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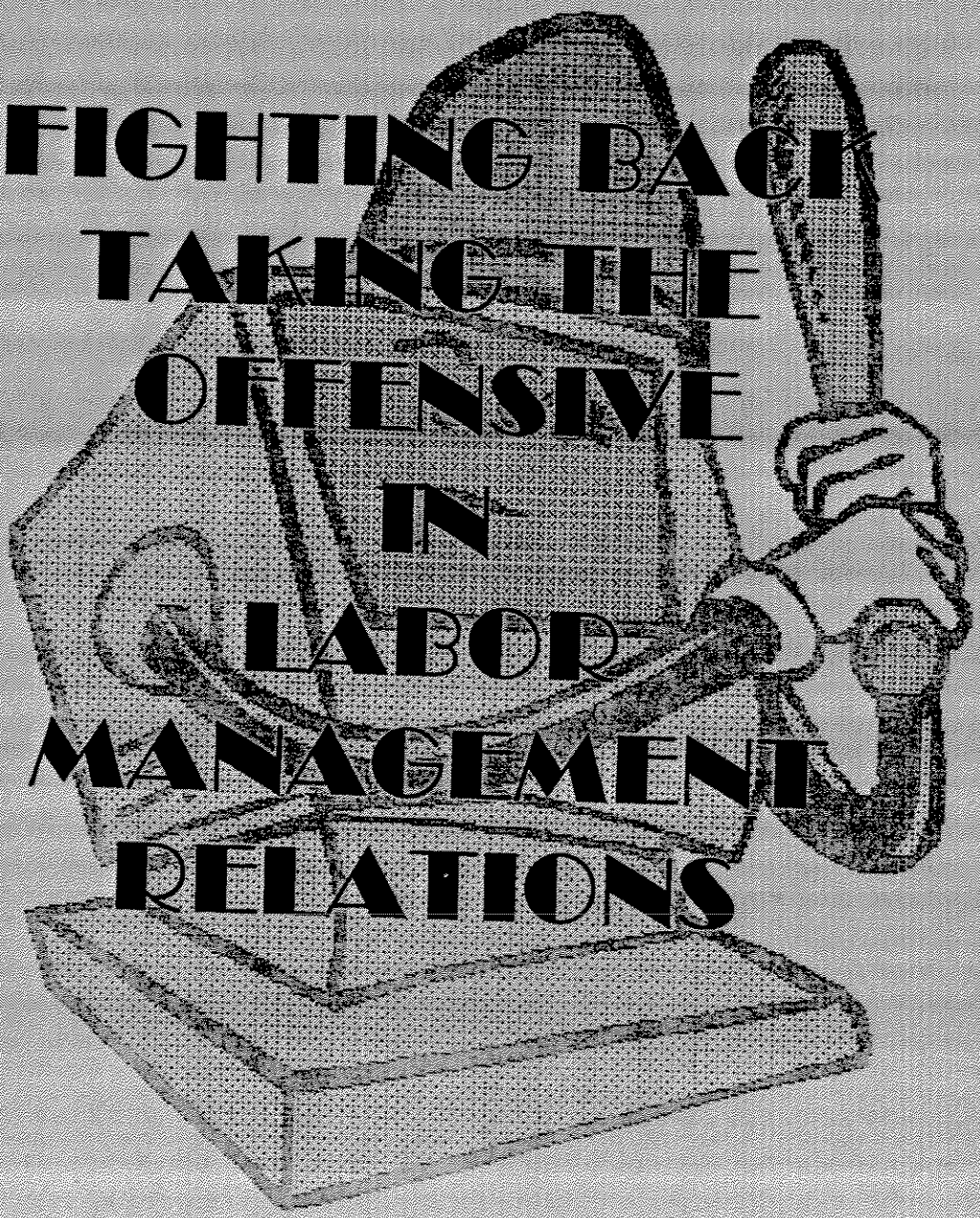

FIGHTING BACK: TAKING THE OFFENSIVE IN LABOR MANAGEMENT RELATIONS

Conducted by:

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prepared at APWU National Headquarters sl//opeiu #2, afl-cio

Working Smart

A Union Guide to Participation Programs and Reengineering

by Mike Parker and Jane Slaughter

with

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Contents

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Chapter 26

Legal Status of Participation Programs

Under current law, participation programs are illegal without union approval. Unions have the right to "just say no." A union can ask the NLRB to disestablish a unilaterally-imposed program. Within a program, unions may insist on the "collective bargaining model," with each side functioning in its own interests.

by Ellis Boal

SECTION 8(a)(2)[1] OF THE NATIONAL LABOR RELATIONS ACT gives unions considerable power in dealing with employee participation programs. It declares that a company cannot dominate a labor organization. National Labor Relations Board cases brought by unions against participation programs—*Electromation*,[2] *DuPont*,[3] and others—show that 8(a)(2) is very usable.

NLRA Section 8(a)(5)[4] is equally important. It says a company must bargain in good faith once a union is recognized.

For a variety of reasons unions have brought few 8(a)(2) cases against participation programs. Even so, employer organizations are working to reinterpret or amend these laws in the courts and Congress.

As this book goes to press Congress has not acted. This chapter reflects the law as of 1994. If the law is subsequently changed, write to Labor Notes for an update. Even if it is changed, employer conduct committed while the old law was in effect will still be judged under the old law.[5]

Copies of the cases, laws, and regulations noted here are available at any law library. For a more extensive treatment than what follows, see chapter 41.

ILLEGAL WITHOUT UNION APPROVAL

The bottom line is that under the current law virtually all real-life participation programs are illegal without union approval, and some may be illegal even if the union consents to them. A program set up unilaterally by the employer will be struck down by the NLRB, if the union challenges it.

Because the National Labor Relations Act itself is so clear, the NLRB and the Supreme Court have been clear in their rulings. Following is a summary of the legal principles.

Finally, although legalities are important, any union's strategy toward a participation program is advanced immeasurably by an organizing approach: an educated, mobilized, and informed workforce.

DOMINATION AND ASSISTANCE

1. Under section 8(a)(2), an employer may not dominate or assist a team, circle, task force, any participation group that is a labor organization, or any other entity that is a "labor organization."[6]

2. The difference between domination and assistance is a matter of degree. The significance of the distinction is that in the first case the NLRB will order the dominated entity itself to be disbanded ("disestablished"), and in the second it will issue only a cease-and-desist order to the company to stop assisting.[7]

3. Unlawful domination can take many forms. The presence of one or more of the following can mean domination: controlling the membership of the participation group,[8] paying for members' time in participation groups,[9] providing meeting space and materials,[10] requiring supervisory personnel to be present in participation group meetings,[11] controlling the group's agenda,[12] controlling the facilitator or training,[13] giving extra perks to

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Ellis Boal is a lawyer in Detroit. He wrote Labor Notes' brief in Electromation *and its submission to the Commission on the Future of Worker-Management Relations.*

the labor-side members,[14] requiring a consensus decision-making procedure thus giving supervisor members of the group a veto,[15] and having no formal structure, dues, or officers.[16]

The NLRB has not specifically ruled on the legality of groups which prohibit labor-side caucuses or distribution of group information to the rank and file, but presumably groups that prohibited these actions would also be held to be dominated.

4. Unlawful assistance can also take many forms. Examples: having company officers vote on a contract proposal,[17] providing clerical support,[18] and permitting a superintendent to be a union officer.[19] (The most commonly litigated example, recognition of a union without objective evidence a majority of the workers support it, does not usually arise in participation cases.[20])

5. An employer that provides meeting space and pays for the time of stewards or shop committee members to negotiate or process grievances does not thereby unlawfully assist that committee, if the space and payments are provided by a collective bargaining contract negotiated at arm's length.[21]

'LABOR ORGANIZATION'

6. It is only a "labor organization" that the employer is forbidden to dominate or assist. A labor organization is defined in section 2(5)[22] as any body 1) in which "employees participate" and 2) whose purpose at least in part is to "deal" with the employer about wages and/or working conditions.[23]

7. A union is therefore a labor organization, and employers may not dominate unions (including NLRB-certified unions[24]). Participation groups can also be "labor organizations" susceptible to illegal domination.[25]

8. "Dealing" does not necessarily have to involve "bargaining." A participation group can be a labor organization dealing with management even though it has no contracts and/or does not try to bargain contracts.[26] It is a labor organization if its purpose is to deal with employers even if it has never actually done so.[27]

9. "Working conditions" cover a broad range. They can include matters that are not in the contract or are non-grievable.[28] Thus work standards and work rules,[29] work hours,[30] work schedules,[31] work loads,[32] and work assignments[33] are considered working conditions. If the participation group also gets involved in management prerogatives not related to working conditions (such as product design, advertising, or investment), it is still a labor organization if it exists "in part" to deal about working conditions.[34]

10. A participation group can be a labor organization even if it has supervisors in it.[35]

11. The NLRB has to date left open the question whether it is a necessary part of the definition of a labor organization that a participation group's members subjectively interact with or "represent" the workforce.[36]

12. A "brainstorming session," where workers spin out ideas but do not necessarily expect or get any management response,[37] is not a labor organization.

13. A "work crew," where workers simply do their work together, is not a labor organization.[38] Though the NLRB has not considered such a case, if a work crew had periodic meetings where working conditions were discussed, it would presumably become a labor organization on those occasions.

14. A body, such as a shop committee, civil rights committee, or bargaining committee, which is a subcommittee of a recognized union is not a labor organization. It is not a separate entity.[39]

15. A two-sided joint committee engaged in ongoing collective bargaining or grievance handling is not a labor organization.[40] Rather it is an ongoing coupling or meeting of two distinct sides, each with their own constituency. In a joint committee the labor-side members either are a labor organization or are a subcommittee of a labor organization.[41]

BAD FAITH BARGAINING

16. It is bad faith bargaining under section 8(a)(5) for a company to set up a participation program against a union's wishes. A recognized union has the absolute legal right to "just say no" to company proposals for a participation program.[42]

17. The union may demand the names of any officers or stewards who have applied for management positions.[43] The union can amend its constitution to bar from office anyone who has applied.[44]

DANGERS FOR THE UNION

18. The union is the exclusive representative of the workers in its unit.[45] If a union allowed participation groups to function autonomously without union monitoring or a union presence in each group, a group might emerge as an illicit dual power on the floor.[46] A group untethered to the union could assume a separate obligation to represent members fairly.[47] It could itself be charged as a dominated labor organization,[48] and the union could be charged for failure to represent for allowing the group to exist.[49]

MEMBERSHIP ACTION

19. Concerted worker agitation for or against a participation program, and agitation within a participation group for better conditions, is protected activity.[50] Provided members continue to obey direct orders, they may not be fired for organizing, educating other members, and speaking their minds to others. Efforts to press for better product quality through the team, however, are not protected.[51]

20. The employer may not use a participation program to interrogate an employee in the absence of a requested steward.[52]

21. Workers who participate in participation groups as management-appointed leaders or facilitators may find themselves legally ruled to be supervisors without union protection.[53] Elected leaders have been held to be on a different footing.[54]

22. When management wants a quality program, members might strive for quality by working to rule—concertedly and rigidly following management's explicit rules. There are no NLRB decisions specifically on discipline for working to rule. But working to rule is legitimate so long as workers can point to specific rules they are following, and there is no refusal to obey direct orders. However, use of similar tactics (partial strikes, intermittent strikes, refusals to work scheduled overtime, slowdowns) to achieve tactical advantage (such as during contract negotiations) are unprotected.[55]

CONDUCT CODE

23. A union might consider adopting an "honor code" or "code of conduct" to educate members involved in teams. The idea is that a member should never do or say anything that could get a fellow member in trouble or out of work. Without education, an unthinking member giving the employer an assist might do this. Ideally, everyone complies with a code either through feelings of solidarity or through peer pressure.

In extreme cases union codes might be enforced with union discipline. "Conduct unbecoming a union member" is a time-honored charge in the bylaws of practically every union, traditionally used against strikebreakers. Members who cooperate with management in teams against the whole membership's interest are just as bad.[56]

Discipline, after a union trial with due process,[57] legally can range from counselling to ostracism, barring from attending meetings or holding office, suspension, expulsion, and court-enforceable fines.

Codes of conduct should be handled carefully if they are to be enforced by more than counselling or ostracism. The legal rules are intricate, and vary according to the type of conduct of the offending member, the type of sanction ordered by the trial committee, and changing policies of the NLRB. Generally, the NLRB and courts are more interested in individual rights than collective rights in these situations.

NLRB PROCEDURE

24. Workers and/or unions suspicious of participation programs as company-dominated set-ups on the shop floor

Union Had Right To Say No

The contract between Deerfield Plastics and United Electrical Workers Local 274 expired in 1991. The company then proposed an Employee Involvement program and refused to bargain on anything else until that was settled first.

The local filed an NLRB charge, saying that EI was not a mandatory issue of bargaining—the company could not force the union to bargain about it.

While the charge was still pending, the UE decided to agree to a program in negotiations, but under its own terms:

- the union could select the employee members on the teams
- only 15 named topics could be discussed—all of them production and quality issues
- any changes in working conditions would be voted on by the membership.

Later, the NLRB endorsed the union's position by requiring the employer to post a notice in the plant: that EI is a subject that can only be bargained with the union's permission, and the company could not declare an impasse over that subject.

Back on the shop floor, the union was not idle. "The company wanted big changes in one department," says UE International Rep David Cohen, "and they tried to form an EI committee on that subject. The union allowed volunteers, and the only two who volunteered were two guys who were pretty close to the company.

"So the company rammed through all these changes that they wanted. When these two guys brought it back for a vote in that department, the people unanimously voted it down. These two guys were under so much pressure that even they voted against it.

"So we had destroyed the committees in the plant anyhow."

