unity among unions, enhancing labor's lobbying and campaign finance operations, improving labor's public image, and restoring labor's influence in the Democratic Party.[3] Carried out at least to an appreciable degree, this strategy did not produce substantial electoral or legislative gains for labor during the 1980s. It remains unclear whether a solution to labor's difficulties can be found within the bounds of traditional political parties and interest group politics.

Another possibility implied by Goldfield is an upsurge of labor militancy in the form of strike activity and mass protest. According to Goldfield, such militancy produced union growth and a political and legal order more favorable to unionism during the 1930s. Given the low and declining levels of unionization and the shrinking organizational resources of unionism in the 1980s (as in the 1920s and early 1930s), it could be argued that once again the advancement of unionism and labor's industrial and political power will depend upon worker militancy and the concessions it can wrest from elites.

The fundamental question about this scenario or strategy is whether the conditions that precipitated labor militancy in the 1930s (including, by Goldfield's account, mass unemployment, business cycle swings, broad social protest, and growth of radical organizations) will recur and have similar consequences in the near future. This is far from certain, particularly in a period marked by a highly fragmented labor force and heightened international mobility of capital.

Several other political strategies for the revitalization of labor have been suggested. One is the organization of an independent labor political party to promote the class identity and interests of workers and unions, a proposal advocated by Anthony Mazzochi of the Oil, Chemical and Atomic Workers Union.[4] Another is the formation of grass-roots coalitions of labor with other community groups and organizations in order to rebuild labor from the ground up and generate a broad-based social reform movement.[5] Yet another proposal involves a social partnership (class compromise) whereby workers and unions would agree to cooperate in

[3] Edsall, *The New Politics of Inequality*, ch. 4; Bill Keller, "The State of the Unions: Part I," *Congressional Quarterly Weekly Report*, 28 August 1982, pp. 2111-2118; and Charles Rehmus, "Labor and Politics in the 1980s," *Annals of the American Academy of Political and Social Science*, 473, May 1984, pp. 40-51.

[4] Tony Mazzochi, "Toward a Workers' Party," *Democracy*, 3, Summer 1983, pp. 34-40; Tony Mazzochi and Les Leopold, "The Politics of Labor: A Third Party in the Making," *Multinational Monitor*, February 1987, pp. 15-17.

[5] Jeremy Brecher and Tim Costello, eds., *Building Bridges: The Emerging Grassroots Coalition of Labor and Community* (New York: Monthly Review Press, 1990).

economic restructuring for global competitiveness, in return for corporate and governmental guarantees of employment security for workers, organizational security for unions, and decision-making influence for the labor movement.[6]

Like conventional political action and militant strike and protest activity, these strategies have uncertain prospects. All of the approaches mentioned above have advantages and drawbacks. Some are mutually exclusive, while others are compatible. In any case, the time has arrived for wide-ranging debate at all levels of the trade union movement about the proper political strategies for workers and unions. The trends of the past decade in union representation, bargaining, and political influence suggest that organized labor may not even be able to preserve and defend its existing base, let alone advance the size and power of the union movement without new and innovative strategies to compete for power in the political system.

Whether the labor movement finds a way out of its deep decline will have profound consequences not only for workers, unions, and industrial relations, but also for the whole shape and substance of politics and public policy in the United States. Considerable historical and comparative evidence suggests that democracy and egalitarianism in capitalist societies depend fundamentally upon strong and vital labor movements. Throughout Western capitalism such basic democratic institutions as universal suffrage, competitive mass political parties, and welfare states, have typically rested in good measure on organized labor, while the extent of unionization and working-class political mobilization has significantly shaped national patterns of income distribution and material equality.[7] In the United States, the decline of organized labor has been intimately connected with two of the defining conditions of public life in recent years: (1) low, declining, and class-skewed rates of voter turnout; and (2) growing disparities in the distribution of income and wealth. A democratic and egalitarian social order in the U.S. requires an expanded and reinvigorated labor movement.

[The End]

Strategic Problems and Tactical Promise: Unions and Employee Ownership*

By Joseph R. Blasi and Douglas L. Kruse

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To what extent are trade unions represented in the employee ownership phenomenon in the United States? What are the patterns and the major issues between a union as an institution and employee ownership as an institution? These questions will be addressed through an original study of ESOPs (Employee Stock Ownership Plan) based on Form 5500 Employee Benefit Plan Reports to the U.S. Department of Labor and the U.S. Internal Revenue Service. This is a *very* preliminary

[6] Robert Kuttner, *The Life of the Party: Democratic Prospects in 1988 and Beyond* (New York: Viking, 1987), pp. 234-241.

[7] Walter Korpi and Michael Shalev, "Strikes, Power, and Politics in the Western Nations, 1900-1976," *Political Power and Social Theory, A Research Annual: Vol 1*, Maurice Zeitlin, ed. (Greenwich, Ct.: JAI Press, 1980), pp. 301-334; Michael Shalev and Walter Korpi, "Working Class Mobilization and American Exceptionalism," *Economic and Industrial Democracy*, 1, 1980, pp. 31-61.

* The authors acknowledge the gracious assistance of Dr. Corey Rosen of the National Center for Employee Ownership in the preparation of this paper.

discussion using the best available data and informed estimates that will raise additional questions and hopefully lead to more definitive research. Reasonable attempts are made to point out the many limitations and pitfalls of the data and estimates.

Definition of Employee Ownership

Employee ownership is ownership of more than 4% of the total market value of common or preferred stock of a corporation by a group of employees, including substantially more employees than the senior executive team and key middle managers.[1] The usefulness of the 4% cut-off is that it approaches the 5% mark, which is considered by the U.S. Securities and Exchange Commission to be a significant stockholding for publicly traded companies. The definition includes most firms commonly referred to as "having employee ownership," but does not attempt to make claims as to the *optimal* form of employee ownership. Two surveys of ESOP companies done in 1981 and 1986 found that 70% and 60%, respectively, excluded unionized employees from their ESOPs.[2]

In 1984, Kruse found that 52.7% of the employees were excluded from all ESOPs reported to the Internal Revenue Service with over 100 participants, and that 19.9% of these were excluded because they were union members or foreign workers. There is no reason to assume that foreign workers make up a sizable proportion of this group.[3] The exclusion of a large number of unionized employees and other employees from ESOP plans, and limits on shareholder rights and employee participation, have been identified as major barriers to optimal employee ownership in union and nonunion employee firms.[4]

Generally, the term "employee-owned" is reserved for a corporation that is more than 51% owned by its employees where more than a majority of the employees participate as owners and the ownership is broadly distributed.[5] An "employee buyout" is the purchase of a company through a combination of equity and debt where the resulting company becomes employee-owned. Most leveraged buyouts (LBOs) involve the purchase of firms with less than 30% of the purchase price financed by equity and the rest largely financed by debt secured by the assets of the company being purchased. Most "employee buyouts" are LBOs. A management buyout where management promises or provides employees with a 30% ownership stake before or after the buyout, is not an employee buyout. An employee/investor buyout where employees and investors join together to do a leveraged buyout of a company is also not an employee buyout although it may be employee-initiated.

Statistical Portrait of Employee Ownership Companies

In a recent book *The New Owners: The Mass Emergence of Employee Ownership in Public Companies and What It Means to American Business*,[6] the authors reported 10,000 employee ownership companies in the U.S. in 1991, covering 10.8 million participating employees or 12.5% of the private sector work force representing 3% of the value of all public and private stock in the nation. Nine thousand of these firms are closely held corporations with an estimated 6.5 million employee participants and a market value of $20 billion or .7% of the total

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[1] J. Blasi and D. Kruse, *The New Owners: The Mass Emergence of Employee Ownership In Public Companies and What It Means To American Business.* (New York: Harper Business/HarperCollins, 1991).

[2] J. Bado and J. Logue, "Hard Hats and Hard Decisions," in *Journal of Employee Ownership Law and Finance*, Spring 1991, 3-50.

[3] Blasi, Joseph R., *Employee Ownership: Revolution or Ripoff?* (New York: Harper Business/Harper Collins, 1988).

[4] *Id.*

[5] Cited at note 1 above.

[6] *Id.*

market value of all corporate stock. One thousand of these firms (the Employee Ownership 1000) are publicly traded corporations covering an estimated 4.3 million participants with a market value of $100 billion or 2.3% of the total market value of all corporate stock. Closely held corporations represent 90% of employee ownership companies but only 60% of employee participants, while publicly traded corporations represent 10% of employee ownership companies but 40% of employee participants.

In a departure from conventional views on employee ownership, the authors attach special importance to employee ownership in stock exchange companies. This is because the 6872 public companies traded on all three Stock Exchanges dominate the U.S. economy, accounting for over 60% of the total market value of corporations, 50% of the employment, and most of the sales. The Employee Ownership 1000 represent 14.55% of these key companies in the publicly traded sector, but these 1000 firms constitute 29% of the market value, 28% of the sales, and 20% of the employment of all publicly traded corporations.[7]

Table 1 summarizes the best estimates available, in terms of *how much* employees own of the 10,000 employee ownership companies based on a 1985 survey by the U.S. General Accounting Office (1985). A survey is required because the market value of closely held companies is not publicly available. The percentage of companies that employees own in the Employee Ownership 1000 is definitively known because these firms are required to publicly report employee ownership holdings to various government agencies, including the Department of Labor and the Securities and Exchange Commission. These computations were done for all public corporations in the first quarter of 1991 and are shown in Table 2.

Security analysts commonly view a 5% holding as quite significant in terms of corporate control in public companies, and the average of 12.19% holding among the Employee Ownership 1000 is startling. Indeed, 33% of the Fortune 100, 27.2% of the Fortune 500 Industrials, and 19.4% of the Fortune Service 500 had significant employee ownership. Shockingly, employees are the top shareholder in 41% of these corporations. One indication of the importance of these numbers is that 15% employee ownership can usually prevent the takeover of a public corporation if the company is, as most are, incorporated in the State of Delaware and the employees as shareholders vote against the takeover raider in a tender offer or proxy battle.[8]

Some general trends do emerge from this national portrait:

(1) Whether one looks at closely held or publicly traded firms, since the plurality of employee ownership corporations have minority employee ownership, namely, 80% of closely held and 91.5% of publicly traded corporations.

(2) Majority of employee-owned firms are strongly concentrated among closely held corporations that represent over 99% of these firms, whereas less than 1% of the Employee Ownership 1000 are majority employee owned.

(3) Because of the flagship nature of public corporations, because a small stake *can* represent tremendous control in such companies, and because the average holding is so high, minority employee ownership *may* be more relevant than first meets the eye in publicly traded companies.

This portrait would be incomplete without addressing assumptions made by

[7] U.S. General Accounting Office, *Employee Stock Ownership Plans: Benefits and Costs of ESOP Tax Incentives for Broadening Stock Ownership* (Washington, D.C.: U.S. General Accounting Office, 1986).

[8] Cited at note 1 above.

industrial relations scholars and the general public. These assumptions indicate that employee ownership is concentrated in failing firms or that employee buyouts mainly take over failing firms. Both assumptions are totally false. The National Center for Employee Ownership (NCEO) has reported that 98% of ESOPs are set up in profitable ongoing companies.[9] NCEO has conducted an ongoing analysis of selected time periods in a National Employee Ownership Newspaper Clipping Service that is cooperatively purchased and used by a network of employee ownership researchers. The service has provided scholars with an exhaustive national portrait of employee ownership every twelve weeks since 1980 and has yielded no evidence that the aforementioned assumptions are true.

In 1985, the U.S. General Accounting Office[10] confirmed this trend by reporting that surveyed managers of employee ownership firms reported that the ESOP was used to save a failing company in only 4% of the cases. Recently, this finding was confirmed by the authors through a more systematic review of the SEC filings of public corporations with employee ownership. The authors are now conducting a detailed financial analysis comparing employee-ownership firms with their industry cohorts.

The common misconceptions about employee ownership can be traced to the extensive and repetitive national reportage given to a few prominent unionized employee buyouts of failing firms such as Weirtown Steel in West Virginia, Rath Packing Company of Waterloo, Iowa, and Hyatt Clark Roller Bearing of Clark, New Jersey. Misconceptions have not only resulted from these unionized buyout cases, but also from the fact that information put forth by industrial relations scholars has mainly focused on the unionized employee ownership experience. Recently, Chong Park, CEO of Hyundai Corporation of America, studied 38 large employee buyouts that took place between 1980 and 1988. The study compared solvency, efficiency, and profitability ratios of ESOP LBOs relative to industry norms. In this study, the employee buyout firms did about the same or better on all measures.[11]

The evidence strongly suggests that ESOPs in employee buyouts do not frequently involve failing firms. The exact number of employee buyouts is not known, but the National Center for Employee Ownership has provided the following estimates based on their ongoing analysis of the clipping service.

(1) Of the 2000 majority employee-owned companies, an indeterminate number are the result of gradual accretion where a minority ESOP closely held firm grows through gradual accretion of stock. No evidence has ever been presented that gradual accretion ESOPs take place in failing firms.

(2) Over 1000 of majority employee-owned firms are the result of employee buyouts of a retiring owner where a retiring owner sells the majority of a closely held firm to the employees. There are few documented cases of retiring owners attempting to sell unprofitable businesses to the employees.

(3) No more than 200 buyouts are the result of an employee buyout as a divestiture (i.e., where union or nonunion employees buy a majority of a firm in the divestiture of a division of a public company or a closely held corporation. Blasi and Kruse discovered 31 public company divestitures and noted that the divestiture does not mainly refer to buyouts of failing firms. They found that public companies frequently sell the employees prof-

[9] National Center for Employee Ownership (NCEO), *The Employee Ownership Union Handbook* (Oakland, CA.: NCEO, 1989).

[10] Cited at note 7 above.

[11] C. Park and C. Rosen, *The Record of ESOP Leveraged Buyouts* (Oakland, CA.: NCEO, 1986).

itable subsidiaries that no longer fit the firm's strategic mission.

Unions and Employee Ownership

The National Center for Employee Ownership has estimated that union members are no more prevalent in employee-ownership companies than they are in the private sector labor market in general, where union membership has been set by the Center at 12.2% in 1990.[12] In *The New Owners*, Blasi and Kruse reported that 12.5% or 10.8 million workers in the private sector labor force were employee-ownership participants and that the number of employee-ownership participants exceeded the 10.5 million employees who have joined unions and make up 12.2% of the private sector labor force. These figures provided a trend, suggesting that employee ownership is institutionally gaining in importance relative to the trade union movement. It has been difficult to reach definitive conclusions about exactly how much or little unions participated in employee-ownership companies.

Beginning in 1989, companies identified (in their annual filing with DOL and IRS) whether an ESOP plan was collectively bargained, and enumerated the number of employee participants in the plan. This report focuses on 1988 and has three limitations. First, the data are not current with the substantial growth in ESOPs that happened in public companies in 1989. Second, the analysis conducted for this research did not include ESOP plans with less than 100 participants, which requires a more time-consuming analysis and will be included in a further study. Third, it is possible that union and nonunion employees share ESOPs in the same firms. Two baselines will be the observation that union members represent 12.2% of the private sector work force and 29.19% of pension plans of all types. Space limitations prevent reporting of all the data in detail. More statistical analysis will be done on these data in the future.

A total sample of 2515 ESOPs with more than 100 employee participants was examined. This first sample included tax credit ESOPs, leveraged ESOPs, and non-leveraged ESOPs. Subsequently, tax credit ESOPs were excluded and the research focused on 1169 leveraged and non-leveraged ESOPs that have also been looked at separately. In the total sample, unions constituted 20% of employee participants, 6.04% of ESOP plans, and 12.09% of plan assets, with the average employee having an account value of $6030. The average amount value for the nonunion employee is $9600. Thus, it would seem that unions are over-represented in terms of employee participants, heavily under represented in terms of plans, and evenly represented in terms of plan assets. Note, however, that the average union member gets less compensation in stock than the average nonunion employee.

The sample of leveraged and non-leveraged ESOPs alone excludes tax credit ESOPs that have been terminated by Congress and hardly ever lead to more than 4% employee ownership in companies. It is a better measure of union diffusion in employee ownership. Unions constituted 13.15% of employee participants, 6.25% of plans, and 8.82% of plan assets with the average employee having an account value of $9748. The average account value for the nonunion employee is $15,142. This suggests that unions are slightly overrepresented in employee participants, heavily underrepresented in terms of plans, and somewhat underrated in plan assets. Note again that the gap between what the average union member gets in stock has grown significantly vis-a-vis the nonunion employee.

Let's look at leveraged and non-leveraged ESOPs separately. Leveraged ESOPs are the main method unions use to

[12] (NCEO, Personal Communication, 1990).

effectuate sizable or majority employee ownership, because they allow the use of credit to buy large segments of firms. They are the battering ram of employee ownership and probably the source of the greatest amount of wealth creation and capital appreciation. They allow labor to buy companies using credit without using worker savings, while the loans are paid back out of operating profits of the firms. In leveraged ESOPs, union members constituted 7.02% of employee participants, 2.98% of plans, and 3.40% of account assets with the average union employee having an account value of $11,764. The average account value for the nonunion employee is $25,288. Note now that where ESOPs have the most wealth-creating potential the account balance of the nonunion employee is more than two times greater than that of the union member. This suggests that unions are very underrepresented in employee participants, extremely underrepresented in plans and plan assets, and completely out in left field in wealth-creating potential.

Non-leveraged ESOPs are commonly used by unions in concession bargaining when stock is traded for wages and benefit concessions. This data will require further examination to be certain that use is dominant in non-leveraged union ESOPs in the sample, although initial observation indicates that some large cases of steel and airline concession bargaining are represented in the sample. In non-leveraged ESOPs, unions constituted 17.24% of employee participants, 9.89% of plans, and 23% of plan assets with the average union member having an account value of $9200. The average account value for the nonunion employee is $6916. This suggests that unions are overrepresented in employee participants, heavily underrepresented in terms of plans, and overrepresented in terms of plan assets. This last finding may be explained by the large wage concessions some unions took in return for stock bonus plans in the early eighties.

Trade unions are numerically a minor factor in employee ownership by almost every measure. These results may be a surprise to scholars, trade unionists, and consultants, who inhabit a world made up of the same few hundred union ESOPs and have persuaded themselves that unions play a greater role in this phenomenon than is actually the case. Let's summarize the trends:

- Union members are represented close to their proportion in the population in leveraged and non-leveraged ESOPs as a group but underrepresented in the more important leveraged ESOP, and overrepresented in ESOPs used for concession bargaining. The authors suggest this figure is significantly inflated because of the enormous growth of ESOPs in large publicly-traded corporations with little union representation or participation in those ESOP plans.

- Unions are consistently underrepresented in employee ownership plans given their propensity to be more involved with pension plans in general. (Unions are involved in 29.29% of all retirement plans.) In fact, their representation in ESOPs is even far below their proportion of the private sector labor force. On one hand, this may reflect unions preference for defined benefit pension plans. Unions have generally considered avoiding the riskier employee stock ownership plans as a service to their members. But because many corporations have abandoned regular cost-of-living increases for defined benefit plans, and because many companies now offer workers combinations of defined benefit and defined contribution plans, the authors suggest that unions may be doing a disservice to their members by ignoring the addition of employee stock ownership plans to their benefit bargaining strategies.

- With the exception of nonleveraged ESOPs, unions are significantly underrepresented in account assets, while individual union members have much smaller

employee stock ownership account values than nonunion employees. Again, if nonunion employees are paid less than union employees as a group in these firms, this may simply reflect a union preference for fixed wage increases over the riskiness and uncertainty of stock values. Also, greater stock compensation may be a way that employers compensate nonunion workers who do not have defined benefit plans. But if the union/nonunion wage differential does not explain this gap, then unions may be disadvantaging themselves and their members by staying away from employee stock ownership plans. Also, Congress allows liberal stock incentives for ESOPs that fund part of the value of this stock. Union members may not be using their fair share of these tax incentives. *In any regard, union members are ignoring the significant wealth creation potential of leveraged ESOPs quite disproportionately.*

When these data are combined with the national portrait of employee ownership, it is strongly suggested that unions are largely irrelevant to employee ownership in employee buyouts, majority employee-owned companies, and in publicly-traded corporations, or the Employee Ownership 1000. Unions represent only 2.3% of leveraged ESOPs in closely held corporations but 16.9% of the employee participants. This is probably because most nonunion ESOPs are in small businesses, while there is evidence that union ESOPs (especially through employee buyouts) have taken place in some large industrial firms. For example, the United Steelworkers of America has identified 50,000 members in just 23 employee ownership plans.[13] But union ESOPs represent only 4.25% of the assets in all closely-held corporate ESOPs with the remaining assets in the hands of nonunion ESOPs. This is consistent with several attempts by scholars to list actual union ESOPs. No writer has been able to enumerate more than 100 union leveraged ESOPs. This is an upper-level estimate by NCEO, [14] with most lists coming in at the 30-60 range.[15]

If unions are also part of only 2.9% of leveraged ESOPs as the sample suggests, then the plurality of sizably employee held (25-50%), majority employee-owned companies (51-100%) and employee buyouts must be nonunion. This is contrary to the perception that unions may be overrepresented in employee buyouts and have a special presence among majority employee firms. It is indeed probable that employee buyouts of a retiring owner dominate the employee buyout phenomenon.

Unions probably play a more significant role in three types of employee ownership transactions: (1) The employee buyout of a divestiture where one source identifies about half of the divestitures from public corporations cases as union-initiated. Many of these are troubled units.[16] (2) The employee buyout of a failing firm where another source identifies almost seven out of ten of the cases as involving a troubled business.[17] (3) Trading stock for wages where one source identifies most of the cases as involving unions.[18]

The bottom line is that unions have probably concentrated *their* employee ownership efforts in divestitures of troubled public company units, employee buyouts of failing firms, and concession bargaining in trading stock for wages. This may also explain why industrial relations scholars equate employee ownership

[13] S. Newman and M. Yoffee, "Steelworkers and Employee Ownership," *Journal of Employee Ownership Law and Finance*, Spring 1991, 51-74.

[14] (Corey Rosen, 1991, personal communication).

[15] C. Bell and R. Calliorate, "Recent Examples of Union Involvement in Employee-Owned Companies," *The Employee Ownership Union Handbook*, Edited by National Center for Employee Ownership (Oakland, CA.: NCEO, 1989); C. Livingston, "Capital Strategies for Labor," *Journal of Employee Ownership Law and Finance*, Spring 1991, 97-120; and see Newman and Yoffee cited at note 13.

[16] Cited at note 1 above.

[17] Cited at note 15 above.

[18] Cited at note 1 above.

with failing firms; they may be drawing inaccurate conclusions based on a very small representation of the employee ownership world.

Union employee ownership is probably completely insignificant both numerically and as a model among publicly traded corporations. The Employee Ownership 1000 is probably almost totally nonunion. The two sources of evidence at hand support this hypothesis. The 1988 sample indicates that most union participation in public companies was in tax credit ESOPs, which are insignificant and predominate in public companies. Also, the Employee Ownership 1000 database has no evidence that union members participate in any more than a handful of public company leveraged ESOPs and other employee ownership plans[19]. Thus, there is no evidence whatsoever that unions participated in the enormous growth in employee ownership in the flagship publicly traded sector in the last 3 years.

Issues for Unions

The national portrait of employee ownership and the new findings on union distribution raise several questions for unions that require further discussion, debate, and research. No matter how one stands on these questions, their consideration presents a number of dilemmas for those concerned about both unions and worker rights and labor-management relations.

The first question is whether the concomitant decline of unions and the rise of employee ownership will create a situation where nonunion employee ownership companies become a more dominant model than unions of labor-management relations in the year 2000. The authors have predicted that by the year 2000, employee owners in companies with more than 15% employee ownership will dwarf the entire private sector trade union movement. If unions decline to 5-7% of the private sector as some observers predict, this would be a conservative projection. Indeed, employee participants in employee ownership companies (with more than 4% employee holdings) already exceed total private sector trade union members, although admittedly there is no evidence that these firms share organizational characteristics that create alternatives to unionization. Nevertheless, despite the harsh criticism of management's lack of developing employee communication and participation programs in such firms,[20] there are many indications that such efforts are on the rise in nonunion firms.

It cannot, however, be a comfortable prospect for unions to consider the dissemination of this amount of substantial employee ownership as they decline. This is especially true if unions themselves are an insignificant part of employee ownership numerically and that includes majority employee-owned firms, employee buyouts, and large public corporations with substantial employee ownership. The relevance of unions to employee ownership has been in the carefulness with which some unions have shaped employee ownership strategies in their industries or worked at providing real shareholder rights, employee participation, and fairness in employee ownership plans. The United Steelworkers of America has done all three,[21] but their leadership does not alter the general trends.

Second, the rapid increase of employee ownership among America's flagship publicly traded sector (the Employee Ownership 1000) and the low incidence of union employee ownership in this sector may combine with corporate governance imperatives to create the slow emergence of an alternative to the collective bargaining system in some of these companies. Fifteen percent of all stock exchange com-

[19] *Id.*

[20] Cited at note 3 above.

[21] Cited at note 13 above.

panies that dominate the U.S. economy have average employee holdings of 12%. Workers are the top shareholder in 41% of these public companies. Most of these corporations will be more than 25% owned by pension funds, representing large segments of the population, and larger public companies will be 50-70% owned by institutional investors, as a whole, while share ownership by households declines rapidly in these firms.[22]

Institutional investors are increasingly pushing for board representation and reforms of the proxy voting process in these public companies. Many employee ownership plans, however, have direct voting by workers because that is the only way the ownership can function as a potential takeover defense. It is only a matter of time before employee committees and employee associations mount coordinated elections for directors in these companies. The question arises whether workers will use board representation as a vehicle to influence human resource management and labor-management relations in these firms and make management more accountable to employees. In short, once workers become dominant owners in *public* corporations, corporate governance and shareholder rights may represent a vehicle for worker rights previously assured by collective bargaining under labor law. Again, there is an increasing number of examples too numerous to mention here.

Third, what role will unions play in employee ownership in closely held firms, especially closely held firms that are majority employee owned? Ownership of stock in these companies is viewed by management as a way to catch tax incentives, a method to increase tax flow, a change in the fixed wage system, an alternative to the creation of defined benefit plans, a cheaper form of the defined contribution plan, and a way to insure employee loyalty and attachment to the firm. But we have also provided evidence that employees feel employee ownership is a joke in many of these firms, where there is minimal information provided on the firm, a lack of voting rights on the stock, regressive labor-management relations, and little opportunity for employee involvement whereby an employee-ownership culture can take root.[23]

In many of these corporations a sizable proportion, if not the entire amount of the worker's pension, is tied up in company stock. Perhaps unions can play a role in organizing such firms by promising to bring in "real" employee ownership. Unfortunately, unions are incapable of doing so as long as industrial relations scholars and union leaders see the major role for unions in employee ownership as using it as a last-ditch tool and completely ignoring mounting evidence that employee ownership will play an increasing role in the labor economy.

Fourth, the most upsetting issue for unions is whether employee stock ownership, instead of being an economic ripoff for workers, may in fact represent an improvement on the fixed wage and benefit system. In other words, what if employee ownership on average or in a wide variety of visible settings in the society, succeeds in putting more money in worker's hands? The evidence above indicates that indeed employee ownership is putting more money in the hands of nonunion workers and that unions have "hung back" decisively in the employee ownership sector. If there is any truth to this claim, employee ownership could definitely be an "institution" that could challenge unions where it really matters.

Conclusion

The authors have observed elsewhere that the average inflation-adjusted return on stocks from 1926-85 has been 8.8% while average inflation-adjusted wages, depending on the source of one's data,

[22] Cited at note 1 above.

