December 1993

Burdens and Restrictions of Workplace Regulations on Small Business: Statement of the U.S. Chamber of Commerce Before the Commission on the Future of Worker-Management Relations

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Hot Topic
"Future Worker Management"
12/15/93

Statement of the U.S. Chamber of Commerce

ON: **BURDENS AND RESTRICTIONS OF WORKPLACE REGULATIONS ON SMALL BUSINESS**

TO: **COMMISSION ON THE FUTURE OF WORKER/MANAGEMENT RELATIONS**

DATE: **DECEMBER 15, 1993**

BY: **WILLIAM A. STONE**

The U.S. Chamber of Commerce is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents more than 215,000 businesses, plus 3,000 local and state chambers of commerce, 1,200 trade and professional associations, 68 American Chambers of Commerce Abroad, and 11 bilateral international business councils.

More than 96 percent of the Chamber's members are small business firms with fewer than 100 employees, 71 percent of which have fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 11,000 members. Yet no one group constitutes as much as 36 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 68 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of its members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

TESTIMONY
on
BURDENS AND RESTRICTIONS OF WORKPLACE REGULATIONS
ON SMALL BUSINESS
before the
COMMISSION ON THE FUTURE OF WORKER/MANAGEMENT RELATIONS
for the
U.S. CHAMBER OF COMMERCE

DECEMBER 15, 1993
by
William A. Stone

Good morning. My name is William A. Stone. I am the President and Chief Executive Officer of Louisville Plate Glass Company in Louisville, Kentucky. I also serve as the Chief Executive Officer of Tempered Glass, Inc. and Insulating Glass of Georgia, both in Atlanta. I am a member of the Board of Directors of the U.S. Chamber of Commerce and Chairman of its Labor Relations Committee. My Chamber activities also include membership on its Small Business Council. My testimony, on behalf of the Chamber, is offered to provide a small business perspective on some of the issues under consideration by this Commission.

First, let me thank Chairman Dunlop and the members of this Commission for inviting the Chamber to testify on these matters. As you know, I testified before the Commission in Louisville last September and offered my views on several subjects, including employee participation and the need for balance in labor relations. Today, I appear as a representative of the U.S. Chamber of Commerce Federation of more than 215,000 businesses, 3,000 local and state chambers of commerce, 1,200 trade and professional organizations, and 68 American Chambers of Commerce abroad.

The companies I manage manufacture architectural glass products for commercial

buildings and employ about 116 people in three locations. I purchased the Louisville Plate Glass Company 25 years ago. We had only 19 employees. At one time the Glassworkers and Glazers Local Union No. 1529 represented the production workers. For the most part, the relationship between the company and the union was amicable until the union demanded a huge wage increase of approximately 70% in the 1978 negotiations. We refused to meet these outrageous demands and a strike started on June 1, 1978.

To continue operations and avoid having to lay off the employees not represented by the union as well as to protect those who reluctantly, because of peer pressure and union rules, had to participate in the strike, the company hired long-term (permanent) replacements for the strikers about four weeks into the strike. Today, there are 25 more jobs with the company in Louisville and we have added another 60 jobs at the two locations in Atlanta.

As a result of my activities in the Louisville business community and my experience with the Chamber, I have developed a slightly different definition of "small business" and I would like to suggest that, in many respects, it is the most meaningful description of what we really represent. To me, the hallmark of a small business is one in which the person or persons who operate or control the organization are personally at risk as the majority owners. Thus, their own money and resources are directly at stake. The point is that the owner or owners have staked their own money on the success or failure of the firm.

In my definition of small business, the "small" refers to the number of owners, not primarily the firm's revenue, profits, or number of employees. Almost all businesses fitting my definition -- indeed, most businesses in this country -- have small payrolls and limited administrative and management staffs. This common factor leads to the central theme of my

remarks, and one of the primary concerns of the business community when this Commission collects and analyzes information. There are critical differences between large companies with hundreds or thousands of employees, many of whom are specialists or experts in various areas such as finance and accounting, legal matters, and human resources management, and small, privately-owned businesses. Most small businesses have limited management and administrative staffs, as in the case of our company, where just four individuals work on such matters, and none of them have the resources or time to focus on which government regulations may be applicable in any given situation.