[The UE now circulates an Organizer's Bulletin describing what the union won in this fight, to help other locals beat back similar plans. It is available from UE Local 274, 80 School St., Greenfield, MA 01301.]

may challenge them at their local NLRB office by simply filing a charge giving the date of the conduct and outlining the facts in a few sentences. A lawyer is not necessary and anyone can file.[58] There is no filing fee. The statute of limitations for filing and serving is six months from the date the employer did the illegal act.[59] The six months begins when the final decision is made and communicated.[60] The time limit can sometimes be extended beyond six months, if the violation "continues" into the six-month period.[61]

COLLECTIVE BARGAINING MODEL

25. Though the NLRB has not yet directly ruled on this point, in a case where the facts showed a participation group dealt with working conditions, the Board would likely hold that legally, the group must conduct itself as a two-sided bargaining session.

Thus in cases where participation groups dealt with the employer on working conditions, the NLRB General Counsel has held that a union is privileged to appoint only union members to a participation group.[62] This is because ordinarily in negotiations the composition of the labor side is an internal union matter with which the employer may not interfere.[63]

Labor Notes calls this the "collective bargaining model" of participation.

In this model, there is a union presence in each participation group. The labor-side members of each team have and exercise the right to caucus separately. Their decisions are subject to leadership consultation and/or membership ratification. As in any other bargaining, if the two sides cannot compromise, the matter can be grieved to an outside arbitrator. Or, if there is a right to strike during the contract over grievances,[64] or if the contract has expired, after impasse the union side of the team can assert or exercise the right to strike.

Notes

1. NLRA Section 8(a)(2), 29 USC 158(a)(2).

2. *Electromation Inc*, 309 NLRB # 163, 142 LRRM 1001 (1992), aff'd ___ F2d ___, 147 LRRM ___ (CA7, 1994).

3. *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121, 1123 (1993).

4. NLRA Section 8(a)(5), 29 USC 158(a)(5).

5. *Landgraf* v *USI Film Products*, ___ US ___, 114 S Ct 1483 (1994); *Rivers* v *Roadway Express Inc*, ___ US ___, 114 S Ct 1510 (1994).

6. NLRA Section 8(a)(2), 29 USC 158(a)(2).

7. *NLRB* v *UMW District 50*, 355 US 453, 458-59, 78 S Ct 386 (1957).

8. *Electromation Inc*, 309 NLRB # 163, 142 LRRM 1001 (1992), aff'd ___ F2d ___, 147 LRRM ___ (CA7, 1994); *F M Transport*, 306 NLRB # 156, 139 LRRM 1389 (1992); *Spiegel Trucking Co*, 225 NLRB 178, 179, 92 LRRM 1604, 1606 (1976).

9. *Rensselaer Polytechnic Institute*, 219 NlRB # 85, 89 LRRM 1879 (1975); *Spiegel Trucking Co*, 225 NLRB 178, 179, 92 LRRM 1604, 1606 (1976).

10. *Spiegel Trucking Co*, 225 NLRB 178, 179, 92 LRRM 1604, 1606 (1976).

11. *Ryder Distribution Resources*, 311 NLRB # 81, 143 LRRM 1225 (1993); *Spiegel Trucking Co*, 225 NLRB 178, 179, 92 LRRM 1604, 1606 (1976).

12. *Research Federal Credit Union*, 310 NLRB # 13, 142 LRRM 1250 (1993).

13. *Ryder Distribution Resources*, 311 NLRB # 81, 143 LRRM 1225 (1993).

14. *Ryder Distribution Resources*, 311 NLRB # 81, 143 LRRM 1225 (1993);

15. *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121, 1123 (1993).

16. *Spiegel Trucking Co*, 225 NLRB 178, 179, 92 LRRM 1604, 1606 (1976).

17. *Upper Great Lakes Pilots Inc*, 311 NLRB # 21, 144 LRRM 1060 (1993).

18. *Upper Great Lakes Pilots Inc*, 311 NLRB # 21, 144 LRRM 1060 (1993).

19. *NLRB* v *General Steel Erectors*, 933 F2d 568, 137 LRRM 2466 (CA7, 1991).

20. *Garment Workers (Bernhard-Altmann Texas Corp)* v *NLRB*, 366 US 731, 81 S Ct 1603, 48 LRRM 2251 (1961).

21. *BASF Wyandotte*, 274 NLRB # 147, 119 LRRM 1035 (1985), aff'd 798 F2d 849, 123 LRRM 2320 (CADC, 1986).

22. NLRA Section 2(5), 29 USC 152(5).

23. NLRA Section 2(5), 29 USC 152(5).

24. *Homemaker Shops Inc*, 261 NLRB # 50, 110 LRRM 1082 (1982), enf denied on other grounds, 724 F2d 535, 115 LRRM 2321 (CA6, 1984).

25. *Titanium Metals Corp* Cases ## 31-CA-16000, 31 CB 6773, 125 LRRM 1375 (GC Advice Memo, 1987); *US Postal Service*, Case # 19-CA-16909(P), 118 LRRM 1654 (GC Advice memo, 1985); *Local 235 UAW*, 313 NLRB # 18 (1993) (summary affirmance of ALJ); *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121, 1123 (1993); *Cabot Carbon Co*, 117 NLRB 1633, 1640, 1644, 40 LRRM 1058 (1957), aff'd sub nom *NLRB* v *Cabot Carbon Co*, 360 US 203, 79 S Ct 1015 (1959); *James H Matthews & Co* v *NLRB* 156 F2d 706, 707 (CA3, 1946); cf *Sears Roebuck & Co*, 274 NLRB 230, 243-44, 118 LRRM 1329 (1985) (summary affirmance of ALJ).

26. *NLRB* v *Cabot Carbon Co*, 360 US 203, 79 S Ct 1015 (1959); *E I DuPont de Nemours & Co*, 311 NLRB # 88, ___, 143 LRRM 1121, 1123 (1993).

27. OLMS Interpretative Manual 030.610-12.

28. *NLRB* v *Jacobs Mfg Co*, 196 F2d 680, 30 LRRM 2098 (CA2, 1952); *Titanium Metals Corp* Cases ## 31-CA-16000, 31 CB 6773, 125 LRRM 1375 (GC Advice Memo, 1987); *US Postal Service*, Case # 19-CA-16909(P), 118 LRRM 1654 (GC Advice memo, 1985); *Local 235 UAW*, 313 NLRB # 18 (1993) (summary affirmance of ALJ); *E I DuPont de Nemours & Co*,

311 NLRB # 88, 143 LRRM 1121, 1123 (1993); *Cabot Carbon Co*, 117 NLRB 1633, 1640, 1644, 40 LRRM 1058 (1957), aff'd sub nom *NLRB* v *Cabot Carbon Co*, 360 US 203, 79 S Ct 1015 (1959).

29. *Miller Brewing Co*, 166 NLRB # 90, 65 LRRM 1649 (1967), enf'd 408 F2d 12, 70 LRRM 2907 (CA9, 1969).

30. *Meat Cutters* v *Jewel Tea Co*, 381 US 676, 85 S Ct 1596, 59 LRRM 2376 (1965).

31. *Inter-City Advertising Co Inc*, 61 NLRB 1377, 16 LRRM 153 (1945), enforcement denied on other grounds, 154 F2d 244, 17 LRRM 916 (CA4, 1946).

32. *Beacon Piece Dyeing & Finishing Co*, 121 NLRB # 113, 42 LRRM 1489 (1958).

33. *Charmer Industries Inc*, 250 NLRB 293, 104 LRRM 1368 (1980).

34. NLRA Section 2(5), 29 USC 152(5).

35. *Masters, Mates & Pilots (Chicago Calumet Stevedoring Co)*, 144 NLRB 1172, 54 LRRM 1209 (1963), supplemented, 146 NLRB 116, 55 LRRM 1265 (1964), enf'd 351 F2d 771, 59 LRRM 2566 (CADC, 1965).

36. *Electromation Inc*, 309 NLRB # 163, 142 LRRM 1001, 1006 n 20, 1008 (1992), aff'd ___ F2d ___, 147 LRRM ___ (CA7, 1994); *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121, 1123 n 7, 1126 n 17 (1993).

37. *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121, 1123-24, 1126 (1993).

38. *General Foods Corp*, 231 NLRB # 122, 96 LRRM 1204 (1977).

39. OLMS Interpretive Manual 030.603, 634. Cf *General Shoe Corp*, 122 NLRB # 192, 43 LRRM 1350 (1959); *Warner* v *McLean Trucking Co*, 136 LRRM 2633 (SD Ohio, 1991).

40. OLMS Interpretive Manual 030.625.

41. OLMS Interpretive Manual 030.603, 625, 634. Cf *General Shoe Corp*, 122 NLRB # 192, 43 LRRM 1350 (1959); *Warner* v *McLean Trucking Co*, 136 LRRM 2633 (SD Ohio, 1991).

42. *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121 (1993); *E I DuPont de Nemours & Co*, Case 4 CA 16801, JD 208 89 (1/30/90) (summary affirmance of ALJ); *Jafco*, 284 NLRB # 139, 126 LRRM 1038 (1987); *Oak-Cliff-Golman Baking Co*, 207 NLRB 1063, 85 LRRM 1035 (1974), enf'd 505 F2d 1302, 90 LRRM 2615 (CA5, 1974), cert denied 423 US 826 (1975); *Defense Logistics Agency, Defense Depot Tracy* and *Laborers Local 1276*, FLRA Case No 9 CA 20241 (1983).

43. *NLRB* v *US Postal Service*, 841 F2d 141, 145, 127 LRRM 2807 (CA6, 1988).

44. *Martin* v *Letter Carriers Branch 419*, 965 F2d 63, 140 LRRM 2442 (CA6, 1992).

45. *Emporium Capwell Co* v *Western Addition Community Organization*, 420 US 50, 95 S Ct 977 (1975).

46. *Cabot Carbon Co*, 117 NLRB # 211, 40 LRRM 1058 (1957), aff'd 360 US 203, 79 S Ct 1015 (1959).

47. *Steelworkers* v *Rawson*, 495 US 362, ___, 110 S Ct 1904, 1911 (1990); *Electrical Workers* v *Hechler*, 481 US 851, 860, 107 S Ct 2161 (1987); *Sams* v *Food & Commercial Workers*, 866 F2d 1380, 130 LRRM 2805 (CA11, 1990); *Warner* v *McLean Trucking Co*, 136 LRRM 2633 (SD Ohio, 1991); *General Shoe Corp*, 122 NLRB # 192, 43 LRRM 1350 (1959).

48. *Cabot Carbon Co*, 117 NLRB # 211, 40 LRRM 1058 (1957), aff'd 360 US 203, 79 S Ct 1015 (1959).

49. *NLRB* v *Magnavox Co of Tennessee*, 415 US 322, 94 S Ct 1099 (1974); *Ford Motor Company (Rouge Complex)*, 233 NLRB # 102, 96 LRRM 1513 (1977); *Ford Motor Co*, 221 NLRB # 99, 90 LRRM 1731 (1975), enf'd, 547 F2d 418, 93 LRRM 2570 (CA3, 1976); *Boilermakers Local 202*, 300 NLRB # 4, 135 LRRM 1142 (1990); *Branch 6000 Letter Carriers* v *NLRB*, 595 F2d 808, 100 LRRM 2346 (CADC, 1979); *Walker* v *Teamsters Local 71*, 714 F Supp 178, 191, 131 LRRM 3185 (WDNC, 1989), aff'd in part and rev'd in part 930 F2d 376, 137 LRRM 2059 (CA4, 1991), cert denied 112 S Ct 636, 637 (1991); *Service Station Operators (Ulrich Oil Co)*, 215 NLRB # 154, 88 LRRM 1152 (1974).

50. *Hancor Inc*, 278 NLRB 208, 121 LRRM 1311 (1986).

51. *Harrah's Lake Tahoe Resort Casino*, 307 NLRB # 29, 140 LRRM 1036 (1992).

52. *NLRB* v *J Weingarten Inc*, 420 US 251, 95 S Ct 959 (1975).

53. *Health Care & Retirement Corp of America* v *NLRB*, ___ US ___, 114 S Ct 1778, 146 LRRM 2321 (1994) (licensed practical nurses); *J C Brock Corp*, 314 NLRB # 34, 146 LRRM 1193 (1994) (line coordinators).

54. *Anamag*, 284 NLRB # 72, 125 LRRM 1287 (1987).

55. *Elk Lumber Co*, 91 NLRB 333, 26 LRRM 1493 (1950) (slowdown); *Valley City Furniture Co*, 110 NLRB 1589, 35 LRRM 1265 (1954), enf'd 230 F2d 947, 37 LRRM 2740 (CA6, 1956) (refusal to work overtime); *Honolulu Rapid Transit Co*, 110 NLRB 1806, 35 LRRM 1305 (1954) (weekend strikes); *Pacific Telephone & Telegraph Co*, 107 NLRB 1547, 33 LRRM 1433 (1954) (pattern of intermittent strikes).

56. Cf *NLRB* v *Allis-Chalmers Co*, 388 US 175, 87 S Ct 2001 (1967); *Scofield* v *NLRB*, 394 US 423, 89 S Ct 1154 (1969); *Meat Cutters Local 593 (S & M Grocers)*, 237 NLRB # 181, 99 LRRM 1123 (1978); *Boilermakers (Kaiser Cement Corp)*, 312 NLRB # 48, 144 LRRM 1121 (1993).

57. LMRDA Section 101(a)(5); 29 USC 401(a)(5).

58. *Vee Cee Provisions Inc*, 256 NLRB #125, 107 LRRM 1416 (1981), enf'd 688 F2d 827, 111 LRRM 2833 (CA3, 1982).