[23] Cited at note 3 above.

have not appreciably increased since 1970 or have gone down.[24] Further careful study is necessary, but it is possible that in the last twenty years: (a) union and nonunion wages have converged; (b) union-negotiated wage increases have not done a good job of keeping pace with inflation; and (c) recent nonunion offerings of stock to employees have provided them with more upside potential than fixed wage increases. Perhaps, a very small amount of employee stock ownership throughout this period would have made more sense financially for workers than fixed wage increases alone. Perhaps union supplementation of fixed wages with ESOPs would have given more to members. Obviously, a bet on the stock on one company is more risky than betting on the performance of a portfolio of market stocks. But what if unions could become skilled in evaluating the earnings potential of company stock? These questions should be examined.

There is little evidence that employee ownership is ushering in an era of labor-management cooperation, but the evidence is strong that the steady growth of employee ownership and the steady decline of unions makes this increasingly worthy of industrial relations study and relevant to institutional decisions by unions and their role in the American economy.

TABLE 1

The Percent of Companies Employees Own
Best Estimates for the Entire Employee Ownership Sector

% Owned By Employees	% Of Firms According to 1985 GAO Study	Estimated Number of 10,000 Firms in 1991
Less than 51%	80%	8000
More than 51%	20%	2000
1-25%	56%	5600
25-51%	24%	2400
25-100%	44%	4400

Source: Estimates based on U.S. General Accounting Office and the National Center for Employee Ownership data.

TABLE 2

The Percent of Companies Employees Own
Publicly Traded Corporations of the Employee Ownership 1000

% Owned by Employees	% of Companies
Less than 10%	52.3%
10-20%	34.2%
Greater than 20%	13.5%
Below 25%	91.5%
Over 25%	8.3%
Over 50%	.9%

Average Holdings: Entire Employee Ownership 1000 = 12.19%

Source: Employee Ownership 1000 Database (Blasi and Kruse, 1991).

[The End]

[24] Cited at note 1 above.

Union Considerations in Employee Buyouts

By Malon Wilkus

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Despite the widely publicized failure of the union-led employee buyout of United Airlines, employee buyouts are in fact alive and well. In the last year, American Capital Strategies completed four employee buyouts with combined sales of over $125 million annually, approximately 800 employees, and over $42 million in total financing.

These four represent only a portion of the total employee initiated transactions in the past year. But the total employee buyouts in the past year represent a much larger percentage of all leveraged buyouts when compared to prior years. In a tough financial climate of the kind we are experiencing today, employee buyouts are often the only way a transaction can get done. This paper is intended to explain why this is so.

An ESOP can bring many benefits to the standard leveraged buyout. First, there is the hard-to-measure, but very real motivational effects of ownership. For the same reasons that owners/managers are motivated to improve their performance in a management buyout, the workers as a whole are motivated to strive for the success and growth of the enterprise when they are equitably included in a transaction and when their share of ownership is accompanied by real participation and communication. Secondly, ESOP transactions offer significant financial benefits unavailable under any other ownership structure. The substantial tax benefits of an ESOP transaction, which will be discussed more fully later in this article, make an ESOP a strong bidder by increasing cash flow available for debt service.

Finally, in cases where employee concessions are needed for survival and particularly in unionized settings, employee ownership may be the only effective way of giving workers something of value in return for their sacrifices. Without such sharing of the "upside," employees may not be willing to make the sacrifices necessary for success.

It is hoped that more employee buyouts (EBOs) will be implemented as investors, owners, managers, unions, and employees learn that employee buyouts can be competitive bidders and that multi-investor EBOs can provide a market rate of return to all investors.

Sellers have learned that they can often maximize their return if they sell to management in a leveraged buyout transaction. Management has learned that through leveraged buyouts they too can share in the ownership of their company. It is time for sellers to learn that the advantages of selling to management is compounded when they sell to all employees. It is also time for all employees and unions alike to realize that the opportunity for ownership comes around only rarely, and, when it does, management alone should not reach for the golden ring; instead, every shop worker, clerk, engineer, secretary, supervisor, and manager alike should reach out and take a stake in their company. Only if this becomes the norm will we see a broadened ownership of wealth in this country and maintain a vigorous and dynamic free market economy.

Union Initiated Transactions

Unions can initiate an EBO. This is typically done by one or several unions representing the employees. Such a buyout effort can also be supported by the company with corporate funds. In such a buyout attempt, it is imperative for the employees to team up with qualified management to assist in the buyout effort and subsequently to operate the company.

It is common for a union-initiated employee-buyout effort to invite existing management to participate with the union in buying the company. A union also has the option to seek other more qualified management with which to par-

ticipate or to selectively invite existing management to its side.

It would be nice for sellers if the employees would always be motivated to trade off concessions for ownership. However, workers typically have little discretionary income and less desire to see it taken from them. Workers generally must be concerned about protecting current income as opposed to gambling on the future of their company. When a company undergoes a standard leveraged buyout, no one is more at risk than the employees.

The cash investment from an investor in such transactions typically accounts for 10 to 15% of the total financing requirements of the transaction. Normally, such an investment represents only a fraction of the investor's portfolio. If the company were to fail they would experience losses, not catastrophe.

Management typically invests a portion of their net worth in leveraged buyouts (LBOs) in return for a sizable equity stake and continuation of their relatively high salaries. If the company were to fail, management would fall back on their accumulated resources and take their college degrees elsewhere.

In the standard LBO, the average employee invests nothing, receives nothing, but assumes enormous risks. For average employees, the chance of owning a home, affording a good education for their children, and their very livelihood, is tied up in the success or failure of their company. Stable income and accruing pension benefits are the bulk of their financial resources. If their company is leveraged, these resources are put at great risk. This is not to say, however, that there may be greater risk for employees if the company fails to undergo a leveraged transaction.

If the company falters, it is the employees who are asked to sacrifice. If the company fails, it is the employees who enter the job market with limited or specialized skills and meager resources to relocate and retrain. In return for such risks, the employees normally receive no stake in the success of the company.

Security of wages and benefits should be the foremost consideration of unions. Therefore, if a fat-cat corporate buyer comes along with deep, grand-daddy pockets, the employees, whether organized or not, will generally opt for the role of wage earners and pass on the opportunity and risks of being owners. To out-bid such corporate buyers is tough and the concessions that may make it possible would be substantial.

However, if a corporate buyer is a union buster or is a buyer who is likely to move the facilities to Timbuktu, then the employees will normally consider long and hard their willingness to take concessions rather than risk losing their jobs.

If the employees on average are near retirement and if their retirement benefits are substantial, they may view any efforts to achieve ownership as a waste of time. In situations where a distress company is for sale and employees are entitled to substantial severance or shutdown payments, they may consider it more lucrative to take such payments instead of supporting an employee buyout. In such cases, the union's interest may not be entirely aligned with existing employees and may be more aligned with job preservation through employee ownership.

If the alternative to an EBO is a LBO by a "financial buyer," then the employees should be concerned about the likelihood of work force, wage, and benefit reductions being imposed on them so that the LBO can survive its tremendous debt load. If workers are operating under a collective bargaining agreement they will expect to face demands for give-backs in the next round of negotiations, or they will fear that their highly leveraged company will be prone to failure in any future recession or fail simply due to lack of

resources to adequately invest in capital equipment, research and development, and marketing.

All of these fears are well founded. If the likely buyer is a financial buyer who intends to use leveraged buyout techniques, the employees could buy the company themselves using an ESOP. If the company can be purchased on the same terms as a competing LBO, an EBO's tax and other advantages will enhance the viability of the company. In this way, if the company is successful due to workers' sacrifices or for any reason, the employees will automatically reap the benefits of success through ownership of the company.

It is in the interest of a union to consider the various alternatives available to them, in terms of competing bids, before aligning themselves with one particular bidder. Once aligned, however, it is not in their interest to align themselves with any other bidder. If they were to do so, they would be bidding against themselves. Their objective, if they choose to buy a company, is to buy it at the lowest possible price.

A union supporting an EBO with concessions will generally demand voting pass-through and representation on the Board of Directors for their membership. Typically, such Boards will have one-third of its directors representing the salaried employees, one-third representing the bargaining unit, and one-third composed of independent directors or directors representing cash equity investors. In all of these cases, employees are faced with very personal and significant financial considerations and, like any other buyer, will generally make their decision based on their best judgment of the financial cost and benefits to them and their families.

Those who invest in the equity of a company typically reap six rights of ownership: (1) voting rights; (2) dividend rights; (3) trading rights; (4) appreciation rights; (5) liquidation rights; (6) hypothecation rights; and (7) rights to information. Labor, in such instances, needs to fight for each one of them. However, dividend and liquidation rights of equity investors are typically subordinated in an LBO to the secured lenders of the company.

EBOs vs. LBOs

The financing for an EBO is very similar to a LBO. The advantages for an EBO have to do with various improvements that can be achieved in the cash flows of the company. These improved cash flows can be used to afford a higher price for the company or can be retained by the buyer to have a positive impact on the growth in equity of the company. The example at Table 1 models a typical LBO transaction.

The net worth of the company will rise over a five-year period, as retained earnings accumulate. The enterprise value in the example at Table 1 is assumed to be five times operating income, plus cash, less outstanding debt. The internal rate of return for the initial cash equity investment over a five-year period will be 43% based on the growth in enterprise value. It will require ten years for the LBO to retire all of its debt.

The difference between the LBO described at Table 1 and an EBO is that the proceeds of the senior and subordinated term loans made to the new company will be loaned by the company to its ESOP. It will be used by the ESOP to purchase equity in the new corporation. The proceeds from the sale of equity to the ESOP will be used by the company to pay the purchase price and to cover other financing requirements. The new company will make contributions to the ESOP over a five-year period and these will be used by the ESOP to service its debt. The portion of the company's contribution used by the ESOP to pay principal payments on debt, generally must not exceed 25% of the company's payroll.

The ESOP will enhance the cash flow of the company in a variety of ways, but it will also dilute the interest of any cash equity investor. The following are the ways in which an ESOP, compared to the example at Table 1, can enhance the transaction and offset the dilutive impact of the ESOP:

1. **Principal Deduction**—Principal payments on ESOP loans can be made with pre-tax earnings, causing a reduction in taxable income. Therefore, if the new company is profitable, 40% of the amount used to retire principal is provided with cash flow made available from tax savings. This has a $12 million positive impact on the net worth of the new company over a five- year period.

2. **Lower Interest Rate**—The interest rate on the senior and subordinated debt may be lower because 50% of interest income on loans made to an ESOP or its company by qualified lenders is deductible from taxable income of the lender if the ESOP owns over 50% of the company. The interest rate using an ESOP will be 10.2% or 85% of the non-ESOP rate. This increases the net worth of the new company $2 million over a five-year period.

3. **Enhancements to Earnings**—The $10 million in earnings before interest and taxes in the example at Table 1 can be enhanced with an ESOP because employees and unions are often willing to make sacrifices in wages and salaries, change work rules, and forego certain benefits in exchange for the rights of ownership. These sacrifices are often available only if the employees are involved in the establishment of the ESOP and only if their stock is endowed with all six ownership rights described above, particularly voting rights. In addition, these sacrifices are more readily available if the future of the company is at stake or if the policies of the old company threaten job security. The enhancements are summarized below.

● Salary and Wage Reductions—5 to 15% reductions in salary and wages are possible in many EBOs in exchange for substantial ownership rights. In the example at Table 1, $2.1 million of salary and wage reductions are assumed, with a growth rate of 3% a year. This enhances net worth by $11.2 million over a five year period.

● Work Force Reductions—Work conditions and the demands placed on labor in the workplace is either an employee benefit or a negative aspect of employment. Often, the fewer the workers, the more demanding and risky the job. Labor unions take a serious view of this and will often fight for strict work rules to maintain certain relations between compensation and the demands of the workplace. These arrangements are contractual in collective bargaining agreements and may be difficult to alter in a LBO.

An EBO may create the proper environment for implementing workforce reductions that could not be implemented in a LBO transaction. In Table 1, $1.2 million in annual salary, wage, and benefit reductions are assumed due to work force reductions. These reductions increase profits and net worth by $6.4 million over a five-year period. Work force reductions may be offset by increased sales, with no net loss of employment, or accomplished through normal attrition.

● Shift in Employee Benefits—In most companies the employees receive significant non-wage related employee benefits. By using ESOP financing, the company in this example is contributing $6 million annually to an employee benefit plan. This is a significantly larger amount than a company this size would normally contribute to a pension plan. (However, an ESOP as a pension plan is a riskier pension vehicle for employees than a diversified pension plan; therefore, it may be inappropriate to exchange dollar-for-dollar one benefit for the other.) The employees may support the reduction of certain benefits in exchange for implementing a larger benefit plan (the Employee Stock

Ownership Plan), thereby reducing the operating cost of the company.

In the example at Table 1, it is assumed that cash flow available for service of acquisition debt is increased $1.2 million annually due to a shift and increase in employee benefits to the ESOP. This enhances net worth by $6.4 million over a five-year period, while increasing the pension benefits to the employees if the company is successful.

● Improved Productivity—ESOP practitioners have been reticent to project cost savings in EBOs due to the implementation of an ESOP. However, many in the field believe that there is evidence that with high levels of employee participation in conjunction with employee ownership, productivity can indeed be improved. For this example, costs are reduced by a modest $.75 million annually due to improved productivity. This contributes $4 million to net worth over a five-year period. (See Table 2)

4. Debt Repayment—The debt of the EBO will be reduced twice as fast as in the LBO. This dramatic improvement reduces the risk to the lenders, to the equity investors, and to the employees, making a much healthier company. (See Table 3)

5. ESOP Financial Advantages—The financial advantages of the ESOP can be summarized by calculating the net present value of the cash flows associated with each advantage brought to the new company by the ESOP. The tax savings associated with the ESOP contribution is available to the extent the company has income that can be sheltered from taxes. This risk is taken into account by using a discount rate of 15%. There is little risk of maintaining the lower interest rate on the ESOP debt so that it is discounted at 10%. In addition, there is little risk of the employee sacrifices not being attained, especially if they are agreed to in a five-year collectively bargained agreement. A 10% discount rate is therefore selected for the cash flow associated with the employee sacrifices. The result of the discounting reveals that the ESOP provides a net present value of over $28 million to the EBO over the LBO. (See Table 4)

6. Net Worth—The net worth of the ESOP company described in comparison to the example at Table 1 rises over a five-year period to nearly $58 million, as retained earnings accumulate and as the ESOP retires its debt. This compares to the LBO's net worth of only $22 million. (See Table 5)

7. Enterprise Value—As you can see in Table 6, the enterprise value for the fifth year is projected to be only $36 million for the LBO, whereas the EBO is projected to attain an enterprise value of $101 million. The enterprise value in this example is assumed to be five times operating income, plus cash, less outstanding debt.

8. Stock Ownership Structure—The investor in the standard LBO must only share equity with the subordinated lender who in this example requires an 18% share of the equity. Whereas in the EBO, the equity investor must share equity with both the subordinated lender and the ESOP. However, the subordinated lender only needs 8% of the equity to fulfill its required total return when all the advantages of the ESOP are accounted for. The ESOP needs 59% of the total equity for its investment.

9. Investor Returns—In the EBO, the Non-ESOP equity investors must share ownership with the ESOP. Using current valuation methodology for allocating equity in a multi-investor leveraged ESOP, approximately 33% of the appreciation rights will be allocated to the cash equity investors. Based on such an allocation, the Internal Rate of Return (IRR) to the investors who invest the original $5 million cash investment will be 46% in the EBO or 7% better than the LBO over the first five years. The various enhancements associated with the ESOP offset

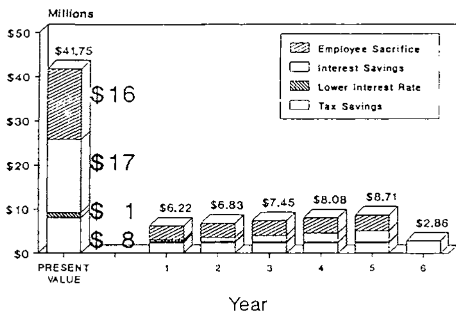
the dilutive impact of the ESOP on the cash equity investor's return. However, it is important to note that the risk to the investor will be dramatically lower due to debt being retired twice as fast in the EBO versus the LBO.

10. Employee Returns—The average employee in this example would experience approximately a $3,600 reduction in compensation annually. Alternatively, the ESOP account for the average employee will grow according to the projected enterprise value of the company to approximately $73,000 by the end of year five. The employees in the example outlined at Table 1 experience a 73% internal rate of return resulting from their sacrifices and the projected enterprise value of their ESOP account.

Table 1
Leveraged Buyout

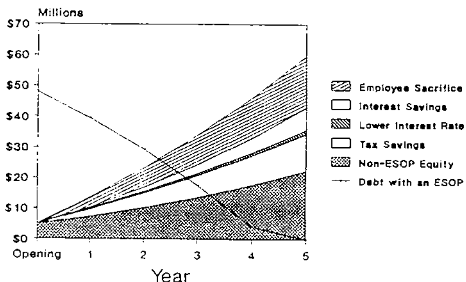
A. Uses of Financing		
1. Purchase Price		$50 million
2. Transaction Expenses & Cash Reserves		5 million
Total		$55 million
B. Sources of Financing		
1. Senior Debt		
a. Revolving Line of Credit		
Amount:		$20 million
Interest Rate:	12%	
b. Term Debt		
Amount:		$20 million
Interest Rate:	12%	
Term:	7 Years	
2. Subordinated Term Debt		
a. Amount:		$10 million
b. Interest Rate:	14%	
c. Term:	10 Years	
Retired in years 8 to 10		
d. Ownership:	18%	
3. Cash Equity Investment		
a. Amount:		$ 5 million
b. Ownership:	82%	
Total		$55 million
C. Starting Operating Income		
Earnings Before Interest and Taxes (EBIT)		$10 million
Growth Rate:	3%	
D. Labor		
Labor Cost:		$31 million
Growth Rate:	3%	
Number of Employees		1,250

ESOP FINANCIAL ADVANTAGES

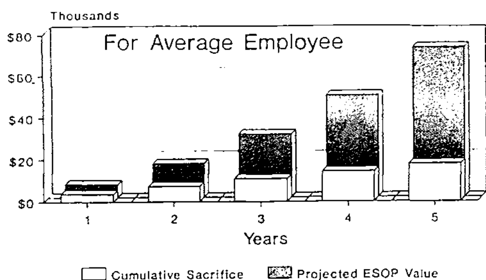


ESOP vs Non-ESOP BUYOUT

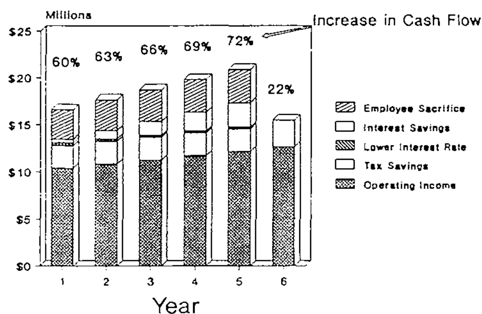
Net Worth



Compensation Exchanged For Stock

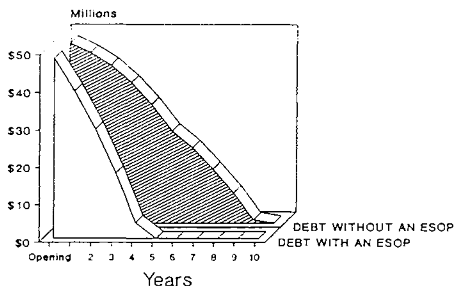


ESOP's IMPACT ON CASH FLOW



ESOP vs NON-ESOP BUYOUT

Debt Reduction



[The End]

Worker-Owners in the Board Room

By Robert N. Stern

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When UAW President Douglas Fraser was appointed to the Board of the Chrysler Corporation in May 1980, the issue of worker representation on corporate boards suddenly drew national attention in the United States. Papers asked "Who's That Knocking at the Board Room Door?" (Ronen and Watarz, 1982), and information concerning worker board representation in Europe, which had begun in Germany over thirty years earlier (Steuer, 1977), was in demand. However, there was little information about how extensive such representation plans were in the U.S., how the existing plans were structured, and how effective board membership might be as a means for representing worker interests. In this paper, I want to report the results of our study of these issues in fourteen U.S. firms with worker representation on the board of directors or on an ESOP trust. (See also, Stern, 1988; Hammer, Currall and Stern, 1991).

Board representation is an indirect (representative) form of participation in decision making for U.S. workers and has often come about through collective bargaining settlements. There have been tradeoffs between unions and corporations in which wages or benefits are traded against representation in the decision making process of the firm. Bargaining occasionally has included the establishment of worker shareholding in the company through an Employee Stock Ownership Plan. Union representation on the boards of Eastern airlines and Pan Am were illustrative of the creation of worker board representation through negotiations. In addition, some non-union firms that established employee stock ownership plans have included board representation, or at least worker representation on the ESOP trust. Thus, the general experience has been one in which workers as both workers and shareholders come to have representation on a corporate board.

U.S. and European board representation arrangements are distinguished from each other in several ways. The decentralized nature of decisions regarding firm governance structure in the U.S. has made board representation a firm-by-firm choice. Plans are established by individual firms rather than by legislative mandate as in many European cases. Thus, legal requirements in Germany, Denmark, Norway etc., produce uniform structures for board representation and indicate the rights of labor to participate in decision making, by specifying whether labor has minority or parity representation and by attempting to delineate power relationships among the parties. In the U.S., local decisions governing plan structure produce idiosyncratic, and to this point, widely disparate representation schemes.

In essence, legislative requirements advance the process of developing institutionalized patterns of interaction. The roles that worker-representatives are to play are at least partially specified as are some of the limitations of previous power holders, including firm management and current board members. The longer the experience with the representation plan, the more routine and taken for granted the system becomes and the less conflict over defining the boundaries of worker-director action will dominate board interaction. For the U.S., experience with worker board representation is in its infancy, and the spread of information on the structure of plans and on the effec-

tiveness of this form of representation is scarce.

Given minimal experience with any social change, such as placing worker-representatives on a board of directors, interested parties will seek definition of appropriate roles and behaviors. Expectations are likely to be unrealistic and in conflict with those having differing interests. There may be competition over the definition of the role worker-directors will play as interested parties, such as unions, workers, managers, and other shareholders compete to control the changes in the corporate governance structure. Power comes into play as a resource in ultimately defining worker roles on the board. Over time, roles should become stabilized and institutionalized patterns developed, but at this point in the U.S., the definition of "legitimate" activity for worker-directors as representatives of worker interests, as well as general corporate interests, is an open and possibly contentious question.

A Process Model

A process model describing interaction at this initial stage of experience with worker directorships focuses on the ways in which interested parties define the directors' roles with respect to expected behavior. Shaping behavior always requires definition of rules or norms, the monitoring of behavior and sanctions designed to shape behavior, either through reinforcement or seeking of change. Such a process has been described in the development of comprehensive policies of worker board representation in Germany and Scandinavia. Initial disagreements over the roles representatives should play eventually evolved into industrial relations models based on a consensus about how participation in decision making would work. (e.g., Adams and Rummel, 1977; Streeck, 1984).

In legal terms, worker board members have equal status to other directors and are likely to assume that their positions will translate into real influence in decision making and decision outcomes (Hammer and Stern, 1986). However, managers are not likely to want to give up or dilute their power over decisions. The shift in authority structure implied by worker board membership creates a conflict between managers and conventional directors seeking stability and little change in board member behavior, and worker-members seeking a new voice in board decision making. Until institutionalized roles develop, expectations, evaluations and perceived effectiveness of representation will be in a state of flux.

Worker-directors as representatives of workers within the firm expect to act on behalf of labor by expressing work force concerns to the board, voting for labor interests (if votes are taken) when these conflict with shareholder or management interests, and bringing labor issues to the board agenda. Worker constituents are likely to expect directors to participate in the broad range of board issues and to provide information about the company. Management may expect some power sharing but with little challenge to its overall decision making authority. Worker-directors might also be seen as conduits for information explaining board and management actions to the work force.

Management and conventional directors have experience in the boardroom and are likely to try to set the frame of reference within which workers think about their positions. They may attempt to control who is selected to sit on the board, provide training, socialization to board practices, and apply social pressure to shape behavior. Worker constituents may use similar techniques to influence directors' behavior. Work in Norway (Englestad and Qvale, 1977) and Australia (Dubler, 1985) illustrates such influence techniques.

The worker-directors bring their own definitions of appropriate roles, perhaps becoming worker advocates, perhaps aim-

ing at general corporate responsibilities, or perhaps taking the role of mediator between contending management and worker interests. Whatever role is chosen, it will satisfy some of the interested parties and disappoint others. Without institutional supports for particular roles, the worker-directors will be subjected to a variety of influence attempts. Dubler (1985) showed that workers in Australian firms who took on a worker advocacy role were socially isolated from other board members. Management also used reminders of the fiduciary responsibility of worker-directors to the firm to shape director behavior.

The discussion of role development suggests that the degree to which worker-directors attempt to represent a worker constituency will be affected first by the manner in which they are chosen and trained. Also, the degree of contact a representative has with constituents should affect an advocacy stance either reinforcing it or reducing it because of lack of contact with other workers.

Worker-directors who assume an advocacy role will be more likely to face sanctions or influence attempts by management and conventional directors. Those who choose general corporate interests will eventually face similar pressure from constituents, although director behavior will not be quickly obvious to other workers. Rather, lack of communication leads to the assumption that the worker-directors are not protecting work force interests, especially if unpopular management decisions are initiated.

Workers chosen to represent other workers are likely to find that the reaction to their advocacy positions produces considerable role conflict. Aside from eventually altering, choosing, or sticking with a particular definition of appropriate behavior, role conflict should generate high levels of stress for the worker-directors.

Method and Findings

This study was undertaken in the early 1980s when there was little information on how extensive the use of worker-directors was in the U.S. The object was to identify companies with workers on the corporate board rather than workers having chosen outsiders to represent their interests. The 14 firms included in the study were identified through a related project at Cornell with additional cases identified by other researchers interested in employee ownership. Eleven industrial firms, two service organizations, and one retail sales store were identified. They ranged in size from a 40-member cooperative printer to a 3,000 employee meat packing house. In half the firms, the worker-directors actually held positions on an ESOP trust rather than the corporate board. However, a comparison between trust and board directors on nearly all measures involved in the study showed no significant differences between the groups, and all worker-directors were combined for the statistical analysis.

The samples consisted of 38 worker-directors, 287 other workers drawn in a size-stratified sample from the firms and the CEOs of each company. The worker-directors and constituent samples were approximately the same in gender composition and company tenure. Directors tended to be slightly younger than constituents (37 vs. 41) with approximately 1.5 more years of education (14 vs. 12.5) and of a higher-skill level. Average board tenure at the time was 2 years, and six of the firms were unionized.

Worker-directors and CEOs were interviewed for 1.5 to 2.0 hours each. Constituents completed a paper and pencil survey that contained a guarantee of confidentiality and a return envelope addressed to the researchers' university.

Procedures for selecting worker-directors varied widely. In an insurance firm, the employees nominated individuals for 5 of 20 board seats. The directors and all

shareholders voted on them, with the employees owning 50 percent of the shares. In a 1500 employee newspaper, employees elected 6 of 24 members to a shareholders council that functioned as a board of directors. In a construction company, the president selected one employee to sit on an ESOP trust of three, and in a dye manufacturer, management suggested three workers for a five-member trust board that was elected by the board of directors.

Though procedures varied, there was one simple difference in type of process. Either employees elected their representatives or some management body chose them. In the six firms where employees controlled selection of worker-directors, the directors were significantly more likely to choose labor interest advocacy as their board role than in the cases where management selected or the board chose. In addition, the act of participation in the decision process led to greater expectations among the work force that directors would represent their interests.

Socialization processes were informal. There was not a single case in which formal training was given to the worker-directors. Training was informal at best and in most cases consisted of either reading material on ESOP plans or the legal obligations of a corporate director.

A variety of intercorrelations were examined to see whether other firm characteristics were related to worker-director's choices of advocacy or non-advocacy roles. There were no significant relationships between firm size, unionization, or worker ownership of company stock, and the role chosen by worker-directors. Neither did firm characteristics correlate with constituents definition of how much labor advocacy was expected. However, both worker directors and constituents desired higher levels of interest group representation than they perceived themselves or the representatives to be giving.