Regulatory and Paperwork Burdens

Small businesses do not have the in-house expertise or resources to adjust to rapidly changing regulatory and legal requirements. For example, rare is the small business that has on its staff, even temporarily, someone who is familiar with the voluminous regulations issued by the Occupational Safety and Health Administration (OSHA). OSHA has issued detailed regulations covering all businesses, as well as industry-specific standards covering only certain types of worksites such as those in the construction industry. Small businesses want healthful and safe workplaces; they want to comply with the law and regulations. However, most small businesses, with limited staff and resources, cannot devote precious time and effort to assimilating the federal and state regulations that may apply. Small businesses cannot call in a specialist or consultant every time government regulations change or new regulations are issued. Similarly, a company's attorney cannot be consulted on a routine basis or the fees will soon pose a serious threat to the company's competitiveness.

As the Commission considers the effect of the nation's labor laws on businesses, please remember that those laws have a vastly different impact on small businesses compared with large businesses and major corporations. Where another regulatory requirement may seem appropriate and reasonable for a large multi-site corporation, its impact on a one-owner, one-site operation may be disastrous. One size does not fit all.

The plea for regulatory flexibility is not just about relieving the burdens of the small business person; it is also about the economic viability of this country. Small Business Administration statistics clearly designate the small business community as the primary job creators of today and tomorrow. Furthermore, the past decade has been marked by technological advances that can be credited to small business "pioneers." This trend will undoubtedly continue in the future. Excessive regulation only serves to stifle the potential of small business.

There are simply too many laws and regulations with which any company must comply. We cannot keep track of them all, let alone ensure compliance. Large personnel departments with specialists devoted to compliance with federal regulations are hard-pressed to ensure compliance in every circumstance they encounter. How can Louisville Plate Glass Co., with only two people (including myself) working on personnel and compliance with the federal laws governing the employment relationship, hope to ensure compliance? It can't.

I. I'M NOT A LAWYER

Being in business nowadays means one must have ready access to a library of constantly evolving statutes and regulations, and be able to effectively use those resources.

To do this, the modern American business owner should probably be a lawyer. However, like most entrepreneurs, I'm not a lawyer.

Two federal laws covering the workplace -- the Fair Labor Standards Act (FLSA) and the Americans with Disabilities Act (ADA) -- and regulations issued under these laws are good examples.

The FLSA seeks to achieve commendable social goals, yet FLSA regulations can result in negative consequences for both employees and employers. Under these regulations, companies can no longer allow salaried employees to take a couple hours of leave without pay for personal or family reasons. Now that this benefit has been "secured" by a federal mandate, the flexibility that most companies exercised in the past has been sacrificed to detailed recordkeeping and hour-counting.

As for complying with the intricacies of the ADA, what should we do if one of our employees states that he or she will take occasional leave because of work-related stress and we must grant the leave under the ADA as a "reasonable accommodation?" Should we just grant the leave and try to make arrangements for another employee or temporary worker to perform his or her duties, or should we maintain he or she is not disabled and entitled to leave as an accommodation? Alternatively, we could consult our lawyer for legal guidance. Or we could somehow obtain or access the materials necessary to find the answer, assuming they are reasonably affordable, but such an endeavor would detract from my primary purpose -- managing the firm.

Louisville Plate Glass complies with existing laws or regulations addressing issues whenever possible. If we are unaware of an applicable rule, we must rely on common sense

and a basic conception of fairness. On occasion, we will consult our company attorney, but the cost of simply consulting on a complex or novel issue is very high and such consultations must be rare. Sadly, most small businesses must face the same difficulties as does Louisville Plate Glass.

Unfortunately, even common sense and a willingness to do the "right thing," or what appears to be the most fair, are not enough. Businesses are continually threatened by employees who may think they have a cause for action that will ultimately yield large sums in punitive and compensatory damages. Employees are deluged by the incessant television commercials and omnipresent print advertisements by lawyers, which can easily become the seeds of destructive lawsuits.