59. NLRA Section 10(b), 29 USC 160(b).

60. *Teamsters Local 42* v *NLRB*, 825 F2d 608, 615, 126 LRRM 2046 (CA1, 1987); *E I DuPont de Nemours & Co*, 311 NLRB # 88, 143 LRRM 1121 (1993).

61. *Teamsters Local 293 (R L Lipton Distributing Co*, 311 NLRB # 58, 143 LRRM 1237 (1993).

62. *Titanium Metals Corp*, Cases 31-CA-16000, 31-CB-6773, 125 LRRM 1375 (GC Adv Mem, 3/31/87); *US Postal Service*, Case 19-CA-16909(P), 118 LRRM 1654 (GC Adv Mem, 1/22/85). Cf *Letter Carriers Branch 6000*, 232 NLRB # 52, 96 LRRM 1271 n 1 (1977), aff'd *Letter Carriers Branch 6000* v *NLRB*, 595 F2d 808, 100 LRRM 2346 (CADC, 1979).

63. *General Electric Co* v *NLRB*, 412 F2d 512, 71 LRRM 2418 (CA2, 1969).

64. *NLRB* v *Lion Oil Co*, 352 US 282, 77 S Ct 330 (1957).

Chapter 27

Postal Workers: We Reject All Company Unions

The American Postal Workers Union has consistently rejected Employee Involvement programs, from the national level down. When the union filed charges, the NLRB got the Postal Service to agree to stop using EI to bypass the union and deal directly with employees. The Postal Service was using such programs as early as the 1920s to avoid the union.

by Greg Poferl

OF THE FOUR MAJOR POSTAL UNIONS, only the American Postal Workers Union has rejected the U.S. Postal Service's Employee Involvement (EI) program. APWU represents clerks, maintenance workers, and motor vehicle operators.

In early 1992, the APWU won a major victory in its ongoing fight against USPS labor law violations committed through its Employee Involvement/Quality of Work Life program. In a National Labor Relations Board settlement agreement, the USPS agreed to post notices throughout the country advising employees that management would stop using EI/QWL committees to bypass the union or deal directly with APWU unit employees. Management would no longer bargain with EI/QWL committees over terms and conditions of employment of APWU unit employees.

The settlement resolved issues raised in the NLRB's 90-page complaint alleging that the Postal Service's EI/QWL program violated the law. That complaint consolidated more than 50 charges in over 25 locations, from Ithaca, New York to Los Angeles.

In the complaint, the NLRB charged that the EI committees were management-"dominated and assisted" labor organizations, and therefore illegal. They had discussed mandatory subjects of bargaining that affected APWU members without the union's input.

The Labor Board said management had made unilateral changes in working conditions arising from discussions in EI meetings. For example, the NLRB said, USPS worked through the EI teams to establish attendance and smoking rules, sick leave and safety policies, and starting times.

In Ithaca, the first local where the NLRB filed a charge, President Mike Oates said, "In our case, they forced an APWU member to attend an EI meeting. They gave him a direct order."[1] The Ithaca EI team discussed discipline for failure to wear picture ID's; express mail delivery procedures; hours of work; employee awards for not using sick leave; and changing start times. Other issues discussed by EI committees in the complaining locations included allocation of parking spaces, work flow and assignments, placement of water fountains, painting of break rooms, smoking areas, incentive awards, use of phones, changed job descriptions, use of particular machinery, and attempts at resolving grievances.

The NLRB found that the EI committees had received franking privileges, use of phones for long distance calls, typewriters, and payment of wages to employees while attending meetings. All of this employer "aid and assistance" was withheld from the APWU.

Management agreed to provide the APWU with minutes of the EI/QWL meetings that went on with the other unions on-site. The APWU argued that it needed this information to enforce its right not to be affected by the EI program. An arbitrator upheld this right as well.[2]

APWU President Moe Biller, who led the APWU's fight against EI, said settlement of the NLRB complaint is a "victory in our ongoing struggle against company unions, which the USPS attempts to disguise as EI/QWL

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committees. The NLRB has again upheld APWU's position that the USPS has used the EI/QWL program as a vehicle for union avoidance..."

AFTER TEN YEARS...

Since 1983, the Postal Service has spent untold millions on outside consultants to develop EI programs, allegedly to improve operations and service. Yet, after ten years with some 6,000 EI/QWL committees in place, EI is a flop.

The Postal Service continues to ballyhoo these phony programs. Where they fail or meet worker resistance, the programs are repackaged and recycled under the "new and improved" heading in hope that a few of them will take root. A partial list follows:

- focus groups
- employee advisory councils
- quality process groups
- employee opinion strategies
- quality of life programs
- "commitment to employees" programs
- employee satisfaction committees
- employee of the month competitions
- employee opinion survey groups
- quality first teams
- quality clerk positions
- leadership team performance clusters
- lunch with the boss
- tiger teams

WHAT IS MANAGEMENT REALLY UP TO?

The Postal Service stubbornly holds to the popular private sector propaganda that EI programs and other gimmicks promoting "quality" are a prerequisite for any company to remain competitive in the global economy. But the real story behind management's focus on "quality" is different. We experience it first hand.

Recently, I had the opportunity to work on a labor-management task force to improve operations at the Mail Equipment Shops. Our goal was to eliminate once and for all any need to subcontract.

For several meetings we listened attentively to management's concerns regarding operational needs, productivity, and outsourcing. But when the union offered concrete proposals to increase efficiency by implementing alternative work schedules and reducing supervisory positions, management was stunned. It quickly became apparent they only wanted to focus on their agenda.

Recent developments at the Postal Data Centers and Supply Centers show yet another side of management's idea of "cooperation." Management has been using blatant union-avoidance tactics such as "lunch-with-the-boss" and work floor strategy sessions to improve morale, quality, and productivity. These activities have not gone unchallenged by the APWU locals; however, despite the 1992 NLRB settlement, postal supervisors continue to ignore their legal and contractual obligations.

OLD TRICKS

Management's "union avoidance" committees hark back to the early 1920s. The 1945 book, *History of the National Federation of Post Office Clerks*, discusses the 1921 "New Era" of postal unionism:

> The new Postmaster General, Will Hays, announced that he had in mind the creation of a Welfare Department through which employees could canalize [channel] their grievances and suggestions for a better Postal Service and better working conditions. An as yet unselected "big man" would be asked to head the welfare service.
>
> Experienced trade unionists are always inclined to look askance at any of these "welfare" concessions as merely backfires set by so-called "liberal" or paternalistic types of employers to head off or destroy real independent unionism. By granting pseudo-recognitions or "employee representation plans," actual and bona fide union recognition is avoided as "unnecessary." In fact, unionism is dismissed as "old fashioned and obsolete."
>
> These "welfare councils" in private industry usually labor mightily to provide extra water coolers, ice, free soap and towel service, better furniture in the restrooms, more lights or larger spittoons or any other "reasonable" requests which the employee may make.
>
> Better wages, shorter hours, union recognition or a closed shop, however, are met with a show of injured feelings as clearly demonstrating the gross ingratitude and insatiable unreasonableness of the workers or the fact that radical snakes are loose in the Garden of Eden.

AS APWU SEES IT

Notwithstanding the APWU's rock-solid stand against EI and other bogus programs trumpeting workplace harmony, our union does have a traditional commitment to cooperation with management which flows directly from our collective bargaining agreement.

We have negotiated national as well as local and regional labor-management meetings, which have existed since we've had collective bargaining. These can best be defined as "arms-length" meetings of the two parties to deal with issues of mutual concern, including ones that are not grieveable. These meetings have discussed safety and health, ergonomics, alternative work schedules and flextime, training, staffing, and technology and mechanization issues. They are carried out in the spirit of collective bargaining.

> At last, in this memorandum, the foundation for real cooperation—Union involvement—has been established. The Postal Service makes an unprecedented statement recognizing the role of the union as the employees' representative:
>
> *"The Postal Service will work through the national, regional and local union leadership, rather than directly with employees* on issues which affect working conditions and will seek ways of improving customer service, increasing revenue, and reducing costs [emphasis added]. Management also recognizes the value of union input and a cooperative approach on issues that will affect working conditions and postal policies and affirms the intent of the parties to jointly discuss such issues prior to development of such plans and policies."
>
> No one should get the idea that this commitment to work through the union means that employees' input will be excluded in the listed areas. The opposite is true. Broad-based, rank-and-file employee involvement in all areas of their work lives is encouraged—but *through their union—APWU...*
>
> The fact is that the union *is* the employees—it is *their self-created and freely-chosen representative. The law flatly prohibits management from creating a representative body for employees.* Cooperation is easy enough when management's and employees' interests coincide, but that is not always the case...

Our labor history, especially the tumultuous beginnings of the American Postal Workers Union in the Great Postal Strike of 1970, has taught us that solidarity is our strength. Any employer program that could in any way weaken postal worker solidarity must be stamped out.

APWU has aggressively fought the Postal Service's multiform EI programs, but we have come to realize this is only a part of the struggle. Postal workers want and deserve a strong voice at their places of work. Through "Union Involvement," the APWU must continue to build *real* workplace democracy, which is, after all, one of the labor movement's greatest challenges in the 1990s.

Notes

1. Mark Kodama, "Employee Program Violates Labor Law, Board Charges," *Federal Times*, July 8, 1991, p. 13.

2. Roman Lewis, "Employee Participation Programs: A critical look at their development," paper written in Masters in Labor Law program, Georgetown University Law Center, Washington, D.C., 1994, pp. 42-46.

Industrial Relations Research Association
47th Annual Meeting, January 6, 1995,
Omni Shoreham Hotel, Washington, D.C.

Workshop On

The Potential Impact Of Alterations To Section 8(a)(2) On Unions And Union Organizing Campaigns

SECTION 8(a)(2) AND THE PERCEPTION OF REALITY

by

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As we know too well, in politics the perception of reality is more important than reality itself. That is why Section 8(a)(2) is in danger. The perception of the Electromation[1] case is that it concerned employee participation and team concepts and therefore the Board's decision has had a "chilling" effect on such programs, thereby threatening American competitiveness in the world market. The reality of Electromation was that the only issue before the Board was a watered-down employee negotiating procedure which the employer had unilaterally created to deal with a limited number of mandatory subjects of bargaining. This procedure consisted of five so-called "action committees" that were imposed upon its employees without their consent. In the words of Board Member Devany, that procedure "gave employees the illusion of a bargaining representative without the reality of one."[2] Neither the action committees nor any other facts in the case concerned employee teams or worker participation in the production process. Affirming the Board's decision, a unanimous panel of the Seventh Circuit Court of Appeals spelled out the elements of the company's unlawful conduct,[3] thereby emphasizing

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[1] 309 NLRB 990 (1992), *aff'd*, 63 U.S.L.W. 2174 (7th Cir. Sept. 15, 1994).

[2] 309 NLRB at 1003.

[3] The court's opinion stated:

> The company played a pivotal role in establishing both the framework and the agenda for the action committees. Electromation unilaterally selected the size, structure, and procedural functioning of the committees; it decided the number of committees and the topic(s) to be addressed by each....Electromation actually controlled which issues received attention by

that the real issue in the case concerned the fundamental right of employees to choose for themselves which labor organization, if any, will represent them in dealing with their employer regarding traditional subjects of bargaining. That is the right which Section 7 guarantees to all employees covered by the Act. Electromation thus involved the core principle of the statute.

But notwithstanding the Seventh Circuit's carefully reasoned opinion, the well-orchestrated opposition to Electromation has ignored the reality of the case, choosing instead to propagate a campaign of fear and misinformation about the decision, charging that it has had a chilling effect on worker participation plans, thereby endangering the competitiveness of American industry.[4] No hard evidence has been advanced to support that charge;[5] whereas there is abundant anecdotal evidence to dispute it.[6]

> the committees and which did not. [I]t unilaterally determined how many could serve on each committee...and determined which committees certain employees would serve on, thus exercising significant control over the employee's participation and voice....
>
> Also, the company designated management representatives to serve on the committees... effectively put[ting] the employer on both sides of the bargaining table, an avowed proscription of the Act....Finally, the company paid the employees for their time spent on committee activities, provided meeting space, and furnished necessary supplies.... 63 U.S.L.W. at _____.

[4] E.g., see the following: "Consensus position" of a "Working Group" of management attorneys (Vincent J. Apruzzese, Charles G. Bakaly, Jr., Robert S. Carabell, William J. Curtin, William Kilberg, Charles A. Powell III, and Ezra Singer) presented to the Commission on the Future of Worker-Management Relations (hereinafter the "Dunlop Commission") on Jan. 19, 1994: "Electromation and its progeny have had a chilling effect on employers' willingness to initiate and/or continue employee participation committees, at the very time these committees have become widely recognized as a major means of improving productivity and enhancing product quality. Electromation must be clarified or changed to assure continued employee participation." (Contained in Daniel V. Yager's statement to the Commission.) Jeffrey McGuiness, president of the Labor Policy Association, without mentioning the Seventh Circuit's affirmation, recently characterized Electromation as the NLRB's "dumbest decision." 222 Daily Lab. Rep. (BNA) D-10 (Nov. 21, 1994.

[5] None was presented to the Dunlop Commission. E.g., the Survey conducted by Aerospace Industries Association, Electronic Industries Association, Labor Policy Association, National Association of Manufacturers, & Organization Resources

It is easy to understand why the nonunion management lobby is so upset by Electromation, and it is not because the case chills "worker participation" or any meaningful concept of "employee cooperation." Those are simply nice buzz words which mask the real concern, which is that something else might be chilled, because Electromation has focussed attention on what used to be the best kept secret under the National Labor Relations Act: Section 8(a)(2). As a result of Electromation and its progeny,[7] that section has suddenly become the Achilles Heel of nonunion employer conduct under the Act. Employers long ago learned how not to fear the NLRB or the Act, especially its better known provisions, Section 8(a)(3) relating to discharges for union activity,[8] and Section 8(a)(5), relating to the duty to bargain in good faith.[9] They learned that the Act could even be used as a buffer against unionization, and that the NLRB, at

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Counselors, Inc., submitted to the Commission on August 10, 1994, contains no such data.

