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Statement of Kenneth McLennan before the Commission on the Future of Worker-Management Relations on Chapter II of its Fact Finding Report to the U.S. Department of Labor

Kenneth McLennan

Manufacturers Alliance for Productivity and Innovation, Inc.

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Comments

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Statement of
Kenneth McLennan
President
Manufacturers Alliance for Productivity and Innovation, Inc.
on
Chapter II of its Fact Finding Report
to the
U. S. Department of Labor
Commission on the Future of Worker-Management Relations

August 3, 1994

Introduction

The Manufacturers Alliance is pleased to respond to the Commission's request for comments on Chapter II of its Fact Finding Report published in May 1994, entitled, "Employee Participation and Labor-Management Cooperation in American Workplaces." The Alliance is a nonprofit policy research organization supported by some 500 manufacturing companies from a broad range of industries. For more than 60 years, our organization has directed its efforts toward initiating and supporting policies that stimulate technological innovation and economic growth. Over the last decade, many of the companies affiliated with the Manufacturers Alliance have introduced some form of worker participation as part of a strategy to improve product quality, raise productivity, meet customer demands in global markets, and improve workers' real income.

There is a general consensus among U.S. manufacturers that the National Labor Relations Act (NLRA), including interpretations of specific provisions of the act, should not restrict management's ability to introduce new approaches to work organization involving employee participation in decisions affecting the efficiency of production and success in the marketplace.

The following is a summation of our views on the economic and legal environments affecting employee participation programs in industry and the government's role in affecting the future of such programs:

- Successful worker participation programs to improve business performance and contribute to employees' real income growth depend on a realization by both management and workers that greater employee involvement is in their mutual interest.
- Although the government can encourage industry to consider adopting employee involvement programs by funding research and case studies of industry experience with these new forms of work organization, responsibility for initiating and modifying an employee involvement program resides entirely with management.
- The Manufacturers Alliance strongly opposes proposals that government *require* industry to adopt employee participation programs. The success of such programs varies greatly by type of business and is a function of unique management-employee relationships that exist in specific companies and plants.

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- Because the success of employee participation programs appears to be related to the skill and knowledge of the work force, the government, through its education and training programs, including demonstration activities and information dissemination, can play an important role in improving the quality of new labor market entrants.
- While it makes no sense for government to "legislate" participative management-labor relationships, government policy should not restrict voluntary employee involvement programs. The Manufacturers Alliance continues to adhere to the position it took *before* the National Labor Relations Board's (NLRB or Board) decision in *Electromation, Inc. and E.I. DuPont de Nemours*, which is that the Board has sufficient authority to interpret Section 8(a)(2) of the NLRA to permit employee participation programs that do not amount to *actual* employer domination of an employee organization.
- Should the NLRB fail to reinterpret the act as recommended by the Manufacturers Alliance, then we favor a limited amendment of the NLRA such as contained in the Teamwork for Employees and Management (TEAM) Act, (H.R. 1529, S. 669).

The Alliance's response to the Commission's specific questions now follow.

Cooperative Worker-Management Relationships

Commission Question: How can the level of trust and quality of the relationships among workers, labor leaders, managers, and other groups in society and at the workplace be enhanced?

Alliance Response: The fact that most companies have not yet progressed much beyond the basics of employee involvement activities indicates that the transition along the spectrum toward more intensive forms of worker participation is not easy. There is a natural resistance to change in any organization, and those with a long history of a traditional command-and-control management style are likely to find power-sharing to be difficult to implement.

Economic necessity is typically a strong incentive for fundamental reform of the decisionmaking process within any organization. For this reason, those companies that achieve the higher forms of worker participation give business reasons for making the transition.¹ The business survival instinct of both managers and workers appears to be an important precondition to the emergence of a partnership between labor and management. When participative management makes economic sense and shows up on the bottom line, both sides are likely to realize that cooperation is the best way to strengthen a business's competitive position in the marketplace.

As more and more markets experience global competition, executives in an increasing number of companies are reexamining their corporate cultures and adopting programs that emulate other firms' successes in total quality management, inventory management, and problem solving by implementing advanced worker participation practices.

