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United States Department of Labor

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U.S. Department of Labor

Office of the Secretary
Women's Bureau
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Hot Topic
"Future Worker Management"
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STATEMENT OF KAREN NUSSBAUM

DIRECTOR, WOMEN'S BUREAU, U.S. DEPARTMENT OF LABOR

before the

**COMMISSION ON THE FUTURE OF
WORKER-MANAGEMENT RELATIONS**

DECEMBER 15, 1993

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DIRECTOR, DOL WOMEN'S BUREAU
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I'm Karen Nussbaum, Director of the Women's Bureau at the Department of Labor. "Oh, is that something new?" a Hill staffer asked me the other day. But as you know, the Bureau has been around as long as women's suffrage, since 1920, with the mandate to "formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment."

It is that long-standing mission that brings me here today to address some new challenges. This Commission is meeting at a pivotal moment in the evolution of the American workplace. Over the past two decades a number of trends have been building, to what are probably the biggest changes in methods of production, worker population, use of capital, and changes in workplace relationships since the Industrial Revolution.

Among the trends reshaping the workplace has been the burgeoning number of working women. In 1970, we were 38% of the workforce. Now we're 46% -- nearly 58 million strong, and still growing.

For this reason, the restructuring of workplace relationships is a critical women's issue. However, while that is my focus today, many of the issues I address affect working men as well.

The growth of women in the workforce has been one significant component of change in the past decades. That change has proven to require revisions in the laws and practices that predominated in the industrial, mostly male workplace of the past.

Reports to us make the case that the current laws governing labor-management relations do not adequately meet even the basic needs of working women.

Re-evaluating our Labor Relations Framework

The purpose of a labor-management framework is to rationalize the handling of legitimate differences between workers and their employers -- and to create a fair balance of power between the two. We believe this is an appropriate and necessary framework that should not be discarded.

However, the current framework is not working. As I travel around the country, the working women I meet feel tired, worried and alone. "The only thing at work I have control over is my emotions," said one of the women. Said another, "I have plenty of information. What I don't have is power."

On October 14th of this year, the Women's Bureau held a forum entitled "Labor Law Reform: Viewpoints from Working Women" -- the first national discussion about labor law reform specifically as it affects women. It drew a standing-room-only crowd of 325 policy makers, labor and business representatives and advocates for working women, coming from as far away as Texas

and Oregon, and featured analyses by six noted scholars.

One of the presenters, Associate Professor Dorothy Sue Cobble of Rutgers University, provided a useful framework for the dialogue. She noted that our current system was designed for a mass production industrial workplace, with a predominantly male workforce. It is no longer appropriate to a service-dominated, computer-based global economy, in which success comes as much from quality, innovation and employee expertise as from quantity, standardization, and the efficient use of semi-skilled labor.

The labor relations framework that arose in the 1930s and 1940s is oriented toward specific, industrial worksites and based on Tayloristic practices. Under the New Deal structure, union benefits and representation were tied to the individual employer, assuming a long-term, continuous and full-time commitment to a single employer.

This is a poor fit with the needs of women workers, 87% of whom work in the expanding service sector, often in jobs with high turnover and little security. Many are in low-paying slots, with little chance of upward mobility. Seventy-six percent of women workers still earn less than \$25,000 per year.

The current structure is also, almost by definition, ill-suited to the representational needs of a new workforce which includes many highly mobile, part-time, temporary, leased, on-call and subcontracted workers -- now estimated to be 15-20% of the entire workforce.

However, Cobble cautions that we should not throw out the

"baby" -- collective bargaining -- with the "bathwater" -- the old industrial framework for labor relations.

The Impact of Contingent Work

The growth in contingent work is perhaps the most significant change in the structure of the workforce since the move from farms to factories, and women are the shock absorbers of this change. Two-thirds of all part-time and three-fifths of temporary workers are women.

There is a distinction we must deal with if we want women to survive this transformation equitably and in good economic health. Frequently contingent work is described as flexible work, and inherently desirable, offering women a chance to work reduced hours and balance family and employment.