[6] E.g., Jerome Rosow, president of the Work in America Institute, a non-profit group that promotes employee participation, observed that although "[s]ome companies are going to have to clean up their act....most will find ways to work within the labor laws;" according to Ned Hamson, an official of the 10,000-member Association for Quality and Participation, "despite the hoopla and uncertainty, companies apparently are not scuttling their labor-management committees," most companies "are following the guidelines they have always used;" and USA Today reported that quality experts say they doubt the NLRB's rulings will bring the quality movement to a screeching halt. USA Today, June 8, 1993, 6B. See also discussion at notes 17-21 infra.

[7] Since Electromation, the Board has found §8(a)(2) violations in the following cases: Ryder Distribution Resources, Inc., 311 NLRB No. 81 (May 28, 1993); E.I. DuPont & Co., 311 NLRB No. 88 (May 28, 1993); NCR Corporation, a Subsidiary of AT&T, Case No. 9-CA-30467 (July 15, 1994); Prime Time Shuttle International, Inc., 314 NLRB No. 139 (Aug. 24, 1994); Megan Medical Clinic, Inc., 314 NLRB No. 173 (Sept. 12, 1994). The following §8(a)(2) cases are pending at the Board level (*i.e.*, ALJ Decisions have issued): Keeler Brass Automotive Group, Case No. GR-7-CA-32185; Webcor Packaging, Inc., Case Nos. 7-CA-31809 & 31896 & 7-RC-19513; Stoody Company, Div. of Thermadyne, Inc., Case Nos. 26-CA-15425, 15428, & 15521; Dillon Stores, Div. of Dillon Company, Case No. 17-CA-16811; Vons Grocery Co., 21-CA-29084-86 & 29202.

[8] E.g.,, Morris, *The NLRB in the Dog House--Can an Old Board Learn New Tricks?*, 24 San Diego L. Rev. 17-22 (1987).

[9] E.g., W. Cooke, UNION ORGANIZING AND PUBLIC POLICY: FAILURE TO SECURE FIRST CONTRACTS (1985); Dunlop Commission FACT FINDING REPORT 73-74 (1994).

worst, was but a minor irritant to an employer who was doggedly determined to maintain a nonunion environment.[10] But now the Board shows signs of enforcing a potent provision of the Act which most employees, especially nonunion employees, didn't even know existed.

In recent years, prior to Electromation, Section 8(a)(2) was only rarely enforced; in fact, unions typically filed 8(a)(2) charges only in the aftermath of an unsuccessful organizational campaign.[11] And a well designed and properly maintained company union, which was likely to be called by an attractive euphemism, such as "Equity Committee," "Progress Committee," "Employee-Company Relations Committee," or "Action Committee," could generally be relied upon to discourage employees from supporting any organizational campaign mounted by an outside union.

As a result of the scant attention paid to Section 8(a)(2), including the lulling-effect of two unsound NLRB holdings, John Ascuaga's Nugget[12] and Mercy-Memorial Hospital,[13] which slipped through the cracks in 1977 when they were not submitted for judicial review, an untold number of employers have confidently

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[10] See FACT FINDING REPORT of the Dunlop Commission (May 1994) at 66-78.

[11] Comprehensive review of all published decisions under Section 8(a)(2) prior to Electromation reveals that in each case the charge was filed ancillary to a union organizational campaign. *See also* Rundle, *The Debate Over the Ban on Employer Dominated Labor Organizations: What is the Evidence* (paper submitted at AFL-CIO/Cornell Univ. Conf., 1993), indicating the same conclusion, based on a LEXIS search, for the period from 1972 to 1993. Rundle's research also indicated that in almost all of the cases prior to Electromation in which the Board ordered disestablishment of the employer-dominated entity, the employer was found guilty of other unfair labor practices in addition to §8(a)(2): "Typical of the ULPs were interrogations, threats to shut down and layoff, surveillance, discriminatory discharge, soliciting grievances, and granting improvements." Id.

[12] 230 NLRB 275 (1977), holding that an employees' grievance committee composed of the company's director of employee relations, an elected employee representative, and another representative of management was not a labor organization within the meaning of § 2(5).

[13] 231 NLRB 1108 (1977), holding that an employees' grievance committee, created by the employer, composed of elected employees with three years of seniority and also a representative of management was not a labor organization within the meaning of § 2(5).

maintained a variety of employee committees and plans[14] that patently violate Section 8(a)(2), the most conspicuous examples being the long-established plans at the Polaroid Corporation[15] and at the Donnelly Company,[16] both of which are now the subject of cases pending at the National Labor Relations Board. These and plans like them, as well as certain nonunion grievance plans, including so-called "peer review"[17] and "ombudsman"[18] type plans, are now at risk because of the publicity attached to Electromation.

The features of such plans that violate the statute do not involve worker participation in the work or production process, for the Board held in General Foods[19] that such a plan is not a labor organization within the meaning of Section 2(5); thus, high performance nonunion participation plans like the ones described to the Dunlop Commission by Texas Instruments, Inc.,[20] and Toyota Manufacturing, USA,[21] Inc. appear to be perfectly legal. And employee communication plans designed for legitimate communication, not for sham collective bargaining, are likewise not at risk, for the Board found such a plan to be lawful in its

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[14] See, for example, numerous such plans described in the following books: David W. Ewing, JUSTICE ON THE JOB: RESOLVING GRIEVANCES IN THE NONUNION WORKPLACE (Harvard Bus. Sch. Press, 1989); Douglas M. McCabe, CORPORATE NONUNION COMPLAINT PROCEDURES AND SYSTEMS, A STRATEGIC HUMAN RESOURCES MANAGEMENT ANALYSIS (Praeger, 1988); Alan F. Westin & Alfred G. Feliu, RESOLVING EMPLOYMENT DISPUTES WITHOUT LITIGATION (BNA, 1988); Fred K. Foulkes, PERSONNEL POLICIES IN LARGE NONUNION COMPANIES (Prentice-Hall, 1980); James R. Redeker, EMPLOYEE DISCIPLINE: POLICIES AND PRACTICE, (BNA, 1989).

[15] See NLRB Consolidated Complaint pending in Polaroid Corporation, 1 CA-29966; 1 CA-30063; 1-CA-30211, scheduled for trial on Feb. 7, 1995.

[16] See NLRB Charge pending in Donnelly Company, GR 7-CA-36697.

[17] See Keeler Brass Automotive Group, a Div. of Keeler Brass Co., NLRB Case No. GR-7-CA-32185, ALJ Decision issued Oct. 1, 1992, now pending before the Board.

[18] See NLRB v. General Precision, Inc., 381 F.2d 61 (3rd Cir. 1967).

[19] General Foods Corp., 231 NLRB 1232 (1977).

[20] Presentation of Texas Instruments, Inc., to Dunlop Commission on Feb. 11, 1994.

[21] Presentation of Toyota Manufacturing, USA, Inc., Georgetown, Kentucky, to Dunlop Commission on Sept. 15, 1993.

Sears Roebuck[22] decision. As Edward Miller, distinguished management attorney and former Chairman of the Board, told the Dunlop Commission, "an employer who really wants to, with assistance from good legal advice and counseling, can implement a very worthwhile employment involvement program and stay within the law."[23] He stressed that "[i]t is indeed possible to have effective programs of this kind in both union and nonunion companies without the necessity of any change in current law."[24] And he also had the integrity to tell the Commission: "While I represent management, I do not kid myself. If Section 8(a)(2) were to be repealed, I have no doubt that in not too many months or years sham company unions would again recur."[25]

Regrettably, other management spokespersons on this subject have not been so candid, for it is obviously easier for them to sell an anti-(8)(a)(2) campaign if the public views that provision not as a shield against sham company unions but as an archaic impediment to worker cooperation and therefore a danger to American competitiveness. And that is exactly how the effort to repeal Section 8(a)(2) is being sold. It is the perception of reality that they are selling. The present actual reality is that legitimate nonunion worker participation programs are not being chilled. And the likely future reality as to what will happen if Section 8(a)(2) is repealed--aside from the obvious negative impact which that would have on union organizing--is that the resulting legislative void would dampen some of the best efforts at employee-management cooperation, and the competitiveness of much of American industry could be adversely affected in the long run. I shall highlight some of these prospects later in this presentation.

Although what is really happening regarding Section 8(a)(2) should be easy to see, I am distressed that some of my academic colleagues in the industrial relations community seem to see nothing, as if they were viewing Section 8(a)(2) with blinders on their eyes. The most recent example of the "blinders" syndrome is to be found in Tom Kochan's and Paul Osterman's new book, THE MUTUAL GAINS ENTERPRISE.[26] That book contains an excellent review and exposition of high performance workplaces, and it is an important contribution to the literature on the subject. But unfortunately it also contains some untenable conclusions that must not go unchallenged. In fact, the authors specifically

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[22] Sears Roebuck &. Co., 274 NLRB 230 (1985).

[23] Miller, *Myths and Reality about U.S. Labor Relations*, paper submitted to Dunlop Commission, at 6 (Oct. 8, 1993).

[24] Id.

[25] Id. See also 201 Daily Lab. Rep. (BNA) D-7 (Oct. 20, 1993).

[26] (Harvard Bus. Sch. Press, 1994).

invite debate about their ideas,[27] so I am pleased to accept that invitation. What I shall say will be in the nature of a book review; but that is appropriate considering the importance of their conclusions and the relationship of those conclusions to the subject of this presentation.

Kochan and Osterman, whom I shall hereinafter refer to as "K&O," have chosen to see only what they wanted to see in Electromation, not what it really stands for. They assert that Electromation "illustrates" that "over time, the law has lost its ability to provide workers a voice in workplace decisions that have the greatest impact on their long-run economic security."[28] They apparently arrived at that remarkable conclusion not by direct analysis of the case, but rather by a misreading of a report of the case in *Business Week*[29] magazine and by ignoring the compelling evidence which they themselves document in their book. I shall review some of that evidence later.

First, the *Business Week* story. It was written by Aaron Bernstein, *Business Week's* Workplace Editor. He concluded, unlike what K&O reported, that "Employers should take some cues from the NLRB and give employees more say in running teams. [And] if Corporate America is serious about teams--and the results they produce--the Electromation decision need be no more than a healthy midcourse correction."[30] K&O, however, drew a different conclusion, a pejorative one that Bernstein hadn't even suggested, which was "that the conditions [nonunion] employers needed to avoid are essentially those which make teams worth having in the first place."[31] And without supporting facts or analysis, K&O conclude that "the major point that Electromation illustrates is how outdated the current law is and how badly a new one is needed."[32] I fully agree that the law could use better enforcement mechanisms and other improvements; in fact, I have advocated amendments to that effect.[33] But Electromation is proof of a statutory success, not a statutory failure. There are many proofs of failure under the NLRA, but Electromation is not one of them. Unless, of course, a person believes that an

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[27] Id. at 17.

[28] Id. at 201.

[29] Bernstein, *Making Teamwork Work--And Appeasing Uncle Sam*, Business Week, 101 (Jan. 25, 1993).

[30] Id.

[31] K&O, supra note 26, at 202.

[32] Id.

[33] See Morris, *A Blueprint for Reform of the National Labor Relations Act*, 8 Admin. L. J. ____ (1994).

employer should have the right to dominate and control its employees' collective voice regarding their "wages, grievances, hours of work, or working conditions," which are precisely the words describing the mandatory bargaining items that K&O inaccurately attributed to Bernstein's list of conditions that make "teams" worthwhile for nonunion employers.

In their effort to find a quick-fix for the serious problems in American labor law, K&O could not resist their fascination with German works councils. But what they failed to consider is that those employee councils in Germany have functioned so well precisely because their operations are linked to an almost total-saturation collective bargaining system[34] which features strong[35] and socially accepted[36] trade unions. And because German works councils are not mandatory, they exist mostly in establishments where there is a significant trade union presence among the employees. Furthermore, almost all works counselors are also union members and union sponsored, and the unions work closely with the councils.[37] K&O, however, are of the opinion that a works council, or something like it, could function successfully in the United States without a union presence. But the historical record indicates otherwise, as I shall demonstrate shortly. Tom Kohler's comment on the phenomenon of an employee participatory entity unrestrained by the restrictions of Section 8(a)(2) aptly sums up the prospect. He said that although

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[34] See discussion of the "declaration of general binding" effect of collective agreements in M. Weiss, LABOUR LAW AND INDUSTRIAL RELATIONS IN THE FEDERAL REPUBLIC OF GERMANY (Kluwer, 1987), 128-129.

[35] See Buschmann, *Worker Participation and Collective Bargaining in Germany*, 15 Comp. Lab. L. J. 26, 28 (1993).

[36] "The role of unions as organizations representing the workers' interests is generally accepted and uncontested in the Federal Republic of Germany. The trade unions are not only factually integrated in society but they have quite a few institutional rights of participation. These rights are not only limited to matters of the labour market but go far beyond this. The unions to a more or less limited extent are integrated on boards dealing with educational and cultural matters, on boards of mass media, in institutions dealing with economic and social security matters, in the system of labour courts and social security courts, to give some idea of the multitude of their activities." M. Weiss, supra note 34, at 118-119.

[37] Addison, Kraft, & Wagner, *German Works Councils and Firm Performance*, in Bruce E. Kaufman & Morris M. Kleiner, eds., EMPLOYEE REPRESENTATION: ALTERNATIVES AND FUTURE DIRECTIONS, 305, 310 (1994). See also Buschmann, *Worker Participation and Collective Bargaining in Germany*, 15 Comp. Lab. L. J. 26 (1993).