Successful worker participation programs depend heavily on cultivating trust between management and the work force. A more participative management style begins by instilling a set of core values in the business organization. These values include: respecting the dignity of individuals; creating opportunities for personal growth and development on and off the job; and recognizing that individual achievements within the work group are all necessary to promote an environment conducive to teamwork. The whole attitude of business organizations has to change to encourage openness and flexibility.²

The U.S. Departments of Labor and Commerce can facilitate empowerment by setting up demonstration projects and disseminating case studies of successful employee involvement programs, sponsoring conferences and workshops on implementing worker participation, and funding research on conversion strategies for business organizations.

¹Brian Dumaine, "Who Needs A Boss?," *Fortune*, May 7, 1990, p. 53.

²"Labor-Management Cooperation: 1990 State-of-the-Art Symposium," a summary of the meeting by the U.S. Department of Labor, Bureau of Labor-Management Relations and Cooperative Programs, BLMR 142, 1991, p. 5.

As mentioned earlier, participation programs work best when there is a business reason for them. Both parties (labor and management) must come to the realization *on their own* that greater employee involvement is in their mutual interest. For this reason, management must work out its own relationship with employees without government mandates.

Commission Question: Is there a deep unrealized interest in participation in the American work force? If so, what keeps these employees from taking the initiative on these matters?

Alliance Response: Employee participation in the workplace covers a broad spectrum of activities.³ Low-intensity employee involvement techniques simply seek to align the goals of the individual employee with those of the organization. One type of low-intensity technique is information sharing. For example, a worker communication program may include: financial and other performance data; background information on capital improvement projects; management changes; and development plans for new products or services.⁴

Employee participation methods in the middle range of the worker involvement spectrum tend to involve a commitment on the part of management to bring some employees into the decisionmaking process on a more active basis, surveying and/or interviewing employees with respect to business issues ranging from attitudes toward the organization to suggestions for improvements, task forces, quality circles, and other problem-solving techniques often are used to provide workers with a certain degree of participation, but typically they do not supplant the decisionmaking authority of management. These groups generally operate in an advisory capacity and recommend actions to management.

At the high-intensity end of the employee involvement spectrum, where the Commission indicates that very few firms operate, employee participants are given broad responsibilities and authority. Management organizes employees into teams based on the work process. Using a team concept, the functions performed by the teams vary enormously and are limited only by the culture of the company. The most advanced concept is self-directed work teams. These self-directed work teams are cross-functional, and they not only produce goods and services but also perform some traditional managerial functions, such as participating in hiring decisions, training team members, and conducting performance evaluations.

Empowering employees provides them greater opportunity for expression and self-development and thus improves working conditions, sometimes referred to as the quality of work life. In many cases, employee participation makes jobs more meaningful because it invokes a feeling of personal responsibility for the outcome of work.⁵

Nevertheless, many employees fear change and find it difficult to take on more responsibility. Even with training in teamwork, in problem-solving, and interpersonal skills, a segment of the work force is likely to be unable to perform in a participative environment. Many organizations that have applied advance participative management techniques have carefully selected the workers for the program. In some cases, applicants must first pass psychological tests and graduate from rigorous company-provided training courses. In fact, one reason for using employee participation approaches is to help attract and retain a skilled and educated work force. Lack of skill and basic education are very likely to disqualify workers for advanced participative management programs.

High-intensity worker participation programs are desirable in many business environments, but certainly not in all of them. Advanced employee involvement programs will work in some industries but not in others, and they can be adapted to some business cultures but not to others. There are so many variables for a successful transition from command-and-control management to high-intensity worker involvement that any attempt to mandate worker participation would be counterproductive.

³Does Employee Involvement Improve the Performance of U.S. Industry?, Manufacturers Alliance ER-212, August 1991.

⁴John Belcher, "Employee Involvement Techniques," *Productivity Brief*, American Productivity and Quality Center, No. 62, 1987, pp. 3-4.

⁵Mitchell L. Markers, Edward J. Hackett, Phillip H. Mirvis, and James F. Grady, Jr., "Employee Participation in a Quality Circle Program: Impact on Quality of Work Life, Productivity, and Absenteeism," *Journal of Applied Psychology*, Vol. 71, No. 1, 1986, pp. 61-62.