It is often reported that the costs of medical care are skyrocketing in part because of doctors practicing defensive medicine. How much time, effort, and money is spent by small business practicing defensive private enterprise? What are the opportunity costs? This situation has been fueled by an activist Congress that can politically no longer afford to add significantly to the public's tax burden in return for increased statutory rights and more elaborate government services. Instead of further burdening the fed-up public, Congress has transferred the cost of expanded social services to American employers. This could permanently disable America's ability to compete and maintain jobs.

II. COLLECTIVE BARGAINING

The percentage of the private-sector work force represented by unions is at an all-time low. The decline has been slow but steady over the years since its peak in the 1950s. The

unions blame this decline on employers' willingness to break the law to avoid having to deal with a union representing employees. While it is convenient for organized labor to blame others, it is abundantly clear that the decline of unions in our economy is attributable largely to several obvious factors that do not have such sinister or blameworthy overtones.

Perhaps the largest single factor behind the decline of unions is that organized labor has legislated itself out of a job. Why would employees want to pay any of their hard-earned wages to a labor organization to secure protections already guaranteed by law? When unions were at their peak, employees were not covered by laws prohibiting discrimination based on race, national origin, gender, or age. There weren't laws and regulations addressing employee health and safety. What pensions there were certainly weren't protected by federal law. Benefits and benefit plans weren't subject to federal oversight and regulation. There simply isn't a widespread need for employees to pay a union to safeguard and improve highly regulated working conditions.

Add to all this the realization by most involved in human resource management that a company cannot long survive, let alone thrive, if it consistently treats its employees in an unfair or inhumane manner. Good employees -- competent, trained, or trainable, with a reasonable work ethic -- are not readily available. No company can stay in business in the tight domestic and international markets of today if it fails to value its work force and treat its workers accordingly. The days when a boss could intimidate and coerce employees as a matter of routine or standard practice are nearly gone. Organized labor should be credited with showing employers how to improve employee relations. Management's attitude toward workers has changed in part because of the balance provided by the possibility that mistreated

employees can and will vote to have a union represent them. Most employers know the bottom-line: employers can treat their employees right with a union or without a union.

Unfortunately, many in organized labor have done little to police their actions. Even today the newspapers regularly carry stories about serious and unjustified picket line or other strike-related violence. For example, who can forget the terror caused by the gunfire directed at Greyhound buses when their drivers struck? Another example is the beatings and assaults by striking New York newspaper drivers on individuals who attempted to distribute papers from the struck publisher. For every video story about determined airline employees peacefully picketing at some airport terminal, there is media coverage of striking coal miners or well-paid factory workers in the Midwest, dressed in combat fatigues, patrolling in a threatening manner and in large groups as terrified non-striking employees try to get through the picket line to their jobs. The violence and threats of mid-century, while clearly outdated, continue as unions struggle to maintain their political leverage.

For the most part, unions face difficulties in organizing due to their inability or unwillingness to devote the time, money, and effort necessary to convince workers they would be better off with union representation. Perhaps organizing is simply too difficult when there is usually little reason for workers to have a representative. Maybe a work force that is increasingly female, young, diverse, sophisticated, and educated doesn't relate to organizations that appear still to be focused on bitter struggles and conflicts from a different era. Whatever the causes, it is naive to think that widespread employer noncompliance with the National Labor Relations Act (NLRA) is the primary reason that organized labor continues to lose members and influence.

The Chamber firmly supports the NLRA and its principles. The most basic of these principles is that employees have the choice whether to be represented by a union, and if they so choose, which union it will be. As in every democracy, the majority decides the issue. Yet as nearly perfect as this principle is, some would allow a determined minority, willing to intimidate, coerce, or mislead their coworkers, to force those employees into union representation by obtaining their signatures on union authorization cards. If we were to allow unions to be certified as exclusive collective bargaining representatives based on signed union cards instead of the results of a secret-ballot election conducted by neutral government agents, we would be eliminating employee choice as the fundamental principle of federal labor law. Rather than facilitating and encouraging employee participation in this basic issue, we would be disenfranchising employees and removing from them a right they have had for almost 60 years. Union certification based on union authorization cards with signatures obtained in the most questionable of circumstances is a step backward. It is a substantial blow to democracy at a time when democracy is prevailing, rather than retreating, throughout the world.