> a lot has changed during the nearly sixty years that have intervened since the Act's passage...[t]he one thing that remains constant...is human character....By striking off in an entirely different direction, we will be attempting to do something that no one else in the world has been able to achieve: make participative devices function without some form of autonomous employee body to ground them.[38]

Without intending to do so, K&O supply us with an excellent example of Kohler's thesis. They entitle that example "'Works Councils' in America: The Case of Polaroid,"[39] for which they offer a laudatory and lengthy exposition of a "value system" at the Polaroid Corporation that operated in conjunction with an employee governance device called the Employees' Committee. As described by K&O, "Representatives were elected by employees, and the committee discussed the full range of the company's personnel policies, although it had no formal authority to make decisions."[40] But as K&O illustrate, the Committee sometimes was able to obtain an agreement from the company on an employment policy issue.[41] Thus, the Committee and the company dealt with each other concerning mandatory bargaining subjects. But K&O's description of employee participation at Polaroid does not include employee participation in the process of production, although that may also have occurred. What they describe is simply a classic example of an old-fashioned company union, which in this instance had already been declared illegal by the Department of Labor because of its violation of the democratic

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[38] Kohler, *The Overlooked Middle*, in M. Finkin, ed., THE LEGAL FUTURE OF EMPLOYEE REPRESENTATION (ILR Press, 1994) 224, 241. Professor Kohler added: "We will be doing more as well. We will be giving public sanction to yet another turn away from one of the institutions that grounds the middle [Kohler's reference to the centrality of employment]. It may be more prudent to inquire in the other direction and to ask what sorts of steps we can take to sustain and restore those crucial...autonomous employee bodies. Problems rarely are solved by furthering the types of actions that brought the problem on in the first place." Id.

[39] K&O, supra note 26, at 137.

[40] Id., at 138.

[41] Employee share of Eastman Kodak patent-infringement settlement. Id.

election requirements of the Landrum-Griffin Act,[42] and an NLRB unfair labor practice trial is scheduled next month regarding its legality under Section 8(a)(2).

The Polaroid example demonstrates the working of the human character to which Professor Kohler referred. Had K&O delved a little deeper, they would have discovered that the Polaroid Employees' Committee was so organized that the company was able to maintain effective control over its operations. The Chairman and Vice-Chairman of the Committee, who dealt directly with the CEO, were well paid by the company for their full-time activities on behalf of the Committee, and they in turn were elected by the members of the Committee whose regular compensation in turn was augmented by overtime payments which were authorized and approved solely by the Chairman of the Committee.[43] This was the tightly controlled inner-circle that prompted Charla Scivally, an elected Employees' Committee member, to blow the whistle in 1992 on both the company union and Polaroid.[44]

But K&O apparently saw no evil in the Polaroid process, or even an ethical conflict. Instead, they advise us that the "ultimate lesson" of the Polaroid experience is that "we are unlikely to see this form of employee participation in corporate governance on a meaningful scale in the United States unless it is sanctioned by changes in labor law."[45] The changes they favor, as we shall see, would allow Polaroid to reestablish its defunct Employees' Committee.

Although K&O assert that the Polaroid Committee "functioned very much like an equivalent of a German works council,"[46] I fail

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[42] 29 U.S.C. § 481. See *Polaroid Dissolves Employee Committee in Response to Labor Department Ruling*, 121 Daily Lab. Rep. (BNA) A-3 (June 23, 1992).

[43] See affidavits and other exhibits on file in Scivally v. Graney, et al, U.S. Dist. Ct., Dist. of Mass., No. 92-11688-Z. Anne Leibowitz, Polaroid's corporate labor counsel, acknowledged in a formal panel discussion at Cornell Journal of Law & Social Policy Symposium on Employee Participation Plans, in Ithaca, New York, on April 30, 1994, that the company never questioned the overtime reports submitted by the Chairman of the Employees' Committee. See Video tape transcript of that symposium.

[44] Id.

[45] K&O, supra note 26, at 139.

[46] Id., at 137.

to see any resemblance.[47] K&O were obviously looking in the wrong place for an example of an American counterpart to a German works council; they could have found such an example from among the unionized companies in the integrated steel industry. To illustrate: Using traditional collective bargaining, Inland Steel and the United Steelworkers in 1993 arrived at a level of employee participation that includes union representation and input at all levels of corporate decision-making, full and early disclosure of business and financial information, and a union designated member siting on the corporate board of directors. The name of that director, incidentally, is Bob McKersie, a distinguished member of this Association.[48]

In contrast to the Inland Steel experience, K&O present us with various versions of what they consider to be viable forms of an Americanized works council,[49] all of which, however, would discourage the presence of an independent union. The version which they seem to favor is one that appears to be identical to the bills introduced in the Congress last year by Senator Kassebaum[50] and Congressman Gunderson.[51] Those bills would effectively repeal Section 8(a)(2).[52] K&O, however, contend that

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[47] There are many critical aspects of German works councils lacking in the Polaroid plan. To note just a few: A German works council does not deal with basic rates of remuneration, for these are handled by collective bargaining; the company is required to supply the council with early and detailed information and documentation about a wide variety of subjects, including future business plans; the counsel has an independent right to call on the advice of outside consultants; and the council's consent is required for policy changes relating to recruitment, transfers, regrading, and dismissals. See Buschmann, supra note 37.

[48] See discussion and sources in C. Morris, *From Crisis to Cooperation: A New Direction in Industrial Relations*, 180 Daily Lab. Rep. (BNA) D-1, D-5-7 (Sept. 20, 1994).

[49] K&O, supra note 26, at 204-207.

[50] S. 669, 103rd Cong., 1st Sess., introduced March 3, 1993.

[51] H.R. 1529, 103rd Cong., 1st Sess., introduced March 30, 1993.

[52] The only company unions that would henceforth be outlawed would be those foolish enough to label or identify the product of their discussions or dealings with the employer as a "collective bargaining agreement," for §3 of both bills allow employers to "establish, assist, maintain or participate in any organization or entity of any kind, in which employees participate [so long as such organization or entity] does not have, claim or seek authority to negotiate or enter into *collective bargaining agreements*...." Emphasis added.

such legislation would "simply...open labor law to *allow* firms and employees to create voluntarily any new form of participation."[53] Thus, firms "might choose to set up councils for advisory purposes and keep their agendas open to whatever issues are of greatest concern to *the parties*."[54]

Note the manner in which they repeatedly refer to *the parties* in a nonunion setting, as if unorganized employees have a coherent identity and the capacity to speak independently with a unified voice. For example, they see their proposal as a means to "encourag[e] the *parties* to experiment with new types of participation and representation in the labor movement, in other employee groups that provide support for these councils, or in the business community."[55] Translated, "parties" in such a nonunion environment actually means the "employer" acting unilaterally, though sometimes that action might occur behind the scenes and overtly appear to be employee action. K&O seem to have forgotten: Just as it takes two to tango, it takes two identifiable partners to engage in meaningful cooperation. Thus, it is no accident that the real success stories of innovative cooperation in the American workplace, as exemplified by the many companies that K&O identify for the purpose of illustrating "mutual gains enterprises," are those which have been created at unionized companies through the process of collective bargaining.

The nonunion management lobby, however, appears to be more interested in maintaining union-free operations than maximizing employee productivity through genuine cooperative programs, for the Kassebaum/Gunderson bill would do nothing to advance employee participation in the work process. Despite its packaging, the text of the bill gives employers no real incentive to create such participatory programs. On the other hand, the bill does provide a legal means to create buffer employee committees that would discourage the organization of independent unions.[56] Such

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[53] K&O, supra note 26, at 205 ("second option").

[54] Id. Emphasis added.

[55] Id. Emphasis added.

[56] To demonstrate how such plans, even without the blessing of legality, have been used in the past for union avoidance purposes, see: D. Ewing, JUSTICE ON THE JOB: RESOLVING GRIEVANCES IN THE NONUNION WORKPLACE (Harvard Business School Press 1989) at 7, 14, 104-105, 242-43, 282; D. McCabe, CORPORATE NONUNION COMPLAINT PROCEDURES AND SYSTEMS, A STRATEGIC HUMAN RESOURCES MANAGEMENT ANALYSIS (Praeger 1988) at 22-29, 41-43; A. Westin and A. Feliu, RESOLVING EMPLOYMENT DISPUTES WITHOUT LITIGATION (BNA 1988) at 117, 129-43; F. Foulkes, PERSONNEL POLICIES IN LARGE NONUNION COMPANIES (Prentice-hall 1980) 281-93; J. Redeker, EMPLOYEE DISCIPLINE: POLICIES AND PRACTICE, (BNA 1989) at 129.

committees provide a benign mechanism that permits carefully limited employee participation, even representation, in the setting of "wages, hours, and other terms and conditions of employment," the mandatory bargaining subjects defined in Section 8(d) of the Act. If this bill were to become law, Electromation-type action committees would again become legal. And such highly visible company unions as those that have been challenged at Polaroid and Donnelly, and others like them, would also be legalized. I link the Polaroid and Donnelly plans because each has been boastfully presented by its creator company as an especially effective medium for channeling employee expression. Polaroid so boasted to K&O, and Donnelly so boasted to the Dunlop Commission.[57]

The only difference between the K&O proposal and the Kassebaum/Gunderson bill is that K&O combine their 8(a)(2) recommendation with other labor law reforms which they believe would make it easier for unions to organize and achieve first bargaining contracts.[58] But, as we all know, none of those reforms have the slightest chance of passage in the foreseeable future. But this will not keep proponents of Kassebaum/Gunderson or other anti-Section 8(a)(2) bills from using Kochan's and Osterman's endorsement, and probably similar stands by other academics, to provide a cover of respectability for their single-item 8(a)(2) amendment. That is why it is so important to critically examine the *Mutual Gains Enterprise* and not rush to confer the usual accolades that its authors most often deserve.

Lest there be any doubt about what will happen if the Gunderson/Kassebaum bill should pass, history supplies the answer. Not surprisingly, it is the same answer Ed Miller gave us earlier, that "in not too many months or years sham company unions [will] again recur."[59]

It is unfortunate that K&O's treatment of the history of company unions omits key data from the same historical source on

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[57] See testimony and exhibits presented by Kay Hubbard, Advocate for Human Resource Development at Donnelly Corporation, to Dunlop Commission, Oct. 13, 1993, Tr. 55-77. See also Ewing, id., at 205.

[58] Although those changes are not the focus of this presentation, I would not want their omission to appear to imply approval. Were this a full review of *The Mutual Gains Enterprise* book, I would seek to demonstrate that notwithstanding the good intentions that prompted them, a number of those changes would worsen rather than improve the law. See K&O, supra note 26, at 199-212.

[59] Supra note 25.

which they purport to rely. They cite Millis & Montgomery[60] as primary authority for their assertion that

> employee representation plans [were] established after World War I by companies partly to ward off union organizing....But gradually over the course of the 1920s their growth tapered off [and] the Great Depression dealt another blow to these efforts. 'Company unions' were then outlawed by the passage of the National Labor Relations Act, which served as the final nail in the coffin of the employee representation or American Plan movement.[61]

Of course, as we now know too well, Section 8(a)(2) was not the final nail in that coffin, for, as Electromation, Polaroid, and Donnelly illustrate, company unions continued to flourish, and many of them are still functioning. But more important for historical purposes is the fact that K&O omit entirely, as if by way of psychological denial, all references to the critical three-year period that immediately preceded passage of the NLRA and Section 8(a)(2), for that was when company unions and employee representation plans reversed their decline and actually multiplied faster than independent unions. As Millis & Montgomery noted, during that short period of time, "company-union coverage increased from approximately 40 per cent to almost 60 per cent of the estimated trade union membership."[62] That period thus provides an uncanny preview of what is likely to happen should Congress issue a legislative licence to employers to create unregulated employee-representation committees. For such an invitation had been extended in 1933 by passage of the well-intended but infamous Section 7(a) of the National Industrial Recovery Act.[63] Here is what Millis & Montgomery wrote about that early New Deal legislation, which K&O failed to note:

> Section 7(a) of the National Industrial Recovery Act, though designed to protect the right of workers in code industries to organize as and when they might wish, actually stimulated more than it checked the introduction of company unions....[M]any employers in no small measure influenced their employees to adopt representation plans, or presented to their employees representation plans they themselves had formulated for

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60 H. Millis & R. Montgomery, ORGANIZED LABOR (McGraw Hill, 1945).

61 K&O, supra note 26, at 98.

62 Millis & Montgomery, supra note 60, at 841, citing National Industrial Conference Board source.

63 48 Stat. 198 (1933).

> approval at meetings or at elections fairly or unfairly held, or imposed plans by mere announcement; furthermore in most cases the employers paid the incidental bills.[64]

And if Kassebaum/Gunderson has not already created a sense of déjà vu, listen to what another labor historian said about that N.I.R.A. Section 7(a) period. Foster Rhea Dulles wrote that although employees could not be required to join a company union "their employers were still free to exercise every possible kind of pressure in making it seem advisable. And this was done so effectively, that enrollment in company unions rapidly rose...."[65] The historical conclusion is both obvious and familiar: Those who would ignore history are destined to relive it.

A resurgence of company unionism would have an obvious effect that requires no elaboration. It would nip in the bud the revitalization of the American labor movement that has already begun. To their credit, K&O fully recognize that the continued decline of organized labor in America would adversely affect both our economy and our democratic institutions. They give four basic reasons why a healthy labor movement is important to the well-being of the country. *First* is the value which unions bring to a democratic society.[66] *Second* is the "distributive economic role that union representation plays, especially for workers at the lower end of the wage scale."[67] *Third*, "[t]he active partnership of union representatives can be a powerful force for sustaining commitment to workplace innovations."[68] And *fourth*, "further union decline will impose a high cost on those organizations which are currently organized [so that] over time it will become increasingly difficult to sustain cooperative or innovative activity in existing unionized establishments as labor representatives get backed further into a corner."[69]

Those assessments are very much on target. Unfortunately, however, K&O fail to discern that without the protection of Section 8(a)(2), their dire predictions about the effect of further decline in organized labor will likely come true.

