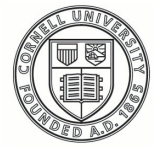

May 1994

Executive Summary of the Fact Finding Report of the Commission on the Future of Worker-Management Relations

Commission on the Future of Worker-Management Relations

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HOT TOPIC
"Commission - future
WORKER - MANAGEMENT"

FACT FINDING REPORT

EXECUTIVE SUMMARY

COMMISSION ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS

MAY 1994

U.S. Department of Labor

U.S. Department of Commerce

Commission on the Future of Worker-Management Relations

Report of Findings: Executive Summary

At the request of President Clinton, Secretary of Labor Robert B. Reich and Secretary of Commerce Ronald H. Brown appointed the Commission to investigate the current state of worker-management relations and to report on the following questions:

> "1. What (if any) new methods or institutions should be encouraged, or required, to enhance work-place productivity through labor-management cooperation and employee participation?
>
> 2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay?
>
> 3. What (if anything) should be done to increase the extent to which work-place problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?"

The Report of Findings provides the factual base and background, after further public hearings and comments from all interested parties, for a final report with recommendations planned to be completed in six months' time.

The report has four majors chapters with some final general observations.

I

Chapter I describes an environment for worker-management relations that is markedly different from what it was when the shaped decades ago. Sections of the chapter summarize, with statistical data, the dimensions of the changing economy, workforce, labor market and labor relations outcomes.

The Commission's findings with respect to the economy and labor market may be summarized in the following 25 critical factors:

1. A long-term decline in the rate of growth of productivity.

2. An increased globalization of economic life, reflected in trade and capital flows, and immigration.

3. Increased ability of U.S. firms to compete in the international marketplace in the late 1980s/early 1990s, due to changes in unit labor costs and exchange rates.

4. Changes in the work performed due to changing technology.

5. A shift in employment to service-producing sectors from goods-producing sectors.

6. A shift in the occupational structure of the workplace toward white collar jobs that require considerable education.

7. Millions of establishments and firms of different sizes, whose workplace practices and outcomes differ depending in part on the number of employees.

8. Turbulence in many product and financial markets due to deregulation and government cutbacks in defense or other programs.

9. A higher proportion of Americans working than ever before, due in large part to the movement of women into the workforce.

10. An increased minority share of the workforce.

11. Increased years of schooling by the workforce.

12. A workforce whose average age has increased as the baby boom generation has grown older.

13. An increased flow of immigrants from developing countries into the United States.

14. Substantial creation of jobs but high unemployment for the less skilled and considerable insecurity about jobs.

15. Stagnant real hourly compensation, with falling real compensation for male workers, both unprecedented in American economic history.

16. A rising gap in earnings between higher paid and more educated or skilled workers and lower paid and less educated workers, that is bifurcating the U.S. labor market.

17. A sizeable and growing number of low wage fully employed workers in the lower end of the earnings distribution whose real earnings fall below that of comparable workers in other advanced countries.

18. A decline in the pay gap of men and women, but which still leaves considerable gender-based pay differentials; and stagnation in the pay gap between non-white and white workers.

19. Annual hours of work that exceed those in other advanced countries except for Japan.

20. A growing number of jobs that diverge from full-time continuing positions with a single employer.

21. An increasing number and proportion of working age men incarcerated or under supervision of the criminal justice system.

22. Stagnant rates of occupational injury and illness and increased workdays lost per full-time worker, with increased workers' compensation costs.

23. A decline in the prevalence of collective bargaining.

24. Fewer strikes or lockouts.

25. Increased government regulations of the workplace.

The overall picture is one of dramatic changes. While our labor markets and employee-management relations system has done well in adjusting to change in some areas, notably job creation, it has done sufficiently poorly in others, notably stagnant real earning and growing inequality, to raise serious concerns about the "fit" between extant institutions and the web of regulations and the needs of employees and enterprises.

II

Chapter II describes the extent and characteristics of employee participation and labor-management cooperation in American workplaces. In recent years there has been a substantial expansion in the number and types of these plans. They are also described in a variety of terms - quality circles, employee participation teams, total quality management programs, self-managed teams, safety and health committees, gain sharing plans, information sharing forums, joint task forces, joint labor-management committees including training programs, employee ownership programs, worker representation on corporate boards of directors, etc.