The work of Michael Hammer⁶ on business process reengineering demonstrates that there is potentially a large payoff from worker participation. The business process itself, however, must be reengineered before the management structure is changed. Most businesses are organized functionally (e.g., purchasing, accounting, marketing), and work is fragmented and assigned to specialized departments. The more complex the job, the more specialized the work becomes and the more steps there are to complete any process.⁷ According to Hammer, to enrich workers' jobs, the functional structure must be radically changed so that workers become responsible for a process, for example, acquiring raw material. A business that operates cross-functionally empowers workers to deal with problems and make decisions immediately rather than submit imperfect work to others or await decisions in a hierarchical management structure.

For high-intensity worker participation to be successful, senior management has to alter the way the business is organized and managed. This means changing the content of jobs so that they no longer involve vertical (i.e., functional) responsibilities but allocate responsibilities horizontally (i.e., by process). Business unit employees alone cannot make this change. The initiative must come from the most senior level of management.

Management Responsibility for Economic Performance and Work Organization

Commission Question: Should employees have some voice in initiating employee participation? If so, how might this be done?

Alliance Response: The initiative for worker participation must come from the senior management team of a business organization. Authority to make decisions for a corporation is conferred by the shareholders to senior management. It is, therefore, the prerogative of senior management to delegate authority to or withhold authority from middle management, supervisors, or nonsupervisory employees. Senior management is in the best position to make the business decision as to which management style will best fit the organization. Employees are not and should not be in a position to initiate a participative management approach for an organization.

We realize that some advocates of improvements in worker-management relations believe the government should mandate specific employee participation programs for industry. Indeed, within the federal bureaucracy some civil servants have a vested interest in the micromanagement of economic behavior in industry through detailed government regulation. The notion that somehow government employees have the ability to design a management system that will improve economic performance within factories and offices that vary enormously by size, industry, product line, and in the skill levels of the work force is simply not credible.

Government regulations that would "require" firms to adopt participative management techniques are inappropriate, unrealistic, counterproductive, and may damage workplace innovation in American business. For its part, the federal government should concentrate on removing barriers to worker participation, and should use support services, economic analysis, and case studies to encourage business to adopt more advanced employee involvement techniques.

No single approach to employee involvement has proven successful in all cases. As we have stated previously, there is a spectrum of participative management programs ranging from simple information-sharing to self-directed work teams. Firms must be free to experiment with these techniques to determine which ones fit their market structure, competitive situation, and corporate vision.

Commission Question: Should employees have some voice in determining whether, once started, a given employee participation process should be continued, changed, or terminated? If so, how might this be done?

Alliance Response: Employee participation will evolve to high-intensity employee involvement depending on whether the process increases the firm's productivity, lowers costs, or increases customer satisfaction. The decision to continue, change, or terminate an approach to how a business is managed is not and should not

⁶"Reengineering the Corporation: A Manifesto For Business Revolution," *Harper Business*, 1993.

⁷"The Promise of Reengineering," *Fortune*, May 3, 1993, p. 94.

be constrained by legislation. Senior management must have authority, unconstrained by the labor laws, to terminate unsuccessful corporate programs and policies. Only senior management is in the position to decide whether employee participation is a success or failure for the firm. The decision to continue or terminate the employee participation process is not unlike the decision to discontinue a product or line of business. Employee participation initiatives must be results-focused, and actually achieve the targets of improved customer satisfaction and profitability.

Management can train, facilitate, and motivate workers to participate, but they cannot make people take the initiative to exercise increased responsibility on the job. A successful transition to worker participation, evidenced by improved financial performance, will lead management to give employees more of a voice in the process.

In our opinion, attempts by government to impose legal constraints on management by preventing them from terminating or changing an employee participation program would discourage worker involvement initiatives in the first place. Few senior executives would voluntarily start a program where management's control of the design and implementation of the program is severely constrained by legislation or detailed government regulations. If employees gained legal protection to continue an employee participation process that employers deemed a failure and did not want to continue, then an employee involvement initiative would be fruitless. The risk of losing control could dissuade most senior managers from giving higher forms of employee involvement a chance.

Responding to Structural Economic Change

Commission Question: How serious are the economic obstacles, such as downsizing pressures for short-term results, high start-up costs, and lack of understanding in the investment community? What if anything can be done to address these issues?