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[64] Id. at 843.

[65] LABOR IN AMERICA: A HISTORY (Thos. Y. Crowel, 1966) 270-271.

[66] K&O, supra note 26, at 142-144.

[67] Id., at 145.

[68] Id.

[69] Id.

Their own data tell us that the potential impact of such a decline would fall heavily on the very industries that have been the most innovative in instituting employee participation at various levels of decision-making. Accordingly, if the cooperative programs at those industries are replaced by "a self-fulfilling cycle of conflict," which is the K&O reading, the competitiveness of much of American industry will indeed be adversely affected in the long run.

K&O should realize this from their own data. Early in the volume they promise to bolster their argument for the establishment of "mutual gains enterprises" by drawing "on experiences with new forms of participation that have proved their value in specific American workplaces...."[70] But when the time comes to identify those workplaces, they describe in considerable detail a number of cooperative programs that have been developed at unionized companies under collective bargaining,[71] but they include only a few short references to programs at nonunion companies, and these raise more questions than answers.[72] Except for brief summaries of employee programs at three small companies that appear to be limited to the work or production process[73] and one plan at a large company that operates under the Railway Labor Act,[74] they provide no details of innovative programs in nonunion environments. So where are the much-touted examples of worker participation at nonunion companies which they seemed to promise? They are not described in the book, though many excellent participatory programs certainly exist in nonunion workplaces. Over the long haul, however, such programs cannot be as productive or as enduring as those in unionized establishments, which is what K&O fully explain but apparently fail to fully appreciate.

K&O begin their analysis of high performance workplaces with four generic principles designed to serve as guidelines for a

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70 Id., at 17.

71 For example, Saturn, NUMMI, Boeing, Xerox, Magnum Copper, Corning, Ford Motor, Chrysler, integrated steel companies, AT&T, Levi Strauss, and Harvard University.

72 The most space is devoted to the Polaroid plan. See notes 39-47, supra.

73 Chaparral Steel, K&O, supra note 26, at 63; Shenadoah Life Insurance Co., Id., at 64; Rohm & Haas Bayport, Inc., Id., at 65.

74 Federal Express. Id., at 62. The Railway Labor Act does not have a company-union prohibition as expressly restrictive as § 2(5) of the NLRA.

mutual gains enterprise.[75] Two of those principles, "[e]mployment in problem solving"[76] and requiring a "climate of cooperation and trust,"[77] are illustrated only by examples at unionized establishments. And they tell us that their examination of gain-sharing and profit-sharing reveals "the importance of having a supportive, collaborative arrangement between labor and management [because] these plans seem to work well only if the labor force is given sufficient access to information to be confident that the system is fair."[78] They also note that "[e]mployment participation is unlikely to survive for long in an organization whose business strategies rely primarily on minimizing costs and there is little or no commitment to employment security." [79]

Conclusions such as these seem finally to have convinced K&O of the critical role that unions can and do play in the development and maintenance of innovative work processes, for they grudgingly report that their work has led them to a strong hypothesis, that "the active involvement and support of unions increases the sustainability of the innovation process."[80] I say "grudgingly" because they still are unable to see the forest for the trees.

What the forest they describe really looks like is a place where independent unions are a necessary component of the highest productivity workplaces; certainly that is a common characteristic of almost all the trees in this forest, at least all of the most impressive and durable trees. So for reasons which are now well-documented, high productivity and sustainability can best be found in unionized establishments on account of two main factors: (1) shared decision-making can legally embrace both methods of production and conditions of work, including genuine due process grievance procedures;[81] and

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[75] Id., at 46-52

[76] Id., at 49-50 (NUMMI and Saturn).

[77] Id., at 51-52 (Xerox and Saturn).

[78] Id., at 74. See also 103, where K&O note that the available data suggest "that if employment security is critical to workplace innovation, it either has to come from someplace other than the policies of individual firms or individual firms have to manage their resources in a significantly different way."

[79] Id., at 59.

[80] Id., at 105.

[81] Because the latter conditions are statutory subjects governed by §§2(5) and 8(d) of the National Labor Relations Act, they

(2) an atmosphere of mutual trust and confidence, which includes reasonable employment security, is a necessary ingredient if employees are to have maximum incentive to contribute innovatively to the work or production process.[82]

Hope springs eternal. Perhaps Kochan and Osterman will eventually see the forest. And when the do, they may also see the potential which retention and enforcement of Section 8(a)(2) can bring to a newly revitalized labor movement. Now more than ever before, unions have something to offer, not just to employees but also to their employers, something which management cannot achieve unilaterally.

I shall close this presentation on a note of optimism. Assuming Section 8(a)(2) is not repealed or weakened, and assuming the NLRB does its proper job of enforcing that provision, the new hallmark of union organizational activity in much of industry will likely be the combined appeal of broad-

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can be legally dealt with between employers and groups of employees only where such groups are voluntarily selected by the employees and not controlled by the employer. As Eileen Appelbaum has noted, on the shop floor "it may be difficult to separate discussions of process improvements from discussions of job assignments and conditions of work, or discussions of quality training from discussions of pay for skills and compensation," (Testimony to Dunlop Commission, Jan. 19, 1994, 11). Thus nonunion plans, at least the legal ones, must focus primarily on methods of work or production, leaving unrepresented employees with no meaningful voice in determining their pay or other conditions of work. From such data Applebaum drew the not-surprising conclusion that a "strong case can be made that a major obstacle to the diffusion of the empowerment model of high performance is the low level of unionization in many industries." Id. See also E. Appelbaum & R. Batt, THE NEW AMERICAN WORKPLACE (ILR Press, 1994) 164.

82 As Professors Mahoney and Watson have observed, "[p]erhaps the greatest threat to development of a social exchange with the work force is the threat of job loss." Mahoney and Watson, *Evolving Modes of Work Force Governance: An Evaluation*, in Kaufman & Kleiner, supra note 37, at 136, 164. They conclude that "[r]ealization of the social exchange benefits of direct participation is possible only within an exchange system that is perceived as just and equitable." Id., at 165. See also Kelley & Harrison, *Unions, Technology, and Labor-Management Cooperation*, in L. Mishel & P. Voos, eds., UNIONS AND ECONOMIC COMPETITIVENESS (M.E. Sharp, 1992): "Non-union work places with joint labor management problem-solving committees are significantly *less* efficient and *less* likely to provide job security than is a traditional union-based system of work place governance. For collaborative problem-solving to succeed, it must be possible for employees to achieve outcomes that also empower them."

based worker-participation programs and due-process grievance procedures, neither of which can be fully or legally achieved in a nonunion company. Perhaps we shall even come to see the day when at least some American companies will view the organization of their employees not as an act of treason but rather as an opportunity to gain a helpful partner in the areas of employment and production.[83]

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[83] See Morris, supra note 48.

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Winning and Losing
With Employee Participation

Ellis Boal

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WINNING AND LOSING WITH EMPLOYEE PARTICIPATION

Ellis Boal[†]

INTRODUCTION

Established in 1993 by the Secretaries of Labor and Commerce, the Commission on the Future of Worker-Management Relations (the "Commission") investigated the current state of worker-management relations in the United States with an eye to recommending new methods or institutions to enhance workplace productivity.[1] The Commission concluded in its initial Fact Finding Report that employee participation plans ("EPPs") may be the key to America's competitiveness and standard of living:

> Where employee participation is sustained over time and integrated with other organization policies and practices, the evidence suggests it generally improves economic performance. If more widely diffused and sustained over time, employee participation and labor management cooperation may contribute to the nation's competitiveness and standards of living.[2]

[†] A.B. Bowdoin College, 1966; J.D. Wayne State University, 1972. Many of the ideas set out here first were developed by staff and collaborators at LABOR NOTES, particularly Mike Parker and Jane Slaughter.

[1] *See* COMM'N ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS, U.S. DEP'T OF LABOR AND U.S. DEP'T OF COMMERCE, FACT FINDING REPORT xi (1994) [hereinafter FACT FINDING REPORT]. The Commission was directed to report back to the Secretaries in response to the following questions:

> 1. What (if any) new methods or institutions should be encouraged, or required, to enhance work-place productivity though 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 court and government regulatory bodies?

Id.

[2] *Id.* at 56.

The Commission's conclusion relied on two premises. The first is that EPPs enhance worker rights by providing workers with a measure of empowerment or democracy. Implicit in the words and ideology of employment participation is a promise that workers play a role in making workplace decisions that usually are reserved to management. The second premise is that EPPs result in higher productivity. Accepting these premises, proponents of participation plans concur with the Commission's conclusion and endorse EPPs as the "win-win" solution to problems of labor unrest and lagging productivity.

I challenge these premises. Modern participation plans neither enhance worker rights nor increase productivity. The Commission's conclusion that EPPs may contribute to our nation's competitiveness and standard of living is contradictory and weak. Rather, the primary effects of employment participation plans are the tightening of management control, the erosion of worker rights, and the disorganization of unions. Corporate America's plea that unions make sacrifices to accommodate EPPs is disingenuous; employers implement participation plans precisely in order to retain control over their workers.

Part I of this essay traces the history of employee participation programs. Part II examines the productivity claims made with respect to adoption of EPPs and urges workers to reject them and organize independently. Part III argues that workers should reject EPPs and organize independently in order to protect their rights. The best way for workers to protect their interests is not to plead with business or government to adopt pro-worker policies. Until workers organize, and do so in large numbers, genuine improvement of their lot will not occur.

I. FROM THE 1890s TO CURRENT PRACTICE: A BRIEF HISTORY OF EMPLOYEE PARTICIPATION

Employers' concerns with productivity dictated worker participation in the late 1800s. Pointing to the growing disparity of labor costs between the United States and its competitors in England and Germany, industrial engineers of the 1890s began to experiment with various methods of reducing unit cost. The most famous of these methods was a wage-incentive scheme developed by Frederick W. Taylor. Under Taylor's scheme, production standards and work methods were dictated by the laws of science, and science left no room for bargaining. Taylor promoted his system as a solution to labor unrest and productivity problems. He argued that scientific management would so

increase the economic pie that it would be unnecessary for workers and management to quarrel over how to divide the surplus.[3] This has a familiar ring today.

Not surprisingly, trade unions were hostile to Taylor's scheme. Strikes often accompanied the introduction of Taylorist theories into unionized shops.[4] The resulting upheaval sparked experiments in union-management cooperation, and during the 1920s there were high hopes that structured, cooperative programs might resolve problems of poor labor relations. However, most of these experiments were short-lived; they buckled under the weight of the Great Depression, membership opposition, or assertions of managerial prerogatives.[5]

It was not until the late 1970s that the topic of union-management cooperation reemerged. "Quality of Work Life" programs were the first to surface. The idea behind these programs was that if management improved working conditions, worker absenteeism would decline, quality would improve, and productivity would increase. However, the focus in the 1970s was on improving work-life; productivity was merely a welcome by-product.[6]

With the recession of the early 1980s, "Quality of Work Life" programs were phased out, and new regimes, dubbed "Employee Participation Plans," were introduced.[7] The idea behind the new regimes was to move away from the expectation that the focus of the cooperation programs should be on improving worker conditions. Instead, the focus of EPPs in the 1980s

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[3] *See* Sanford M. Jacoby, *Union-Management Cooperation in the United States: Lessons from the 1920s*, 37 INDUS. & LAB. REL. REV. 18, 19 (1983) (outlining the basics of Taylor's wage-incentive production scheme).

[4] *Id.* at 19.

[5] *Id.* at 18.

[6] *See* MIKE PARKER AND JANE SLAUGHTER, WORKING SMART, A UNION GUIDE TO PARTICIPATION PROGRAMS AND REENGINEERING 1-8 (1994).

[7] Schemes today have dozens of different names: Autonomous Work Groups, Call Manufacturing, Continuous Quality Improvement, Continuous Improvement, Constant Improvement, Deming Method, Diversity Training, Employee Ownership, Employee Participation Plan, Employee Involvement, Gain Sharing, High-Performance Workplace, Japanese Management, Post-Fordism, Quality Function Deployment, Quality Circles, Quality of Work Life, Return On Quality, Self-Managed Work Teams, Task Forces, Team Concept, Teams, Total Quality Control, Total Quality Management, Work Teams, Worker-Management Partnerships, Worker-Management Cooperation, Workplace Democracy, Workplace Innovations, World Class Manufacturing, and Zero Defects.

was on "teamwork." Management wanted to have employees actively participate in work decisions for the primary purpose of increasing productivity.[8]

Ideas about workers' roles with respect to decisions traditionally reserved to management thus have come full circle. In the 1980s, the focus of participation plans remained on productivity. Workers' roles in the 1990s, however, are diminishing drastically. Today, systems of "total quality management" allow employers to set the course for organizing and controlling the workplace. Modern EPPs are used as a vehicle for aligning employee activity with production goals.[9]

II. EMPLOYEE PARTICIPATION, PRODUCTIVITY, AND WORKER SOLIDARITY

Modern employment participation plans neither enhance worker rights nor contribute to productivity. By allowing management to control workplace decisions, EPPs naturally undermine unions' efforts to secure worker participation. Unions are workers' natural allies; they represent the most zealous advocacy of workers' rights. By undercutting union activity, modern plans erode workers' rights.[10] Employee participation plans cannot be justified on the grounds that they enhance workers' quality of life.