Women -- and many men -- do want flexibility in work schedules. And for some, contingent work may offer these opportunities. However, 1992 data show that the median hourly rate of part-time workers was 62.3% of the median hourly rate earned by full-time employees.

Frequently contingent workers earn minimum wage, making an average \$2 less than their permanently-employed co-workers. Often they lack health care coverage, pensions and protections, many of which have been part of the employment compact since the 1930s. The workplace contract that was the foundation of the American dream of home ownership, a secure retirement and a better life for our children is evaporating.

Professor Cobble calculates that 39% or close to 20 million women, are now in job situations explicitly exempted from the National Labor Relations Act. They include domestic workers, agricultural workers, supervisors, independent contractors, professional employees, and confidential employees, among others. Even if you exclude public sector workers (some of whom are covered by other enabling legislation) the figure is a substantial 27%. (see Cobble\TABLE 1).

In addition, as much as another 25% of the female workforce may be effectively barred from collective representation by the nearly insurmountable barriers to organizing "non-standard" employees, namely part-timers, at-home, temporary, sub-contracted, short-term contract workers and leased employees.

By Professor Cobble's estimates, the current legal and institutional framework disenfranchises a large proportion -- as much as half -- of the female work force. The situation will only worsen since many of the exempted and barred categories are among the most rapidly-growing sectors of the economy.

Union Membership Pays Off for Working Women

These barriers are especially significant when you consider that union membership has been consistently tied to higher earnings, and more rapid earnings increases, for women -- as economist Heidi Hartmann of the Institute for Women's Policy Research highlighted in her October 14th presentation.

In 1992, union women working full time earned an average of

\$123.00 more per week than did non-union women -- a bigger differential than for men (\$109.00). And while 49% of all women workers earned less than \$7.00 per hour, the "poverty wage" for a family of four, only 16% of union women earned wages that low. Black and Hispanic women especially benefit from union membership compared to their non-union peers.

Unions also decrease the wage gap between men and women. Union women earn an average of 82 cents for every dollar earned by union men, while non-union women earn only 75 cents for every dollar earned by non-union men.

And these benefits extend beyond blue collar, to professional and technical workers. In fact, while high school graduates are somewhat under-represented among unionized women, college graduates are more heavily unionized -- one out of every three union women has a college degree, as opposed to one in five among all working women.

The Independent Association Experience

So what can women do to achieve equity in the workplace when access to union representation is either barred or impracticable?

Many form independent non-majority associations. One such organization is 9to5, which presented testimony to the Women's Bureau. The lessons learned through the 9to5 experience speak to some of the strengths and gaps in the current systems of worker representation.

Among the most successful 9to5 programs is a job problems

hotline, which has fielded more than 200,000 calls since 1989. Last year, it answered almost 60,000 calls from secretaries, computer programmers, assembly line workers, nurses. Ninety five percent of the callers are non-union, many are private sector and low wage. Twenty percent of the calls dealt with sexual harassment, another 13% with other forms of harassment, 18% with discrimination, 19% with family and medical leave, and others with pay, benefits and VDTs.

The hotline is, by nature, a crisis line. It receives calls spurred by individual incidents of harassment or discrimination, symptomatic of a troubled workplace. The systemic problems of low pay, no health benefits or fundamental lack of respect for workers are therefore under-represented.

Among the stories women told the phone counselors:

A baker from Long Island was the only African American in her department. Her supervisor made a racist joke, and a number of days later she received a memo from her boss with the joke's punchline scrawled across the top.

Susan works for a retail clothing store. When she returned from maternity leave, they offered her a night job at another store 45 minutes away. Her boss told her, "I don't allow handicapped people and women with small children to work in my store. If you don't take this job you know you're not going to qualify for unemployment." She took the job.

Brenda was terminated after 35 years at a company, just eight months before she was planning to retire with full benefits. The company told her it was "restructuring."

The people who call the hotline **want** solutions. They have taken the first step to solve their problems -- but often the second step is far too daunting.