Alliance Response: Leveraged buyouts, recapitalization, and an extremely competitive international business environment have forced firms to downsize. The Commission no doubt realizes that downsizing is not necessarily an obstacle to employee participation. In fact, downsizing may be a catalyst for changing to higher levels of employee involvement. The Commission has already found that, "Changes are particularly visible in many large workplaces that have undertaken restructuring in response to economic pressures, . . ."⁸ and "Employee participation is more widespread in industries exposed to international and domestic competition than in industries with less competition. . . ."⁹

Technological advances in such industries as computers and communication have increased the flow of information throughout many business organizations and have reduced decisionmaking times. Whole layers of middle-level management that were responsible for gathering and disseminating information and then making decisions based on this centralized data are now redundant and are being eliminated. At the same time, product life cycles have been shortened and manufacturing operating systems have become more complex. In response to these structural changes, management frequently encourages the rank-and-file work force to recommend innovations and exercise some degree of self-management.

Insecurity among employers and employees is a natural result of changes in the status quo of the economic and work environments. Nevertheless, in order to achieve a rising standard of living for our citizens, change is a necessary ingredient.¹⁰ In responding to changing customer preferences and new technology, firms find ways to accelerate productivity improvements to stay competitive. As businesses reengineer their processes and adopt high-performance workplace practices, some employees will be displaced. Nevertheless, economic change also creates opportunities for new business and employees they hire. New industries, jobs, and communities arise from technological progress that comes from structural change.

⁸Fact Finding Report, Commission on the Future of Worker-Management Relations, May 1994, p. 29.

⁹*Ibid.*, p. 48.

¹⁰*Reengineering U.S. Manufacturing: Implications of Structural Changes in the U.S. Economy*, Manufacturers Alliance ER-294, February 1994.

Downsizing and layoffs are products of the economic adjustment process that maximizes the benefits of economic progress. Where government can assist is in the adjustment process. In general, more highly skilled workers have less of a problem adjusting to change than lower skilled people. Before employers empower workers, form problem-solving teams, and reengineer the workplace, they need to know that the workers they hire have basic math and language skills, can participate in solving everyday workplace problems, and have the social skills to work in teams. The Alliance believes it is critical that the United States embark on educational reform that includes:

- National educational performance standards that match those of other leading industrial nations.
- School choice experiments between and within public and private systems in order to evaluate the role of vouchers and competition as to the educational output of schools.
- National achievement standards to permit consumers (students and families) to “benchmark” the performance of their schools.
- School districts that are encouraged to have school-to-work high school programs combining on-the-job training with a school-based curriculum.
- In cooperation with community colleges, school systems that offer a comprehensive system of technical and professional certificates and associate’s degrees for students who do not pursue a baccalaureate degree.¹¹

As to the Commission’s concern over the high start-up cost of employee involvement programs, the Alliance agrees that one major obstacle is the very high initial investment that must be made to train workers, to implement organizational change, and to reengineer processes. Also, financial returns from making the transition to a more participative work environment may take years to materialize, and the disruption during the transition period can be unsettling for both management and labor. For these reasons, we believe that only management should have the responsibility to decide whether employee participation is appropriate, and if it is, how rapidly the organization should progress toward the more intensive stages of participation. Another problem is that, during the initial stages of this type of transformation, businesses are especially vulnerable to predatory pricing by low-wage competitors.¹²

Government’s Role in Raising Real Income and Improving Work Relationships

Commission Question: What, if any, government strategies can assist the diffusion of employee participation and labor-management cooperation?

Alliance Response: There are a number of strategies that government can use to assist in the diffusion of employee participation. Government should consider offering training and educational incentives to both employers and individuals to raise the quality of the work force. Further, because the key to improving employee productivity and job enrichment is business investment, government can provide incentives for capital investment.

We, however, cannot support mandated worker committees or other required employee participation schemes. Employer mandates would further increase the cost of hiring workers and would risk introducing European-type rigidities into the U.S. labor market. U.S. labor policy should concentrate instead on increasing the quality of the labor force.¹³ In a labor market where the quality of labor is improving, employers which do not offer their employees opportunities for job enrichment and worker involvement are likely to experience

¹¹“America’s Choice: High Skills or Low Wages!,” *The Report of the Commission on the Skills of the American Work Force*. National Center on Education and the Economy, June 1990, p. 6.

