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Judith A. Scott
International Brotherhood of Teamsters

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**TESTIMONY OF TEAMSTERS GENERAL COUNSEL JUDITH A. SCOTT
BEFORE THE COMMISSION ON THE FUTURE OF
WORKER/MANAGEMENT RELATIONS**

International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
January 19, 1994

**Testimony of Teamsters General Counsel Judith A. Scott
Before the Commission on the Future of
Worker/Management Relations**

Good Morning. On behalf of the 1.4 million workers represented by the Teamsters, I am pleased to have this opportunity to talk to you about one of the three questions posed to the Commission. As the largest private sector union in the country, the Teamsters represent a cross-section of the American work force, covered by approximately 26,000 collective bargaining agreements.

You have been presented with many proposals calling for much needed reforms in our labor laws. A number address how to encourage broader labor-management cooperation and employee participation. It is indeed ironic that we find ourselves focused today on whether the section of the NLRA that bars employer domination of labor organizations should be relaxed to further this goal. More important is how those sections of the law through which employees themselves can organize to obtain their own independent voice in labor-management affairs can be strengthened.

This diversion of attention from the areas that would truly respond to your Commission's mission is the result of an intense employer publicity campaign surrounding the 1992 Electromation decision of the National Labor Relations Board. As the General Counsel of the union that pursued the unfair labor practice charges giving rise to that case, I feel

required to challenge those who proclaim the decision tolls the death knell of labor-management cooperation.

Clearly, it is possible for labor and management to negotiate employee involvement programs that are mutually beneficial. That is occurring today in numerous workplaces under current labor law.

In many areas, reform of labor law is drastically needed, but this is not one of them.

Section 8(a)(2) still performs the key function envisioned by the creators of the Labor Act. It keeps employers from using employee involvement programs as a vehicle to dominate or interfere with the formation or administration of a true, independent worker voice.

Indeed, those who really believe in the constructive role of employee involvement should have no fear of the current safeguards of 8(a)(2) and the NLRB application of the law.

What the law bars is employer-dominated or employer-controlled committees of workers dealing with working conditions.

There are such committees - in both union and non-union workplaces -- that have satisfied the NLRB interpretation of Section 8(a)(2).

Those who propose throwing out this provision of labor law most often don't have labor-management cooperation as their goal. Instead, they seek a more sophisticated device to block and suppress the independent, free voice of workers.

They seek not to expand worker involvement in workplace decision-making, but rather to maximize management control.

In the past, some employers formed so-called "company" unions to subvert true worker representation and did so openly. More often today, in a more sophisticated era, such employers seek a similar result through various forms of "workplace committees" which they dominate or control and which are the equivalent of company unions in fact.

Both are contrary to both the law and sound labor-management policy.

The practices the NLRB barred in Electromation and the circumstances surrounding the employer's reaction to various forms of employee participation that occurred at its Indiana plant vividly demonstrate why the protections of Section 8(a)(2) are needed as much today as they were when the section was first enacted in 1935.

The Teamsters employed by Electromation, a manufacturer of electrical components, have a more complete story to tell than the sanitized versions of the facts often reported in some media. According to the union's chief steward, Berna Price, a 15 year employee, Electromation's production employees are predominantly working women who make \$6 an hour. Its management has been entirely male and the desired skilled maintenance jobs have been held by males making over \$10 per hour.

At a 1988 Christmas party, Electromation's management announced that it was unilaterally imposing several cuts in benefits, including a lump-sum bonus instead of a raise, and a more stringent absenteeism control program.

After the company announced these unilateral benefit cuts, 68 workers signed a petition protesting these changes. In a panic, management established the so called "action committees" generally limiting their agenda to the areas affected by the cuts, not to the areas of improving efficiency or quality of the product. The action committees were a way of handling workers' frustration about the benefit reductions. The company's president made it clear, however, that the benefit programs would not be restored to pre-Christmas levels. In the end, Electromation's employees say that one of the main reasons why they participated in the action committees was to get a paid break from the tedium of their jobs.

The Company's Employee Benefits Manager was assigned to coordinate the activities of the action committees. Management reserved the right to select the six employees to serve on each committee from among those who signed the volunteer sheets. The introductory language on each sheet proclaiming the goal of the committee was drafted by management, without employee input. The employees did not vote to ratify the selection of their representatives on the committees. Further, the committees had no authority to implement decisions, but could only draft proposals for management's acceptance or veto.

The committees began meeting in late January and early February, 1989. On February 13, 1989, Teamsters Local 1049 (now Local 364) requested voluntary recognition from Electromation. Shortly thereafter, each committee was advised by the management representatives that the management personnel could no longer attend. The committees soon disbanded.