Proponents of labor law reform claim that the law must be changed to facilitate union organizers' access to a company's employees to convince them of the need for union representation. This is not the remedy for largely unsuccessful union organizing. As I stated earlier, the problem with union organizing is that there is little demand or need for the product. No amount of union access to employees can overcome these obstacles. Regardless of this phenomenon, there remains the issue of an employer's constitutional right to control his or her property. The Supreme Court correctly determined that in all but a few situations, union organizers have several viable alternatives to communicating with employees at their

worksite. It is the content of the union message rather than its medium or location that is the problem.

Chairman Dunlop asked that I reserve pointed comments about certain labor law issues for another forum. Accordingly, although tempted, I will not devote the remainder of my time to pointing out the absurdity of the most serious labor law reform yet proposed -- a ban on the hiring of long-term or permanent replacements for economic strikers. I realize the issue is not under consideration by the Commission but I must, however, restate the Chamber's vehement opposition to this proposal in any form. Without question, it will, if enacted, give unions almost complete control over every employer, small or large, whose employees are represented by a union.

Ironically, organized labor's prediction that jobs will be lost as a result of the North American Free Trade Agreement (NAFTA) may become a self-fulfilling prophecy, but not as a result of the NAFTA. Rather, thousands of jobs may be lost as businesses move to other countries because of the tremendous cumulative burden of regulations, litigation, and statutory mandates now being demanded by unions.

Please consider that when the average small business deals with a union, it is analogous to a mouse dealing with a gorilla. That is usually because the small business is owned and managed by one person or family and, like most small businesses, has limited expertise in effective labor negotiating. On the other side, the union is almost always an affiliate of a large international labor organization that provides considerable expertise and staff support to the local union and its officers. Thus, it is "mom and pop" versus the ultimate in labor relations sophistication. In these circumstances, there is absolutely no need

to further tilt the balance toward the labor organization. If any adjustment is appropriate in such cases, it should be in the form of assistance for small business management.

Our collective bargaining system needs little change. It has helped us through depressions and recessions, tremendous growth, wars (hot and cold, big and small), and the transformation from a manufacturing to a service economy. That our economy may be changing again is no reason to rewrite the law. The National Labor Relations Board (NLRB) has been able to forge workable labor policies for whatever economic factors or trends prevailed at any time in the past 60 years.

III. ALTERNATIVES TO CONFLICT AND LAWSUITS

Are there alternatives to forcing employers to engage in defensive human resource management to reduce the likelihood of a lawsuit or reduce the damages for which the business can be liable? I hope so. If we hope to compete, domestically or globally, we cannot afford to let fear of a lawsuit govern the way we manage our businesses. Perhaps in our zeal to protect the rights of individuals we have forced employers into a corner, unable to escape employee administrative or court actions for any and all perceived wrongs, regardless of merit, and forced to assess the liability exposure for every single management act that could impact an employee.

Legal System

A practical solution may be what is commonly referred to as Alternative Dispute Resolution (ADR). Unresolved individual employee concerns, including complaints of

discrimination or other illegal treatment, may be appropriate for routine involvement by a neutral third party who could mediate a dispute or, should mediation fail, arbitrate the issue.

Arbitration could be far less expensive than litigation in court. Ideally, both the rapid decision characteristic of arbitration and the arbitrator's substantive expertise could contribute to a mutually satisfactory resolution. The Chamber is carefully considering the ADR issue and hopes to develop a comprehensive policy on this in 1994.