¹²Eileen Appelbaum and Rosemary Batt, *High Performance Work Systems: American Models of Workplace Transformation*. Economic Policy Institute, Washington, DC, 1993, p. 59.

¹³*What Is Happening to Middle Income Jobs in the U.S. Economy?*, Manufacturers Alliance ER-303, May 1994.

high labor turnover and deteriorating worker performance. Market forces, rather than government intrusion into the management of private industry, encourages job enrichment and increased productivity.

A viable strategy for government is to pursue policies that lead to a higher quality work force. The rapid pace of technological change requires more versatile workers who are capable of making decisions and working in teams. Existing tax laws can be modified to encourage employees to invest in the acquisition of new skills. We also believe the educational reforms advocated earlier in this statement are important in preparing the work force for greater participation in business decisionmaking processes. For a lasting improvement in human capital, however, individuals must take responsibility for their own training and development. Government can support this effort by assisting those who want to continue their education. Among the programs proposed are the following:

- Permit workers to contribute to an "Individual Training Account."¹⁴ Savings would go into the account tax free to pay for educational advancement and occupational training.
- Change the tax code to allow workers over age 25 to deduct from their taxable income some portion of training expenses to acquire skills required by new technologies and enable workers to qualify for a new job with their current employer or another company.
- Allow displaced workers to borrow against their individual training accounts to pay for training and/or relocation.

The government's most important role is to stimulate productivity growth through more powerful saving and investment incentives. Investment in human capital is important and should be encouraged by public policy. Worker participation also can contribute to productivity and enhance the competitive position of U.S. businesses and public policy should not restrict worker participation. If the goal is to strengthen U.S. industry and improve the real income of workers, however, the most important role by far is for public policy to encourage saving and investment in new equipment. The Alliance's recommendations for this goal include the following:

- Reduce the federal budget deficit (public dissaving) as a means of increasing the supply of domestic funds available for investment.¹⁵ Deficit reduction should be achieved not by raising taxes, but by reducing government expenditures.
- Shift the balance of resource use from consumption to saving, i.e., increase the savings rate of U.S. households. To achieve this, individuals should be given a greater incentive to save, in part through the restoration of tax-deferred Individual Retirement Accounts (IRA).
- Reenact a 10 percent Investment Tax Credit having the following characteristics: permanency, across the board application, and qualification from the first dollar of investment.
- Make permanent the research and development (R&D) tax credit and redesign it to encourage greater R&D investment by industry.

Finally, we challenge the federal government to apply reengineering and employee empowerment in its own activities.

Legal Philosophy and Worker Participation

Commission Question: How should the legal uncertainties and limits on employee participation and labor-management cooperation be addressed without discouraging workplace innovations that enhance the competitiveness of the modern workplace and without risking a return to the conditions that motivated passage of these protections?

¹⁴Testimony of Howard Rosen, Institute for International Economics, hearings before the House Ways and Means Subcommittee on Trade, 102d Congress, August 1, 1991, p. 120.

¹⁵*Is the Budget Deficit Still a Problem?*, Manufacturers Alliance PR-129, April 1994.

Alliance Response: Capital and, to a growing extent, goods and technology travel rapidly across international boundaries. Markets have become more homogeneous, and competitive differentials are narrowing. Business success, therefore, will depend on how firms organize and manage their employees and business processes. The nature of "work" is changing as many firms delay and reengineer to achieve a more efficient organizational structure. "Work" for a growing portion of employees includes unprecedented responsibility to satisfy the customer and make the organization financially successful. The nation's labor laws must not impede industry leaders from enriching job content and empowering their workers.

Unfortunately, the law as interpreted recently by the NLRB in *Electromation, Inc. and E.I. DuPont de Nemours* limits employee participation programs implemented outside the collective bargaining process. The Board's findings in those two cases, that the employee committees in question were unlawfully dominated labor organizations, were based on a literal interpretation of what constitutes domination. If that interpretation of the law is not changed, employers will be discouraged unnecessarily from instituting various types of employee participation efforts, especially in the vast majority of workplaces where there are no unions.