CEO definitions of the worker-director role contained significantly less advocacy than did the directors themselves or constituents. However, CEOs differed considerably in how they perceived the "proper" role for worker-directors. Some CEOs indicated that the program was established in their firm for financial reasons, either a significant buyout of stock by workers or a bargained sharing of power in the face of poor economic performance. Others suggested that they held an ideology favoring participation or believed that worker ownership of stock entitled the workers to seats on the board or trust. Those with a participatory ideology tended to see the worker-director program as a reasonable way to obtain expression of worker views. Those who saw the program as forced by bargain or finances argued that the function of the program was to have worker-directors explain board decisions to the work force.

Labor advocacy did not seem to be associated with management or conventional director attempts to impose confidentiality constraints or threaten legal liability for giving information to constituents. However, both choosing a labor advocacy role and being presented with legal confidentiality constraints resulted in significantly higher levels of experienced role conflict. Further, there were no formal mechanisms established for providing information from representatives to constituents. Worker-directors had to depend on informal information flows or in a few cases, union leaders mediating information flows between worker-directors and other workers.

Lack of institutionalized channels of information makes the evaluation of worker-directorships as a representational form difficult. However, in the firms studied, there was a clear pattern that if representatives felt better about the overall program and its effectiveness, the greater their level of activity as labor advocates. Higher levels of education and longer tenure in the company were associated with

less positive evaluations of this representation system. Work force constituents felt that the more they perceived the directors as labor advocates the more satisfied they were with this form of representation.

Discussion

The method used in this study requires caution in that some self-report bias may be involved, particularly as worker-directors deal with their uncertain ideas about what they are supposed to be doing. However, looking at these programs of representation in their early stages allows a relatively clear view of how the interests of labor and management shape worker-director behavior. As patterns of selection, activity, thwarted expectations, and experience emerge, there may be more institutionalized support for particular worker-director roles. Until then, diversity and role conflict are likely to persist.

In examinations of the German experience, discussion of this type of conflict has all but disappeared (Streeck, 1984), but in the British experiments with worker-directors, role conflicts and interest group competition were identified as responsible for the ineffectiveness of worker directorships as a form of labor representation (Braunen, 1983).

The lack of training and socialization to a new form of decision making is also responsible for some of the conflicts in these cases. Two of the CEOs remarked that in hindsight, the whole program would work better if worker-representatives had been given training in order to understand corporate financial reports. Two union leaders who had never sat in a board of directors meeting remarked that the union had a majority on the board and could simply outvote the others. However, boards generally function on a consensus model: conventional directors and worker-directors may come with different conceptions of the meaning of a meeting or how a decision is reached. The board room requires unfamiliar skills and representation in the boardroom requires managers to reconceptualize the situation. They cannot solely emphasize downward communication and expect worker-directors to be accepted as effective representatives of worker-owners.

The process described here related to the initiation and development of worker representation on corporate boards is based on limited experience. So long as the U.S. pattern is one of local programs structured in idiosyncratic ways, experience will accumulate slowly and institutional arrangements will remain ambiguous. Case-by-case problem solving will take considerable time. Thus, worker representation on corporate boards cannot be expected to appear particularly effective for some time. Perhaps clearly stated goals and expectations from participating parties can speed the process along.

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[The End]

Immigration Reform and the Skill Shortage Issue*

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On November 29, 1990, the President signed into law P.L. 101-649, the Immigration Act of 1990. [1] That law increases overall immigration by approximately 35 percent, while more than doubling employment-based immigration from 54,000 to 120,000 visas, and reconfiguring the educational and skill qualifications required of these immigrants with a pronounced tilt toward the high end of the scale. It is this component of the new law, and the debates surrounding this component's passage, that will be the focus of our paper.

The framework of the debate that led to the bill's enactment was the present immigration system's alleged "unresponsiveness" to U.S. employers' needs for foreign workers with human capital characteristics otherwise unavailable at the time and place needed in the United States. In particular, how best to use immigration policy to enhance the competitiveness of U.S. businesses in the global marketplace.

Demographic Issues and Immigration

Most of the debate on legal immigration reform took place at a time when talk about labor "shortages" was in many circles dominating U.S. labor market concerns. Much of that talk had been fueled, if not initiated, by a report titled *Workforce 2000* (Hudson Institute, 1987). Coming as it did on the heels of several respected, highly critical assessments of the U.S. educational system (see Carnegie, 1986, 1989), this report focused the attention of policymakers, educational and training institutions, and many occupational and professional groups, on the widening gap between the preparation of U.S. workers and the needs and demands of the economy of the future (see Perrin Towers and Hudson Institute, 1990; National Center on Education and the Economy, 1990).

While heightening everyone's awareness of the consequences of the projected widening in the country's skill shortfalls and mismatches, this report also allowed the drawing of a large number of inferences from its projections about areas of emerging labor shortages.

Persistent, below-replacement U.S. fertility rates, along with their twin certainties of contracting numbers of new

* The views expressed in this paper are the views of the authors and are not necessarily the views of the Department of Labor or the U.S. Government.

[1] P.L. 101-649 will go into effect in October 1992. See Papademetriou, 1991, for a discussion of this law's major provisions.

entrants into the labor force and an aging population, have sensitized pundits and policymakers alike to the fact that immigration will play an increasingly important roles in both population and economic growth. Perhaps surprisingly, however, the resulting attention has failed either to advance significantly the understanding of these issues or make palpable inroads in the mass public's acceptance of the need for new or additional immigration. The reasons for this paradox may lie with the inherent complexity of the issue.

The Organization for Economic Cooperation and Development (OECD) has looked closely at the relationship between immigration and population dynamics across the Organization's foreign labor-receiving member states. After intensive study, the organization has reached certain interesting (yet for some counterintuitive) conclusions that address the debate's main points[2] (OECD, 1991).

The organization's findings can be summarized as follows:

- Unless extreme immigration measures are implemented (such as admitting immigrants at a much higher rate than the current rate, and selecting them largely on the basis of age, i.e., admitting large numbers of primarily very young immigrants[3]), most of the advanced industrial societies' perceived demographic challenges cannot be effectively remedied through immigration.

- A sustained labor-force growth in the face of continuing low fertility can be ensured by sustaining regular flows of immigration. However, the effects of immigration on fertility are usually modest because in many cases the fertility of immigrants does not exceed the rate of generational replacement. And in virtually all cases, higher initial fertility by immigrants is transient, i.e., immigrant fertility tends to quickly approach that of the indigenous population.

- Ensuring a fairly stable ratio of retirees to working persons (as a means of shoring up retirement systems) will not only require major and sustained "compensatory" immigration flows but also changes in such factors as retirement age, further rationalization of the work force, etc.

Clearly, then, the nature of the relationship between demographics and immigration is extremely complex. And absent a consensus about population goals, the likelihood of relying on immigration beyond levels that simply ensure replenishment must be judged as remote. The absence of such goals allows opponents of large immigration flows to focus on the alleged environmental and infrastructure costs associated with immigrants, while proponents sing siren songs about immigration's ability to remedy most U.S. demographic and socioeconomic "ills," real or imagined. Not unexpectedly, immigration is increasingly portrayed both as the *bete noire* and the salvation for demographic, social, and economic deficiencies. In addition, immigration has most recently been offered up as a response to the U.S. budget deficit (Wattenberg, 1990; Simon, 1989).

Labor Force Projections and Immigration

Projections about labor force surpluses and deficits are difficult under the best of circumstances, particularly in market economies where the interplay of market forces constantly shapes the forces of labor supply and demand. With this

[2] These conclusions have been largely confirmed by U.S. Census Bureau researchers (Long, 1989).

[3] In the United States, immigrants at entry are about three years younger than the overall population. However, illegal immigrant cohorts do appear to be much younger than either other immigrants or the population at large. Data on the legalized population under the January 1, 1982, U.S. legalization program of the 1986 Immigration Reform and Control Act (IRCA; P.L. 99-603) indicate that median ages on April 30, 1989, the date a survey of a probabilistic sample of that population was completed, of 30 years. In view of the minimum of 7 years between the date of eligibility and the timing of the survey, the illegals' average age at entry was much lower. See U.S. Immigration and Naturalization Service, 1991.

caveat in mind, in the few pages that follow, we highlight some of the most recent Bureau of Labor Statistics (BLS) projections.

The Bureau projects the U.S. labor force to grow at a much slower pace in the next 12 years. From 1970 to 1980, the labor force grew at a 2.6-percent annual pace. That slowed down to 1.6 percent in the 1980 to 1988 period and is projected to drop further to 1.2 percent from 1988 to 2000. This amounts to a projected 16-percent growth rate in the labor force, or a net addition of 19 million workers (Fullerton, 1989:7; Kutscher, 1989:67).

By the year 2000, BLS projects the U.S. labor market to be much "looser" than today. The 1980s experienced a very sharp drop in the number of workers between the ages of 16 and 24 entering the labor force. This decline is expected to continue until at least the mid-1990s (Fullerton, 1989:5). Beginning around the year 2000, however, the entry-level labor market is likely to begin to loosen up, as increasing numbers of teenagers and persons in their early 20's (the "echo"; of the post-war baby boom generation) begin to enter the labor market.

The age composition of the U.S. labor force will shift only slightly during the 1988 to 2000 period as workers between the ages of 25 and 54 years will make up a larger proportion of the labor force, from 69.1 percent in 1988 to 71.8 percent in 2000. [4] At the same time, the youth labor force (ages 16 to 24) will make up a lower proportion of the total labor force in the year 2000, although it is projected to be the same size in absolute numbers as it was in 1988 (Fullerton, 1989:9, 11).

Total labor force participation rates are expected to increase from the current 65.9 percent to 69.0 percent. The major reason for the increase will again be the concentration of the baby-boom generation in the prime working years, ages 25-54 (see Fullerton, 1989:11; Fullerton, 1987; and Kutcher, 1987, 1989).

The Bureau's "best guesses" about occupational profiles are as follows (see Silvestri and Lukasiewicz, 1987, 1989; and Kutscher, 1989):

- The largest absolute job growth is expected to be in service occupations (4.2 million), [5] professionals (3.5 million), and executive, administrative, and managerial occupations (2.7 million).

The largest percentage increases paint a somewhat different picture. Technical[6] and related support occupations are projected to increase 31.6 percent. The next three occupations expected to experience the largest percent increases are the same as the top three for absolute-growth professionals (24%), service occupations (22.6%), and executive, administrative, and managerial occupations (22%).

Employment projections by industry are largely consistent with the above figures (see Kutscher, 1989:66-74). Goods-producing industries are projected to grow by only 0.1% annually (1.7% over the entire 1988 to 2000 period). Construction is the only industry expected to experience job growth. Manufacturing (both durable and nondurable) and mining are projected to experience job declines.

[4] Black and Asian workers will increase both in numbers and labor force share by about one percentage point each. Hispanics are projected to make up a much larger share of the labor force, increasing from 7.4 percent in 1988 to 10.1 percent in 2000 (Fullerton, 1989:4). Women are expected to continue to increase their numbers in the labor force from 45 percent in 1988 to 47 percent in 2000. In the 1976-88 period, the number of women in the labor force increased by 2.9 percent annually as young women entered the labor force in large numbers. This rate is expected to decrease to 1.7 percent per year from 1988 to 2000. (Kutscher, 1987, 1989).

[5] Many of the occupations expected to experience the largest absolute job growth, however, are either unskilled or low-skilled. Examples include retail salespersons, janitors and cleaners, waiters and waitresses, and general office clerks.

[6] Many of the occupations expected to experience the fastest rate of growth require fairly high levels of training, including some post-secondary training. Examples include paralegals, medical assistants, radiological technicians, and data processing equipment repairers (Kutscher, 1989:66-74).

At the same time, service-producing industries are projected to grow by 1.6% annually (20.9% over the entire 1988 to 2000 period). It is this sector that is expected to experience the largest annual gains, particularly general services (2.5%), retail trade (1.5%), and financial, insurance, and real estate (1.3%).

Industries expected to experience the largest annual employment decreases, in turn, are private households (-.4%), agriculture (-.3%), durable manufacturing (-.2%), and mining (-.2%).

These data paint a useful picture of the likely future demand for labor in the United States. Yet, we must not lose sight of the fact that the very complexity of the projection business (i.e., a business propensity for being wrong), strongly urges that both analysts and policymakers be aware of the perils of trying to design immigration policies tied too closely to such projections. Insisting on doing so would show inadequate appreciation both of the methodological "softness," and hence fundamental uncertainty (Lutz, 1990) of projections and of the market's complexity and dynamism, and its ability to adjust (Papademetriou, 1990a, b; Bach and Meissner, 1990).

The Perils of Projections

Reliance on immigration to rectify projected labor-market imbalances proceeds from two sets of assumptions. First, both the demand and the supply sides of the labor market equation will either remain essentially constant or change in a specific and predictable way. Second, government intervention in the labor market is either useful or appropriate.

To put it differently, we can know what we are doing and the government can be a competent or appropriate engineer in effecting the appropriate changes. Each one of us will make our own judgments about the latter assumption in that it is as much an ideological and political judgment as a scientific one. The former assumption, however, is much easier to address and question on analytical grounds.

Even the most perfunctory analysis of that assumption shows it falling short of the mark in that it discounts numerous ongoing processes that affect demand directly. Among them are business cycle fluctuations and technological innovations,[7] capital flight in the form of foreign investments on labor-intensive production in countries with lower labor costs; aggressive capital deepening and industrial restructuring in response to international competition,[8] as well as numerous other economic and political "wild cards." [9]

Fundamentally, however, making immigration policy decisions on the basis of such projections ignores the effects of the constant adjustments that the existing labor supply can and does make in response to private and public sector intervention. These adjustments can take the form of wage increases, initiatives in the education and training areas, changes in working conditions, and policies that have never been tried systematically in the United States before. Among them are such options as offering incentives to older workers to remain in the labor force longer, assisted relocation for needed personnel,[10] firm relocation to areas where supplies of labor are adequate, and flexi-

[7] Technological innovations influence the demand for certain types of workers, not only in manufacturing but also in the services sector. For instance, consider the effects of personal computers on the secretarial work force and of facsimile machines on messenger and other mail delivery services.

[8] Restructuring under pressure from international competition often reduces demand for low- and medium-skill workers and makes certain industrial activities simply unprofitable for advanced industrial societies, and hence, expendable.

[9] Although not an everyday occurrence, the change in the East-West relationship has potentially important immigration-specific consequences. These will materialize as the so-called "peace dividend" releases a cohort of well-trained and educated military people into the civilian economy, while also redirecting some of the defense-related research and development talent toward non-defense work.

[10] Business routinely incurs substantial recruitment and legal costs (primarily due to fees paid to immigration attorneys) in the course of attracting and hiring foreign nationals.

ble hours and innovative, at-work child and elder care arrangements designed to attract and retain workers who might otherwise not be able to enter or remain in the labor force.

Intervention in child care and elder care, education, and training areas is particularly relevant to any discussion about immigration policy. The meaning of such intervention is clear: true long-term international competitiveness rests on the ability of a nation's business community to respond to the needs of its work force, and that nation's educational and training institutions must consistently produce an educated and trainable work force. Such a work force is essential if the jobs needed in the highly competitive, information-based global economy of the future are to be filled by domestic workers.

Failure in this regard, whether by omission or commission, will take us down a road where we will fulfill our own worst prophesies about skill shortages and skill mismatches. In certain fundamental ways, it will obstruct the cause of social justice both at home and abroad by interfering with our resolve to bring into the economic mainstream those who are not now in the economic mainstream, but on whose services we will increasingly come to depend. This group includes minority youth, older workers, the handicapped, and the disadvantaged.

Educating and Training Workers

Losing sight of the reality associated with education and training makes a commitment to lifetime education and training, the widely acknowledged *quid pro quo* to both long-term international competitiveness and social progress, much more difficult to follow. It may also become an invitation to postpone the initiatives necessary to gain access to and harness the enormous potential found among groups that are not fully incorporated into the labor market, by encouraging the delaying of policies that adapt the culture of work to the special needs of the available work force. Such areas of adaptation include child care and elder care, benefit portability, innovative compensation arrangements, and flexible and part-time work. All of these items are of considerable interest to those who think in terms of employment policies.

In its recently released final report entitled *Investing in People* (1989), the U.S. Secretary of Labor's Commission on Workforce Quality and Labor Market Efficiency made a powerful case for the need to agree on and implement a national strategy of sustained investment in human resources. Immigration policy should be a part of that strategy, rather than either independent of it, as is often the case, or in conflict with it.

The perspective we have outlined does not take issue with the critical economic role that immigration has played and will continue to play in the economies of most advanced industrial societies. Recent comprehensive government and private researchers' analyses (Papademetriou et al., 1989; Council of Economic Advisors, 1986, 1990; Borjas, 1990; and Simon, 1989) make clear that such contributions have been very significant. Furthermore, they can be expected to become increasingly so as immigrants make up a much larger share of new entries into the U.S. labor force in the 1990s, as opposed to the 1980s 22 percent. (Papademetriou et. al, 1989). This perspective also does not deny the real need for alleviating certain needs by U.S. businesses, especially the need for workers with specialized skills who come through immigration.

We have simply argued that a truly comprehensive review of our demographically exacerbated predicaments must take place not only in the context of an assessment of estimates about our future labor market trends, but also of initiatives designed to enhance the qualifications, and hence the marketability, of our own workers. In such a discussion, immigration becomes a supplement, one important response in the reservoir of possible

responses to those labor market anomalies that the market mechanism is either too slow or unable to redress.

To do justice to these concerns, actions on immigration must be tempered by the recognition that if current labor market events and projections about future developments are setting the stage for discussions about immigration policy, the nature of the need and the ability of the system to respond to it reasonably and promptly should he one of the key factors in adopting any course of action. Failure to engage in such a debate may squander the greater opportunities for our own workers that the confluence of demographics and robust economies afford. It will also allow the critical discussion about the determinants of international competitiveness and the most appropriate strategy for addressing our economy's fundamental weaknesses as we approach the twenty-first century to take place without proper regard for immigration's most appropriate place among our possible policy responses. In other words, the discussion must take into account both the appropriate work force quality issues and the potentially deleterious direct and indirect effects that immigration beyond certain thresholds may have on domestic labor.

The direct effects include: (a) cases of actual outright "displacement" of local workers; (b) cases of employers "preferring" aliens over local workers; and (c) cases where the concentration of substantial numbers of foreign workers in certain occupational sectors might keep wages and working conditions in them at less desirable levels than they might have been in the absence of such workers, and thus making these sectors unattractive to local workers. Most, although not all, of these effects are more readily observable in low-skill occupations and are primarily concentrated in certain sectors of a few industries, such as garment industry, low-wage services (such as cleaning services and the hospitality industry), and agriculture.

Indirect effects are often less easily discerned but are usually more long term and potentially far more troublesome. They range from interference with the incentive to boost capital/labor ratios (with the implications for productivity) and job restructuring (through steps designed to rationalize and introduce innovations into the production process), to outright interference with the operation of competitive market forces that could bring about the necessary labor market corrections. In the long term, allowing the market to address labor market imbalances may offer the only realistic chance that the adjustments will attract U.S. workers to such jobs, rather than turn what may have been only temporary labor market anomalies into structural deficiencies.

Conclusion

Crafting policy responses to immigration without a prior attempt to assess our human resource needs is both shortsighted and dangerous. Few would argue with the simple proposition that a successful immigration policy should be guided by the results of such an assessment and attempt to respond to identifiable skill deficits.

An equally simple and equally undisputable corollary to this proposition is that immigration policy should be in harmony with other important societal goals and priorities, particularly in the areas of the education and training of the domestic work forces. Failure to heed these warnings, i.e., the careless mixing of talk about labor shortages and immigration, almost invariably makes for a too volatile political and policy mix.

During the last twenty years, the United States has admitted immigrants at rates approaching historical levels.[11]

[11] Since 1970, the U.S. has admitted approximately 13.5 million immigrants and refugees. In fact, during the 1980s, the U.S. took in more immigrants than at any other comparable period in its history, especially when refugees are

The integration challenges that these rates of admission impose are equally momentous. In a report about to be released, the Ford Foundation addresses the challenges of such generosity in immigration for the host society (Bach, 1991). In a remarkably insightful and eloquent passage, the report observes that: "[o]urs is a time of crossing, blurring, and remaking boundaries. Not since the turn-of-the-century have communities throughout America faced the diverse cultures, nationalities, languages, and religions brought by immigrants during the last two decades. As established communities receive these newcomers, relations among groups, ethnic identities, community associations, and political alliances are being met. Once again, America is changing." (1991:1).

If we are to continue to admit large numbers of immigrants, we must seek to be successful in reaching and maintaining within ourselves as a nation, a fundamental accord on the value of immigration. In the words of the same Ford Foundation report: "America is deeply implicated in the migration flow and its destiny. American employers fuel the immigration, American foreign policy embraces it, and American family values maintain it . . . As a nation, we have been there before. America thrives on its immigrant heritage. Part history, part ideology, immigration embodies the theme of national renewal, rebirth, hope. Uprooted abroad, newcomers have become transplants in a land that promises opportunity." (1991:26,1)

As a "nation of immigrants," immigration in the United States is inextricably interwoven not only with our economy's historical evolution, but also with our society's very own social, cultural, and political ethos. Understanding this reality and acting on that basis is essential if the inherent tensions that always underlie discussions about and decisions on immigration are to remain under control. And in pursuing generous immigration policies, we must always reconcile the diverse and often competing cultural, social, political, and economic interests that make up our national character. It is in managing successfully the delicate tensions among these interests that the roots of sound immigration policies are found.

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(Footnote Continued)

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[The End]

Immigration Reform and the Agricultural Labor Force

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Agriculture was the only sector of the U.S. economy to be given preferential treatment in the Immigration Reform and Control Act (IRCA) of 1986. The 800,000 farm employers are about 13 percent of all U.S. employers, but the nation's 3 million farmworkers are only 2 percent of the 130 million persons who are employed sometime during a typical year. Farmers feared that IRCA would reduce their access to illegal immigrant workers, so an agricultural amnesty for undocumented field workers employed in perishable commodity production was created. The Special Agricultural Worker (SAW) program was created apart from the general amnesty program for undocumented workers in all other sectors of the economy. In addition to the SAW program, a Replenishment Agricultural Worker (RAW) program was established to provide replacement field workers should the SAWs leave agriculture. The existing agricultural guest-worker program now known as the H-2A program was also streamlined to expedite hiring of foreign guest-workers.

The disproportionate emphasis in the IRCA on the agricultural sector reflects the legislative clout of Western growers in Congress, rather than the agricultural sector's importance in employing undocumented labor. After 1965, when the Bracero agricultural guest-worker program terminated, agriculture played a key role in facilitating illegal migration to the United States. This role has declined in importance as many former Bracero workers found jobs outside agriculture and many newer undocumented migrants no longer find entry jobs in agriculture. The service sector of the economy currently appears to be the single largest employer of undocumented workers. Yet agriculture was the only sector of the U.S. economy to receive separate treatment under RCA because farmers argued successfully that the perishability of agricultural commodities requires them to have ready access to an ample pool of labor.

IRCA was designed to change the market for undocumented agricultural labor with four policy instruments: an agricultural amnesty program (SAWs); employer sanctions; a supplemental agricultural guest-worker program (RAWs); and a streamlined contractual worker program (H-2A). Although employer sanctions in agriculture are nearly identical to those of other sectors, the SAW, RAW, and H-2A programs are uniquely agricultural programs.

The SAW Program

The agricultural amnesty program might be termed as the "easy" amnesty. SAW applicants were required to have worked at least 90 days in perishable crops during the twelve-month period ending May 1, 1986. General amnesty applicants, by contrast, were required to document continuous residence in the United States since January 1, 1982. Nonfarm packing and processing workers, as well as illegal workers in livestock, were excluded from the SAW program.

The SAW program generated more applicants than growers, farm labor groups, or policy makers expected. There were about 1.8 million general amnesty applicants and 1.3 million SAW applicants (see Table 1); however, USDA had estimated that there were only 350,000 illegal aliens employed in agriculture, and most studies concluded that only 15 to 20 percent of all illegal aliens were farmworkers. Though no precise estimate of fraudulent SAW applications can be made, indirect evidence suggests that

widespread fraud may have at least doubled the number of SAW applicants in California (Martin, 1990). Some farm labor contractors and growers sold work history documents to SAW applicants and some prospective SAW applicants volunteered outlandish stories about their qualifying agricultural work, noting, for example, that they used ladders to pick strawberries.

SAW applicants differ from their general amnesty counterparts significantly. There are more males among them, they are younger, and more come from Mexico. About two-thirds of the SAWs reported that they were last employed seasonally by fruit, vegetable, and tree nut farms. The age, gender, proximity to Mexico, and seasonal employment of most SAWs indicate that many were not permanent residents. Most seemed to return to Mexico at least occasionally. Recent studies of INS enforcement along the U.S.-Mexican border suggest that legalizing these SAWs significantly lowered the number of aliens apprehended by the Border Patrol since 1986 (Bean et al.; Crane et al.; Espenshade). However, the families of these newly legalized SAWs may attempt to enter the U.S. illegally, especially since the 1990 Immigration Act's "family fairness" provision prevents their deportation. More significantly, the distribution of fraudulent U.S. immigration documents in rural Mexico may spur illegal immigration.

Employer Sanctions in Agriculture

The enforcement of employer sanctions in agriculture was phased in more slowly than elsewhere in the economy. Agricultural employers, like other U.S. employers, must complete I-9 forms to document each newly hired worker's legal status. A new provision in IRCA requires Border Patrol agents to obtain a search warrant before going unannounced into a grower's field to check for undocumented workers. This eliminated the traditional field raid conducted by INS, and the INS has demonstrated a limited and variable ability and propensity to enforce laws against the "white-collar" crime of keeping inadequate documentation.

As measured by total fines collected, agricultural operations were the target of INS's most intense enforcement efforts in the South, while in the West construction accounted for the most fines, and in the North and East, light industry was the principal target (Smith and Shea). In most cases, however, actual fines collected were less than fines levied, the percentage of noncompliance cases in which fines have been levied was low, and INS's definition of noncompliance has given employers the benefit of the doubt. Only twenty percent of INS's inspections have targeted industries that traditionally relied on undocumented workers. Another twenty percent of its inspections are random in nature, while the majority of inspections are "lead" driven, that is they follow tips on probable violators provided by disgruntled employees or competing firms. This pattern of enforcement reflects two shortcomings of INS efforts under IRCA: (1) As a law enforcement agency, the INS has accumulated experience at raiding work places and patrolling the border but not at conducting the "paper chase" necessary to enforce employer sanctions. (2) Inadequate budgets, limited personnel, and the trade-off between patrolling the border and enforcing employer sanctions diminish the probability of employers being apprehended and fined for employer sanction violations.

The RAW Program

During the legislative debate preceding the enactment of IRCA, growers were concerned that SAWs, with legal resident status and no restraints on where they could hold jobs, would quit field jobs in agriculture for higher wages and less seasonal nonfarm work. If a shortage of workers were to materialize during a growing season because SAWs quickly left farm

jobs, growers argued that they would need access to supplemental foreign workers as insurance against production losses. The RAW program was enacted to admit foreign workers if the exit of SAWs caused farm labor shortages. As a compromise to farm labor advocates, however, RAWs can work most of the year in nonfarm jobs, change farm employers without notice in the United States, and obtain immigrant status after doing at least 90 days of farmwork for 3 years.

The annual number of RAWs to be granted visas is the lesser of an absolute ceiling and a shortage calculation. The absolute ceiling on the annual number of RAW visas is 95 percent of the approved SAWs plus or minus several adjustments. The shortage calculation requires the Department of Agriculture to estimate person-days needed in Seasonal Agricultural Services, and the Department of Labor to determine the person-days available. Given current approval rates for SAWs, the absolute ceiling for RAWs will be about 900,000 workers. However, the shortage calculations have shown that SAWs are not exiting agriculture, and that there are enough new farmworker entrants so that the RAW shortage numbers for FY 1989 and 1990 have been zero.