Workplace Cooperation

Without a doubt, cooperation in the workplace is widely viewed as the best way to improve productivity, enhance employee involvement and interest, and achieve the highest quality in goods and services. We see the trend toward Total Quality Management as irreversible and ultimately beneficial to everyone in an organization that adopts its principles. Few dispute that an atmosphere in which workers and managers cooperate to achieve the goals of the organization will, in most cases, lead to a more productive, satisfied, committed, and reliable work force producing improvements to the company's bottom line. Even the federal government is moving in this direction as it seeks to implement Vice President Gore's National Performance Review Report. Unfortunately, some in organized labor have decided to continue to fight efforts to improve workplace cooperation as seen in the Electromation and Dupont NLRB cases.

Voluntary Cooperation - Incentives

While workplace cooperation may be the answer to many individual and institutional

problems, it simply does not work when it is less than voluntary by all parties involved. Mandated cooperation, as provided in some of the OSHA reform proposals being considered in Congress, won't work. This is especially true when the cooperation is thoroughly prescribed in minute detail as it is in the legislation. A one-size-fits-all mandate, like that in the Comprehensive Occupational Safety and Health Reform Act, will create intense employer resentment and extremely reluctant involvement. On the other hand, a voluntary approach facilitated by employer incentives, where necessary, rather than mandates will allow the parties to develop their own cooperation scheme. Their ownership of that scheme will improve the chances that it will last and lead to the desired result -- improved workplace health and safety.

Workplace Safety

I have two additional comments on occupational safety and health. First, as I stated earlier, most companies zealously try to achieve maximum safety conditions because not only is it proper and morally correct to do so, it is also financially rewarding. The workers' compensation rate system in most, if not all, states creates major incentives for workplace safety. This incentive would exist with or without federal government involvement in workplace health and safety.

The Commission should encourage increased government attention to two of the major causes of workplace injuries and deaths -- violent crimes and substance abuse. Recent studies indicate that homicide is the single largest cause of workplace deaths for women. These instances of violence are completely unrelated to workplace safety as typically addressed by

OSHA, yet they are included in the statistics that affect the formulation of OSHA regulations. Clearly this is a societal problem to be addressed by law enforcement experts and crime control legislation rather than human resource managers and OSHA regulations.

Similarly, countless workplace accidents and injuries can be traced to employee abuse of drugs or alcohol. The federal government long ago established workplace safety as one of its primary concerns. The government could do much to improve workplace health and safety by taking effective action to curb both violent crimes and substance abuse, whether it is the abuse of illegal drugs or alcohol. One way for OSHA to address the substance abuse problem is to issue drug testing regulations that would preempt state laws which prohibit or impede employer efforts to control the impact of workplace drug abuse.

IV. CONCLUSION

The key to the future of human resources management, worker-management relations, and improved conditions for American workers may be that over-used and somewhat ill-defined term -- empowerment. The federal laws and regulations governing the workplace should empower entrepreneurs, growing businesses, and employees so that the evolution of business and the institution of work can continue allowing us to compete freely with each other and with our foreign competitors. As President Clinton has stated, the jobs engine of our economy is small businesses. It should not be over-burdened with incomprehensible requirements and regulations requiring the assistance of technical staffs and lawyers to ensure compliance.

We are in the midst of another industrial revolution. Flexibility will be the hallmark

of the successful business organizations of the next century. Those businesses -- large or small -- and the people who make them successful must have the ability to be creative and flexible. They must be able to adjust rapidly to changing processes, dynamic markets, and new opportunities. The best way to create good jobs, achieve adaptability, and maintain flexibility is through individual and organizational empowerment.

Business must be rewarding, not frustrating! A reasonably competent business owner should not have to mold business plans in the shadow of threatening and ruinous litigation. Defensive business, like defensive medicine, wastes time and money, benefits few, and builds resentment and frustration. Most importantly, it discourages the creation of new and better business organizations and squelches investment in businesses.

Finally, and above all else, we should preserve and protect the fundamental employee right to choose whether and to what degree to join in cooperative forms of management, and whether to be represented by a union for purposes of collective bargaining.

Thank you for the privilege of allowing me to speak on behalf of the U.S. Chamber of Commerce. I would be happy to answer any questions.