These employee involvement and labor-management programs have arisen in response to pressures from international and domestic competition, technological changes, and related corporate restructuring. They are also influenced by a growing recognition that achieving high productivity and quality require changes in work organization that better utilize the potentials of the workforce.

These employee participation and labor-management cooperation plans function in only some workplaces. Some are of quite limited duration. Others are subject to a variety of risks and obstacles that limit their sustainability and diffusion.

Many small enterprises have informal processes for employee participation compared to the formal arrangement of larger workplaces.

The major findings of the Commission are as follows:

1. Employee participation, in a wide variety of forms, is growing and is partially diffused across the economy and the workforce, comprising one fifth to one third of the workforce. The value of these practices is realized best when combined into a total organizational system that rests on trust, information sharing and human resources practices of training and gain sharing, and where a union is present, a full partnership between union leaders and management. These "high performance" workplaces are estimated to exist in no more than five percent of workplaces.

2. Where employee participation is sustained over time and integrated with other policies and practices, the evidence suggests it generally improves economic performance.

3. Interest in participation can be expected to grow in future years as the education of the workforce rises, technology creates more opportunities to share information and delegate decision-making authority, and the pressures of competition require continuous improvement in productivity and quality.

4. Survey data suggest that between 40 and 50 million workers would like to participate in decisions on their job but lack the opportunities to do so.

5. Many managers, workers, and union representatives believe employee participation and labor-management cooperation are essential to being competitive in their industries and to meeting employee interest and expectations. However, some employees, middle managers, and union leaders are skeptical or critical of employee participation processes.

6. Labor representatives view employee participation as a means to enhance workplace democracy as well as economic competitiveness. The believe that independent representation is essential to achieving these goals.

Most management representatives see employee participation as an integral part of the work process and believe effective participation can be achieved in both union and non-union settings.

7. The labor and employment legislation enacted in the 1930s and related regulations raise questions about a variety of forms of contemporary employee participation. This is particularly true of (1) employment laws and regulations that distinguish between "exempt" and "nonexempt" employees or among "workers," "supervisors," and "managers," and (2) labor law that may limit the scope of employee participation in non-union settings.

III

Part A describes the experience under the National Labor Relations Act (Wagner Act,

1935 and the Taft-Hartley amendment, 1947). Part B is concerned with "contingent" workers, the Construction industry and the experience under the Railway Labor Act.

Part A focuses on how effectively the NLRA has worked to provide American workers the free choice whether or not to join a union and to bargain collectively with their employers, which is the unifying principle on which labor, business, and the American people concur.

In most workplaces with collective bargaining, the system of labor-management negotiations works well. Conflict is relatively low, and unions and firms have developed diverse forms of new cooperative arrangements. These relation among workers, their unions and managements in these workplaces are well-regarded by these parties.

Where much conflict and delay does occur is in the process of providing workers a democratic choice to organize a union, in previously unorganized workplaces. Only a small proportion of the U.S. workforce is involved in NLRB representation elections, and only a small number of employers and unions have been found guilty of unfair labor practices. NLRB representation elections are the way the nation offers workers the right to choose union representation, and conflicts in this arena can create an atmosphere of confrontation in worker-management relations throughout the economy.

The principle findings are summarized in the following points:

1. American society -- management, labor, and the general public -- support the principle that workers have the right to join a union and to engage in collective bargaining if a majority of workers so desire.

2. The number of NLRB elections held, the number of workers in elections, and the number in units certified for collective bargaining had diminished over the past several decades,

3. Representation elections as currently constituted are a highly conflictual activity for workers, unions, and firms, This means that many new collective bargaining relationships start off in an environment that is highly adversarial.

4. The probability that a worker will be discharged or otherwise unfairly discriminated against for exercising legal rights under the NLRA has increased over time. Unions as well as firms have engaged in unfair labor practices under the NLRA. The bulk of charges found meritorious are for employer unfair practices.