The Board found that "the Action Committees were the creation of the [Employer] and that the impetus for their continued existence rested with the [Employer] and not with the employees." That being so, the Board concluded that "by creating the Action Committees, Electromation imposed on employees its own unilateral form of bargaining or dealing and thereby violated Section 8(a)(2) and (1) as alleged."

Most official accounts of the Electromation case end with management's withdrawal from the action committees following the Teamsters' official request for recognition. But what happened afterwards further refutes the notion that Electromation's call for these action committees was in any way an enlightened effort to elicit independent employee participation in its labor-management affairs. Rather than stepping back and letting the workers freely choose their own vehicle for representation, management brought out plenty of old fashioned scare tactics during the Teamster organizing drive. It threatened employees with tales of other unionized plants in the area which closed, featuring pictures of tombstones symbolizing those plants. It subjected employees to

captive audience meetings which included the showing of anti-union movies. It also promised to reinstate the action committees if the employees voted against the Teamsters.

A male supervisor encouraged female employees to vote against the Union while putting his arm around them. These employees pursued a sexual harassment complaint.

Not surprisingly, after all this, the Union lost the election. However, in a rerun election that was held because of the employer's misconduct, the workers voted for Teamster representation.

During negotiations for a contract, Electromation laid off all but three of its employees due to a purported loss of business. Because the Union lacked bargaining power, Chief Steward Berna Price reports that eventually the rank-and-file negotiating committee on which she participated accepted a contract which fell short of their hopes. It was a modest contract addressing the employer's purported need for financial relief, but it also enabled the employees to recoup some aspects of the prior cuts.

The depth of management's aversion to any real employee involvement in workplace decisions, however, was evidenced by its steadfast refusal to include a standard arbitration requirement that unresolved grievances be decided by a neutral third party. Shortly after the contract was ratified without this feature, Electromation's business mysteriously picked up and most workers were recalled from layoff.

Last October, before the first contract expired, a decertification petition was filed. An election is scheduled for this Friday. Management has refused to negotiate until the election takes place. Last week, Electromation's management told employees at a meeting, "we don't need a third party, do we?"

Apparently, Berna Price is an acceptable "employee participant" when she sits in an action committee controlled by management, but she and her fellow workers take on the nasty spectre of an outside third party when they assert those same concerns through an independent labor organization of their own choosing.

The situation the NLRB confronted in Electromation turns out to be no different than cases involving the abuses of management-initiated and controlled "employee committees" which have typified the NLRB's application of Section 8(a)(2) in the past several decades.

According to a recent study by Cornell University labor-education coordinator, James Rundle, during the past 22 years the NLRB has issued only 58 decisions ordering the disbanding of employee committees under Section 8(a)(2). He found that, in 56 out of the 58 cases, the committees were established during organizing drives or by employers who committed other unfair labor practices. Rundle reports: "There is absolutely no evidence that the NLRB has ever, in the past 22 years,

disestablished a committee of the type employers say they must have to be competitive."

Contrary to the belief of many that Section 8(a)(2) creates an all or nothing choice between adversarial collective bargaining and cooperation, Senator Wagner, the sponsor of the original NLRA, believed that collective bargaining was the necessary precondition for genuine cooperation. He emphasized that Section 8(2) was included in the Act on the judgment that only the growth of true employee labor organizations -- created, structured, and administered by the organization's employee members -- could, over the long-run further the development of truly cooperative labor relations.

"Most impartial students of industrial problems," Senator Wagner noted in 1935, "agree that the highest degree of cooperation between industry and labor is possible only when either side is free to act or to withdraw, and that the best records of mutual respect and mutual accomplishment have been made by employers dealing with independent labor organizations." The overall goals of the NLRA, therefore, was "cooperation between employers and employees, dealing with one another on an equal footing."

Women, like Berna Price -- the Teamsters chief steward at Electromation -- are particularly sensitive to claims of empowerment that are just window dressing. If indeed there is to be effective labor management cooperation, let us reach that goal by fostering relationships where working women and men can

address their workplace conditions on an equal footing with management as envisioned by Senator Wagner.

Those whose only idea of labor law reform is to dump Section 8(a)(2) most often seek domination of their workers, rather than partnership with them.

My 20 years of experience as a labor lawyer have taught me that the best examples of labor management cooperation occur at the bargaining table where equal partners tackle hard problems and develop common ground although their interests are not entirely identical. I defy anyone who has gone through the negotiating experience to suggest that meaningful resolution of issues like health insurance, pension coverage, job security and health and safety are not greatly enhanced if the workers' representative has an independent voice, resources and the expertise to bring this discussion.

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