

VI. Organized Employers: Past and Present

Business Lobbies and the Employee Free Choice Act

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Abstract

While several individual employers (for example, AT&T Wireless) have agreed to card check recognition as an alternative to formal National Labor Relations Board (NLRB) elections, leading employer associations have aggressively opposed the Employee Free Choice Act (EFCA), which would extend this practice as a matter of law. Spearheading employer opposition are the Human Resources Policy Association, the Chamber of Commerce, and the National Association of Manufacturers. The anti-EFCA coalition seeks to mobilize the public through temporary largely web-based front groups like UnionFacts and the Coalition for a Democratic Workplace.

A History of Gridlock on Labor Law Reform

Mainstream business lobbies have consistently refused opportunities for problem solving and compromise with regard to labor law reform, even beginning with the Wagner Act of 1935, for which there was little evident business support. Union leaders in the Labor–Management Group chaired by famed industrial relations academic John Dunlop unsuccessfully sought to secure their employer colleagues’ neutrality in the campaign for pro-union labor law reform during the Carter administration. Dunlop’s failure to win a deal on common situs picketing in construction labor relations had led to his resignation as Secretary of Labor under President Ford. Clinton administration Secretary of Labor Robert Reich attempted to engineer a compromise in which employers would accept reforms facilitating worker organizing in return for a relaxation of the ban on company unions. Instead, employers groups pushed the TEAM Act to lift the company union ban altogether (Jacobs 1999).

On the other hand, Senate Republican leader Everett Dirksen offered the AFL-CIO a possible deal on repeal of Section 14B, the so-called “right to work” provision of Taft-Harley, in the mid-sixties. Unfortunately, the price was too great: labor support for overturning *Baker v. Carr*, the “one person, one vote” decision of the Warren Court. Labor leaders were unwilling to sacrifice the power of the urban vote for union security.

Broad labor–management councils have been difficult to sustain in the United States. Despite his repeated efforts at consensus building, Dunlop himself acknowledged the peculiar hostility to dialogue that characterizes U.S. employer associations (Jacobs 1999). However, the Arthurs Report proposing changes in the Canadian Federal Labor Code appears to be the result of just the sort of employer–union consultation that eluded Dunlop. It is the preeminent position of the obstructionist “vanguard” in U.S. business politics that so frustrated Dunlop (“Fairness at Work” 2008).

Vanguard Organizations, Moderates, and Liberals

One might distinguish between three classes of business associations in the U.S.: the dominant conservative “vanguard” organizations, the moderates, and the much weaker liberals. The conservative

vanguard claims to speak for all business and is hostile to dissenting employers open to collective bargaining or activist government. Vanguard organizations have the power to make passage of EFCA very difficult, by virtue of both their resources and the hurdle of the filibuster in the Senate (Jacobs 1999).

The vanguard organizations include the Chamber of Commerce, the National Association of Manufacturers (NAM), and the Human Resource Policy Association (HRPA, originally the Labor Policy Association [LPA]). The Chamber and NAM are broad national membership organizations. However, they are nearly monolithic politically. They are strongly committed to the defense of unilateral management authority, opposed to the outlines of the welfare state, and closely allied with Republican party leadership. HRPA is an exclusive association for corporate vice presidents for human resources (Labor Policy Association 1993).

The moderates are employers active in deliberative and pragmatic bodies like the Business Roundtable, the Committee for Economic Development, and the now defunct National Policy Association. They represent only themselves. They have engaged in dialogue with stakeholder groups on public policy issues but remain susceptible to influence from vanguard organizations. The liberals have ideological ties to organized labor or environmental groups and stand almost entirely outside the business mainstream. Eric Sklar, formerly of Burrrito Brothers, and Ben Cohen, founder of Ben and Jerry's, fall in this category. Business for Social Responsibility originally had a liberal cast in 1992, but it no longer takes positions on public policy issues.

The Human Resource Policy Association: The Vanguard Bureaucracy

The Human Resource Policy Association is an important element of the conservative vanguard. HRPA/LPA has pursued an uncompromising antiunion strategy for member employers since its founding. While its positions are indistinguishable from those of the Chamber and NAM, HRPA/LPA represents a specialized bureaucracy for union suppression and avoidance (Jacobs 1999).