Women are all too often faced with situations where the

existing avenues for resolution are almost as painful as the initial wrong. What can we offer these women beyond (1) filing a charge or (2) bringing a lawsuit -- either of which may well drag on for seven to 10 years, at great personal expense, both financial and emotional.

The backlog of cases at our enforcement agencies tells the story. The staff of the Office of Federal Contract Compliance Programs (OFCCP), which monitors equal opportunities for women and minorities in the awarding of federal contracts, has been cut by a third. And in the State of Vermont, as another example, the Attorney General's office dropped almost half of its civil rights and EEO complaints because the backlog and understaffing had become so critical.

Even in the cases where women are willing to organize their workplace, they are virtually assured a four or five year struggle, amassing majority representation among an increasingly transient workforce, risking possible job loss and intense on-the-job pressure.

9to5 is only one among many worker rights groups trying to staunch these workplace wounds. Charles Taylor is director of the Carolina Alliance for Fair Employment in Greenville, South Carolina -- with more than 1,200 members, the majority female. An increasing number of situations they face involve temporary work and contracting out.

The Citadel a state-funded military school, where more than 100 African American food service workers have fallen into a loophole between two jurisdictions. Until 1967, they were state employees (there is no public employee bargaining in

SC). Then their work was contracted out to an agency. Recently, there was an effort by the Hotel and Restaurant Employees Union to organize the workers. Nearly all the workers signed authorization cards. But the NLRB ruled that ARA had no obligation to negotiate or arbitrate, because the terms of employment were defined by a state contract with the agency. But the workers are no longer considered state employees. They have no voice or protection in any system. To whom can they turn?

Or consider the case of the housekeeping unit at an area resort -- all African American women. The resort has just contracted out the work, and the private contractor made them all reapply for their jobs. The workers who were rehired, returned to the same jobs they had previously held -- but at lower pay. Eight older workers were not rehired at all.

Where can they turn, in the absence of a federal law prohibiting wrongful discharge? This is a region where traditional unions have not been able to succeed; only 1% of workers are unionized.

"We really believe there's no replacement for a union to resolve workplace problems," says Taylor, "but we do what we can to fill the void. We inform members of their rights and then try to help get them enforced. We help people cut through the bureaucracy. We lobby to improve state laws. Until recently, workers in South Carolina could be fired for getting hurt on the job, or for being called as jurors or witnesses. We work on group complaints and community campaigns to expose these wrongs, but it's often not enough."

Not enough. Those words describe the current practices for giving workers a real, democratic voice in the workplace, and insuring the most basic fairness and dignity which all workers should be able to expect in America.

Based on the experiences of worker rights organizations outside the traditional union structure, the decline of unionization does not equate with a reduction in problems. Their experience point in another direction: (1) the calls indicate a great need, and demand, for more workplace representation; (2) workers in unions are more likely than non-union workers to get their problems resolved without resorting to hotlines and other stop-gap measures; and (3) structural changes in the workforce are a major obstacle to gaining majority representation within the existing labor relations framework.

These associations, and our own Women's Bureau discussions with constituents, also reveal an increasingly insecure workforce, where fear over losing a much needed job silences the desire to rectify even egregious wrongs and illegalities.

Seeking Remedies

One central dilemma with the current system is the lack of interim forms of representation. The calls received by organizations dealing with women workers attest: The problems are too hard to handle alone, and the existing remedies are out of reach.

It seems clear that some creative measures are needed to fill the gap. Although the Department of Labor has not taken a position on many of the issues you are addressing, you might want to consider several avenues raised by the presenters and respondents at our October 14th forum.

1. Four of the presenters raised the concept of sectoral bargaining and regional or market-wide master contracts. The current structure, based on the single-employer model, is increasingly unsuited to our current employment patterns, especially for the service sector and the contingent workforce. Susan Eaton, a visiting scholar at Radcliffe College, noted that Canada is far ahead of us in this regard, and that women are perceived as the primary beneficiaries. She calls it, "Equal opportunity for women to organize." Quebec is already experimenting with sectoral bargaining, and several other provinces are considering legislation to do so.