5. The legal relief afforded individual employees fired for exercising their rights under the NLRA was designed to be remedial. The legal relief afforded individuals under more recent employment law is more severe.

6. Relief to employees whose employer has bargained in bad faith with them requires the employer to cease and desist such tactics.

7. Roughly one third of workplaces that vote to be represented by a union do not obtain a collective bargaining contract with their employer.

8. There is a dismal aspect of American labor relations in which the rights of some individual workers are violated by some employers who resist the effort to organize.

Part B(1) notes that one of the significant developments of the past decade or two has been the growth in the number and proportion of workers with relationships to those that provide job opportunities that diverge from full-time continuing positions with a single employer. The term "contingent workers" often includes part-time workers, some of whom are voluntarily part-time, some of whom would like full-time work, and some of whom are multiple job holders. It also includes employees of temporary help agencies - who may be full-time workers - and some of the self-employed including "owner-operators" of independent contractors with only a single contract of employment.

The contingent worker issues pose a number of important and complex questions about the application and enforcement of employment laws, such as the Fair Labor Standards Act and labor-management statutes. The Commission intends to devote more attention to this subject.

Part B(2) reviews the conflicted developments and problems in the application of the National Labor Relations Act to the construction sector. It summarizes the views of the union and non-union segments of the industry as to changes in the present legal framework and poses questions for further deliberations.

Part B(3) concerns the experience under the Railway Labor Act affecting the railroad and airline industries. The factual review raises a number of specific questions for discussion with affected parties.

IV

Chapter IV concerns employment regulation, litigation and dispute resolution.

The National Labor Relations Act (and earlier Railway Labor Act) were the pioneering forms of federal, legal regulation of labor-management relations at the workplace. By the 1990s a very different model of legal intervention, employment law, has come to play a much more prominent role both on the job and in the courts.

American employees have now been promised a wide variety of legal rights and protections by both federal and state law makers. These include minimum wages, a safe and

healthy workplace, secure and accessible pensions and health benefits once provided, adequate notice of plant closings and mass layoffs, unpaid family and medical leave, and bans on wrongful dismissal, without discrimination on account of race, gender, religion, age or disability. Implementation and enforcement of these legal rights against noncomplying employers requires litigation in the ordinary courts and/or administrative proceedings before specialized agencies.

The workers best able to take advantage of the law are upper-level employees whose claims (usually about termination) are financially worthwhile to sue about, or groups of employees with some form of representation.

The Commission's summary findings include:

1. Federal laws governing the workplace increased dramatically since the 1960s, with a corresponding expansion in the regulations and rules that guide their administration and enforcement. Administration and enforcement are not always well funded, and compliance is not always achieved in some sectors.

2. The American workforce and workplaces have become more diverse, making it difficult for the laws and regulations to fit these changing circumstances.

3. The private institutions Americans have traditionally relied upon to resolve issues without resort to government regulations or court litigation, collective bargaining and grievance arbitration, declined in coverage and were limited in their finality by court decisions.

4. Neither mediation and arbitration, nor the newer more informal employee participation and alternative dispute resolution systems are being utilized to their full potential for dealing with issues and resolving disputes that now are regulated by law. These procedures would need to be modified if they are to fit different settings in enforcing public laws.

5. Workplace litigation caseloads and costs rose faster than other areas of law. Employment cases in the federal courts increased by over 400 percent between 1971 and 1991.

6. Agencies responsible for administering these laws experienced increasing backlogs and delays in processing cases.

7. The administrative procedures for resolving employment cases are complicated by (1) the large number of different agencies, enforcement regimes, and remedies available under the different statutes; and (2) the varying scope of judicial review accorded agency decisions.

8. The U.S. relies on the civil court system to litigate employment disputes while many other countries use specialized, tripartite employment courts.

9. Negotiated rule making can improve the efficiency and acceptability of the regulations required to implement and enforce the objectives of laws governing the workplace, but it has seldom been used for employment issues.

V

The Commission emphasizes the interdependence of the three issues presented to it and the interdependence of the findings of the previous three chapters. Employee participation, rights freely to exercise or refrain from representation, and dispute resolution are a seamless whole for the future of worker-management relations.