Modified H-2A Foreign Worker Program

Prior to IRCA, the H-2 agricultural guest-worker program was established to provide farmers with foreign farm workers when sufficient domestic workers could not be found. The H-2 program required growers to obtain a Department of Labor (DOL) certification that demonstrated a serious attempt to recruit domestic workers had been made. In order to recruit domestic workers, employers seeking H-2 workers had to offer and promise to pay workers at least an "adverse effect" wage rate so that the admission of H-2 workers would not unduly depress local wage rates.

Under IRCA, the H-2 program was converted to a streamlined H-2A program that gave DOL, among other things, less time to determine whether U.S. employers were engaging in the recruiting procedures necessary for certification of H-2A applications. Some observers speculated that the H-2A program would expand if labor shortages developed because the H-2A program guarantees farmers a (foreign) work force at the time and place specified by the farmer. Although annual certifications of H-2A workers increased slightly since 1986, at an annual rate of 6.5 percent, the absolute number of H-2A guest-workers was less than 30,000 annually and is relatively low compared to SAWs (see Figure 1). Almost 50 percent of the H-2A guest-workers are the 10,000 Jamaicans who hand-cut sugar cane in Florida. Most of the rest are employed in the apple and tobacco harvests on the east coast and sheep herding in western states.

Demand and Supply of Agricultural Labor

The principal demand for agricultural field labor derives from fruit, vegetable, and horticultural specialty (FVH) agriculture in the United States. Consumer demand for fresh and frozen fruits and vegetables has grown during the last two decades. Per capita consumption of these products has increased, spurred by health and convenience concerns (Thompson et al.), with domestic acreage and production of FVH crops generally growing in response to heightened consumer demand. Despite rising imports of FVH products, domestic producers have also expanded their acreage and production because seasonal imports often complement domestic production. For example, grapes are now available year round because exports from the southern hemisphere now supply the U.S. winter market.

Expanding U.S. production with a static technology increases demand for field labor. Harvest labor represents the largest portion of the wage bill in most

FVH operations, and no significant labor-saving harvest technologies have been adopted in these crops since the advent of the mechanical tomato harvester. Some nut crops and citrus are harvested mechanically, but the majority of fruits and vegetables are still hand harvested.

The costs and availability of field labor influence employer desires for labor-saving techniques. If labor becomes more expensive relative to other inputs, there are more incentives to develop and adopt labor-saving techniques. Nominal hourly and field wages have increased during the past decade less than hourly wages in the service and manufacturing sectors hourly agricultural wages. Field wages are still less than half of the average hourly manufacturing wage. IRCA clearly did not precipitate labor shortages that increased nominal agricultural wages any faster than wages in other sectors that employ large numbers of undocumented workers. Many growers argue, however, that hourly wages are not the proper measure of labor costs since payroll taxes such as workers' compensation, unemployment insurance, and social security are also labor costs and add 15- to 30-percent to wage costs. However, nonfarm employers of alien workers also incur these payroll taxes and these employers have not increased enough to offset the 10- to 15-percent decrease in real wages since the IRCA.

National trends in agricultural labor markets, based on aggregate statistics, mask the regional variability in impacts resulting from IRCA. Anecdotal evidence gathered during hearings conducted by the Commission on Agricultural Workers depicts a wide variety of supply and demand conditions in regional farm labor markets.

Impacts of IRCA on Agricultural Labor

The impacts of IRCA on agricultural labor markets were largely unforeseen. Few observers expected employer sanctions to have so minimal an impact on the influx and employment of undocumented workers. Enforcement of employer sanctions by INS has been less effective than expected. Lax enforcement coupled with the relatively large influx of undocumented farmworkers has fostered only nominal compliance with employer sanctions. Since growers accept fraudulent documents, the demand for fraudulent documents has increased. Increased reliance by growers on farm labor contractors (FLCs) has also shifted the burden of compliance from fixed-situs growers to mobile FLCs. Some FLCs appear to prefer to hire undocumented laborers because they are a relatively docile, easily replaceable source of field workers. Fraudulent compliance and increased reliance on FLCs have clearly subverted the intended purpose of employer sanctions to mitigate the pull of higher paying U.S. jobs on undocumented migrants.

The outcome of the SAW program was equally unexpected. While some observers warned of fraud, few predicted that there would be more than 800,000 SAW applications. Although the SAW program may have achieved its goal of legalizing most undocumented seasonal agricultural workers, SAW legalization has undoubtedly included a large number of ineligible people. If SAWs settle in the United States and unify their families here, illegal migration may inadvertently be increased.

The failure of employer sanctions and fraud in the SAW program have exerted downward pressure on real agricultural wages. Those legitimately legalized SAW workers continuing to work in agriculture may earn lower real wages as a result of IRCA. With an apparent excess supply of undocumented field workers, illegal workers compete with newly legalized SAWs for existing jobs so that annual earnings and working conditions for individual SAWs may decline. Instead of "wiping the slate clean" by legalizing undocumented workers, removing the magnet of high-

paying jobs in the United States, and providing growers with a stable, more "professional" work force, IRCA has encouraged a new wave of undocumented agricultural workers. A condition similar to the situation that occurred after the Bracero program was terminated in 1964.

The failure of IRCA to convert the agricultural labor market into a legal market place will affect immigration policy decisions for many years. The contentious debate surrounding the passage of IRCA led many observers to speculate that IRCA represented a once-in-a-generation change in policy towards illegal immigration. However, IRCA's effectiveness in agriculture has been circumscribed because of amnesty fraud and lax enforcement of employer sanctions. Also, the will to formulate new policies may be seriously lacking in light of the current shortcomings of IRCA.

One source of potential research for analyzing the shortcomings of IRCA and formulating future policy responses is the Commission on Agricultural Workers (CAW). The Commission was established under IRCA to examine the issues surrounding employer sanctions, SAW, RAW, and H-2A programs. Perhaps symptomatic of the ills befalling IRCA, CAW got a belated start in answering its charge, due to Congressional infighting over appointments and a sense that the questions before CAW are not urgent because there have been no shortages of farm labor. The issues CAW must address are the institutional and economic factors affecting the supply and demand of farm labor, as well as the effects of the SAW program on the international competitiveness of U.S. crops. CAW findings are due in November 1992.

The U.S.-Mexican Free Trade Agreement

Future policy alternatives for immigration and agricultural workers will be conditioned by consumer demand for FVH commodities, competition between domestic and foreign producers of FVH crops, as well as economic conditions in sending countries. Consumer demand and sending country conditions will likely not change radically during this decade, but competition in FVH commodity markets may affect domestic growers.

Demand by consumers for fresh and frozen fruits and vegetables will continue to grow as consumers place more value on a healthy diet and the convenience of consuming fresh produce. Food safety concerns may dampen consumer demand, but most food safety issues, such as pesticide and fungicide residue levels, are amenable to governmental regulation.

The economic conditions that foster migration from countries such as Mexico are apt to persist well into the next century. Although differences in wages between sending countries and the United States should diminish overtime, the differences will likely remain large enough to stimulate migration.

Whether domestic FVH producers will maintain a competitive position in the domestic and international markets is less certain. The U.S.-Mexico Free Trade Agreement (FTA) will affect domestic FVH producers to the extent that Mexican growers are currently hampered by U.S. tariffs. Some statistical evidence suggests that removing the tariffs that currently raise the cost of Mexican FVH products would not eliminate domestic producers, but the expansion of FVH agriculture may occur in Mexico rather than in the United States (Thompson). The relocation of some U.S. fruit and vegetable processing plants to Mexico, due in part to expectations of enhanced free trade, may accelerate the shift of FVH production.

The indirect effects of the FTA on agricultural labor markets in both countries are difficult to gauge. The FTA will not directly affect migration because Mexican officials, at the insistence of the U.S. government, have agreed that labor migra-

tion between the two countries should not be addressed in the FTA. Mexican growers rely on seasonal labor just as U.S. growers do. In Mexico's major vegetable growing area, over 150,000 workers are employed seasonally, many of whom migrate yearly from central Mexico to the northwestern state of Sinaloa. The vegetable industry in Sinaloa would likely expand and diversify under an FTA, creating additional seasonal jobs. In the past, these seasonal migrants within Mexico have shown little propensity to migrate to the United States once their seasonal jobs end in May of each year (Thompson and Martin). However, the seasonal compatibility between U.S. and Mexican FVH production indicates at least a possibility that even if wage gaps narrow under FTA, seasonal migrants could string together jobs from Sinaloa to Baja California, and California to Washington each year, much as FVH workers already do for a shorter season in California. Similar seasonal compatibilities might also include Texas and Florida production areas.

Policy Alternatives

Agriculture has traditionally opened side or back doors to generally unskilled immigrants and non-immigrants. Farm employers have, and seem likely to retain, enough political power in the 1990s to guarantee themselves access to foreign workers. The basic question for public policy is whether these foreign workers should be immigrants or non-immigrants. Farmworker advocates are seemingly united in their opposition to non-immigrant foreign worker programs, since they believe that a non-immigrant worker who is bound by contract to a U.S. employer can never protect his rights and thus will depress wages and working conditions for U.S. workers. The advocates argue that alien farmworkers must be "empowered" by not binding them to a U.S. employer. One former MLAP lawyer argued that U.S. farmworkers would rather compete against illegal aliens than H-2A non-immigrants who are bound by contract to a single U.S. employer (Tuddenham, 1991).

The western farm employers who have the SAW and RAW programs are also consistent in their demand for easy access to foreign workers, and this easy access is usually justified by asserting that the need for labor in perishable agriculture is inherently unpredictable. Farm employers seem less concerned about the status these workers have in the U.S. Their major concern is that foreign workers are available to them without their going through a government certification procedure.

The Immigration Act of 1990 indicated a congressional preference for immigrants over non-immigrants, e.g., annual immigrant admissions were raised, but non-immigrant H-1 and H-2 admissions were for the first time capped. The separate interests of farmworker advocates, farm employers, and Congress suggest a compromise, by abolishing the H-2A program in exchange for a continued and modified RAW program. Abolishing the H-2A program eliminates the bonded worker nemesis of farmworker advocates and eliminates a program that has proven to be difficult for government to administer. A RAW probationary immigrant program, modified to confine "sweat equity" RAW immigrants to one of 10 to 20 regional labor markets during their 3 to 5 years of temporary U.S. residence, would revive the 1984 Pannetta-Morrison program adopted by the House of Representatives, but make the workers who enter under it probationary immigrants rather than non-immigrants.

A regionalized free agent RAW program may satisfy farmworker and farmer advocates, as well as appeal to a Congress that favors immigrants over non-immigrants admission. But are probationary immigrants good public policy? Students of foreign worker programs for particular economic sectors have noted how the availability of foreign workers tends to

make that sector dependent on them, since the availability of foreign workers discourages labor-saving changes, depressing wages and working conditions so that workers with other U.S. job options quit doing farmwork. If the United States truly wants to reduce the dependence of any economic sector on foreign workers, as the Select Commission on Immigration and Refugee Policy urged, proposals to use a non-immigrant program that substitutes a tax for some of the certification rules have been outlined (Martin, 1983). The basic argument is that farm employers must make an investment in lawyers to get into the H-2A program, but once they are in, H-2A workers are cheaper than U.S. workers because U.S. employers do not pay U.S. payroll taxes for Social Security, Unemployment Insurance, or Workers Compensation. These taxes add 15 to 30 percent to the wage bill for U.S. workers. A non-immigrant foreign worker program that substitutes taxes and fees for at least some certification rules could generate monies to end dependence on foreign workers by upgrading farm jobs and training U.S. workers, or mechanizing labor-intensive tasks.

Public policy analysts have sought to improve the non-immigrant farmworker program instead of developing an immigrant worker program for agriculture. Admitting immigrants and confining them, at least initially, to a particular economic sector runs counter to the quest for treating all immigrants equally. Even if there were no moral or legal problems with confining some immigrants at least initially to farm jobs, there is some question about whether a Congress, which in 1990 doubled the number of immigrants to be admitted for their skills and thus their ability to contribute to U.S. economic growth, will accept as immigrants 200,000 to 300,000 probationary immigrants who have only 4 to 6 years of schooling. In sum, farmworker advocates and farmers might agree on a farmworker program for the 1990s that satisfies the narrow interests of each group, but runs counter to the economic goals of immigrant policy.

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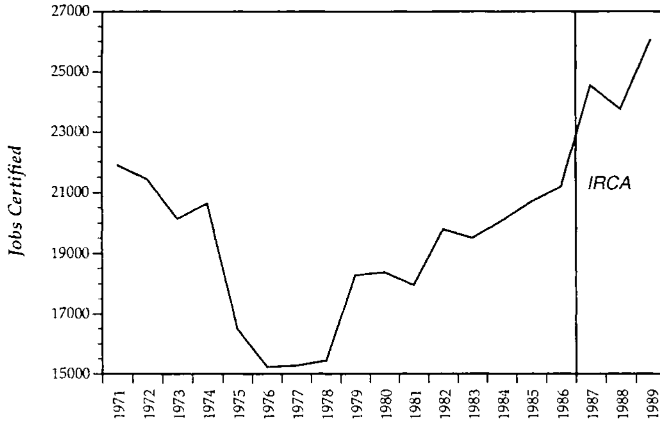
Table 1. Special Agricultural Worker and General Amnesty Statistics

Category	Special Agricultural Worker Program	General Amnesty Program
Applications Filed	1,275,182	1,761,956
Percent Approved	93.9%	94.6%
Cases Pending	332,699	10,362
Demographic Characteristics		
Mexican Citizens	81.5%	69.8%
Males	82%	57%
Married	42%	41%
Median Age	27	29
Under 30 years of Age	65%	53%
States of Residence	California (52.9%)	California (54.4%)
	Texas (10.3%)	Texas (17.6%)
	Florida (8.4%)	Illinois (6.9%)
	Arizona (4.2%)	New York (6.7%)
	New York (3.0%)	Florida (2.8%)
Type of Employment	Fruits and Tree Nuts (37%)	Machine Opertors, Laborers (24%)
	Vegetables and Melons (31%)	Service Workers (21%)
	Field Crops (7%)	Students (12%)
	Cash Grains (6%)	Skilled Craft (11%)
	Horticultural Specialties (3%)	Unemployed/Retired (5%)

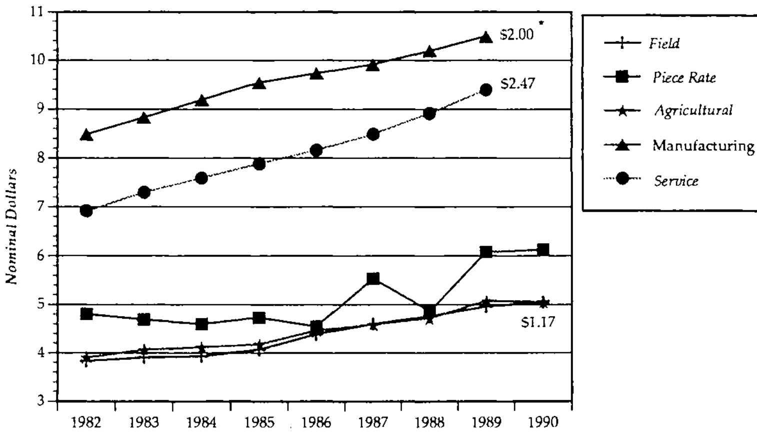
Source: Provisional Legalization Application Statistics, December 23, 1990, U.S. Immigration and Naturalization Service, Office of Plans and Analysis, Statistics Division.

Figure 1. H-2A Certifications for Calendar Years 1971-1989.



Source: "Labor Certifications for Temporary Foreign Agricultural and Logging Workers (H-2's)," U.S. Employment Service, Division of Foreign Labor Certifications, various years.

Figure 2. Manufacturing, Service, and Agricultural Hourly Wages.



* *Increase in hourly wage from 1982 to 1989.*

Source: For agricultural wages, Quarterly Agricultural Labor Survey, National Agricultural Statistics Service, U.S. Department of Agriculture; for other wages, "Survey of Current Business," Bureau of Economic Analysis, U.S. Department of Commerce.

[The End]

Immigration Reform and the Urban Labor Force

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The decade of the 1980s witnessed the most extensive changes in the immigration policy of the United States since numerical restrictions were first placed on immigration in the 1920s. Responding to changes made in the mid-1960s, the immigration reform movement has contributed to the revival of mass immigration as a distinguishing feature of the U.S. economy. Indeed, a comprehensive study of U.S. society conducted by an international team of scholars has noted that "at a time when attention is directed to the general decline in American exceptionalism, American immigration continues to flow at a rate unknown elsewhere in the world." [1]

The 1980 Census revealed that the foreign-born population had grown by 46 percent during the preceding decade to 6.2 percent of the total population. The decade of the 1980s should show a similar quantum increase in the nation's foreign-born population when the 1990 Census data are released. The policy "reforms" of the 1980s assure that this growth trend will continue throughout the 1990s. Immigration has accounted for about one-third of the labor force growth of the 1980s, but it is hard to be precise because of differences of opinions over the size of the uncounted illegal immigrant flow. This percentage should also rise during the 1990s.

As with the previous periods of mass immigration in the 19th and early 20th Centuries, the post-1965 wave of "immigration is overwhelmingly an urban phenomenon." [2] The 1980 Census disclosed that 92 percent of the foreign-born population of the United States lived in metropolitan areas compared to 74 percent of the native born.

The actual urban impact of immigration is even more concentrated. Five metropolitan areas in 1980 (New York, Los Angeles, Chicago, San Francisco, and Miami) accounted for 40 percent of the nation's foreign-born population but only 11 percent of the native-born population. If considering central cities, eight cities (the five listed in the preceding sentence plus Houston, San Diego, and Philadelphia) had more than 100,000 foreign-born persons residing in them. These eight central cities, however, accounted for over 26 percent of the foreign-born population. The city with the highest number of foreign-born persons was New York (1.7 million), and the city with the highest percentage was Miami (53.7 percent). Given the scale of immigration developments in the 1980s and what is now legislatively in place for the 1990s, these numbers and percentages have certainly increased and will continue to do so. Likewise, the number of central cities with over 100,000 immigrants should have several additions when the 1990 census data are made public.

The Prelude to Reform

The reform movement of the 1980s was a direct response to the accidental revival of mass immigration that began in the mid-1960s. Prior to the passage of the Immigration Act of 1965, immigration,

[1] Oxford Analytica, *America in Perspective* (Boston: Houghton Mifflin, 1986), p. 20.

[2] Elizabeth Bogen, *Immigration in New York* (New York: Praeger Publishers, 1987), p. 60.

which had been the nation's most important human resource development policy prior to the 1920s, had slipped into a state of relative dormancy. The percentage of the nation's population that was foreign born had declined from 13.2 percent in 1920 to 4.7 percent in 1970. During that long period, those persons from Eastern Hemisphere nations who sought to immigrate to the United States were subject not only to a numerical limit of about 154,000 persons a year (plus immediate relatives),[3] but were also screened on the basis of their ethnic origin. For those who were admitted, first priority was given and 50 percent of the available visas were reserved for people who possessed labor market skills that were in short supply in the economy. There was, however, no limitation or screening on immigration from Western Hemisphere nations except that they were subject to the 33 possible grounds for exclusions that applied to all would-be immigrants. These pertained to various political ideologies, moral principles, mental conditions, and economic status. There were no formal refugee admission provisions. The prevailing law also contained the infamous "Texas Proviso" that exempted employers from prosecution for hiring illegal immigrants, even though such aliens were not supposed to be in the country.[4]

Passed at a time when civil rights was at the top of the nation's domestic political agenda, the immediate rationale for the Immigration Act of 1965 was the elimination of the overt racism and ethnocentrism of the national origins system that had been in place since 1924. It was not the intention of the legislation in 1965 to significantly increase the level of legal immigration although it did raise annual admissions to 290,000 persons a year (plus immediate relatives).[5] A major shift in entry preferences, however, was introduced in 1965. Family reunification was elevated to the primary rationale for admission with 74 percent (raised to 80 percent in 1980) of the available visas were to be granted on this basis. Family reunification, in this case, refers to the admission of adult children of U.S. citizens over the age of 21; spouses and unmarried children of permanent resident aliens; and adult brothers and sisters of U.S. citizens.

The Johnson Administration had strongly supported the termination of the national origins system, but it favored the retention of labor market need as the primary factor to determine who should be admitted. Family reunification, however, was favored by a powerful political group in the U.S. House of Representatives, who believed it was a *sub rosa* method to perpetuate national origins under a more subtle guise. After all, the ethnic and racial groups who had been most favorably treated over the preceding 40 years of national origins restrictions (i.e., Western and Northern Europeans) would be the most likely to have the most relatives who would qualify to reunify. The Johnson Administration ultimately had to concede to Congress on the admissions priority system. The Act of 1965 added a small preference category for refugees (17,400 persons a year), but it did not alter the status of the "Texas Proviso." It also placed immigration from the Western Hemisphere under numerical restrictions for the first time.

As is often the case, the Immigration Act of 1965 had unexpected consequences. For present purposes, it will suffice to say that enormous backlogs quickly developed (especially from applicants from the

[3] The phrase "immediate relatives" means spouses of citizens, children of citizens under the age of 21, and parents of citizens over the age of 21.

[4] For details of policy development, see Vernon M. Briggs Jr., *Immigration Policy and the American Labor Force* (Baltimore: Johns Hopkins University Press, 1984), Chapters 2 and 3.

[5] This number was reduced to 270,000 (plus immediate relatives) in 1980 when refugee admissions were removed from the legal immigration law and given a separate admission system.

Western Hemisphere) for the available visas for legal immigration. The refugee slots proved to be far too few (given the fact that refugee policy was often perverted into being an instrument of foreign policy during the Cold War era), and illegal immigration exploded to unprecedented levels. Indeed, just as many people were attempting to enter the United States each year for permanent settlement as refugees and illegal immigrants, as were legal immigrants.

In response to mounting public concern that immigration policy was in total disarray, the Carter Administration in 1977 sought to address the most serious abuse of illegal immigration. Carter offered a legislative package that would have made it illegal for employers to hire illegal immigrants. Congress, however, was reluctant to act. It preferred to study all aspects of the nation's immigration system. Hence, it responded a year later by creating the Select Commission on Immigration and Refugee Policy (SCIRP) to perform this task.

SCIRP issued its final report in March 1981. It stated that immigration was "out of control"; that the nation must accept "the reality of limitations"; and that "a cautious approach" should be taken in the design of any reform measures.[6] Among its principal recommendations were that legal immigration be slightly increased to 350,000 persons a year (plus immediate relatives); no shift should be made in the preference given to family reunification; some provision should be made for allowing the entry of "new seed" immigrants who are not family related and who lack needed work skills; a system of sanctions against employers who hire illegal immigrants should be adopted; and an amnesty should be given to all illegal immigrants who were already in the United States as of January 1, 1980.

The Manifestations of Reform

In the midst of its deliberations, most of the Select Commission's pending recommendations pertaining to refugees were enacted into law by the Refugee Act of 1980. The substance of this legislation was to remove refugees from the legal immigration system, where they had been since 1965, and create an entirely separate system for their admission. The number permitted to enter each year is set by the President after a largely *pro forma* consultation with Congress. The President is under enormous political pressure by various religious, ethnic, and human rights organizations to admit large numbers of persons, especially those with whom these groups have special interests. Since its enactment, the number of refugees has fluctuated from a low of 67,000 in 1986 to a high of 217,000 in 1981. The figure for 1991 is 121,000 persons.

By the time SCIRP actually issued its report, the Reagan Administration had taken office. Immigration reform had not been part of its campaign platform. Eventually it did offer a timid package of reforms that Congress quickly found inadequate. Congress then began the tortuous process of writing its own legislation. The initial version in 1982 followed the broad outlines of the SCIRP report. The initial goal was comprehensive reform. But after failing in two consecutive congressional sessions to develop the necessary broad consensus to pass such an ambitious program, a new strategy was adopted, basically a piecemeal reform.

The strategy was successful. The first topic selected for attention was illegal immigration. The result was the passage of the Immigration Reform and Control Act (IRCA) of 1986. Among its multiple provisions was the adoption of employer sanctions and four separate amnesty programs for various categories of illegal immigrants already in the United States.

[6] Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest* (Washington, D.C.: U.S. Government Printing Office, 1981).

Two of the amnesty programs were of significant size. One was a general amnesty for illegal immigrants who had lived continuously in the United States since January 1, 1982. Under its terms, 1.8 million applications were filed, with 1.6 million approved as of December 1990. The other large amnesty was for illegal immigrants who had worked seasonally in agriculture for at least 90 days prior to May 1, 1986, and who would not otherwise qualify for the general amnesty. This program is called the special agricultural worker program (SAW). As of December 1, 1990, 1.3 million SAW applications were filed and 885,000 have been approved. The SAW program was added in the final stages of negotiations on IRCA as a concession to Southwestern agri-business interests who feared the loss of their work force, which is dominated by illegal aliens. Without this concession, there would have been no IRCA.[7]

Congress subsequently turned its attention to the legal immigration system. The result was the adoption of the Immigration Act of 1990. Although it manifests more awareness of potential labor market effects than does the extant immigration law, its primary focus is upon increasing the quantity of immigrants. Legal immigration will increase by 35 percent over prevailing levels to 700,000 persons a year, after the law takes effect on October 1, 1991. While the new law does increase the number of immigrants admitted without regard to family ties (an increase to 140,000 visas a year), the actual percentage of work-related visas to the total number of visas remains the same, 20 percent, as it is under the present law. The nepotistic principle of family reunification remains the primary criterion used for determining who is eligible to enter. Thus, like the law it replaces, short shrift is given to the specific human capital endowments of most of the people to be admitted. In addition, the law introduces questionable new entry routes (i.e., "investor immigrants" who can now "buy their way in") and resurrects one of the most reprehensible features of past U.S. immigration history, using the national origin criteria for admitting a specific number of would be immigrants (i.e., "diversity immigrants").

The Missed Opportunity for Meaningful Reform

Unfortunately, as the old political adage goes, "after all is said and done, more is said than done." A decade of policy reform has left the nation's immigration system with essentially the same problem characteristics it had before the process began. It is a system that is primarily designed to accommodate political interests. Hence, family reunification and humanitarian interests largely determine the annual level of the immigration flow. The legal system is still dominated largely by nepotistic, legalistic, and mechanistic principles.

The central characteristic of the Immigration Act of 1990 is its quantitative focus. The emphasis is on the admission of greater numbers of people with little concern for their employability or the actual economic needs of the urban communities in which they decide to settle. The reform legislation has essentially perpetuated the existing policy focus but at a higher scale. There is no implicit recognition given to what could have been done in lieu of mass immigration to enhance the employment opportunities of native born persons in those same urban labor markets.

As for its qualitative effects, the vast preponderance of those who enter do so without any regard to whether they possess skills, education, English fluency, or work experience needed to meet the rapidly changing employment requirements of urban labor markets that are in a state

[7] For details, see Vernon M. Briggs Jr., "The Albatross of Immigration Reform: Temporary Worker Policy in the United States," *International Migration Review* (Winter 1986), pp. 1009-1015.

of radical transformation.[8] Too many of the immigrants are from less developed nations who themselves need human services and human resource enhancement. Immigration is a major explanation for the nation's mounting adult illiteracy problem. Thus, urban communities that should be concerned with upgrading the education, skills, health, and housing needs of their native-born population are now confronted with an enormous need to provide even more remedial and income maintenance programs for many of their new foreign-born residents. Therefore, one consequence of the reform movement has been to add to the social burdens of these urban communities. A more cautious and selective immigration policy, tailored to meet actual urban work force needs, could have prevented this outcome.