Since 1934, Quebec has also had a "decree system." Quebec unions and employers can conclude an agreement for wages and benefits which affects a "preponderance" of employees in a given sector, and apply to have the Minister of Labour issue a decree extending the minimum standards of the contract (wages, benefits, vacation and hours, primarily) to all other employers in the industry in a given geographic area. In 1990, the system covered 140,000 employees or about 12% of hourly workers, mostly in firms with only six to eight employees.

2. A number of the papers emphasize that we should take another look at who is excluded from the Act, with the goal of extending coverage to those workers, a large percentage of them female, who are currently denied protection.

It might also be useful to review who is an **employer**, and perhaps re-visit the status of sub-contracting and leasing agencies to make them more accountable.

3. There's a need that the worker protections we do have be enforced in a timely fashion that minimizes the harm to individuals trying to exercise their rights. It is alarming how many women -- whether in the course of a union organizing drive or as individuals -- are fired for trying to get their employers to obey the law. And how long they must wait for relief is unacceptable.

In Ontario, Canada, an expedited process legislated in 1992 ensures interim reinstatement within three to five work days of a filed protest of an unfair discharge, at the discretion of Board members. A hearing on the facts must be scheduled within 10 to 15 days, and it runs consecutive days until complete. A decision is then made within two days, ensuring that discriminatory discipline which seriously harms unionization campaigns can be reversed almost immediately.

As Dolores Huerta, founder and vice president of the United Farm Workers, noted at our forum, California has a "jewel of

a law" covering farmworkers, but it is meaningless without enforcement.

4. The cumulative experiences of many organizations suggest we should explore methods of minority representation of workers. However, from my experience in situations both in and outside the union framework, these forms of representation, be they workplace committees, sectoral councils, or something different, must have several components: They must be democratic; selected and driven by the employees themselves; and contain a mechanism that mandates employer response.

These changes alone would go a long way toward ensuring a real voice for women in the new American workplace. I hope you will give them serious consideration as you formulate your recommendations.

Thank you for the opportunity to share our concerns with you.

COBBLE\TABLE 1

TABLE 1 Estimates of Numbers of Women Excluded from NLRA Coverage, 1993

	Total number of workers	Total number of women	Total number of women excluded
Domestic workers ¹	1,184,000	990,000	990,000
Agricultural Workers ¹	1,876,000	430,000	430,000
*Supervisors ²	7,225,000	2,133,000	2,133,000
Managers ¹	14,119,000	5,819,000	5,819,000
Independent Contractors ¹	9,201,000	3,110,000	3,110,000
*Professional Employees ³	15,113,000	7,740,000	750,000
Confidential Employees ⁴	250,000	175,000	175,000
Other ⁵	335,000	92,000	92,000
Public Sector workers other than in categories above	12,000,000	6,500,000	6,500,000
		Total number excluded	<u>19,999,000</u>
		Total number of women employed	<u>50,887,000</u>
		Percent excluded	<u>39%</u>

* 1990 data available only

- 14
1. Employment and Earnings, United States Department of Labor, Volume 40, Number 7, July 1993, Table A-24.
 2. Estimate based on totaling all supervisory categories listed in the 1990 Census as reported in Detailed Occupation and Other Characteristics from the Equal Employment Opportunity File, United States Department of Commerce, October 1992, Table 2.
 3. Estimates based on totaling figures for post secondary teachers, physicians, dentists, computer scientists and others facing possible exclusion. The figure was then cut in half; 1990 Census as reported above.
 4. Based on the number of employees in personnel and labor relations managers category, plus estimates of confidential secretaries and assistants to persons with managerial functions in the field of labor relations; 1990 Census as cited above.
 5. Based on estimates of employees in businesses with receipts below Board requirements (from Statistical Abstract of the United States 1991, Table numbers 860-1) and number of employees of religious institutions under in clergy and religious workers categories (1990 Census as cited above).