Similarly, EPPs cannot be justified on the grounds that they enhance productivity. The Commission erroneously concluded that employee participation plans may be the key to U.S. competitiveness. This conclusion is based on three studies, each of which found that increased economic productivity ensued when participation was combined with changes in employment practices, manufacturing policies, and decision-making procedure.[11]

[8] *See* PARKER & SLAUGHTER *supra* note 6 (noting that the 1980s was an era in which management encouraged workers to take responsibility for production increases and to pressure fellow workers for not pulling their load).

[9] *Id.* (explaining that total quality management places emphasis on top management's setting the course and organizing the workplace so that decisions "cascade down").

[10] *See infra* notes 18-20 and accompanying text.

[11] *See* FACT FINDING REPORT, *supra* note 1, at 46 (citing studies examining systematic forms of workplace changes at Xerox, in an international sample of auto assembly plants, and in a sample of plants in the steel industry, in support of the conclusion that the more systematic the involvement efforts, the greater the economic benefits); *see also infra* notes 12-15 and accompanying text.

The first of these studies occurred at a Xerox plant in which Xerox recognized the union without resistance and gave workers a no-layoffs guarantee.[12] The second study surveyed automobile plants in seventeen countries and concluded that a commitment to employment security or an absolute "no-layoff" policy probably is essential for productivity to increase.[13] The third study the Commission cited in reference to its conclusion that employment participation plans enhance economic productivity reviewed fifteen human resource practices in the steel industry.[14] It found that the firms with the highest performing practices are unionized.[15]

None of these studies supports the conclusion that employment participation plans necessarily enhance productivity. The Commission buried its recognition of this fact in the Report.[16] The Report states that productivity increased in "some cases" and that the empirical studies showed "mixed results".[17] Given the paucity of evidence that EPPs directly enhance productivity, and the fact that they erode workers' rights, endorsing EPPs as the "win-win" solution to problems of labor unrest and lagging productivity simply makes no sense.

III. WORKERS SHOULD REJECT EPPs AND ORGANIZE INDEPENDENTLY

The interests of workers and management are adverse. Workers desire good wages, short working days, and comfortable working conditions. Management's primary interest is profit.

text.

[12] Joel Cutcher-Gershenfeld, *The Impact of Economic Performance on a Transformation in Workplace Practices*, 44 INDUS. & LAB. REL. REV. 241, 244-45, 258 (1991).

[13] John Paul MacDuffie & John F. Krafik, *Integrating Technology and Human Resources for High-Performance Manufacturing: Evidence from the International Motor Vehicle Research Program*, *in* TRANSFORMING ORGANIZATIONS (Thomas A. Kochan & Michael Useem eds., 1992).

[14] Casey Ichinoiski et al., The Effects of Human Resource Management Practices on Productivity (March 1994) (Unpublished Study, on file with Carnegie Mellon University).

[15] *Id.*

[16] *See* FACT FINDING REPORT, *supra* note 1, at 46 (noting that the studies showing the largest positive effects on economic performance involve a combination of workplace reforms).

[17] *See id.*, at 45.

The National Labor Relations Act recognizes these competing interests[18] and includes provisions that are tailored carefully to protect both workers and management. For example, in an effort to protect workers, section 8(a)(2) of the Act prohibits management from sitting on both sides of the bargaining table.[19] To protect management, the Act prohibits a union from restraining or coercing an employer in choosing management representatives.[20] Given this adversarialism, workers' natural allies are not their employers, but other workers, including workers in competing and foreign companies. By organizing themselves internationally, workers can eliminate price competition based on differences in labor standards and thereby equalize wages and working conditions everywhere.[21] The elimination of this competition increases the bargaining power of unions and thus promotes workers' rights.

Critics of unions argue that unions are *too* adversarial and propose that unions cooperate with management in an effort to enlarge the economic pie for all.[22] It is true that unions are adversarial, but adversarialism is the hallmark of our society. Why should workplace relations be any different? Given the

[18] The preamble to the National Labor Relations Act does not mention shared labor-management interests. 29 U.S.C. §151-69 (1988). Rather, the Act alludes to the competing interests of workers and management. The Supreme Court acknowledged that worker and management interests are diametrically opposed. *See N.L.R.B. v. Insurance Agents Union*, 361 U.S. 477, 488-89 (1980) (noting that such an antagonistic relationship is "part and parcel" of the system that the Act recognizes).

[19] Section 8(a)(2) provides: "It shall be an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." 29 U.S.C. § 158(a)(2) (1988).

[20] Section 8(b)(1)(B) provides: "It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances." 29 U.S.C. § 158(b)(1)(B) (1988).

[21] In *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940), the Supreme Court explained that, "successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards." *Id.* at 503.

[22] Ford Motor Company's vice-president, Peter J. Pestillo, lamented the adversarial nature of union relations and called for what he contradictorily termed "the competitive view of collective bargaining." *Hearings Before the Comm'n on the Future of Worker-Management. Relations* (March 28, 1993) (statement of Peter J. Pestillo).

overwhelming resurgence of corporations, and the recent decline of unions, workers must adopt a broad strategy of aggressively opposing cooperation with management; they must intensify the struggle for international labor solidarity.[23] This most certainly includes rejecting employee participation plans.

If a company demands that a union accept an EPP as a condition of keeping a plant open, the union should accommodate the EPP with great caution and only after consultation and discussion among its members. If a union decides to adopt an EPP, it should implement a program consistent with a two-sided bargaining model. The EPP should consist of employee-side members and management-side members. Employee-side members should be allowed to exercise their rights to caucus separately, hire their own facilitators and experts, and take issues back to the union for consultation or vote. Union officials must be vigilant in monitoring the activities of the EPP. Finally, as in all other collective bargaining, the union should demand that in the event of an impasse, it retains the right to strike or arbitrate. Limitations on EPPs are valuable guarantees of labor independence and should not be bargained away.

CONCLUSION

Access to influence on traditional management prerogatives is the bait floated by the Commission to unions in order to win union support for EPPs. However, management keeps for itself the final say in all of the plans. The EPPs enhance management control, not productivity. Workers and union officials become confused, worker ideology suffers, and working conditions deteriorate.

Employee participation, like all other games, has losers. It is an old game, so unions must respond as they always have. Unfortunately, their message is not well heard today, and the short term prospects for workers are bleak. Academics and attorneys cannot solve the problems. However, workers can be more optimistic in the long term, because organized worker discontent inevitably will rise again. When it does, we all, including the Commission, will see real participation directed to a workers' agenda.

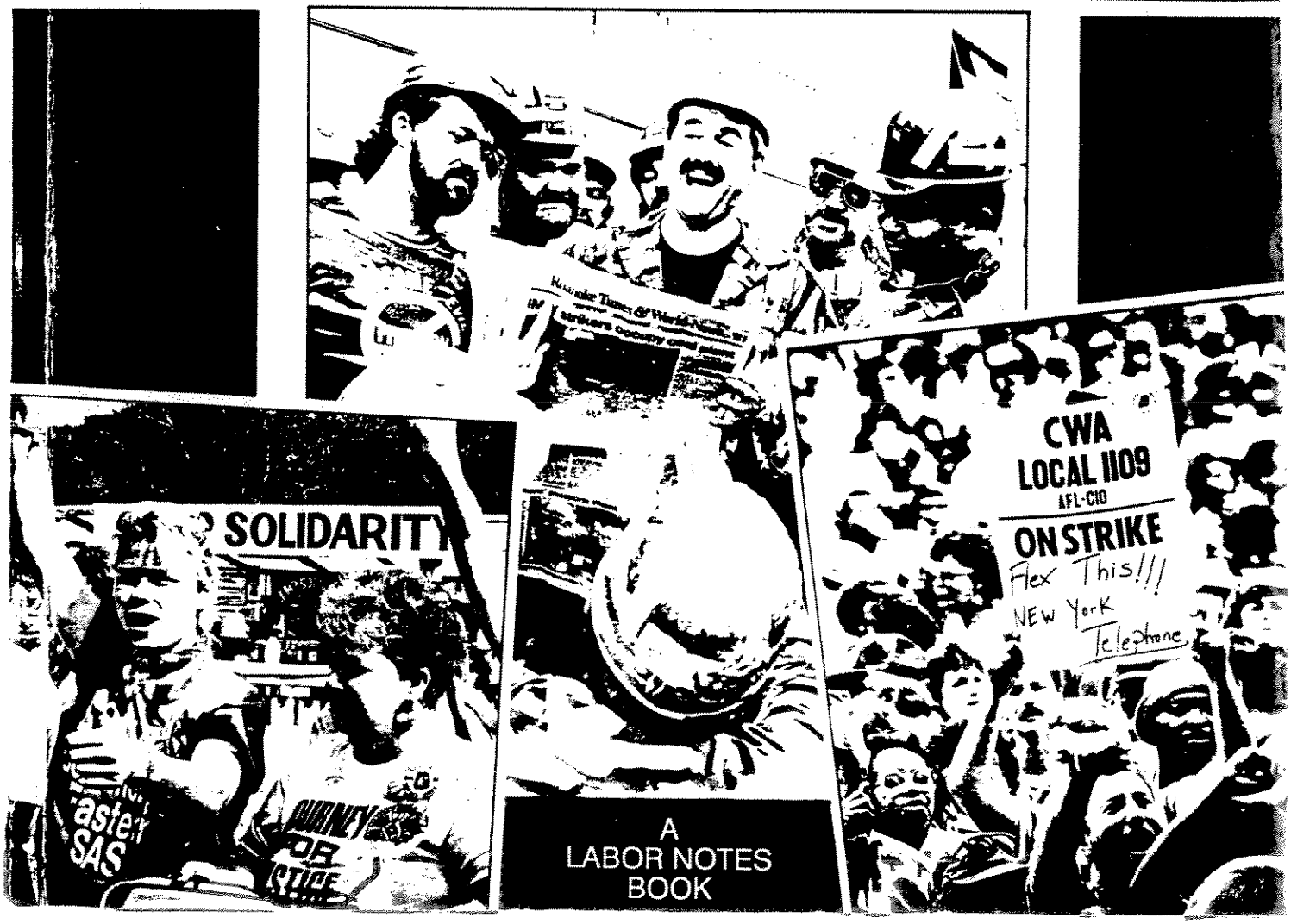
[23] For support of the idea that workers should intensify their struggle for solidarity, *see* Wilson McLeod, *Labor-Management Cooperation: Competing Visions and Labor's Challenge*, 12 INDUS. REL. L.J. 233, 281-91 (1990).

A TROUBLEMAKER'S HANDBOOK

HOW TO FIGHT BACK WHERE YOU WORK—AND WIN!

by Dan La Botz

With a Foreword by Genora Johnson Dollinger



A LABOR NOTES BOOK

A Troublemaker's Handbook

How To Fight Back Where You Work — and Win!

by

Dan La Botz

A Labor Notes Book
Detroit • 1991

To Jakob La Botz

A Labor Notes Book

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Top: New York hospital workers, members of Local 1199, strike for a decent contract in the summer of 1989. Andrew Lichtenstein/Impact Visuals.

Lower left: Striking Eastern Air Lines flight attendant and Pittston miner's wife welcome Detroit auto workers to the miners' Camp Solidarity. Jim West.

Center: Pittston miners read about their plant take-over in the newspaper. Cindy Reiman/Impact Visuals.

Lower right: NYNEX strikers, 1199 hospital workers and Eastern Air Lines strikers marched together in an August 1989 demonstration. Les Stone/Impact Visuals.

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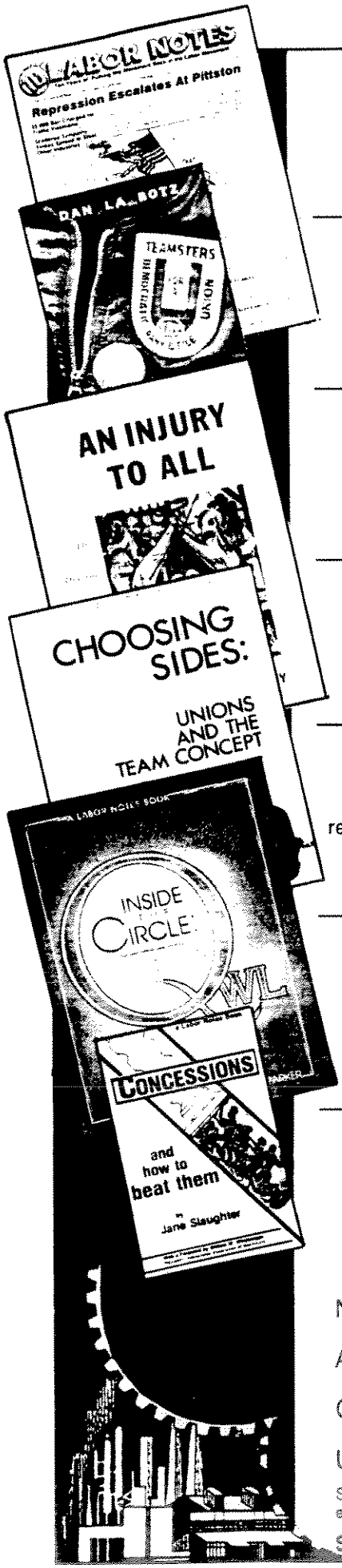
Table of Contents



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COMMUNICATING DIRECTLY WITH YOU, THE MEMBER

We Reject All USPS 'Company Unions'!

Last month, I stated an unequivocal clarification of APWU's policy regarding management's latest variations on the theme of its Employee Involvement/Quality of Worklife programs.

Since then, however, I have received evidence of a proliferation—a mushrooming—of these committees. Management presents them under the "new and improved" heading—in the hope that perhaps a few of them will take root.

NOT!!!!!!