LPA, the predecessor to HRPA, was founded in 1939 by corporate executives determined to contain the power of organized labor. The association favored the enactment of Taft-Hartley and other measures to weaken unionism. Herbert Northrup, a Wharton School professor and former aide to Lemuel Boulware, guided LPA by helping to develop tactics and providing research support. Northrup brought to LPA the practical experience he had acquired in labor relations at GE, where he helped develop "Boulwarism," or "take-it-or-leave-it" bargaining. Northrup solidified LPA's connections to major American corporations as well as to the Republican party through his recommendation that Ken McGuiness, a Republican party labor policy expert (previously serving at the NLRB and House Education and Labor Committee) assume LPA leadership. LPA was indistinguishable from the McGuiness and Williams law firm and closely tied to the McGuiness family, as Ken's son Jeffrey McGuiness became the LPA director in 1988 (Jacobs 1999).

Other important LPA principals have included R. Conrad Cooper, formerly of United States Steel, G. John Tysse, who worked for the Chamber of Commerce, and Daniel V. Yager, former Republican Labor Counsel to the House Education and Labor Committee. Throughout the history of the LPA, it has evidently coordinated closely with the Republican Party, the Chamber, NAM, and leading corporations. It is seldom clear where LPA policy is determined, whether by LPA leadership, Republican party officials, or corporate officers. In any event, there appears to be uniformity of thinking and rigid hierarchical control within this network. (Barley [2007] has explored the disproportionate political power of corporate elites.)

The McGuiness and Williams law firm with which the LPA is associated employs practicing attorneys with both legislative and litigation experience. Staff lawyers prepare *amicus curiae* legal briefs for corporations accused of illegal activities. The firm also has sponsored the Equal Employment Advisory Council, which assists employers responding to civil rights challenges, and the Employment Policy Foundation, a pro-deregulation think tank (Potter and Youngman 1995).

The LPA's role with regard to the Teamwork for Employees and Managers (TEAM) Act, a 1990s initiative to lift the Wagner Act ban on company unions, demonstrates the organization's commitment to a largely union-free economy and provides a context for the battle over EFCA. Congress passed the TEAM Act in the mid-nineties, but it was vetoed by President Clinton. Advocates argued that the TEAM Act would constitute only a modest change in Section 8(a)(2), permitting employee involvement in nonunion settings.

However, employers probably viewed the proposal as a major step in the deregulation of labor relations and a decisive blow against trade unionism.

Boulwarism as a Grand Philosophy

The philosophy of HRP and LPA is clearly grounded in “Boulwarism.” Bloom and Northrup (1981:126) provided this definition of its practical core:

Dissatisfaction with the “haggling” approach to collective bargaining has induced some employers to come to the bargaining table with a carefully researched and thought-out proposal, offer it to the union, and at the same time announce it to the employees. The bargaining offensive in this instance reverts to the employer.

In Boulware’s mind, American business was besieged by socialistic and communistic perils in government, trade unionism, and the academy. He felt there could be no compromise with regulators or union militants. Boulware hoped that individual workers and consumers could be persuaded to abandon distorted socialist views of business through economic education programs sponsored by corporations and allied institutions. He was determined to develop a strategy to defend and reassert corporate power, both within GE and more broadly within American society. His ideas and Northrup’s refinements constitute a primary ideological frame for LPA/HRP.

The HRP/LPA program blends a naive optimism and a grim cynicism. In theologian Reinhold Niebuhr’s formulation, the naïve “children of light” incorrectly assume that human nature is perfectible (Niebuhr 1944). The leaders of HRP/LPA are children of light insofar as they assume that the managers of large American corporations do nothing but good despite the potential abuse of power. The principals appear to ignore the everyday injustices that characterize the exercise of corporate power. Therefore they are indistinguishable from the “children of darkness,” “who know no law beyond their will and interest” (Niebuhr 1944:9, Jacobs 1999).

The Current Alignment of Forces

HRP, the Chamber, and NAM are the principal opponents of EFCA. They jointly support temporary front groups like UnionFacts and the Coalition for Workplace Democracy, which are the official sponsors of anti-EFCA advertisements in the press and on television. The rhetoric of the front groups emphasizes the corruption of unions, alleges union ties to organized crime and corrupt politicians like Illinois governor Rod Blagojevich, and protests card check as an antidemocratic substitute for the secret ballot. UnionFacts and the Coalition for Workplace Democracy are both creations of former Chamber labor lawyer Richard Berman, who practices Boulware’s brand of economic education. That is, he seeks to persuade workers and the public that they have a stake in the deregulation of corporations (Berman 2008).