As for illegal immigration, enforceability remains a paramount concern as it was before IRCA. The new employer sanctions program contains an enormous loophole. IRCA did not require that a counterfeit proof identification system be established to verify eligibility to work. Employers are not responsible for the authenticity of the documents that are offered by job applicants. They are only required to make a "reasonable" effort to attest to their validity. As a consequence, counterfeit documents, which have always been a problem, have become a thriving urban enterprise. Moreover, the Immigration and Naturalization Service (INS), which has responsibility for enforcement of the law, has had to devote an inordinate amount of its work toward document validation; a process that has never been the agency's strong suit. Furthermore, the proposed increases in federal funds to support enforcement activities never materialized and in fact were reduced. Consequently, the problem of illegal immigration has not abated and, indeed, there is every reason to believe that it is again flourishing.[9]

As for the amnesty programs, they were a necessary component of the IRCA reform package. The recipients were already in the United States. They had entered at a time when the "Texas Proviso" had given mixed signals as to whether they were wanted as workers or not. Hence, it was preferable to allow them to legalize their status than to force them to leave or to continue to work in the shadows of the labor market. But many of the amnesty recipients were unskilled, poorly educated, and seldom fluent in English. Many of their family members who are now in the process of reunifying, have the same paucity of human capital endowments.

As for the SAW amnesty, it has far exceeded any estimates of what was anticipated. Indeed, the program has been correctly labeled as "one of the most extensive immigration frauds ever perpetuated against the United States Government." [10] Overwhelmingly, the SAW recipients have been from Mexico (82 percent). There is an extensive urban impact of these SAW recipients. Over two-thirds of the SAW participants were in the Southwest where, due to the aridity of the rural region, most agricultural workers live in urban areas. In no other region of the country is this the case. The SAW program and the related family reunification that flows from this program have added to the region's pool of unskilled and poorly educated job seekers. Moreover,

[8] See Richard Cyert and David Mowery (editors) *Technology and Employment* (Washington: National Academy Press, 1987), Chapters 3, 4, and 5; Valerie Personick, "Industry Output and Employment Through the End of the Century," *Monthly Labor Review* (September 1987), pp. 30-45; and C.T. Silverstri and J.M. Lukasiewicz, "A Look at Occupational Employment Trends to the Year 2000," *Monthly Labor Review*, (September 1987). pp. 46-63.

[9] See Roberto Suro, "Traffic in Fake Documents is Blamed on Illegal Immigration Rises," *New York Times* (November 26, 1990), p. A-14; and Richard Stevenson, "Growing Problems: Aliens with Fake Documents," *New York Times* (August 4, 1990), p. A-8. For a discussion of how the employment data are indicating a rise in illegal entry, see Paul Flaim, "How Many New Jobs Since 1982? Data from Two Surveys Differ," *Monthly Labor Review* (August 1989), p. 14.

[10] Robert Suro, "False Migrant Claims: Fraud on a Huge Scale," *New York Times* (November 12, 1989), p. A-1.

with their legalization of status, they are no longer required to seek employment in agriculture, so the region's urban labor markets will undoubtedly have to accommodate many of them.

Given the lack of focus on economic considerations in the design of the immigration reform movement, it is likely that labor force characteristics of these immigrant flows will not alter the adverse economic trends that have already been discerned. As George Borjas concluded in his comprehensive assessment in 1990 of the economic impact of immigration, "the more recent immigrant waves have less schooling, lower earnings, lower labor force participation and higher poverty rates than earlier waves had at similar stages of their assimilation into the country." [11] Because of the preponderance of unskilled workers, the use of welfare assistance by immigrants has also been found to be higher than that of earlier waves of immigrants.[12] Barry Chiswick has also found a noticeable decline in the human capital endowments of the recent immigrant flow.[13] Given that the thrust of the reform policies has focused on quantitative increases rather than on qualitative human capital characteristics, there is no reason to expect that these negative features will diminish.

Clearly, these labor force characteristics are not patterns that are beneficial to the urban labor markets that are receiving the vast majority of the mass immigration inflow. Indeed, most of the urban areas impacted by the revival of mass immigration have also been suffering disproportionately from these same deficiencies from too many of their native-born residents and workers.

Employment discrimination has long been recognized as a major issue in urban labor markets. Indeed, the new immigrants themselves have been found to be at risk of such practices.[14] But, the rapid growth of the foreign-born population has also added a new dimension to the employment discrimination issue. It is the systematic discrimination by employers, in favor of immigrants, but to the detriment of native-born workers. This discrimination usually involves decisions by employers who are themselves of a particular ethnic background, who hire only immigrants and refugees who are of the same ethnic background. The effect is to deny work opportunities for citizens, resident aliens, and other persons eligible to work, but may not have a similar ethnic heritage.

As the number of immigrants continues to rise, the collective consequences of such discriminatory actions mount. This topic, however, has yet to be carefully researched. Elizabeth Bogen noted the phenomenon when she wrote: "There are tens of thousands of jobs in New York City for which the native born are not candidates." [15] The reasons she cites are "ethnic hiring networks and the proliferation of immigrant-owned small businesses in the city have cut off open-market competition for jobs." Quite perceptively, she strongly urges that the blatant "discrimination against native workers is a matter for future monitoring."

Concluding Observations

Presently there is little synchronization of the immigrant flow and the demonstrated needs of urban labor markets. With uncertainty as to the number of foreign-born persons who will enter in any

[11] George Borjas, *Friends or Strangers: The Impact of Immigrants on the U.S. Economy* (New York: Basic Books, Inc., 1990), p. 20.

[12] *Ibid.*, Chapter 9; see also George Borjas and Stephen J. Trejo, "Immigrant Participation in the Welfare System," *Industrial and Labor Relations Review* (January 1991), pp. 195-211.

[13] Barry Chiswick, "Is the New Immigration Less Skilled Than the Old?" *Journal of Labor Economics* (April 1986), pp. 196-192.

[14] See Vernon M. Briggs, Jr., "Employer Sanctions and the Question of Discrimination: The GAO Study in Perspective," *International Migration Review* (Winter 1990), pp. 803-815.

[15] Cited at note 2 above, p. 91.

given year, it is impossible to know in advance of their actual entry how many will annually join local labor forces. Moreover, whatever skills, education, linguistic abilities, talents, or locational settlement preferences they have is largely incidental to the reason that most were admitted. For illegal immigrants, of course, they do not care whether they have needed human capital endowments or not. They seek only to enter the competitive lottery with economically disadvantaged citizens for available entry-level jobs.

The labor market effects of the current politically driven immigration system are twofold. Some immigrant workers do have human resource endowments that are quite congruent with urban labor market needs. They were usually admitted under the work-related preferences or they happen to have needed human capital characteristics even though they were admitted as family related immigrants or refugees. But most immigrants are not so qualified. For the majority, they must seek urban employment in the declining sectors of the goods-producing industries (e.g., light manufacturing) or the low-wage sectors of the expanding service sector (e.g., restaurants, lodging, or retail enterprises). Such workers, especially those who have entered illegally, are now a major explanation for the revival of "sweat shop" enterprises and for the sharp upsurge in child labor violations reported in urban centers where immigrant populations have congregated.[16] With so many immigrants coming from Third World nations, it is not surprising that many are bringing Third World working conditions and work attitudes with them. These are not features that the United States should tolerate, regardless of whether such immigrants actually displace native-born workers.

Unfortunately, many native-born workers are among the urban working poor who are also employed or seeking work in these same declining occupations and industries. A disproportionately high number are minorities, women, and youth. As these urban groups are growing, the last thing they need is more competition from unskilled immigrants for the declining number of low-skilled jobs providing a livable income, or for the limited opportunities for training and education.

Immigration policy must become accountable for its economic consequences. Under existing circumstances, it should be a targeted and flexible policy that will be designed to admit only persons who can fill job vacancies that require significant skill preparation and educational investment. The number annually admitted should be far fewer than the actual number needed. Immigration should never be allowed to dampen the market pressures needed to encourage native-born workers from preparing for vocations that are expanding, or to reduce the pressure on governmental bodies to provide them with needed human resource development programs.

As it takes time for would-be workers to acquire skills and education, immigration policy can be used on a short-run basis to target experienced and qualified workers for permanent settlement who possess such abilities. But it is the "preparedness," or lack thereof, of significant segments of the existing urban labor force that is the fundamental economic issue confronting many of these communities. It is not a shortage of workers.

Obviously, the admission of refugees will continue to be done without regard to labor market criteria. The federal government, however, should provide all of the financial assistance needed to prepare ref-

[16] See Lisa Belkin, "Abuses Rise Among Hispanic Garment Workers," *New York Times* (November 29, 1990), p. A-16; Constance Hays, "Immigrants Strain Chinatown's Resources: Many Aliens Face a Kind of Indentured Servitude," *New York Times* (May 30, 1990), p. B-1; "Report: Kids Fill City Sweatshops," *Ithaca Journal* (May 28, 1990), p. 9A; and Peter Kilborn, "Tougher Enforcing of Child Labor Laws is Vowed," *New York Times* (February 8, 1990), p. A-22.

ugees to meet the employment requirements of the communities in which refugees are settled.

It is also imperative that IRCA's provisions to reduce illegal immigration be strengthened. To do this, it will be necessary to adopt a counterfeit-proof identification system, to tighten restrictions on the use of fraudulent documents, to devote more funds and manpower to the enforcement of employer sanctions, and to place fines on illegal immigrants who are apprehended and found to be employed.

The national goal must be to build a high wage, high productivity labor force.[17] In the process, the existence of shortages, when it comes to qualified labor, offers this country a rare opportunity to reduce its persistently high levels of unemployment, to improve the economic lot of its working poor, and to reduce its large urban underclass. Such shortages can force public human resource development policy and private sector employment practices to focus on the necessity to incorporate into the mainstream economy many citizens who have been "left out." Immigration policy must cease contributing to urban problems and instead be redirected to become a source of solutions.

[The End]

Immigration Reform and Labor Markets: A Discussion

By Benjamin N. Matta

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All three papers presented this morning remind us of why immigration reform is so necessary and why it is so difficult to achieve. Immigration reform is necessary because the current policy adds to the labor market difficulties of disadvantaged native-born workers, particularly those in urban labor markets and those in agricultural work. The best econometric evidence supports the notion that the vast majority of the current immigrant supply is substitutable in the workplace with low-skilled, native-born labor. Newly arrived immigrant labor is also substitutable with low-skilled immigrant workers who arrived in earlier waves. Not unlike other social programs that have unintended effects, immigration policy, as it is currently constituted with its emphasis on family reunification, ends up hurting many low-skilled workers who are displaced from their employment and/or face sharply curtailed opportunities.

Immigration policy is also inconsistent with other national human resource policies, as the Briggs and the Papademetriou and Lowell papers point out. For example, the current policy makes it difficult, if not impossible, for the placement of employment and training program participants. Scarce human resource policy dollars must increasingly be spread over a larger pool of eligible participants. If the concern is about the condition of the low-skill worker, the only prudent immigration policy the authors advocate is one that is coordinated with the needs of the labor market. Family reunification needs to take a lower priority in determining who gets in.

If these are the effects, how can the nation not move more expeditiously toward a more rational immigration policy? Several reasons are articulated in these papers and I would suggest others. First, as Briggs points out, immigration in

[17] National Center on Educational and the Economy, *America's Choice: High Skills or Low Wages!* (Rochester, N.Y.: National Center on Educational and the Economy, 1990).

the first instance is an urban phenomenon with only a handful of urban labor markets being the primary receivers of immigrants. Accordingly, in the aggregate, the perceived effects of immigration are small. That is, a relatively small number of labor markets are adversely impacted by a significantly large number of immigrants, while the vast majority of markets are adversely impacted by small amounts. It is, therefore, easy for many voters and legislators to conclude that immigration is a local issue.

Second, the immigration process is a complicated one. Just understanding the complex legal code on the preference system, for example, requires a sizable investment. Coming to a thorough understanding of the measured effects of immigration is difficult, especially when the econometric evidence is not entirely compelling. Estimates of labor market effects based on national samples, and even based on more narrowly defined samples of segments of heavily impacted urban markets, are likely to understate the true effects because of aggregation. If scholars find the topic to be complicated so will the ordinary voter.

Third, even if we as a nation of interested and concerned voters were fully equipped to approach the subject rationally, we would not because we are emotionally wedded to the idea that immigration policy should serve humanitarian concerns. As a nation of immigrants, immigration is part of our most recent history. The idea is strong that destitute people of the world should have the right to alleviate their poor human condition by simply migrating to the U.S. and we should not stand in the way of that decision. This dimension alone makes me less optimistic about the possibility of a more restrictive immigration policy in the near future.

Finally, the paper by Thompson and Martin illustrates the point that, as is the case with so many other policies, there are those who gain and those who lose in the instance of the current immigration policy. Those who gain have the political power to see to it that the benefits are as large as politically tolerable.

There is no doubt that immigration generates positive effects on the economy. The questions are (1) whether or not these benefits could be generated in a more efficient manner, instead of through the present immigration policy; and (2) whether the costs, especially in relation to the impacts on the labor market, have been correctly conceived. The present authors seem to be unanimous in their negative responses to these questions.

Are there no other means available that satisfy humanitarian concerns? If low-skill labor shortages exist, perhaps instead of relying on immigrant labor, should not the preferred approach be one of making certain that native-born workers are in possession of those skills? Moreover, given that the skills composition of the post-1965 immigrant cohort are decidedly inferior relative to those cohorts immigrating during earlier time periods, and that the assimilation of more recent arrivals tends to be a more arduous and prolonged task, has our arithmetic on the costs of immigration been correct? I believe these are the questions worth pursuing before we as a nation set about to relax further the level of numerical restrictions on immigration.

[The End]

Remedies and Arbitration Decision Making: Responses to Change*

By Anthony V. Sinicropi

Professor Sinicropi is with the University of Iowa at Iowa City, and he is President of the National Academy of Arbitrators.

The subject of remedies is, and always has been, one of the most controversial and complex areas in labor arbitration. Today it is becoming increasingly more difficult to comprehend and deal with because of the speed of changes in the labor relations field. This paper will examine the problems and challenges arbitrators face in this fast-changing environment, and how they have responded to those challenges. Prior to considering these current challenges, however, it may be useful to comment briefly on the foundations of arbitrator remedial authority.

One of the first serious examinations of issues involving arbitrator remedies was done by Emanuel Stein in a paper he presented to the National Academy of Arbitrators nearly thirty years ago.[1] Since then, many commentators including Robben Fleming, Robert Stutz, Peter Seitz, Sidney Wolff, Harry Shulman, David Feller, George Nicolau, Jesse Simons, as well as this author,[2] have all tackled several of these issues.

In reviewing the work of these commentators, it becomes apparent that there are *two* major perspectives to view the sources of arbitral remedial power. One might be described as the "legal authority" view, which grants remedial power to the arbitrator under the labor agreement and/or the law. The other perspective might be called the "policy" view, which focuses on what kind of effect or impact the specific remedy may have on the collective bargaining institution itself. As with most differing perspectives, there are pros and cons to each of these concepts.

While remedies predicated upon the legal authority concept appear to be the more conservative approach, it is not without problems. For example, state and federal courts have recently shown an increasing tendency to review awards on their merits, despite directives from the Supreme Court in the *Steelworkers* trilogy.[3] If this trend gathers momentum, a

* Note: Portions of this article were adapted from the "Introduction" of *Remedies in Arbitration, Second Edition*, by Marvin F. Hill, Jr., and Anthony V. Sinicropi. Copyright 1991, Bureau of National Affairs, Inc., Washington, D.C.

[1] Stein, "Remedies in Labor Arbitration," in *Challenges to Arbitration, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators*, 39 (Washington, DC: BNA Books, 1960).

[2] See Fleming, "Arbitrators and the Remedy Power," 48 *Va. L. Rev.*, 1199 (1962); Stutz, "Arbitrators and the Remedy Power," in *Labor Arbitration and Industrial Change, Proceedings of the 16th Annual Meeting National Academy of Arbitrators*, 54 (Washington, DC: BNA Books, 1963); Seitz, "Problems of the Finality of Awards, or Functus Officio and All That—Remedies in Arbitration," in *Labor Arbitration—Perspectives and Problems, Proceedings of the 17th Annual Meeting, National Academy of Arbitrators*, 165 (Washington, DC: BNA Books, 1964); Wolff, "The Power of the Arbitrator to Make Monetary Awards—Remedies in Arbitration," *Labor Arbitration—Perspectives and Problems, Proceedings of the 17th Annual Meeting, National Academy of Arbitrators*, 176 (Washington, DC: BNA Books, 1964); Shulman, "Reason, Contract, and Law in Contract Relations," 68 *Harv. L. Rev.*, 999 (1955); Feller, "Remedies: New and Old Problems: I. Remedies in Arbitration: Old Problems Revisited," *Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators*, 109 (Washington, DC: BNA Books, 1982); Nicolau, "The Arbitrator's Remedial Powers, Part I.," *Arbitration 1990: New Perspectives on Old Issues, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators*, 73 (Washington, DC: BNA Books, 1991); Simons, "The Arbitrator's Remedial Powers, Part II.," *Arbitration 1990: New Perspectives on Old Issues, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators*, 88 (Washington, DC: BNA Books, 1991); Sinicropi, "Another View of New and Old Problems," *Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators*, 134 (Washington, DC: BNA Books, 1982).

[3] *Steelworkers v. American Mfg. Co.*, 363 US SCt 564, (1960), 40 LC ¶ 66,628; *Steelworkers v. Warrior & Gulf*

new challenge will present itself to arbitrators.

With respect to the policy theory, it too is subject to some serious criticisms. Because it is based upon what is perceived to be the best outcome for collective bargaining (and is less concerned with the "legality" of the result), a remedy under this aegis might be subject to even greater threat of judicial review. An award rendered under the "policy" theory may not, in a reviewing court's judgment, meet the "Trilogy" standards, and therefore might be more likely to be examined on the merits by the court.

It should be noted, however, that the "legal authority" and "policy" concepts are not necessarily independent or mutually exclusive. As Harry Shulman astutely pointed out, collective bargaining is essentially a system established to allow for the adoption of industrial democratic frameworks in society today. To that end, the collective bargaining arrangement recognizes and accepts the need for both the "legal" and "policy" perspectives in the arbitration process.[4] Shulman's observations have been echoed by other scholars over the years, and in this author's mind are the prevailing view today.

The Arbitrator's Function in Formulating Remedies

Whether one adopts the "policy" or the "legal authority" view, the question of what the arbitrator's function should be with regard to remedies is of equal if not greater significance.

Some arbitrators and practitioners equate arbitral remedy power with that of a court handling a contract dispute. This position was articulated first by Sidney Wolff in an address to the National Academy of Arbitrators in 1964.[5] Under this approach, unless the collective bargaining agreement otherwise prohibits it, the arbitrator takes on the role of a judge, as in a court of law, and considers the same basic remedies that might be available in a suit for breach of contract (e.g., damages, restitution, and equitable remedies). The underlying bases and specific characteristics of these types of remedies have evolved within the legal system over decades, even centuries, and are analyzed in detail in a number of foundational works by such authorities as Corbin, Williston, Farnsworth, and the *Restatement of Contracts.*

At the other end of the spectrum is David Feller's view that the arbitrator's only function is to interpret and explain what is contained (either explicitly or implicitly) within the collective bargaining agreement itself. Feller stresses that arbitration is not a substitute for judicial adjudication, but rather a method for resolving disputes over matters, which if it were not for the collective bargaining agreement would not be subject to any adjudicative principles at all. Consequently, although arbitration is an adjudication based upon standards, those standards are not the same as those that would be applied by a court charged with adjudicating a contractual dispute. He further contends that arbitration in the commercial setting is really a substitute for litigation rather than a system for avoiding industrial strife.[6]

In 1979, Addison Mueller presented a more middle-of-the-road approach between the extremes suggested by Wolff and Feller.[7] He recognized that collective bargaining agreements are indeed special

(Footnote Continued)

Navigation Co., 363 US SCt 574 (1960), 40 LC ¶ 66,629; *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 US SCt 593 (1960), 40 LC ¶ 66,630.

[4] Shulman, cited at note 2.

[5] Wolff, cited at note 2.

[6] Feller, "The Coming End of Arbitration's Golden Age," *Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy Arbitrators,* 97 (Washington, DC: BNA Books, 1976).

[7] Mueller, "The Law of Contracts—A Changing Legal Environment," *Truth, Lie Detectors, and Other Problems in Labor Arbitration, Proceedings of the 31st Annual Meeting, National Academy of Arbitrators,* 204 (Washington, DC: BNA Books, 1979).

contracts, but that arbitrators can still respect and use ordinary principles of contract law to "tap the wisdom of the past." [8] As such, if the arbitrator is usually chosen because of the parties' confidence in his/her knowledge of the "common law of the shop," then it is expected that a remedy may not be found exclusively within the four corners of the collective bargaining agreement.

This is consistent with the Supreme Court's reasoning in *Warrior & Gulf*, where the Court stated that the industrial common law, or the practices within both the industry and the shop, are considered part of the agreement although they are not explicitly contained within it.[9] In this same vein, Justice Black declared that a "... collective bargaining agreement is not an ordinary contract for the purchase of goods and services, nor is it governed by the same old common law which controls such private contracts." [10]

Practices Today and the Reasons Behind Them

The problems that arbitrators face today are several, and in the area of remedies, they are indeed most challenging. To understand these challenges, one must be aware of what changes are occurring and what is causing these changes. Several factors can be identified and should be discussed:

(1) "The new expectancies of the parties." In the past, remedies were simple and broad, relatively homogenized and bland, usually a general request to "make the party whole." The parties accepted, in fact expected, these results. Today, however, parties appear to have greater and more specific expectations with respect to remedial actions by arbitrators. These may include requests for reemployment, back pay, reinstatement of benefits, interest, damages, and even apologies. While these demands for expanded remedies appear to be significant changes in the area of arbitration, perhaps they are simply the reflection of a larger trend that seems to cut across many of the institutions of our society, or the increased litigiousness within our society.

(2) The role of courts in the arbitration decision-making process. As mentioned above, courts have shown an increasing tendency to review arbitration awards on their merits. They have also have found a greater need for specificity in remedies. Forty years ago it was sufficient to order that the injured party be placed in the position he/she would have been in had the contract been fully performed (i.e., the "make whole" remedy [11]). Today such remedies are found to be impermissibly vague and are often set aside and/or remanded to the arbitrator for more specific remedial action.[12]

(3) The complexity of the labor agreements. Simply put, they have become lengthy, complicated, and often very legalistic documents that cover many areas never before considered. Plant closures, takeovers, drug testing, external law questions, affirmative action, early retirement, part-time status, and two-tiered wage systems, are but a few examples of these new areas of coverage within collective bargaining agreements. As such, there are more opportunities for disputes to arise from these agreements, and it becomes much more difficult to interpret and formulate workable remedies within them. These greater areas of potential controversy require a concomitant increase in the expertise of arbitrators, and with these expanded vistas come

[8] Feller, "A General Theory of the Collective Bargaining Agreement," 61 *Calif. L. Rev.*, 663 (1973).

[9] *Steelworkers v. Warrior & Gulf Navigation Co.*, cited at note 3.

[10] *Transportation-Communication Employees v. Union Pacific R.R.*, 385 U.S. 157, 160, 63 LRRM 2481, 2482 (1966).

[11] See *Wicker v. Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867); *Falls Stamping & Welding v. Automobile Workers*, 485 FSupp 1097, 109 LRRM 2987, 2991 (ND Ohio 1979).

[12] See *Hart v. Overseas National Airways*, 541 F2d 386 (CA-3 1976), 79 LC ¶ 11,610.

the potential for a wider range of remedial alternatives.

(4) The increased sophistication of the parties. A greater number of the parties involved in the arbitral process believe it necessary to employ some type of legal assistance in the grievance resolution process. This greater reliance on legal experts and legalistic arguments leads to more complex arguments that burden the arbitrator with further critical considerations. In addition, this influx of lawyer and nonlawyer "legal expertise" brings with it persons who are often not familiar with the foundations of industrial relations or "the common law of the shop," and this situation can pose other problems.

In a sense, this so-called "sophistication" may be a misnomer because these experts often lack an understanding of the process. Their insistence in imposing legal concepts and practices upon the industrial relations scene has contributed to the nightmares encountered in arbitrations. Thus, some arbitrators, out of fear of legal intrusion or challenges, have responded to these pressures by ordering remedies that ordinarily would not be issued.

(5) The issue of jurisdiction. This is another element that is changing in the arbitration decision-making process. There seems to be a change in attitude among arbitrators over the retention of jurisdiction question. Traditionally, the arbitrator's jurisdiction ended when the award was issued. Peter Seitz coined the phrase "functus officio," and that was the rule arbitrators followed with regard to the finalization of a case.[13] In effect, the functus officio doctrine was that once the award was issued, the arbitrator's jurisdiction ended. The debate then raged among National Academy members when the retention of jurisdiction became the cry of a small but vocal minority. With the passage of time that minority has, in this writer's judgment, become the majority. In fact, it appears that parties have increasingly sought arbitrators to exercise this option. The use of this remedial tool indeed often has salutary effects, but at the same time it also increases the potential for greater remedial complexities.

(6) The widening array of social issues facing society. These issues have also added to the increasing difficulties in dealing with remedies. The rise of employee assistance programs highlights this development. Employers have initiated such programs in response to pressures to deal with employees' physical, psychological, and social problems. Because these programs involve remedial aspects of their own, arbitrators often must consider disciplinary actions in light of the employers' obligations (implicit or explicit) to assist in the rehabilitation of such employees, as well as the employee's rights to the continuation or reinstatement of employment status.

(7) The related and equally challenging area involving an employee's post-discharge conduct. In these instances, arbitrators have been asked to look into an employee's behavior after discharge, where reformation has occurred. Not surprisingly, arbitrators are rarely asked to consider damaging post-discharge behavior by the employee, although on occasion the employer may raise those arguments to rebut the employee's request for reinstatement.[14]

Substance abuse cases are the most fertile ground for such requests. Where evidence of substance abuse (alcohol and/or drugs) may have been the basis for disciplinary action, it is often argued that evidence of post-disciplinary or post-discharge reformation ought to be included as part of the arbitrator's remedial considerations.

[13] See Seitz, cited at note 2.

[14] See Helburn, "Seniority and Post-Reinstatement Performance," *Arbitration 1990: New Perspectives on Old Issues, Proceedings of the 43rd Annual Meeting of National Academy of Arbitrators*, 141 (Washington, DC: BNA Books, 1991); see also, "Chapter 5: The Arbitrator's Remedial Powers," *id.*, at 73.

(8) External law often determines the direction and extent of an arbitrator's remedial actions. Although arbitrators are not normally encouraged to base their remedial orders on the law per se (indeed they are regularly told to refrain from relying on such authority), they often do so at the request of the parties or at the direction of a judicial or a quasi-judicial agency. The propensity of arbitrators to consider such legal issues on their own, or upon the direction of one of these judicial or quasi-judicial bodies, obviously increases the level of complexity of remedial questions.

Conclusions

Progress is often based upon change, and in arbitration that change is most visible in the area of remedies. Some of the remedial innovations mentioned above clearly constitute positive developments in the arbitral form, giving arbitrators a wider range of remedies and greater flexibility in their administration. At the same time, some admonitions are in order. Changes leading to progress most often must be orderly, accomplished within the structure of the existing institution, and not radical or threatening to the existence of that institution.

Labor arbitration, by and large, has been a successful remedial institution and is a respected cornerstone of the American industrial relations scene. It is uniquely American and it has commanded the respect of not only the American labor-management and legal communities, but it also has been a source of constant inquiry and praise by other nations. If that respected status is to continue, change in any aspect of the arbitration process, including the area of remedies, must be rational and reasonable.

It must be emphasized that labor arbitration in America is a private process owned by the parties. It is not a process controlled by the appointing agencies, the professional associations, the scholars, the legal system, or the judiciary. This is not to say that each of those groups does not have an influence over the process or that public policy considerations or the law do not have an effect upon the system. However, in the main, the process belongs to the labor and management advocates, and to a lesser extent, the arbitrators.