Therefore, we believe that the law can and should be reinterpreted by the Board to prohibit only *actual* and not *potential* domination so as to accommodate employee participation efforts that do not amount to unlawful domination. Should the Board decline to reinterpret the law in this fashion, we support a change in the NLRA that would allow employers to establish, assist, and maintain, as well as participate in, employee participation programs that are not aimed at seeking collective bargaining authority or interfering with existing collective bargaining agreements. Should the law be either reinterpreted administratively or amended statutorily as we have suggested, a proper balance will be struck between eliminating legal barriers to the implementation of legitimate forms of employee participation and retaining sufficient safeguards against the establishment of labor organizations that are in fact employer dominated. A more extensive discussion of our position on the legal policy that should govern employee participation initiatives is set forth below.

Policy Recommendations Regarding Revision of Section 8(a)(2) of the NLRA

At the end of Chapter II of its report, the Commission discusses several legal issues which raise the following questions regarding the revision of Section 8(a)(2) of the NLRA.

Commission Question: Should Section 8(a)(2) of the NLRA, which makes employer domination or interference with the formation or administration of any labor organization an unfair labor practice, be revised to permit *nonunion* firms to develop employee participation plans?

Alliance Response: As pointed out previously, and in the *amicus curiae* brief the Alliance submitted to the NLRB in *Electromation, Inc.*, we maintain that the current statutory language provides the Board with sufficient latitude to revise its past restrictive and literal approach to determining what constitutes domination of or interference with a labor organization. Indeed, Section 8(a)(2) can be reinterpreted in a manner that will accommodate bona fide forms of employee involvement while not impeding the exercise of the right afforded by the NLRA to employees to choose whether or not to be represented by a labor organization (as well as to choose between unions that may assume more or less adversarial roles vis-à-vis senior corporate management).

In our *amicus* brief in *Electromation*, we urged the Board to adopt the approach numerous courts have followed in determining whether management activities constitute a violation of Section 8(a)(2). Most significantly, those courts have looked to determine whether there has been *actual*, rather than merely a *potential* for, domination of the labor organization in question sufficient to defeat the employees' free choice of their representative, e.g., *Hertzka & Knowles v. NLRB*, 503 F.2d 625 (9th Cir. 1974), cert. den. 423 U.S. 875 (1975); and *Federal-Mogul Corporation v. NLRB*, 394 F.2d 915 (6th Cir. 1968).

Also, the Board could adopt several other principles that the courts have used to decide whether the elements of a bona fide employee participation plan exist with respect to the employee committees in question. Beyond considering whether there is actual domination of employee committees, other relevant factual evidence would include whether an employer's motive in establishing or maintaining the committee is to coerce employees into avoiding representation by a traditional labor organization and whether the employee committee

reflects the will of the employees involved. In the absence of (1) evidence of actual employer domination; (2) an employer motive to avoid employee representation; and (3) an employee committee that is not representative of employee sentiment, no violation of Section 8(a)(2) should be found.

The Alliance suggests that the Commission broaden its inquiry to include the interpretation of the NLRA to permit firms with employees represented by *unions* to develop employee participation programs. As interpreted by the NLRB, Section 8(a)(2) has posed a significant obstacle to the creation and continuation of employee participation groups (*E.I. DuPont de Nemours & Company*, 311 NLRB No. 88 (1993)).

Although, regrettably, the Board adopted a *per se* interpretation of Section 8(a)(2) in reaching its decision in *Electromation* in 1992, we see no obstacle to the current Board's reinterpreting the statute in the manner we suggest. Nevertheless, should the Board be disinclined to reinterpret Section 8(a)(2), we urge support for a limited legislative amendment of that provision that would not necessitate a more sweeping revision of the NLRA. In particular, we favor enactment of the TEAM Act, (S. 669, H.R. 1529). This bill was introduced by Senators Nancy Kassebaum (R-KA) and Slade Gorton (R-WA) and Representative Steve Gunderson (R-WI). Section 3 of the TEAM Act would amend Section 8(a)(2) so that it would *not* be an unfair labor practice for an employer to:

. . . establish, assist, maintain or participate in any organization or entity of any kind, in which employees participate to discuss matters of mutual interest (including issues of quality, productivity and efficiency) and which does not have, claim or seek authority to negotiate or enter into collective bargaining agreements under this Act with the employer or to amend existing collective bargaining agreements between the employer and any labor organization. . . .