Given the LPA’s campaign to legalize company unionism, supported by the Chamber and NAM, it is apparent that the business lobbies’ defense of the secret ballot is strategic. The TEAM Act did not require a vote or worker authorization of any kind. Authorization cards have always been a recognized part of the NLRB process, and the secret ballot has been merely one of the possible means for determining employee sentiment for unionism. The lobbies’ current insistence on the secret ballot derives from the advantages that employers retain under the current labor law regime.

At present there are several employers who have agreed to recognize card check as the means to determine worker support for unionism. There are, however, no prominent joint labor–management panels in a position to facilitate compromise on labor law reform, including the broader application of card check. The National Policy Association (formerly the National Planning Association, a leading joint labor–management panel favoring “industrial peace”) might have served as such a body but was disestablished around 2003, partly because of diminishing employer interest in cooperative programs.¹

Of course, management members on such committees have not been predisposed to push the business community toward compromise. They have represented only themselves, while the Chamber and NAM have claimed to speak for business as a whole. (For example, Paul Allaire of Xerox did little to contest

the policies of the Chamber, NAM, or LPA when he served on Labor Secretary Reich's Commission on the Future of Worker–Management Relations.)

The National Planning Association was unusually successful as a joint labor–management panel in its extraordinary longevity—a lifespan of almost 60 years. Unfortunately, it lacked the power to extend industrial peace beyond its members or even to sustain cooperative programs.

Apart from employers whose livelihood is intimately linked to the labor movement (the “liberals,” e.g., the Union Labor Life Insurance Company), there are no significant employers who have gone beyond acceptance of card check to advocacy of EFCA. Dissenters from Chamber/NAM/HRPA orthodoxy fear that they will lack the support of these organizations when they seek any particular benefit from government. Southwest Airlines, which Jeffrey Pfeffer and others praise as exemplary in its labor practices, refrains from participating in the public debate.²

Both Change to Win and the AFL-CIO support American Rights at Work (ARAW), a new citizens' organization favoring labor rights. Among ARAW's projects is a campaign to honor companies with good labor practices (labor–management partnerships). In the absence of an NPA-type joint panel, this falls to a group closely tied to the labor movement.

The Chamber and NAM have effectively assigned their labor portfolio to two organizations: a law firm created under the guidance of GE strategists (HRPA/McGuinness and Williams) and a public relations firm founded by a former labor lawyer, Richard Berman. Certainly none of these groups will suspend their opposition to EFCA. As with the original Wagner Act, EFCA enactment depends more on broad labor mobilization than on any labor–management coalition. President Obama is likely to be disappointed if he expects the mainstream business lobbies to entertain any compromises on labor law reform.

Endnotes

1. E-mail from NPA vice president, December 26, 2008.
2. Interview with Thomas Kochan, November 24, 2008.

References

- Berman, R. 2008. Interview with Rick Berman. <<http://www.bermanco.com>>. [December 28, 2008].
- Barley, S.R. 2007. “Corporations, Democracy, and the Public Good.” *Journal of Management Inquiry*, Vol. 16, pp. 201–15.
- Bloom, G.F., and H.R. Northrup. 1969. *Economics of Labor Relations*. Homewood, IL: Irwin.
- “Fairness at Work: Three Perspectives on the Arthurs Report.” 2008. *Comparative Labor Law and Policy Journal*, Vol. 29, pp. 475–6.
- Jacobs, D.C. 1999. *Business Lobbies and the Power Structure in America: Evidence and arguments*. Westport, CT: Quorum Books.
- Labor Policy Association. 1993. *Annual Report*. Washington, DC: Labor Policy Association.
- Niebuhr, R. 1944. *The Children of Light and the Children of Darkness*. New York: Scribner's.
- Potter, Edward E., and Youngman, Judith A. 1995. *Keeping America Competitive: Employment Policy for the Twenty-First Century*. Lakewood, Colorado: Glenbridge Publishing.