Accordingly, the arbitrators have an obligation to address the changes demanded by the parties, and in that regard their innovative responses in the area of remedies are proper in so far as they are responsive to those requests. For the arbitrators to go beyond those bounds is threatening to the stability of the process. Likewise, the imposition of non-labor relations "legal" standards by outside experts poses a serious threat to the arbitral institution. The same might be said for judicial activists who go beyond the *Trilogy* tenets, and the overly litigious participants involved in the process.

This process of labor arbitration has withstood many challenges and on many occasions has embraced change in the past. It must be stressed, however, that it is not an area where changes in social policies and practices are developed and/or initiated. Rather, it is an institution that determines outcomes of problems presented to it by the parties, and does it in a limited and private manner. The remedial innovations discussed herein are indeed proper when presented by the parties in the context of the arbitration, but they should not be viewed as a tool to change the process itself.

[The End]

Grievance Arbitration: Accommodating an Increasingly Diversified Work Force

By Martin H. Malin and Lamont E. Stallworth

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It has been generally accepted that the traditional function of collective bargaining is the establishment of broad principles or precepts concerning wages, hours, and terms and conditions of employment. These broad, mutually agreed upon principles are applied to various future fact situations. Where there is a conflict between labor and management over the appropriate or intended application of these broad principles, labor arbitration provides the mechanism to effectuate the terms of the collective bargaining contract. Thus, it can be fairly said that the labor arbitrator's role is one of "effectuating" the intent of the parties.[1]

Since World War II, there has been considerable progress in integrating the work force and thereby changing its demographics. These work force changes have in large part been prompted by federal and state anti-discrimination laws and judicial interpretations of these statutes. It is projected that the percentage of women and racial and ethnic minorities in the work force will continue to increase through the year 2000.[2] Moreover, the Americans with Disabilities Act[3] will also likely increase the percentage of disabled workers in the work force.

These changing demographics have generated considerable discussion concerning how to effectively manage this new work force.[4] Moreover, statutory and case law have defined such legal concepts as discrimination, affirmative action, reasonable accommodation, undue hardship, and harassment. These legal concepts or definitions also create the environment within which the parties negotiate collective bargaining agreements and arbitrators apply newly negotiated clauses and such traditional principles as just cause.

As the workplace becomes more demographically diversified, the role and function of labor arbitration becomes more than merely "effectuating" the intent of the parties. Labor arbitration also becomes a mechanism for accommodating the needs, interests, and legal rights of those individual workers traditionally excluded from the primary work force. This is particularly true given the evolution of extra-contractual legal obligations placed on the parties by equal employment opportunity laws.

This paper examines the interrelationship between the demographic and legal environments external to collective bargaining and the collective bargaining and arbitration process. It focuses on arbitral interpretations of contract clauses that specifically address equal employment opportunity and the effects of equal employment opportunity law on arbitral interpretation of traditional contract clauses. The paper examines three equal employment issues: accommodation of

[1] Taylor, "Effectuation of the Labor Contract through Arbitration," *Selected Papers from the First Seven Annual Meetings of National Academy of Arbitrators 1948-54*, 2 (1957).

[2] Fullerton, "Projections 2000—Labor Force Projections: 1985 to 2000," *Monthly Labor Review* (Sept. 1987).

[3] Americans With Disabilities Act of 1990 (ADA) § 2(a)(1), 136 *Congressional Record*, H4582 (July 12, 1990).

[4] See Copeland, "Learning to Manage a Multicultural Work Force," *Training* (May 1988): 49-56.

religious practices, affirmative action, and harassment.[5]

Particular attention has been paid to how arbitrators resolved these disputes and what remedy was granted by the arbitrator. Based on this sampling of relevant arbitral awards, it was concluded that for the most part, an arbitrator's handling of a case and the arbitral outcome paralleled what would have occurred if the matter were pursued under the applicable anti-discrimination statute. Accordingly, the authors conclude that labor arbitration remains as a legitimate, fair and efficient mechanism to resolve disputes arising in a demographically diversified and unionized work force.

Labor Arbitration as an Accommodating Mechanism

The first grievance arbitration that interpreted and applied an existing labor agreement was heard by Judge William Elwell of Bloomsburg, Pennsylvania, and involved the Anthracite Board of Trade and the Committee of the Workingmen's Benevolent Association. The issue involved "questions on interferences with the works, and discharging men for their connection with the Workingmen's Benevolent Association." [6] Judge Elwell rendered his award on April 19, 1871. Interestingly, Judge Elwell held, among other things, that there should be no discrimination against union members and officers. In many ways, Judge Elwell's decision prohibiting discrimination because of one's union membership and activities, effectively required an "accommodation" on the part of management. Subsequent to this decision, as most of you know, arbitration was used to settle disputes in the apparel, coal, entertainment, railroad, and automobile industries.

On January 12, 1942, President Roosevelt established the War Labor Board. The War Labor Board's policy toward grievance arbitration stimulated the development of that procedure as the predominant method of settling disputes under a collective bargaining agreement.[7]

In addition to fostering grievance-arbitration procedures to resolve such traditional collective issues as wages, hours, and benefits, the War Labor Board also fostered the inclusion of contract provisions prohibiting gender- and race-based discrimination.[8] In *Phelps Dodge Corp.*,[9] the War Labor Board directed that a seniority clause be adopted with the following language: "Equal opportunity for employment and advancement under this clause shall be made available to all to the fullest extent and as rapidly as is consistent with efficient and harmonious operation of the plant."

Consequently, from a historical perspective, grievance arbitration has been used as a "mechanism of accommodation" of the rights, interests, and needs of the individual workers who have been excluded from the traditional workplace. This is true whether the accommodation was made under the umbrella of the traditional just cause provision, equal pay provision, or non-discrimination provision.

Equal Employment Provisions

Unions and employers have responded to the development of the law of equal employment opportunity and the increasing diversity of the work force by negotiating specific equal employment contractual provisions. The most preva-

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[5] Discussion of affirmative action issues in arbitration draws on our previously published work, Malin and Stallworth, "Affirmative Action and the Role of External Law in Labor Arbitration," 20 *Seton Hall L. Rev.* 745 (1990).

[6] R. Fleming, *The Labor Arbitration Process*, 2 (1985).

[7] See Freidin and Ulman, "Arbitration and National War Labor Board," 58 *Harv. L. Rev*, 309 (1945).

[8] The War Labor Board responded to the influx of women into traditionally male jobs by requiring equal pay for equal work. See *Brown and Sharpe Mfg. Co.*, No. 2228-D (Sept. 25, 1942). Furthermore, President Roosevelt issued Executive Orders 8802 (June 25, 1941) and 9346 (May 27, 1943) pronouncing that it was the "duty of all employers and all labor organizations to eliminate discrimination ... because of race, creed, color or national origin."

[9] *Phelps Dodge Co.*, Case No. 2123-CS-D (Feb. 19, 1942).

lent are nondiscrimination clauses. In 1970, only 69 percent of collective bargaining agreements contained such clauses.[10] In 1985, 94 percent of all contracts contained nondiscrimination clauses.[11] Although less prevalent, if it was considered mutually beneficial, unions and employers have also negotiated affirmative action plans. In interpreting nondiscrimination clauses or affirmative action plans, arbitrators have done so in a manner that is generally consistent with judicial interpretations of equal employment laws. In interpreting nondiscrimination clauses, arbitrators generally have followed the law. In resolving affirmative action-related grievances, arbitrators' awards have been consistent with the external law. It is argued here that this is a result of the collective bargaining environment that produced affirmative action agreements.

Title VII's prohibition of religious discrimination includes a duty to reasonably accommodate an employee's religious practices, unless the accommodation would cause an undue hardship. In *Trans World Airlines v. Hardison*,[12] the Supreme Court held that an undue hardship exists where a proposed accommodation would impose more than a de minimis cost on the employer. In *Ansonia Board of Education v. Philbrook*,[13] the Court held that an employer need not accept an employee's proposed accommodation if the employer has offered its own reasonable proposal. Arbitrators construing contractual, nondiscrimination clauses have followed these and related lower-court decisions in determining whether employers have met their duties to reasonably accommodate grievants' religious practices. Most cases involve discipline or discharge. They are considered in the following discussion of the just cause provisions.

However, arbitrators have not distinguished discipline cases from those brought directly under the contractual, non-discrimination clause. For example, in *Hurley Hospital*,[14] the grievant protested, as contrary to her religious beliefs, the employer's requirement that she wear pants. The arbitrator upheld the employer's safety concerns but ordered that the employer allow the grievant to try to design an outfit that would meet the safety concerns and be consistent with the grievant's faith.

Attendant with the existence of a diversified work force is the occurrence of harassment. The basis for this harassment may be sex, race, ethnicity, religion, and an employee's physical or emotional disability. In *Meritor Savings Bank v. Vinson*,[15] the Supreme Court held that sexual harassment as a condition of employment violates Title VII. The Court endorsed earlier Equal Employment Opportunity Commission (EEOC) guidelines defining sexual harassment as: (1) *quid pro quo* harassment, where sexual favors are required to retain and advance in the job; and (2) hostile environment harassment, where the harassment does not result in loss of any tangible economic benefits. The Court held that for a hostile work environment to exist, the harassment must be sufficiently severe or pervasive to alter the victim's working conditions.

The Court further defined harassment as unwelcome sexual advances, rather than involuntary participation in sexual conduct. Conceptually, sexual harassment does not differ from racial, ethnic, religious, age, or disability-based harassment. EEOC guidelines on sexual harassment expressly provide that the same principles apply to race, religion, and national origin.[16] Just as courts have recognized harassment as a violation of equal

[10] *Basic Patterns in Union Contracts*, 10th ed. 112 (Washington, DC: BNA Books, 1983).

[11] *Basic Patterns in Union Contracts*, 12th ed. 130 (Washington, DC: BNA Books, 1989).

[12] 432 US SCt 63 (1977), 14 EPD ¶ 7620.

[13] 479 US SCt 60 (1986), 41 EPD ¶ 36,565.

[14] 1978-1 CCH ARB ¶ 8266 (Roumell 1978).

[15] 477 US SCt 50 (1985), 40 EPD ¶ 36,159 (1985).

[16] 29 CFR § 1604.11(a)n.

employment statutes, arbitrators have recognized that harassment may violate the contractual nondiscrimination clause.[17]

The most difficult issues in harassment grievances under nondiscrimination clauses is the arbitrator's remedial authority. EEOC policy guidelines require employers, found to have discriminated, to take corrective action to prevent supervisors or other managerial personnel from repeating their discriminatory conduct. Such corrective action may include disciplining the supervisor or manager, training the individual to overcome his or her prejudice, or removing the victim from the supervisor or manager's authority.[18]

Where the parties have a nondiscrimination provision that facially mirrors the proscriptions of Title VII, it could reasonably be argued that arbitrators have similar remedial authority. However, a review of the reported arbitral awards reflect that arbitrators are particularly reluctant to order an employer to transfer or discipline supervisors or co-workers of the harassed grievant.[19] Instead, arbitrators may feel that it is more within their remedial authority to issue a general order that the employer take all steps necessary to eradicate harassment from the workplace. In such instances, the arbitrator may also retain jurisdiction for a reasonable period of time to ensure remedial compliance. Presumably, where compliance is found to be less than appropriate under Title VII, the arbitrator can order a more specific remedy.

The Supreme Court has found that voluntary affirmative action plans are consistent with Title VII where: (1) the affirmative action plan is premised on a remedial purpose; (2) the rights of majority employees may not be unnecessarily trammeled; (3) the remedial purpose is present when the plan is designed to remedy a manifest racial, ethnic, or gender imbalance in a traditionally segregated job category; and (4) the plan's duration must be limited to an amount of time that is necessary to eliminate the imbalance.[20]

Our previously published review of affirmative action-related arbitral awards found that arbitrators generally interpret AAPs by attempting to reconcile their remedial purposes with other provisions of the contract.[21] For example, in *Glide School District 12*,[22] the arbitrator interpreted the contractual AAP adopting an Oregon statute that provided for a school district to maintain its affirmative action policy when reducing its work force and to maintain the "approximate proportion of men, women, and minorities in teaching positions in which those persons are underrepresented . . . ."

The arbitrator held that exemption from layoff would result only from underrepresentation at the time of the reduction in work force, and would not result merely because layoff by seniority would result in racial, ethnic, or gender underrepresentation in the work force. He reasoned that this interpretation was the plain meaning of "underrepresented" and the interpretation was consistent with the goal of affirmative action hiring. Otherwise, according to the arbitrator, affirmative action hiring would result in

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[17] *Chicago Transit Authority*, 89-1 CCH ARB ¶ 8129 (Goldstein 1990); *Philadelphia Gas Works*, 90-1 CCH ARB ¶ 8061 (Tener 1989); and *PACCAR, Inc.*, 72 LA 759 (Grether 1979).

[18] EEOC Policy Statement, 8 FEP Manual 401:2615, 2616 (Feb. 5, 1985).

[19] See *Philadelphia Gas Works*, cited at note 17 (supervisor ordered to apologize to grievant but not ordered transferred); *Delta College*, 14 LAIS 4288 (Glazer 1987) (arbitrator lacks authority to order supervisor demoted); *Naval Weapons Center*, 86-2 CCH ARB ¶ 8383 (Connors 1987) (arbitrator's only available remedy is to recommend that employer take steps to eradicate bigotry); also see *Louisiana Pacific Graphics*, 87-1 CCH ARB ¶ 8150 (LaCugna 1986) (ordering reprimand of supervisor).

[20] *Johnson v. Transportation Agency*, 460 US SCt 616 (1987), 42 EPD ¶ 36,831; and *Steelworkers v. Weber*, 443 US SCt 193 (1979), 20 EPD ¶ 30,026.

[21] Malin and Stallworth, 20 *Seton Hall L. Rev.* 745, 762-69 (1990).

[22] *Glide School District 12* 79 LA 1139 (Lehleitner, 1982).

subsequent layoffs of senior majority employees, a result that would deter affirmative action hiring.

Arbitral interpretations of AAPs that safeguard seniority rights, unless necessary to achieve the plan's remedial purpose, are consistent with judicial interpretations of Title VII. However, they result not from following Title VII case law, but instead from a recognition that in collective bargaining, parties agree reluctantly to override seniority and do so only to the extent necessary to achieve clearly stated remedial objectives.

The Traditional Just Cause Clause

Most grievances involving religious accommodation or harassment arise out of discipline or discharges. The issues are raised in different ways, however. In religious accommodation cases, the grievant raises the employer's alleged failure to accommodate as a shield to defend against charges of misconduct. In harassment cases, the employer uses its duty to provide a nondiscriminatory workplace as a sword to justify disciplining the grievant. Religious accommodation grievances markedly illustrate how external equal employment law affects the interpretation of a traditional contract provision.

Prior to 1972, arbitrators generally found cause to discharge employees who, because of their religious convictions, disobeyed employer orders without inquiry into whether the employer could have accommodated the employee.[23] In 1972, however, Congress amended Title VII to expressly provide that absent undue hardship, an employer must reasonably accommodate an employee's religious beliefs. Since then, arbitrators have confronted the accommodation issue when evaluating the existence of cause for discipline and discharge. Even in the absence of a contractual, non-discrimination clause, arbitrators have held that an employer must meet its accommodation obligations to establish cause.[24] They have also recognized that in appropriate circumstances, employees acting out of religious compulsion may resort to self-help and need not abide by the principle, "Obey now and grieve later."[25] They have sustained discipline and discharges where accommodation would impose undue hardship on the employer,[26] but have found an absence of just cause where employers have breached their accommodation duties.[27]

In harassment cases, employers rely on their statutory obligations to prevent harassment in order to justify the discipline and discharge of harassers. Arbitrators generally agree and have frequently referred to those obligations in justifying discipline for harassment.[28] Examination of reported arbitral awards reveals that arbitrators clearly distinguish between shop talk and horseplay and harassment. For example, in *Kraft, Inc.*,[29] Arbitrator Elliot Goldstein held that the grievant's repeated racial slurs, and other comments about women and Mexicans "were ... socially [i]ndescribable and *directly* antagonistic toward these particular groups."

The "tone and import" of a racial slur may also distinguish it from shop talk and brand a grievant's conduct as harass-

[23] Helburn and Hill, "The Arbitration of Religious Practices Grievances," 39 *Arb. J.* 3, 6 (June 1984).

[24] See *Centerville Clinics, Inc.*, 86-1 CCH ARB ¶ 8050 (Talarico 1985); and *Alameida-Contra Costa Transit District*, 80-1 CCH ARB ¶ 8060 (Randall 1960).

[25] See *Dept. of Correctional Services*, 92 LA 1059 (Babiskin 1989); and Lucky Stores, 88 LA 841 (Gentile 1987).

[26] See *Georgia Power Co.*, 91-1 CCH ARB ¶ 8073 (Baroni 1990); *Centerville Clinics, Inc.*, 85 LA 1059 (Talarico 1985); and *Kansas City Transportation Authority*, 79 LA 299 (Belkin 1982).

[27] See *Dept. of Correctional Services*, 92 LA 1059 (Babiskin 1969); *Lucky Stores, Inc.*, a LA 841 (Gentile 1987); and *Alabama By-Products Corp.*, 83-1 CCH ARB ¶ 8001 (Clarke 1982).

[28] See *Kraft, Inc.*, 89 LA 27 (Goldstein, 1987); *IBP, Inc.*, 89 LA 41 (Eisler, 1987); *Tampa Electric Co.*, 87-2 CCH ARB ¶ 8320 (Vause, 1985); *Zia Co.*, 82 LA 640 (Daughton, 1984); *Atlantic Richfield Co.*, 83-2 CCH ARB ¶ 8584 (Nicholas, 1983); but see *Borg-Warner Corp.*, 78 LA 985 (Neas, 1982).

[29] *Kraft Inc., ibid.*

ment.[30] Other factors considered are grievants' persistent conduct,[31] its direction at a particular target,[32] and its malicious nature.[33] Furthermore, arbitrators have found that a level of general horseplay does not excuse physical sexual assault[34] or threats to rape a co-worker.[35]

The defense that the grievant harasser meant no harm and that the harassed victim is oversensitive is common. Many arbitrators have focused primarily on the victim's perception rather than the grievant's intent. An arbitrator's focus upon the victim's perception or view comports with the Supreme Court's framework of analysis of sexual harassment. Consequently, discipline has been upheld where the grievant's conduct was threatening or intimidating,[36] particularly where the grievant persists in such conduct with the knowledge that such conduct is unwelcome.[37] However, discipline has not been upheld where the alleged victim returned the grievant's conduct in kind[38] and where the victim did not regard the grievant's conduct as intimidating or offensive.[39]

Summary and Conclusion

Many arbitrators and commentators have drawn a dichotomy between external law and the collective bargaining agreement and have debated whether arbitrators may consider the former or are confined to the latter in resolving grievances. This review, however, suggests that the debate may be over-blown. The external law of equal employment and the accompanying demographic changes in the work force define the context in which collective bargaining agreements are negotiated and the context in which even traditional contract language is interpreted. The perceived tension between external law and the common law of the shop, at least in the equal employment area, may be more theoretical than real.

[The End]

Recent Trends in Arbitration of Substance Abuse Grievances

By Helen Elkiss and Joseph Yaney

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Prior to making awards in discharge cases involving job-related substance abuse, arbitrators consider a number of factors that pertain to specific events involved. Their decisions are based on evidence presented by both parties at the arbitration hearing and the applicable provisions of the collective bargaining agreement or company rules. Other related legal proceedings, such as criminal prosecutions, decisions rendered by governmental agencies (i.e. workers' compensation), or other arbitration rulings may

[30] *Peninsular Steel Co.*, 86-2 CCH ARB ¶ 8443 (Ipavec, 1985).

[31] *County of Washoe*, 89 LA 198 (Concepcion, 1987).

[32] *Id.*

[33] *Hannaford Bros. Co.*, 93 LA 721 (Chandler, 1989).

[34] *GTE Florida, Inc.*, 92 LA 1090 (Cohen, 1989).

[35] *St. Regis Paper Co.*, 74 LA 1281 (Kaufman, 1980).

[36] *Hannaford Bros. Co.*, cited at note 33; *Tampa Electric Co.*, cited at note 28; *Peninsular Steel Co.*, cited at note 30; *University of Missouri*, 82-1 CCH ARB ¶ 8134 (Yarowsky, 1982); and *Memorial Hospital*, 79-1 CCH ARB ¶ 8081 (Sincropi, 1978).

[37] *Cub Foods, Inc.*, 95 LA 771 (Gallagher, 1990); *IBP, Inc.*, cited at note 28; and *American Standard, Inc.*, 64 LA 15 (Lapsitz, 1974).

[38] *Heublein, Inc.*, 87-1 CCH ARB ¶ 8220 (Ellman, 1987).

[39] *Washington Scientific Industries*, 83 LA 824 (Kapsch, 1984); and *Nuclear Fuel Services, Inc.*, 93 LA 1204 (Clarke, 1989).

be introduced by either party as reasons why their case should prevail, but they are not controlling or necessarily relevant to the arbitrator.

This study analyzes arbitration decisions relating to drug and alcohol abuse over the past seven years. We searched through numerous cases to determine how arbitrators rule in grievances involving discharge for substance abuse (alcohol and drugs). Our focus was on reasons given for upholding the discharge, "mitigating factors" cited, and "conditions" imposed if reinstatement was ordered. Also, we were interested in determining if back pay was awarded and what burden of proof was required.

What we discovered was a reluctance to support the strict adversarial model where winner takes all and business as usual is resumed. Solutions focused on compromise, where both parties "won" a partial victory and long-range solutions to medical problems could be implemented.

Search Format and Characteristics

A computer search of arbitration cases relating to substance abuse and conditional rehabilitation was conducted. Using LEXIS, we searched the cases published in BNA *Labor Arbitration Reports*, from 1983 through 1990. Category headings used in the search were Drugs and Alcohol, Conditional Reinstatement, Mitigating Circumstances, and Rehabilitation Program. Only cases involving discharge were used, not some lesser form of discipline. Also, those cases relating to a very specific contract clause that could not be used for generalization purposes were excluded from our results.

Sixty-eight arbitration cases were researched. In 22 (32%), the grievance was denied and the discharge was upheld. Whereas in the other 46 (68%), arbitrators sustained the grievance and reinstated the employee. Generally, when arbitrators reinstated grievants, the penalty was reduced and employees were allowed to return to their former positions under certain conditions, but usually without back pay.

Of the 68 discharge cases included in this study, 44 (65%) involved drug abuse, 21 (31%) were for alcohol abuse, and 3 (4%) were for both alcohol and drug abuse. Many grievants were discharged for excessive absenteeism and tardiness (26%) or poor work performance (6%), due to their dependency on drugs and/or alcohol.

There were primarily three reasons cited by arbitrators for upholding management's right to discharge. Out of the 22 cases lost by the union, unsuccessful alcohol or drug rehabilitation efforts were cited in 32%, criminal misconduct (arrest or conviction for selling drugs) in 23%, and company rule (not related to substance abuse) was violated in 23% and included such things as causing major property damage.

Other reasons also were identified. Discharge was often upheld if there was evidence of previous disciplinary action and the employee was clearly informed that a repeat offense would be grounds for immediate discharge.[1] In a number of cases, more than one of these was listed as justification for upholding the discharged employee.

From the sample cases studied, it is clear that arbitrators are reluctant to give management broad rights to discharge employees who violate company rules due to chemical dependency. They view such dependency as an illness that should be treated medically. Once employees are "cured" they should be returned to their jobs.

If there is evidence that the grievant has a reasonable chance at rehabilitation, a conditional remedy will be issued where the employee is reinstated *after* successful completion of an Employee Assistance Program (EAP). Arbitrator Marvin Hill

[1] *Burger Iron Company*, 92 LA 1100 (March 30, 1989).

labels this "condition precedent." However, if a repeat offense materializes in the future, or the grievant fails to live up to all the conditions imposed relevant to reinstatement, the remedy is no longer binding on the company. Hill labels this as "condition subsequent." [2]

Therefore, in 10 (22%) of the 46 cases involving reinstatement, arbitrators reduced the penalty because the employee was not offered an opportunity to enter a rehabilitation program (either through private insurance or use of an EAP).

Arbitrators considered mitigating circumstances, such as no evidence of physical impairment or good work record (i.e., no prior discipline, long-term employee, or good performance evaluations) in 20% of the cases won by the union. In one of the cases, a grievant found drinking beer on company premises during a break was reinstated because of a seven-year good work record.[3] Conversely, Arbitrator Richard John Miller upheld a discharge for a junior employee who violated a plant rule for drug possession stating, "If the grievant was an employee with greater seniority, one might find mitigating circumstances which would entitle him to be reinstated without back pay." [4]

Arbitrators pay critical attention to the issue of fair and equal treatment. An employer must be consistent in determining what penalty, if any, should be imposed for similar infractions of plant rules. If the union can convince the arbitrator that disparate treatment has occurred, a reduced penalty is often imposed.[5] In 11% of our sample cases, disparate treatment was a factor in reducing the penalty.

One controversial issue is off-duty substance abuse. If misconduct is not on company premises but during "off-duty" time, arbitrators often rule in favor of the grievant. A reasonable connection, or nexus, to the employment relationship must be considered. For a discharge to be upheld, the employer must demonstrate that the employee's conduct would have a significant impact on the employer's image or business operations.[6]

For example, an employer discharged an employee after reading a newspaper article that he had been arrested in a drug raid at his home; reinstatement was ordered. The arbitrator's rationale was that the employee had a good work record, the incident was not on company premises, and the result of a criminal investigation was not relevant.[7]

Conversely, if an employer can prove a "nexus," then a discharge is justified. In the State of Ohio, a state trooper was arrested for driving under the influence off-duty. Among his many duties, he was responsible for arresting drunk drivers. Discharge was upheld because the nature of the conduct could influence attitudes of the community and damage the employer's business. As stated by Arbitrator Calvin William Sharpe, the "pivotal factor in off-duty misconduct cases is the nexus between the employee conduct and the employer's legitimate interests in an effective business operation." [8]

Only seven of our reinstatement cases involved off-duty misconduct (15%), but this was cited as a major reason for reducing the penalty in many of them.

None of the cases involved discrimination (as determined by the arbitrator) against the grievant based on race, national origin, religion, or sex, and only one arbitrator differentiated between the fact that the employee only used drugs but was not involved in selling drugs as a rationale for reducing the penalty.

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[2] Marvin Hill, "Traditional and Innovative Remedies in Arbitration: Punitive Awards, Interest, and Conditional Remedies," II, #3 *Whittier Law Review* (1989), p. 636.

[3] 89 LA 99 (May 1, 1987).

[4] 86 LA 1 (December 10, 1985) p. 6.

[5] A. Dale Allen, Jr., "What Constitutes Drug Possession: Arbitration Case Histories and Guidelines," 16 *Employee Relations Law Journal* (Winter 1990-91), p. 366.

[6] *Ibid.*, p. 366.

[7] 89 LA 1 (May 5, 1987).

[8] LA 533 (February 23, 1990).

Arbitration Awards

For the 46 cases where the grievant was reinstated to a former position, back pay was awarded in only 10 (22%). Thus, in 36 of the cases (78%), the arbitrator reinstated the grievant but awarded no back pay. Arbitrators felt free to fashion their own remedy in many of these cases, which often meant a "split" decision. As many awards read, "the grievance was sustained in part and denied in part."

For example, in 13 (28%) of the cases, employees were required to enroll in and successfully complete an alcohol or drug abuse rehabilitation program before being returned to work. Many companies offered help through health insurance policies or an EAP. Often, in conjunction with enrollment in an EAP, reinstatement was conditioned upon attending counseling or Alcoholics Anonymous (or similar drug therapy) for a specific period of time after rehabilitation (28%) and/or submitting to drug/alcohol testing on a periodic basis (26%).