If Section 8(a)(2) were so amended, employer-assisted or initiated employee involvement programs would be permissible under the NLRA, yet existing collective bargaining arrangements would not be compromised. Thus, the TEAM Act would not undermine the original purpose for enacting Section 8(a)(2)—to preserve for employees the opportunity to select truly independent representatives, which, at least in the 1930s, was in some instances threatened by company-dominated unions (commonly known as sham unions).

Shortcomings of Other Proposed Section 8(a)(2) Revisions

Commission Question: The Fact Finding Report describes three other possible approaches to revising Section 8(a)(2) to accommodate the development of employee participation programs:

- Should nonunion employers be free to establish procedures by which their employees can “deal with” conditions of employment within worker participation groups?
- Should employers be able to establish worker participation groups if they meet certain standards about employee selection, access to information, protection against reprisals?
- Should employers be required to offer their employees participation procedures meeting minimum quality standards?

Alliance Response: The Alliance finds the first two approaches to be less desirable than the revision provided in the TEAM Act, but the third approach, which mandates employee participation, we find to be totally objectionable. The first approach would revise Section 8(a)(2) so that it would no longer limit the freedom of *nonunion* employers to establish procedures by which its employees will “deal with” (as opposed to) “collectively bargain” about conditions of employment. Apparently, employee participation groups “dealing with” employers would continue to be considered “labor organizations” under Section 2(5), but the employers’ involvement with those groups would not be considered unlawful domination under Section 8(a)(2). Certainly, that approach would reduce the legal barriers to employee participation for some employers. As we have indicated, however, any concerns about the impact of Section 8(a)(2) on employee participation should not be limited to nonunion employers. Accordingly, we commend the TEAM Act as a more inclusive revision that all employers can utilize.

Although the second approach would relax Section 8(a)(2) to permit employers to establish employee participation procedures dealing with conditions of work, it also would subject those procedures to certain

standards pertaining to employee selection, access to information, protection against reprisals, and others. The Commission has recognized both the wide variety of employee participation arrangements that have been implemented and the substantial percentage of employees in large manufacturing firms involved, at least to some extent, in employee participation. Our concern with the second approach is that it would force employers to conform all of their employee participation programs to one set of inflexible requirements. The likely result of this unnecessary regulation would be exactly the opposite from its intended purpose—which reduces the impediments to employee involvement.

Finally, the third approach to revising Section 8(a)(2) that would *require* employers to offer their employees participation procedures meeting minimum quality standards is completely without merit. It assumes that *all* workplaces of *all* employers are equally amenable to a minimum degree of employee participation. That approach ignores the real differences that exist among employers as to the amount of management discretion needed in order to run their businesses effectively, as well as the differences in abilities and interests of various work groups in gaining a certain level of participation in the decisions affecting their jobs. Again, the approach of the TEAM Act is preferable, in that it *permits* greater employee participation, but does not *require* it.

Concluding Comments

Economic progress and a rising standard of living for current and future generations of American workers depends on industry's ability to raise productivity and compete successfully in global markets. Government policies affecting investment in new plant and equipment and the development of new skills required of a high-performance work force are prerequisites for improved productivity growth and for long-run economic progress. Research also has shown that recent workplace innovations in employee participation programs designed to improve product development and quality and enhance customer satisfaction have contributed to plant level productivity improvement.

While it is impossible to "legislate" successful employee involvement programs, the government should ensure that labor laws do not inhibit the voluntary introduction of such programs. The Manufacturers Alliance believes, however, that the Commission should be cautious about recommendations modifying labor laws to encourage employee participation initiatives. For some 50 years the legal framework underlying the U.S. industrial relations system has proven sufficiently flexible to adjust successfully to many changes in labor markets and in the structure of industry. We urge that if the Commission finds it necessary to recommend changes in the NLRA, such changes should be strictly limited to the specific sections of the act that actually impede new voluntary employee-management relationships.