Over a fourth of the reinstatement decisions required the employer to give the grievant "one last chance" at redemption. Grievants could return to their former positions if they met certain "conditions" of rehabilitation. It was generally agreed that employees dependent upon drugs or alcohol often refuse to admit they have a chemical dependency. Also, negative behavior due to this dependency is a result of a "disease." Only when employees are faced with job loss will they agree to enter a rehabilitation program. Thus, arbitrators conclude that once the grievant finally recognizes the problem, one final chance should be afforded.[9] However, once given this reprieve, the next offense of reporting under the influence[10] or violating a plant rule[11] will be cause for immediate discharge. A "last chance agreement" is indeed the last chance for the employee.

What if the grievant successfully completed a rehabilitation program between the discharge date and the arbitration hearing? Arbitrators are divided on this issue. Some rule that a request to enter an EAP must be made by an employee prior to discharge,[12] while others argue that: "As a general rule, post-discharge conduct is not relevant. However, where the disease of addiction to alcohol, or drugs is involved, after-the-fact participation in a rehabilitation program is entitled to consideration." [13]

Burden of Proof

In a recent article, arbitration decisions were studied to determine the burden of proof required by arbitrators in substance abuse discharges. The author argues that his analysis of 145 cases shows that arbitrators require a lesser burden of proof for drug abuse cases, "preponderance of the evidence," but a greater burden of proof for alcohol abuse cases, "beyond a reasonable doubt." Therefore, employers can anticipate that arbitrators demand a lesser quantum of proof in drug-related discharge cases.[14]

Many of the arbitration cases we studied required the arbitrator to determine whether or not the employee was actually guilty of the crime (alcohol or drug use). All of the arbitrators required some clear proof of possession or "being under the influence," but not all agreed as to what that standard of proof should be. In only 19 of the total cases (28%) did the arbitrator cite a standard of proof when determining whether to deny or sustain the grievance. Clear and convincing evidence was cited 13% of the time, preponderance of the evidence 9%, and beyond a reasonable doubt 6%.

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[9] 89 LA 845 (October 11, 1987) and 87 LA 1039 (June 23, 1986).

[10] 88 LA 463 (June 19, 1986).

[11] 88 LA 275 (December 16, 1986).

[12] 88 LA 937 (March 9, 1987).

[13] 90 LA 681 (January 22, 1988), p. 687, Marlin M. Volz.

[14] Kenneth W. Thornicroft, "Arbitrators, Social Values, and the Burden of Proof in Substance Abuse Discharge Cases," 40 *Labor Law Journal*, 9 (September 1989), p. 588.

In 6 (13%) of the reinstatement cases, grievants were returned to their jobs because management could not prove the grievant's guilt and thus there was no "just cause" for discharge. For a number of the cases, proof was not at issue, since the grievant admitted to committing the "crime," but the union argued that discharge was too harsh a penalty for the crime.

Conclusion

Companies often loosely interpret contract provisions or their own rules when disciplining employees for substance abuse. Primarily, an employer may discharge an employee for "just cause." Many of the cases in this study were lost by the company because they could not prove "just cause."

Some of the examples cited by the arbitrators included: (1) the company had no published policy on the consequences of drug use or possession;[15] (2) a rule related to "being under the influence," which required proof of impairment;[16] (3) rules requiring grievant to be referred for medical diagnosis;[17] (4) no prohibition against off-duty drug use;[18] (5) grievant not being afforded "effective assistance," as required under the contract;[19] and (6) the requirement for a drug test was "unreasonable" under the circumstances.[20]

However, not all arbitrators are in agreement that a specific rule must be in effect before discharging for drug abuse. Arbitrator Harry J. Dworkin concluded that the absence of an express prohibition against consuming or selling illegal drugs on company premises does not divest the company of its contractual right to discipline for "just cause," when such conduct is considered criminal behavior.[21]

In the Thornicroft study cited earlier, it was found that drug abusers were penalized more severely than alcohol users. "Alcoholism is generally viewed as a sickness, and the grievant is seen as someone in need of treatment. The drug user is usually not so sympathetically received." [22] Distinction between drug use and alcohol use did not appear to be an issue in our study. What we found was that grievances were sustained 66% of the time for drug-related offenses and 67% of the time for alcohol offenses. Reinstatement was ordered for all three cases (100%) when both drugs and alcohol were the cause for discharge.

Our findings reveal that arbitrators view discipline as corrective, not punitive, and therefore will give employees a chance to correct unproductive behavior. Since most contracts require "just cause" for discharge, progressive discipline should be followed. William P. Daniel stated: "It is not the purpose to make an employee suffer . . . but rather to consider whether a lesser penalty will result in modification of behavior and observance of rules in the future. The thrust, then, is not punitive but corrective." [23]

[The End]

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[15] 89 LA 925 (November 11, 1987).

[16] 95 LA 137 (July 13, 1990).

[17] 89 LA 268 (April 27, 1987).

[18] 94 LA 540 (December 28, 1989).

[19] 89-1 CCH ARB 8186 (October 21, 1988).

[20] 88 LA 366 (November 6, 1986).

[21] 92 LA 1100 (March 30, 1989).

[22] Thornicroft, p. 585.

[23] 81 LA 988 (November 1, 1983) p. 993-94.

Overview of the IRRA 1990 Research Volume on New Developments in Worker Training

By Joel Cutcher-Gershenfeld

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The 1990 research volume for the Industrial Relations Research Association (IRRA) is entitled *New Developments in Worker Training: A Legacy for the 1990s.* The editors for the volume are: Louis Ferman, Michele Hoyman, Joel Cutcher-Gershenfeld, and Ernest Savoie. At the 1991 Spring Meeting of the IRRA, a special panel was convened to showcase the volume.

The panel opened with the following remarks, which provide an overview of the research volume. Four authors from the book then followed with presentations highlighting key themes from their chapters. Though I have written this overview as a summary of my remarks while chairing the panel, it is important to note that the remarks are drawn from the editors' introduction to the volume, which was written by all four co-editors.

Worker Training in the United States

The core thesis of the 1990 Research Volume is that a set of new developments in worker training emerged in the 1980s and has left a powerful legacy for the 1990s. These developments involve many actors, including government (federal, state, and local), employers, unions, educational institutions, and private training providers.

Historically, worker training in the United States has been highly segmented. The government focused on training for the disadvantaged; businesses focused on executive, professional and technical training; and unions focused on skilled trades apprenticeships and training in technical union-related skills. For most workers, the result was that the bulk of their training experiences were informal and occurred as "on-the-job" training. In addition, the average level of training in the United States trailed behind nearly all of our major international competitors.

During the 1980s, the overall volume of training increased and the structure of training activities shifted to include increased integration of the previously separate spheres. A wide range of forces can be identified as driving the changes in worker training. These include economic/market/technological forces (such as globalization of markets, worker displacement due to de-industrialization, and the development of new technologies); organizational forces (such as new forms of work organization, skill inflation for entry-level positions, strategic choices of the firm); and social/legal forces (such as increased work force diversity, new recognition of workplace literacy problems, and increased public attention to links among training, economic development, and competitiveness).

Chapters in the Volume

In order to trace the many new developments in worker training, the 1990 Research Volume featured ten chapters and an introduction by the editors. The chapters are as follows:

"Editors Introduction," by Louis Ferman, Michele Hoyman, Joel Cutcher-Gershenfeld, and Ernest Savoie

Chapter 1—"Schooling and Training for Work in America: An Overview," by Anthony P. Carnevale and Harold Goldstein

Chapter 2—"Assessing the Returns to Training," by Stephen Mangum, Garth Mangum, and Gary Hansen

Chapter 3—"New Directions in Labor Education," by Lois S. Gray and Joyce L. Kornbluh

Chapter 4—"New Dimensions in the Design and Delivery of Corporate Training Programs," by John A. Fossum

Chapter 5—"Joint Union-Management Training Programs: A Synthesis in the Evolution of Jointism and Training," by Louis Ferman, Michele Hoyman, and Joel Cutcher-Gershenfeld

Chapter 6—"Welfare Employment Policy in the 1980s," by Judith Gueron and David A. Long

Chapter 7—"Uncle Sam's Helping Hand: Educating, Training, and Employing the Disadvantaged," by Sar A. Levitan and Frank Gallo

Chapter 8—"Elements of a National Training Policy," by Paul Osterman

Chapter 9—"The Evolution of Worker Training: The Canadian Experience," by Noah M. Meltz

Chapter 10—"Intermediate Level Vocational Training and the Structure of Labor Markets in Western Europe in the 1980s," by David Marsden and Paul Ryan

As the titles suggest, a wide range of perspectives on worker training has been included in the volume. Selecting chapters to be featured on the panel for the Spring IRRA Meeting proved challenging. Ultimately, four were selected. Anthony P. Carnevale and Harold Goldstein, authors of Chapter 2, had their "Schooling and Training for Work in America" presented in summary form of their chapter. This was intended as a general introduction to the topic area. Second, given the practitioner orientation of the Spring IRRA Meeting, practitioner-focused versions of two papers were included. A paper by Lois S. Gray and Joyce Kornbluh, which was based on Chapter 4 and entitled "New Directions in Labor Education." The other paper in this group was by John Fossum, which was based on Chapter 5 and entitled "New Dimensions in the Design and Delivery of Corporate Training Programs." The final chapter chosen for the panel was selected in recognition of the importance of a comparative perspective on the topic. This presentation was based on Chapter 10 by David Marsden and Paul Ryan and is entitled "Intermediate Level Vocational Training and the Structure of Labor Markets in Western Europe in the 1980s." Summary forms of the presentations from the first three chapters are included with these proceedings. The full text of the Chapters appear, of course, in the 1990 Research Volume.

Emerging Themes in Worker Training

Looking across the entire volume, there is a wide range of themes identified regarding worker training. These themes include:

(1) An expanded range of training providers, public and private, offering training in an expanded number of topical areas.

(2) An increased focus on providing training for the bulk of active workers in a given facility.

(3) Increased use of career planning principles for production workers.

(4) A tighter connection (in practice and in the mind of policy makers) between training, economic development, and competitiveness.

(5) The emergence of a complex set of governance issues as parties experiment with public-private partnerships, labor-management partnerships, business-school-community partnerships, supplier-vendor partnerships, etc.

(6) A dramatic growth in joint union-management training programs, which has produced training innovations and shifted the contours of industrial relations in a number of key industries.

(7) The emergence of a number of training programs aimed at the needs of displaced workers, who are often confronted with the challenge of making huge career transitions.

(8) A substantial increase in the account of private and public resources developed to improve workplace literacy and teach basic skills.

(9) The increased use of new "technologies" in the delivery of training services, including self-paced computer instruction, video-conference facilities, and sophisticated train-the-trainer techniques.

(10) A range of new studies and new training policy initiatives occurring at federal, state, and local levels.

(11) Greater attention to the interaction between training and labor markets (internal and external).

Conclusion

Given the many new developments in worker training, there are important implications for industrial relations practice, research, and policy. For practitioners, these implications include learning to work with the new mechanisms for the delivery of training services aimed at both traditional and new populations, administered under the auspices of new governance structures, and impacting on strategic planning for the future of the organization.

In the area of research, the first challenge is one of classification or organizing the many new forms of training, topic areas, and population groups into a useful taxonomy. The second challenge involves developing methodologies that recognize the multiple (and complex) outcomes associated with training. Finally, there is the challenge of following what can be thought of as the moving target of new developments in training.

The overarching policy questions involve our comparatively low level of public support for training. A related issue involves what are termed "substitution" effects when public funds just replace expenditures that would have been made privately. Finally, there is the issue of competitiveness, which continues to drive discussions of training.

Thus, for practitioners, scholars, and policymakers interested in training, the recent developments documented in the IRRA 1990 Research Volume provide a valuable agenda for the years to come.

[The End]

Schooling and Training for Work in America: An Overview*

By Anthony P. Carnevale and Harold Goldstein

Both authors are affiliated with the American Society for Training and Development in Alexandria, Virginia. Mr. Carnevale as a vice president and Mr. Goldstein as a consultant.

The processes by which workers in the United States acquire work skills were shaped by the industrial and social conditions during the first half of this century. These conditions included an extreme division of labor under the banner of rational management. A broadly literate work force developed by the extension of formal education through high school, for most of the population, and through college for one out of four, along with a traditional expectation of quick-job learning, fostered by the great mobility of workers among industries.

For the majority of workers, including those in most clerical, production, and service jobs, these conditions favored minimum special work training for an essentially literate work force who could learn their simple jobs through informal instruction by supervisors or fellow workers. Only the professional, technical, craft workers, and some office workers, needed post-secondary training.

* Summary of a paper appearing in *New Developments in Worker Training: A Legacy for the 1990s*, IRRA Series, 1991.

How Today's Work Force Acquired Skills

As the century approached its end, an inventory of the skill-acquisition backgrounds of the active work force showed the effects of this combination of general education, special vocationally oriented education, and on-the-job training. Two out of three active workers, including some who had entered the work force decades earlier, reported in a survey that they had received training or education preparing them for their current jobs (See Table 1).

To some observers, particularly those from countries where training is taken seriously, the remarkable fact emerging is that one-third of the workers said that they had no relevant training at all. Yet when the figures are examined by occupation they become more understandable. Nearly all the professional and technical workers and more than three-quarters of the managerial and craft workers had training, while at the other end of the skill spectrum, only one in ten private household workers and one in four laborers had training for their jobs. We should also make allowance for the tendency of workers that do respond to a surveys, to underestimate the amount of informal learning they received from supervision or fellow workers, from doing chores under parental guidance at home or on farm, and simply from experience in doing the work.

Training *to qualify for their jobs* was reported by more than half the workers. The differences among occupations were the same as described above. Employers provided the training to the largest share of workers, including both formal and informal training, while schools, mostly four-year colleges, accounted for nearly all the rest. Only a small fraction of the workers got training from the Armed Forces, correspondence schools, and other training sources.

Over one-third of workers got training *to upgrade their skills.* Upgrading training was also given unevenly among occupations. More than half the professional and technical workers received training, but only a small fraction of laborers and private household workers. Employers provided formal and informal training to one out of four workers, schools to only half this much.[1]

In general, white-collar and technical workers tend to rely more on schooling and formal employer programs, while bluecollar and service workers rely more on informal on-the-job training.

For workers already employed, the three major modes of training, including informal, formal on-the-job, and school, interact in a dynamic way. Incremental changes in skill requirements accumulate, first through informal, on-the-job training. Then, when the need is perceived to be more general in the firm, this leads to formal programs. Finally, as schools respond to widening needs, to school programs.[2]

The extension of schooling to a broader sector of the population has been accompanied by the development of educational programs designed to prepare people for a wider spectrum of careers.

In the early years of this century, less than two-fifths of the newly minted workers had a high-school education and only a small elite, about 6 percent, had finished college. Now more than 80 percent build their work skills on a foundation of at least 12 years of schooling, and one out of four completes college or graduate education.[3] At the same time, the range and variety of postsecondary educational pro-

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[1] Because 25 percent of workers got training both to qualify for their jobs and to upgrade their skills, the unduplicated count of those who got training was 65 percent, as shown in Table 1.

[2] A. Carnevale and Leila J. Gainer, *The Learning Enterprise* (Washington, DC: U.S Government Printing Office, 1989).

[3] U.S Department of Education, *Digest of Education Statistics* (Washington, DC: U.S Government Printing Office, 1987). For the educational attainment of new workers we

grams once confined to liberal arts and sciences, plus a limited number of traditional professional curricula (such as medicine, engineering, law), have become more varied and focused on many different vocational goals.

Degrees are given in hospital administration and ski resort management, and technical institutes and community colleges have a wide variety of occupational offerings. This is only part of a response to industry's urging for special training to meet its human resources needs. In good part, it is an attempt to meet a demand from students and their parents for practical training.

Current Training Activity

Thus far, we have been dealing with the retrospective picture of how workers acquired work skills, as they reported when looking back over their whole lives. Another way of understanding the skill-acquisition picture is to get information on what goes on in a single year. This depicts the current state of training activity, unconfused by the training and education experience of workers now in their fifties, whose mode of skill acquisition was typical of patterns three decades ago. It is also relevant to such questions as what industry and workers are doing to meet current competitive situations, and if cost data were available, would this data enable us to estimate what industry is spending currently.

For this picture, we turn to data from the surveys of participation in adult education conducted every three years from 1969 to 1984, by the Department of Education and through the Current Population Survey of the Bureau of the Census. (Since 1984, only one survey has been made and this is in progress at the present writing). In the surveys, adults are asked about courses or training activities taken in the previous 12 months. Those in regular educational programs leading to diplomas or degrees are excluded to confine the concept of adult education to those who return to education after having left it.[4]

In 1984, 23 million adults took 41 million courses, of which 26 million were work related (i.e., to improve job skills or train for a new job). Twenty-five million of the work-related courses were taken by persons in the labor force. Allowing for the average of 1.75 courses taken per participant in the age range 25-54, when most work-related courses are taken, we can estimate that the 25 million courses were taken by about 14.2 million persons, or 12.5 percent of the 113.5 million persons in the labor force. There is some evidence of under-reporting in this survey, based on comparing data from the survey with enrollment data for some institutions, as published by the National Center for Education Statistics. We can say, therefore, that *at least* one out of eight workers took work-related courses or training activities in 1984.

The training was mostly paid for by employers. The participant's employer paid all or part of the cost of 57 percent of the courses taken, and the worker or his or her family paid for 35 percent of the courses. For five percent of the courses, the cost was shared most often between the participant or family and the employer. It is remarkable that one out of three work-related courses was paid for by the participants themselves. A testimony to the seriousness with which workers took the idea of improving their competitive skills in the job market.

We will take a closer look at the 15 million courses or training activities paid for by employers, since these represent

(Footnote Continued)

are using the data for persons aged 25 to 29, an age at which nearly all have finished their formal educational preparation for work).

[4] U.S. Department of Education, Center for Education Statistics, *Trends in Adult Education, 1949-1984* (Washington, DC: U.S. Government Printing Office, 1986). Adult education data cited below are from this source or from special tabulations of the survey data made by the American Society for Training and Development.

the commitment of industry, government, and nonprofit agencies, to the enhancement of skills of their existing work force. It is this training that Gary Becker deals with in his seminal work entitled *Human Capital*, by making the distinction between "general training" that employers will not pay for because they anticipate that workers will quit and take their skills with them, and "specific training," relevant only to work in the firm, which employers will pay for. It is to employer-paid training that many programs to improve the work skills of the labor force look when trying to devise ways of encouraging more or better training.

It should first be reiterated that what the data from the adult education surveys refer to is formal training rather than the informal learning on the job that represents almost the only training many workers receive, but is an essential part of the skill-learning process for even the most highly educated professional workers.

To begin with, some industries do more training in relation to the numbers of their employees than others do. These differences reflect a variety of factors, including the technology of the industries; the presence of high proportions of professional, technical, and managerial workers; whether or not safety training is important or required by law; and simply the "culture" of the various industries. Among the high-training industries in 1984 were hospitals, public administration, finance, utilities, communications, machinery, electrical equipment, mining, medical services, and educational services.

Most of the training, 69 percent, was done inside the employing organization, and many firms maintain training departments to organize and conduct the training or they hire training providers to come into the plant and conduct the course. Of the 31 percent of training that is paid for by employers but done outside the firm, most (56 percent) is done by schools, with more than half of this done by 4-year colleges and universities. Additionally, a substantial amount of training is performed by business firms, which includes manufacturers of the equipment bought by the employer and training vendors at 16 percent, and professional societies at 14 percent.

Small employers (less than 500 employees) account for roughly half of all jobs in the American economy and almost 40 percent of new jobs. Their employees tend to be younger, less educated, and include more Hispanics but fewer blacks. Small firms tend to have jobs characterized by broad assignments of responsibility and technologies that are less specialized than in large companies. The opportunities for learning are therefore more generalized and lead to career transitions. At the same time, employers do not have enough employees to make it easy to send some off the job for training during work hours. As a result, small firm employees have less formal and more informal training than those in large firms.

According to a survey by the U.S. Small Business Administration,[5] almost half the employees in firms with 500 or more workers received some kind of training from their employers, while only 27 percent of employees in firms with fewer than 25 workers had received training. The same source cites other surveys making the same point.

Who gets training paid for by employers? When the composition of the trainees, by gender, race, ethnicity, age or occupation, is compared with the composition of the entire work force, it appears that women employees get slightly more than their proportionate share of the training. White workers get more than their share. Nonwhite and Hispanic workers receive less than their share. Workers in the age groups 25 to 44 get more training, and executives, professionals, and technical

[5] Cited at note 2 above.

workers get more than their share. These factors appear to be intercorrelated: Whites and women are heavily represented among the occupational groups that get more training.

Conclusions

With two out of three workers getting some training for their jobs, and one out of eight adult workers receiving formal work-related training each year, the question arises whether the training establishment is doing as much as is needed. In a market-driven economy, it is plausible that workers will take advantage of training opportunities and employers will provide the investment in expectation of increased income or productivity. However, disadvantaged and unemployed workers have little access to training opportunities without the intervention of public funding. Moreover, when many corporate managers emphasize current profitability at the expense of long-run investment, or when companies are bought and sold, assembled or dismantled for short-run financial considerations by fast operators without abiding interest in an industry, investment in human and inanimate capital is likely to be skimped.

Finally, perceptions of skill requirements may be subject to cultural lag, especially at a time when rapid changes are taking place in the way work is done. The recent slowdown in productivity growth in the United States may reflect these factors. For all these reasons, we think the training being given is not necessarily what is needed.

As we observed at the outset, the current training picture represents the needs of the work world that developed early in the present century. In recent years there have been rapid changes in the way work is organized that will undoubtedly affect the needs of training in the future. In some industries, batch production has been substituted for the assemblyline. In other industries, production teams and quality groups have been created, with workers taking on a more flexible mix of tasks. Such changes are taking the place of the traditional extreme division of labor, and companies with many different occupations (each specialized) have reduced the number of occupations to a few occupations with more rounded skills. In many firms, management hierarchies have become flattened, with fewer levels of supervision and more responsibility devolving downward. These developments call for more flexible skills.

The use of the computer as a tool adds to the learning needed for work and changes the emphasis in skills acquisition. While we must avoid overgeneralizing from a few instances to the whole industrial economy, it is a method not unlike the groundhog method of weather prediction. Changes of these sorts are going on and will affect the needs for training in the future.

With nearly nine out of ten youths completing high school or its equivalent, there is little potential for quantitative expansion, but much room for raising the quality of secondary education. After this national goal is accomplished, we can think of expanding postsecondary education, where so much of work skills acquisition takes place. The colleges should also be allowed to concentrate on giving better college-level education rather than remediate the failings of the high schools.

We could increase employer commitments to make or buy training through investment incentives, or at a lesser cost by supporting research and development of training methods and materials. Both employers and educational authorities need to focus on the unequal distribution of training opportunities at a time when increasing skill requirements are on a collision course with an entry-level work force increasingly drawn from populations in whom our prior human capital investments have been insufficient.

Table 1. Percent of Workers with Training, by Type of Training and Occupation

Occupational group	Total receiving training	Percent of workers[1]				Percent of workers[2]			
		Total	From school	Employer-based		Total	From school	Employer-based	
				Formal	Informal			Formal	Informal
All workers	65	55	29	10	28	35	12	11	14
Professional spec.	95	93	82	9	22	61	34	15	14
Technicians	92	85	58	14	32	52	20	18	19
Executive, admin.	80	71	43	12	39	47	18	17	16
Precision production, craft, repair	76	65	16	17	40	35	7	14	16
Clerical	69	57	33	7	31	32	10	10	15
Sales	55	43	15	12	28	32	7	13	15
Machine oper., assemblers, inspectors	50	37	6	6	26	22	3	4	16
Service, exc. pvt. hs.	47	36	13	9	18	25	7	8	12
Transportation	45	36	2	8	26	18	2	6	9
Farming, forestry, fishing	35	28	8	1	16	16	5	2	7
Handlers, helpers, laborers	26	16	2	2	13	14	2	2	10
Private household	10	8	2	1	4	3	1	1	1

Source: Max. L. Carey, *How Workers Get Their Training*. BLS Bull. No. 2226 (Washington, Government Printing Office, 1985)

* Unduplicated count of workers with both qualifying and upgrading training, (special tabulation provided by BLS). Sources reported add to more than totals because many workers reported more than one source of training.

[1] with qualifying training

[2] with upgrading training

[The End]

New Directions in Labor Education*

By Lois S. Gray and Joyce L. Kornbluh

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Dating back over one hundred years, the field of labor education in the United States has encompassed a wide range of educational offerings to working people under a variety of institutional auspices.[1]

Twenty-five years ago, veteran labor educators Larry Rogin and Marjorie Rachlin surveyed labor education in the United States, reporting that labor education at that time was funded primarily by unions and state grants to public universities. Programs characteristically enrolled union staff and elected officers and activists from blue-collar unions. Classes included union administration, collective bargaining, leadership skills, and legislative and political action. "Union building" was the underlying goal of all the reported programs. Rogin and Rachlin found no "typical" labor education programs and no national network of labor education providers.[2]

The Rogin and Rachlin study was the point of departure of our study in which we chose to focus on new trends and innovations in the field, rather than on a comprehensive documentation of the extent and content of labor education in the U.S. today. Our sources of information in 1988 and 1989 were a survey questionnaire,[3] correspondence, interviews, written reports, and a feedback session during a national meeting of union and university labor educators. It should be noted that we relied on self-evaluations, or what labor educators themselves considered new and innovative.

Highlights of Our Survey

Moving into the mainstream from its marginal position of yesteryear, labor education is currently receiving top-level attention and support within the labor movement. The AFL-CIO Committee on the Evolution of Work underscored the importance of labor education in its widely circulated publication entitled "The Changing Situation of Workers and Their Unions."

An excerpt states that "[u]nions should devote greater resources to training officers, steward, and rank-and-file members. In a vastly more complicated world, there is an increased need to provide training opportunities for local leadership and potential leaders. Training must encompass the skills local leaders need to function effectively and the information local leaders need to confront the issues of the day." [4]

Our survey indicates that an increasing number of unions, in compliance with this

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* Condensed from article by the authors in *New Developments in Workers' Training: A Legacy for the 1990s*, edited by Louis Ferman, Michelle Hoyman, Joel Cutcher-Gershenfeld, and Ernest J. Savoie, Industrial Relations Research Association, 1990.

[1] R. Dwyer, *Labor Education in the United States: An Annotated Bibliography* (Metuchen, NJ: Scarecrow Press, 1977).

[2] L. Rogin and Marjorie Rachlin, *Survey of Adult Education Opportunities for Labor: Labor Education in the United States* (Washington, DC: National Institute of Labor Education, 1968).

[3] Fifty-one responses were received from a mailing to 51 university and college labor programs, and 79 unions.

[4] AFL-CIO Committee on the Evolution of Work. *The Changing Situation of Workers and Their Unions* (Washington: AFL-CIO, 1985).

policy proscription, sponsor their own programs and/or utilize services provided by the George Meany Center and various universities and colleges. Responding to changes in the workplace, union and management relationships, and society, labor education is broadening its scope and outreach.

Labor education today is reaching *new and broader constituencies.* While local union officers and activists continue to be the main participants, top union officers are becoming involved. This process began with a highly successful series of Brookings Institute seminars in the early 1960s for national union presidents and led to setting up the George Meany Center for Labor Studies (Hoehler, 1989). Recent programs at the Center include seminars for secretary/treasurers and administrative directors of national unions, as well as a year-round program for full-time union staff.

Most of our surveyed unions report staff training. Those that do not conduct their own in-house training programs send staff to courses at the Meany Center and to university labor education programs, demonstrating their recognition of the need to develop new leadership, the increased responsibilities assigned to international union staff, and the growing complexity of industrial relations and, consequently, staff roles.

Course offerings for *rank-and-file workers* have expanded, with programs that are related to workplace interests (i.e., apprenticeship, skill training, career planning, safety and health, and workplace computer literacy), as well as those that meet personal interests and needs (i.e., community services, substance abuse, English as a Second Language, pre-retirement planning, literacy, and AIDS education). In some cases, these education programs are co-sponsored by unions and employers and are offered on company time.

Apprenticeship training is the oldest form of union-sponsored worker education, dating back to the origins of the U.S. labor movement. New and innovative partnerships, however, have been forged between apprenticeship programs and institutions offering college credit for knowledge acquired through experience, and linkages to college degrees for apprentices when they graduate as journey people.

Currently, each year some 8,000 rank-and-file union members enroll in union counseling courses, learn about community resources, and receive training to provide peer referrals to other union members faced with personal or workplace issues. In addition, courses on plant closings, strike support, drug testing, substance abuse, blood banks, pre-retirement planning, consumer protection, and crime prevention are offered. Pre-retirement courses provide members with information on paid benefits, financial planning, health care and legal issues, leisure activities, and community resources (Charner et. al., 1989).

Reflecting the expansion of the white-collar and service sectors, and the dramatic increase in the numbers of women in the labor force, programs for *women* workers who are union activists have been some of the most significant new developments in labor education in unions and universities. Starting in the mid-seventies, programs for women workers aim to assist women in attaining information, skills, and support for greater involvement in labor organizations, and for union leadership and staff positions.

A ten-year report [5] of women's programming at institutions affiliated with the University and College Labor Education Association (UCLEA) indicated that

[5] C. Haddad, "Ten-Year Report on Women's Labor Education at UCLEA-Affiliated Institutions" (Lansing, MI: MSU Labor Program Service, March 1985).

over half of the universities and colleges that were surveyed had conducted special programs for women unionists, a program direction confirmed by our survey. Haddad's survey reports that 71 percent of the women enrolled in these workshops go on to enroll in other labor education/labor studies programs.[6]

Minorities, including African-American, Hispanic, Asian, and Arab workers, are the focus of programs in a number of labor education centers. Some programs have a special outreach to newly arrived immigrants. Classes and education programs for *differently abled workers* (e.g., hearing impaired) are another recent development in labor education.

Outside the union membership ranks, there has been an outreach to family members, and high school teachers and students have been targeted by union and university labor educators in a variety of programs aimed to rectify the omission of information about organized labor from textbooks and curricula.

Second, reflecting workplace changes, as well as these new constituencies, new content areas are being addressed. Health and safety issues have become an important focus, stimulated by the passage of the Occupational Safety and Health Act (OSHA) in 1970. OSHA's "New Directions" grants prompted a variety of projects to train workers in hazard recognition and control, worker and union legal rights, and labor-management workplace problem-solving of health and safety issues. After federal funds were cut, state funds have been forthcoming to continue many of these projects. Recent programs include drug testing in the workplace, AIDS education, health effects of video display terminals, and the impact of the workplace on physical and mental health. The Coalitions of Safety and Health Activists (COSH) have developed a wide variety of training videos, visual aids, and other instructional material on these issues.

Technological change is another major theme, with attention focusing on union strategies for coping with the impact of changes taking place. Programming in participative management has been the most controversial direction in labor education in recent years.[7] Beginning in the mid-1970s, joint labor-management structures and processes and more recently, programs installing new forms of work organization (i.e., team concept, sociotechnical systems, and autonomous work groups) have created the need to train union members to more effectively participate in these workplace changes, as well as formulate union responses and relationships to these developments.

Basic skills training is in increasing demand. Faced with foreign competition, technological change, job restructuring, and occupational shifts, unions are using their collective bargaining power to negotiate innovative employer-financed programs that upgrade the educational competencies of their members.

Increasingly, cultural and artistic activities have been added to enrich labor education programming and there are the beginnings of labor education programs that link the concerns of the labor movement and the environmental movement.

A third major change in labor education is the use of more sophisticated approaches to traditional "union building" themes that continue to be the principal fare of union and university offerings. For example, courses on collective bargaining include a broader range of subject matter relating to such issues as pay equity, plant closings, contracting out, profit sharing, and employee benefits. (The latter is the theme of a long-term certificate program at the George Meany

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[6] *Ibid.*

[7] A. Banks and Jack Metzger, "Participating in Management," *Labor Research Review*, 7 (Fall 1989). M. Parker and Jane Slaughter, "Choosing Sides: Unions and the Team Concept," *Detroit Labor Notes*, South End Press, 1988.

Center.) The current climate of employer demands for give-backs and declining union bargaining power has inspired new emphasis on strategies of bargaining, including the potential use of corporate campaigns and alternatives to strike. Many new programs and materials designed to increase the sophistication of bargainers about the economics of the corporations with which they negotiate draw on insights from accounting and finance, two new subjects for labor education.

At the same time, techniques for teaching collective bargaining have been increasingly refined through an infusion of action techniques and psychological applications. Many of these techniques were adapted from the more highly developed (and better financed) field of management education. Even steward training, reported in a recent survey as the most frequently offered course,[8] has changed in content to include such topics as duty of fair representation, affirmative action, occupational safety and health, and psychological insights about the steward's role, including communication skills and assertiveness.

Training programs to handle arbitration cases have proliferated. Their content has become more complex, reflecting new issues such as drug testing and mental health problems, and utilizing such new methods as simulations and computer tracking techniques.

Organizer training has shifted from information giving about the law and merits of unionization, to in-depth practice in skills required for effective enlistment of members, including aspects of speaking, planning, and interpersonal and group relationships. How to cope with "union busters" is another topic for training programs. To bridge the gap between classroom and field work, the AFL-CIO sponsors an internship program in which trainees are assigned to work with experienced field organizers. Graduates are then referred to union organizing departments for full-time job openings. In addition, internal organizing (i.e., organizing the organized) has become a major emphasis featuring training in one-on-one techniques of communication.

Union leadership training, always popular, is the subject that has evidenced the most dramatic changes in recent years. In many cases, it now incorporates insights from the behavioral sciences and adapts concepts and techniques widely used in managerial training (e.g., Management By Objectives and Transactional Analysis) for decisionmaking and problemsolving.[9]

The union leader as manager is the new thrust of some recent programs. While the traditional union official has eschewed the self-image of being a "boss," a new generation of labor leaders, many with college educations, are becoming more aware of the need for training for managerial functions involved in leading large organizations. At the local level, where administrative training tends to be more technical, the use of computers has been introduced.

Other traditional subjects, including economics, labor history, politics, and international relations, have also been enriched in recent years by more sophisticated reading materials and techniques of teaching.

A fourth change in labor education is the variety of new delivery systems. Although the short-term, noncredit course/workshop continues to be the typical format of labor education, college degree programs for union members emerged as the major development during the past twenty-five years, and remains the most pervasive of the new delivery systems. Sparked by financial support provided by union-negotiated, tuition-

[8] C. Ellinger and Bruce Nissen, "A Case Study of a Failed QWL Program: Implications for Labor Education," *Labor Studies Journal*, 11 (Winter 1987), pp. 195-219.

[9] L. Gray, "Unions Implementing Managerial Techniques," *Monthly Labor Review* (June 1981), pp. 3-13.

refunded benefits, encouraged by union education directors who view these degree-granting programs as advantageous for their union officers and staff, and welcomed by colleges seeking adult students, labor-studies degree programs have expanded by an estimated 75% today.

This trend, however, has sparked considerable discussion and debate.[10] Questions are raised about appropriate curriculum content (i.e., the mix between labor-focused, industrial relations and liberal arts courses), course materials, and faculty credentials.

Experimentation is underway with other delivery systems to supplement the traditional classroom. These include independent study, study circles (borrowed from Swedish worker education), and teleconferencing and telecasts.

A fifth change is the introduction of new types of services, including research and technical assistance. The growing professionalization of educational services has increased interest in research that is being applied to classroom teaching and material development. Research is also the basis for new technical assistance services being offered to unions by staff in university and college labor centers.

Finally, there are new labor education providers and new sources of funding.

The mix of educational institutions providing labor education has changed in recent years. Union-sponsored education programs have been expanded by the year-round, one-week, and weekend courses for full-time union staff in the influential AFL-CIO-sponsored George Meany Center for Labor Studies. Unions of building trades, white-collar, and service workers have initiated education programming, broadening the range of union sponsors from the industrial unions that had been the principal providers. Educational activities are increasingly sponsored by AFL-CIO and the national union departments responsible for organizing, collective bargaining, legislation, community services, public relations, and supplementing the on-going work of departments primarily responsible for union education activities.

University labor education centers have been joined, and in some cases rivaled, by community colleges that entered the labor education field in response to the demand for college credit courses.[11] COSH groups, now numbering about 24 around the country, are another important source of labor education. In addition, there are several nonprofit research and education centers, and a growing number of commercial consultants serving unions. The newest of all the joint labor-management structures are in the auto industry, which currently sponsors worker education in a wide range of subjects.

Funding for labor education, in addition to traditional support from unions and from state-supported public universities, has come from private foundations, national and state government agencies, and employers through collective bargaining.

Although there is still no national system of labor education, annual national and regional conferences co-sponsored by the AFL-CIO Education Department, and the University and Colleges Labor Education Association (UCLEA) have developed a degree of collaboration among union and university labor education staff in recent years.

Trends and Directions

During the post-World War II years, union education departments and labor

[10] M. Lieberthal, "On the Academization of Labor Education," *Labor Studies Journal*, 1 (Winter 1977), pp. 235-45; and A. Nash, "Labor Education, Labor Studies and the Knowledge Factor," *Labor Studies Journal*, 3 (Spring 1978), pp. 5-18.

[11] L. Gray, "Organized Labor and Community Colleges," *Labor Education*, 32 (October 1976), pp. 34-40; also see Brickner, 1975).

services in universities tended to concentrate on "bread and butter" subjects related to union building. Today, the curriculum of offerings has expanded to serve the needs of working people as union members, job holders, and as individuals with careers, personal development interests, and family and community relationships. In addition, traditional "bread and butter" subjects (e.g., collective bargaining, union administration, and organizing) have been transformed in content to reflect the changing realities of today's industrial relations scene.

While leaders and activists continue to be the principal consumers for labor education services, many programs reach rank-and-file workers and their families, even young people in school. Participants are more reflective of the ethnic mix in American society, and women are increasingly represented.

Changes in subject matter and participants that demand in-depth subject matter treatment have fostered specialization among providers and enhanced professionalization for labor educators. Pedagogical methods that continue to rely on participation of adult learners are increasingly sophisticated in form and design, drawing on available technology and even borrowing techniques from the more extensively financed programs offered by business and industry.

Despite these positive trends, however, there are many unresolved questions that call for further analysis and study. Most important is an examination of priorities and whether limited resources are being stretched too thin.

There is also the old question of "Knowledge for what?," as Professor Robert Lynd challenged the UAW's first national education conference in 1955. This is also an issue that is periodically reexamined in the *Labor Studies Journal*. Are there long-range goals that go beyond skill training and organizational efficiency? [12] How do we best train union members to participate and administer democratic trade unions that are faced with the multiple problems of today's society?

Labor educators also debate the merit and long-term impact of "jointness," (i.e., co-sponsorship with management in educational and training activities). What are the trade-offs from this type of collaboration? Some educators question the desirability of training union leaders to "manage" their organizations. And even those who accept the concept of labor leaders as managers express concern about the applicability of concepts and materials, and particularly the use of instructors from business administration, in relation to the differing environment and goals of unions.

Another unknown is the impact of credentialism (i.e., degree programs and academic pressures on labor education) on the social commitment that has characterized labor education. Labor education is increasingly accepted but poorly financed in unions and universities. Also still missing is a system of public financial support and administrative coordination that exists for labor education in a number of Western European countries.

Looking ahead to the rest of the 1990s, there is an urgent need for a comprehensive analysis of all aspects of labor education on the scale of the two-year, Rogin-Rachlin study in 1965. Included should be an assessment of the educational needs of the new work force and an inventory of the most effective programs servicing these needs. Also needed are smaller-scale demonstration projects and studies to evaluate alternative approaches to teaching and delivering labor education. A survey of the long-term impact of labor education on organizational sponsors and individual participants is also needed.

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[12] D. Schachhuber, "The Missing Link in Labor Education," *Labor Studies Journal*, 4 (Fall 1979), pp. 148-58.

Continuing research and evaluation will assist labor educators in dealing with unresolved issues and provide more effective educational services in the years ahead. It will also help unions develop an educational agenda and the priorities to better serve their members in rapidly changing workplaces and a global economy.

[The End]

Issues in the Design and Delivery of Corporate Training Programs

By John A. Fossum

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Training and development (T&D) programs have changed dramatically during the 1980s and can be expected to continue evolving rapidly through the 1990s. These changes resulted from the evolving demography of the work force; the restructuring of organizations due to global competition; deregulation; mergers and acquisitions; and modifications in the design and delivery of T&D activities. During the 1980s, a variety of changes occurred in the focus of T&D activities toward the explicit enhancement of productivity and entrepreneurship and away from career development and other personal goals. The 1990s will find major shifts in emphases as the work force diversifies by gender, by race, by age, and as production technologies increasingly require more cognitive-based job designs.

These changes have spawned concern among both employers and policy implementers. Workforce 2000 forecasted human resource needs and availabilities for the year 2000. Unlike an early 1980s issue on the baby boom excess labor supply,[1] *Business Week* recently devoted an issue to "Human Capital," cataloging problems employers and labor force participants were likely to face in the future, especially since the imbalances between the demand and the supply of knowledge, skills, and abilities (KSAs) are exacerbated.[2]

Literacy is becoming increasingly important as cognitive skill requirements increase. The implementation of various "Japanese" management techniques, such as quality circles, statistical process control (SPC), and kanban ("just-in-time" [JIT]), inventory systems require substantially improved quantitative skills. More concern for interactions among customers, manufacturers, and suppliers, has increased the need for quality control to enhance responsiveness to customer needs. These and other changes in management, including the flattening of managerial hierarchies, have increased the need for intensified and broadened management T&D.

T&D is intended to create or enhance individual KSAs to enable workers to perform at higher levels in their employment. T&D outcomes are employment-related, while educational outcomes may consist of consumption (appreciation of what is learned for its own sake) and both indirect and direct human capital building components (e.g., analytical skills and computer programming).

T&D theories and research relevant for industrial relations have evolved in very dissimilar streambeds. Psychological theories are concerned at the molecular level with the primary neurological mecha-

[1] "Americans Change," *Business Week*, February 20, 1978, pp. 64-77.

[2] "Human Capital: The Decline of America's Work Force," *Business Week*, No. 3070, 1988, 100-141.

nisms involved in acquisition and memorization of bits of information, how psychomotor connections are established, and how the individual interacts with the environment in acting upon it. Other psychological theories relevant for T&D explain human motivation. Assuming innate and learned hedonic preferences, motivation theories explain how individuals make choices to acquire KSAs enabling them to attain important ends. These theories are relevant in T&D for explaining how training vehicles differ in their efficacy for enhancing learning, when given the differences in aptitude and motivation of potential trainees.

Human capital theory seeks to determine the effects of investments in education and T&D activities in future income streams. Individuals are presumed to forego leisure and employment and may pay fees to be trained in order to maximize lifetime earnings. The theory distinguishes between general human capital (GHC), which consists of KSAs of value to most employers for the production of goods and services, and specific human capital (SHC), which consists of KSAs of value only to one's present employer. The development and operation of internal labor markets is closely associated with the concept of SHC.

The impetus for corporate T&D activities resides in the expectation that T&D will positively influence firm performance, and the expenditure of resources on T&D will result in greater returns than other investments. Implicitly, T&D decisions follow from the configuration of the organization's production function. T&D may be a substitute or a complement. Where it's a substitute, the choice to implement, increase, or decrease a T&D program assumes the marginal rate of technical substitution of labor for other inputs has changed, and if T&D efforts are intensified, returns to human capital (labor) have increased relative to returns to materials and/or physical capital. In complementary situations, T&D investments would be employed to the point where their marginal costs equalled the marginal revenue that followed from their use. An example might be a situation in which some T&D would be necessary to enable the implementation of a new production technology or to deal with new materials.

Changes in the use of T&D activities may result from exogenous changes altering the relative prices of inputs and creating income and substitution effects among them. For example, if raw materials increase in price, labor intensity involving T&D might be increased by programs that develop skills enabling employees to conserve materials or reduce scrap. Endogenous changes may also influence T&D activities. Within the labor input, management decisions may be made to reorganize authority relationships or reapportion various tasks, duties, and responsibilities (TDRs) among jobs to enhance efficiency. These create income and substitution effects within the labor input and may require T&D activities for employees to develop KSAs necessary to reach the potential outcomes offered by the new TDR configurations.

T&D activities can be divided into those focusing on the operation of capital, efficient utilization of raw materials, and the facilitation of interactions among labor. Jobs are frequently organized around production technologies, but they are also organized in ways that are idiosyncratic to the firm. Each firm may develop unique methods of production, thus requiring SHC. Much of this involves the interactions that take place between employees across jobs and employees across organizational levels.

Employees are not homogeneous in capacities for learning. Heterogeneity may be related to aptitude requirements of jobs and to individual differences such as age, experience, and the like. Learning models appear to be differentially effective among employees of different age

groups.[3] Human capital theorists recognize outcomes to certain types of training may decline with age if the payoff stream is expected to continue for relatively long periods. Thus, training type may interact with individual differences and the type of production function variable that is being considered.

Short- and long-run training outcomes concern individuals and organizations. If T&D were to be distinguished, training might be thought of as enhancing KSAs for an immediate, identifiable need. Development is a longer run process, designed to equip the employee for a future role of higher value. Job progression might be thought of as involving a performance component and a development component, particularly when the organization has a defined internal labor market.

T&D programs are designed to create or enhance employee SHC KSAs. As such, they operate on the ability dimension of employee performance. However, performance depends on both ability and motivation. While motivation is influenced by both external and internal factors, T&D programs may positively influence employees' efficacy beliefs and provide information to clarify the definition of performance. Modules of training programs may address situations in which the motivation of the employee to apply the training could be reduced by situational constraints.

Training needs analysis is a central concern in corporate training and development programs. The three phases of classical training needs analysis are: (1) the organization must determine where it intends to go in the future; (2) from this an analysis of how operations are to be changed ensues; and (3) capabilities of a target employee or applicant population are assessed to determine how well their KSAs fit the proposed operations. To the extent that deficits occur that will be addressed through T&D programs, the most appropriate designs can be constructed using the developed information from the needs analysis. On a longitudinal basis, needs assessment programs might forecast likely obsolescence of employees and pinpoint appropriate evaluations of behaviors likely to indicate individual obsolescence.[4]

T&D Learning Models

Learning within a T&D context represents a permanent change in the job-related KSAs of employees. The rate and magnitude of KSA acquisition depends on a variety of factors, such as the material to be learned, the instructional technology to be applied, the timing of delivery in the training program, feedback to the learner, support for the learned behavior in the work environment, and other similar considerations. The retention of learning and its application in OJT situations requires that employees recognize situations, ex ante, that are likely to interfere with the implementation of their learning, as well as assist them in developing ways to cope with or overcome those obstacles.

Learning takes place in a variety of environments. Training programs are designed to provide opportunities beyond those acquired through ongoing work experiences. They may be an integral part of production activities, supplemental to production work, or they may involve employees in activities away from the production environment.

Training away from the regular work environment is likely in situations in which the job to be learned has a relatively long cycle time and certain critical elements may occur randomly or at widely spaced time intervals. An important issue involved in the development and implementation of off-job training programs is learning transfer. Learning

[3] J. E. Birren et al., "Psychology of Adult Development and Aging," *Annual Review of Psychology*, 34, 11983, pp. 543-575.

[4] B. Rosen and T. H. Jerdee, "A Model Program for Combating Employee Obsolescence," *Personnel Administrator*, 1985, 30(3), 85-92.

transfer is a measure of the degree to which the KSAs developed in the training program are applicable to and applied in the work setting. Transfer depends somewhat on the similarity of the training and the job situations, from a behavioral requirements standpoint, and partially to the extent that OJT rewards support rather than punish learned behavior.

The design of training programs from a sequence and timing standpoint is also important. Part versus whole learning involves situations in which a part of the desired behaviors is learned before going on to the next module or where all of the behaviors are learned simultaneously. Complex tasks are easier to learn under part learning programs, except that as the organization necessary between tasks increases, whole learning becomes substantially more effective.[5]

Massed versus spaced practice has been studied thoroughly. Massed practice results in more fatigue and an initial lower performance for psychomotor skills.[6] Spaced practice requires more time, and where employees must leave the workplace for training, costs more by disrupting production. Evidence on overlearning (continued training beyond demonstration of competency) unequivocally points to its efficacy.[7] However, it might be most efficient where the time required for repeated sessions is relatively small.

A variety of motivation models have been used to construct training programs. These are generally independent of the type of training to be offered. However, expectancy theory may be more closely related to development programs, while reinforcement and social learning models are probably more often used for training programs. In addition, goal setting has been frequently used as a motivational tool.

Reinforcement models are based on the premise that rewarding appropriate responses to learning stimuli will increase the likelihood that they will occur in similar stimulus situations in the future. To be effective, the rewards must be of value to trainees and seen as following from their responses. As responses to a given stimulus become dependable, as in overlearning, reward schedules may be changed from being given for every success to rather occur periodically or randomly. Behavioral persistence is enhanced by random reinforcement.

Social learning theory suggests that learning can take place in the absence of actual behavior. An example of social learning would involve trainees watching trainers assuming certain roles and behaving in work-related situations. As a result of observation, the trainees would be enabled to learn how to behave in similar situations.

Learning transfer has been a major problem in industrial training programs, particularly for supervisory and managerial training. Many supervisory training programs have been designed to equip trainees with new behavioral skills in negotiating, problem-solving, conflict resolution, and the like. While these may be behaviorally modeled, and learning may be reinforced in the training program, there may be infrequent support for the new behavior in the workplace. Subordinates may be the focus of the newly desired behaviors, and may resist them, while superiors may neither understand nor support the program. Trainees who are equipped to recognize situations in which their learning will not be supported can be taught to reinforce themselves or get support from other employees who can. This so-called "relapse training" is a relatively new

[5] M. L. Blum and J. C. Naylor, *Industrial Psychology* (New York: Harper & Row, 1968).

[6] D. H. Holding, *Principles of Training* (London: Pergamon, 1965).

[7] I. L. Goldstein, *Training in Organizations*, 2nd ed. (Monterey, CA: Brooks/Cole, 1986).

development[8] and has been applied successfully in supervisory training.[9] Goal-setting also may enhance learning transfer if the goals are tied to expected future job performance improvements.[10]

KSAs Desired by Employers

A recent research project identified seven hierarchically ordered employee skill groups that are important to employers.[11] These include: (1) learning to learn; (2) reading, writing, and computation; (3) listening and oral communications; (4) creative thinking/problem solving; (5) self esteem, goal setting and motivation, and personal and career development; (6) interpersonal, negotiation, and teamwork skills; and (7) leadership for organizational effectiveness. This set might be thought of as a global collection of GHC KSAs. Some are skills to be applied (e.g., computation, oral communication, problem solving, etc.). Others, however, are predispositions to act in certain ways (e.g., self esteem, career development, leadership, etc.).

At the lowest end, employer-desired skills involved basic readiness to learn. At middle levels, broad skill groups are primarily related to cognitive diagnostic skills for problem solving in the use of capital, raw materials, and interactions of labor between job groups. Upper-level skills are primarily interpersonally oriented, aimed at organizing, motivating, and directing a defined segment of the work force.

From the perspective of older employees, Tucker found that government managers between the ages of 40 and 49 preferred management training, ages 50-59 preferred technological training, and 60 and over were generally uninterested in either.[12] These preferences are probably linked to perceived promotion or employment security probabilities.

Employers have recently placed more emphasis on individual differences and their association with trainability. Employers are more often making selections for training programs on the basis of aptitudes rather than present skill levels.[13] This may disadvantage senior employees if aptitude levels are uncorrelated with skill. Further, senior employees may be less likely to receive training if aptitudes for learning lead to faster promotions. Then, more senior employees in any given job will be more likely to have lower aptitudes than those who have been promoted.

Future Research and Applications

T&D activities should be considered from a production function standpoint, as well as from the standpoint of the effects on individual trainees. Most T&D activities are complementary to other changes and most involve attempts to enhance interchanges between various levels and roles among the labor input segment of the production function. T&D is usually considered as a substitute only in situations where the employer is deciding whether to hire new employees having KSAs required by present or new TDRs, or to train present employees. Whether to train depends upon balancing the cost of providing GHC training for present employees against the costs of selection and training new employees for SHC KSAs required by the employer.

T&D activities primarily involve the enhancement of interactions within the

[8] R. D. Marx, "Relapse Prevention for Managerial Training: A Model for Maintenance of Behavior Change," *Academy of Management Review*, 7, 1982, 433-441.

[9] R. A. Noe, J. Sears, and A. Fullenkamp, "Relapse Training: Does It Influence Trainees' Post Training Behavior and Cognitive Strategies?" *Journal of Business and Psychology*.

[10] K. N. Wexley and T. T. Baldwin, "Strategies for Facilitating the Positive Transfer of Training: An Empirical Exploration," *Academy of Management Journal*, 29, 1985, 503-520.

[11] A. P. Carnevale et al., *Workplace Basics: The Skills Employers Want* (Washington, DC: Government Printing Office, 1988).

[12] R. D. Tucker, "A Study of the Training Needs of Older Workers: Implications for Human Resources Development Planning," *Public Personnel Management*, 14, 1985, 85-95.

[13] J. G. Casey, "Trainability Diagnosis: A Humanistic Approach to Selection," *Training and Development Journal*, 38 (12), 1984, 89-91.

firm's labor force; therefore, such activities are heavily laden with SHC. To the extent internal labor markets are created and operated because of a need to develop and preserve SHC, T&D activities are closely connected with its operation. More emphasis on the study of returns to various types of T&D, and their availability to employees is important. Additionally, more emphasis on the relationship between the firm and its employees with regard to career development might be productive.

For example, companies in the computer industry have markedly different espoused philosophies about career development. Digital Equipment proclaims employees own their careers. Jobs at all levels are posted and employees can bid on them. They are, in essence, creating their own career development programs. Conversely, IBM employees are encouraged to change occupational emphases as the firm restructures, in order to better match the company's perception of the environment. Substantial retraining opportunities are available for employees who decide to change their interests toward those of the company.

T&D effects should also be examined from a transaction cost perspective. Major differences might be expected in the design, operation, and pervasiveness of various types of T&D activities, depending upon what area of the organization pays for them. Line managers might not be expected to pay for development when the employee will not use the skills within that budgetary unit or during the present budget period. On the other hand, if T&D is funded through a corporate center, then line managers may not be careful about who is assigned to these activities. The patterns of T&D expenditure control may dictate not only the individuals who might be trained, but also the subjects, the amount of training, and whether or not it is GHC or SHC oriented.

Other areas that need emphasis include, who should be responsible for training, cost accountability, the role and potential bias of experts involved in the training needs analysis, and the choice of an appropriate trainer.[14]

Finally, additional work is necessary to identify the organization of the future and the role of T&D in supporting it. It is quite possible that the restructuring of organizations, the transience of products and the velocity of change, in addition to the decreasing job security seen recently, will require organizations to act more as venture capitalists and holding companies.[15]

[The End]

[14] J. A. Sonnenfeld and C. A. Ingols, "Working Knowledge: Charting a New Course for Training," *Organizational Dynamics*, 15(2), 1986, 63-79.

[15] P. F. Drucker, "The Coming of the New Organization," *Harvard Business Review*, 66(1), 1988, 45-53.

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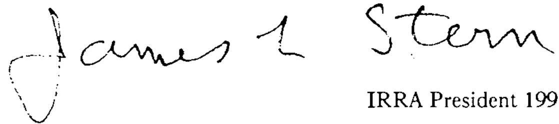

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