Please bear with me while I run down the list of those committees we have received word of as we go to press:

- *focus groups*
- *EOS-linkage training products*
- *employee advisory councils*
- *employee survey committees*
- *quality process groups*
- *employee opinion strategies*
- *quality of life programs*
- *"commitment to employees" programs*
- *employee satisfaction committees*
- *employee of the month competitions*
- *employee opinion survey groups*
- *quality first teams*
- *quality clerk positions*
- *leadership team performance clusters*

Old Union-Busting Tricks

I have jokingly referred to these silly schemes as "new and improved," but they're not an improvement of APWU's bedrock union beliefs, and they definitely are not new.

Postal management's attempt to create "union avoidance" committees is as old as sin. If you don't believe it, just refer to a "History of the National Federation of Post Office Clerks," which was published in 1945. Referring to the then "New Era" of postal unionism of 1921, the authors said:

"[The new Postmaster General, Will Hays] announced that he had in mind the creation of a Welfare Department through which employees could canalize [channel] their grievances and suggestions for a better Postal Service and better working conditions. An as yet unselected 'big man' would be asked to head the welfare service. Experienced trade unionists are always inclined to look askance at

any of these 'welfare' concessions as merely backfires set by so-called 'liberal' or paternalistic types of employers to head off or destroy real independent unionism. By granting pseudo-recognitions or 'employee representation plans,' actual and bona fide union recognition is avoided as 'unnecessary.' In fact, unionism is dismissed as 'old fashioned and obsolete.'

"These 'welfare councils' in private industry usually labor mightily to pro-

BY MOE BILLER

de extra water coolers, ice, free oap and towel service, better furni- ire in the restrooms, more lights or irger spitoons, or any other 'reason- ble' requests which the employee ay make. Better wages, shorter ours, union recognition or a closed hop, however, are met with a show f injured feelings as clearly demon- trating the gross ingratitude and nsatiable unreasonableness of the vorkers or the fact that radical nakes are loose in the Garden of Eden."

A Dangerous Narcotic'

The writer, in 1945, then went on o quote a statement made by the ostal union's secretary-treasurer in is biennial report to the 1921 con- vention where he "clearly set forth the workers' distrust of all such 'welfare' olans in these words:

"'It cannot be too strongly empha- sized that welfare work directed by those in authority can never become a substitute for organized effort on the part of the workers. No employee familiar with economic facts and labor's struggle upward through the ages will be carried away with the inane hope that some agency, sepa- rate and distinct from him and his associate wage earners, will lift him into an industrial Paradise with no compensatory contribution on his part. Such a thought is a dangerous narcotic.'"

Stale Anti-Unionism

As you can see, there is nothing new or innovative in the Postal Service's latest crop of "welfare" schemes, which are designed to avoid and obstruct the bona fide workers' representatives—their union.

We are in the process of stamping out these regional and local manage- ment-dominated committees just as you would swat away flies or stomp out snakes and insects. But our task is magnified by the fact that there seems to be no end to these varia- tions on the EI/QWL theme.

*So suffice it to say that no matter what they call it in your local and no matter how management tries to sell it—**APWU Ain't Buyin' It!!***

APWU Wins Press Honors

As you can read on the back page of this issue, the American Postal Workers Union has, once again, won major accolades in the annual labor press awards competition.

This year, APWU has won more honors than ever before in our union's history. Moreover, we have won awards in more categories and at even higher levels.

I take great satisfaction in this year's awards, because I have just returned from the 1993 APWU Postal Press Association's Editors' Conference in Orlando, FL. As was made eminently clear by PPA President Tony Carobine and his associates, there is no higher honor than that which is bestowed by one's peers. And this year, APWU has brought home the highest recognition from our peers in the labor move- ment—the International Labor Communications Association!

It makes me proud to be APWU! How about you?

New Director of the APWU Retirees Department

It is with the greatest pleasure and satisfaction that I announce my appointment of Dayton, OH, local president John R. Smith as the first director of the APWU Retirees Department.

Some APWU members may have wondered why it has taken some time to fill this position at our union's head- quarters. But I hope you can well appreciate my philosophy that no position can be filled in haste. We must always select the best person for the job! And in John R. Smith, we have!

I cannot overemphasize the impor- tance of Brother Smith's appointment as your new Retirees Department director. At long last, APWU will have an advocate for our retirees in the legislative arena. At long last, we will have a grassroots political and leg- islative operation. At long last, we will be in the forefront of postal/federal retiree issues!

The Struggle Continues!

LABOR-MANAGEMENT COOPERATION: AS APWU SEES IT

Editorial by Moe Biller, President

Recently, on the heels of the historic agreement between the APWU and USPS which brought remote video work back in-house, the parties executed a Memorandum on Labor-Management Cooperation on November 2, 1993. I want to give some background on the union's traditional commitment to *cooperate* with management, while restating APWU's unwavering opposition to programs which *coopt* employees. At last, in this memorandum, the foundation for real cooperation--**Union involvement**--has been established. The Postal Service makes an unprecedented statement recognizing the role of the union as the employees' representative:

"Management recognizes the value of Union Involvement in the decision-making process and respects the obligation of the APWU to represent bargaining-unit employees. In this regard, *the Postal Service will work through the national, regional and local union leadership, rather than directly with employees* on issues which affect working conditions and will seek ways of improving customer service, increasing revenue, and reducing costs. [emphasis added] Management also recognizes the value of union input and a cooperative approach on issues that will affect working conditions and postal policies and affirms the intent of the parties to jointly discuss such issues prior to development of such plans and policies."

No one should get the idea that this commitment to work through the union means that employees' input will be excluded in the listed areas. The opposite is true. Broad-based, rank-and-file employee involvement in all areas of their work lives is encouraged--but *through their union --APWU.* Labor-management committees exist on all levels, many established expressly by the National Agreement. A good example is the Local Safety and Health Committee. Article 14.6, entitled "Employee Participation," commits the parties to "broad exposure to employees... to insure new ideas being presented to the Committee," and encourages broad representation of employees on the committee. The model for "UI" (Union involvement) already exists, which can now be expanded.

The Memo on Cooperation represents no change in the APWU's views on so-called "Employee Involvement and Quality of Work Life" (EI/QWL) programs. The entire membership is aware of my staunch opposition to all forms of EI/QWL which bypass and weaken the union as the employees' representative. The Postal Service's EI/QWL programs, and their recent reincarnations as Focus Groups, Employee Opinion Survey Committees, and the like, did just that. In the name of "employee empowerment," they *disempowered* employees, substituting the *illusion* of power. By dealing directly with employees and bypassing the union, the Postal Service was giving employees the subtle but erroneous message that employees and management are one happy family, and that their union was an outside troublemaker.

The fact is that the union *is* the employees--it is *their self-created and freely-chosen representative. The law flatly prohibits management from creating a representative body for employees.* Cooperation is easy enough when management's and employees' interest coincide, but that is

(over)

not always the case. Consider, for example, the Postal Service's efforts at the termination of every contract to argue that postal employees are overpaid and underworked. Can anyone doubt that employee committees will be promptly ignored the minute they stand up on any issue that is really important to management? Is anyone fooled about the fact that these so-called "partnerships" between employees and managers are totally one-sided? I have always opposed phony programs of this sort, and always will!

The APWU has cooperated on issues of mutual interest and benefit. For example, the union has generally supported the Postal Service's automation efforts: we realize that automation which increases productivity is necessary for the long-term viability of the Postal Service, and therefore for the security of postal workers' jobs. Prior to the November 2 agreement, however, the USPS had taken advantage of this policy of cooperation, and had forgotten that ***it did not come free.*** The union agreed to cooperation on automation ***in return for certain USPS commitments to employees,*** such as sharing the savings of increased productivity with employees in the form of improvements in pay, benefits and working conditions; protecting employees from the adverse effects of automation (e.g., save-grade for excessed employees); and **assuring that the new jobs created by automation would go to postal employees.** This was a large part of what the fight over contracting out RBCS was all about: making the USPS keep its historical compact with employees.

The answer to the cooperation question is **"Union Involvement".** Only through a strong, independent union will the employees' collective voice be heard without coercion and will their interest be protected. My belief has always been and continues to be: **"THE UNION IS YOU!"** Only through the employees' participation in the union's cooperative efforts will they be truly "empowered." And only by dealing with the union will management be assured that employees' genuine desires and sentiments will be expressed.

The landmark November 2 agreement indicates that the postmaster general and the highest levels of Postal Service management have come around to this point of view. In this memo, the USPS is specifically committed **at all levels of the organization** to "a cooperative approach on issues that will affect working conditions and Postal Service policies." The depth of this commitment will be evidenced by management's actions. We expect an end to the run-around that locals often encounter in their attempts to address important issues--things like their being told by management that an issue is out of their hands, or belongs in the Customer Service or the P&D branch of the two-headed management structure.

Cooperation requires an attitude that union and management representatives have **equal standing on a level playing field** in matters of mutual concern. In this way, the intelligence of the union membership and the concerns of employees for their own Postal Service will be unleashed for a more productive and customer-oriented service to the American people, plus a more rewarding career for employees across the nation.

All of this, however, will require diligent and hard work by the union and management. And that's what your president means when he reiterates, **The Struggle Continues!**

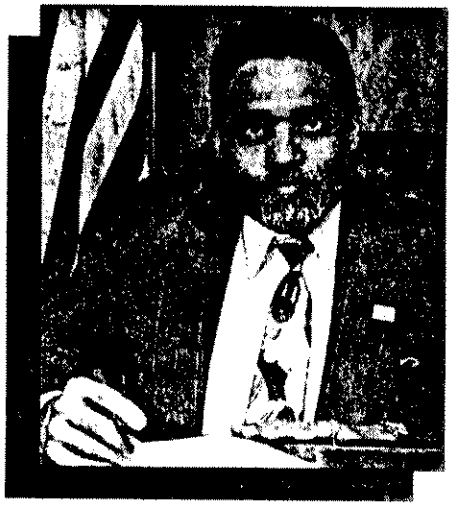
VIEWPOINT

My Perspective: UI, Yes!— EI, No!

I recently read "The New American Workplace: A Labor Perspective," a report by the AFL-CIO Committee on the Evolution of Work. To put this in proper perspective, the report is the response of organized labor to the growing efforts to involve unions in cooperative measures to address the organization of work. Programs commonly referred to are Quality of Work Life (QWL) and Employee Involvement (EI).

To comprehend this issue, one must look to the past to appreciate the function of labor unions. In the earlier stages of civilization, individuals who worked for the profit of others learned that as individuals they were powerless against the power of company owners and their agents with responsibility for exacting maximum output from workers at the lowest possible cost.

To counter the overpowering authority of the company and its agents, the workers experiencing the powerlessness formed unions to best use their collective knowledge and efforts. Workers' early organizing efforts resulted in small fraternal organizations that over time grew into craft unions representing workers performing similar tasks—and finally to industrial unions where all of the workers within a specific industry were represented by a single union. Examples of craft unions are carpenters, plumbers, letter carriers and other employee groups that limit their representation to those performing similar tasks within the same industry or enterprise. Coal miners, steelworkers, telephone workers and APWU are examples of industrial unions that represent workers across craft lines within the same industry.



BY WILLIAM BURRUS

Different Positions

From fledgling efforts to the present, workers formed unions—and the unions have existed—to unify the strength of workers. Because of the desire of owners and managers to maximize profit and control, these efforts of unionization met, and continue to meet, stiff resistance. This resistance has been so effective that today, organized labor represents a smaller percentage of workers than at any time over the past 30 years. In addition, the business community has been successful in enacting laws restricting unions' efforts to organize and represent workers.

From a functional view, management and labor unions have been, and are, enemies who pursue divergent goals. A union's goal is to extend membership to the greatest number of workers and improve their conditions; management's goal is to limit or eliminate union membership and depress conditions to the lowest level that will attract workers. Management has historically opposed labor unions because, without unions, workers stand naked before the employer's power to hire, fire and establish conditions of employment.

Thus it was very disappointing to read the AFL-CIO report on the "Evolution of Work." I do recognize that the report represents a compromise between different unions with different agendas, and compromise by its very nature weakens the resolve of all participants. But what is most disappointing is that the report does not clearly and forcefully denounce every form of direct employee contact with management on issues within the parameters of collective bargaining.

Different Goals

Those who favor cooperative employee programs endorse the involvement of individual workers or teams of workers in increasing the productivity and competitiveness of the company. These are merely code words for surrendering the collective, militant efforts of workers to the benefit of the profit margin of the company. This implies that workers have to sacrifice for industry to be competitive.

How do they propose that we compete? Should we return to the use of child labor or slaves and repeal the minimum wage to compete with starvation wages in undeveloped countries? Or perhaps our sacrifices will be limited to employee jobs, wages, benefits and safety conditions. To be competitive, as defined by management, is to reduce employee costs and the number of employees. The current corporate management standard in manufacturing is that employee costs should not exceed 20 percent of the value of goods produced. The remainder is allocated to fixed costs, debt servicing, research, advertising and profit. In the "leveraged buyouts" of the 1980s, debt-servicing costs escalated so that they equaled the cost of labor in some industries.

To identify with management goals—reduction of labor costs with-

Continued on page 17

VIEWPOINT Continued from page 6

out comparable worker benefits—is to capitulate and accept management goals as union goals. Our members should never identify with goals of management that conflict with union goals. The past 12 years are filled with examples where employees accepted wage and benefit cuts and work-rule modifications—and, in return, the company closed its doors after providing generous golden parachutes for its corporate heads.

Management's definition of being competitive is the reduction of jobs. The union's definition should be the expansion of jobs and the creation of a product that workers are proud to produce. How can labor leaders ask that workers cooperate in their own demise? This cooperative theory is academic gibberish.

Partnerships?

The report is replete with references to a "partnership" between union and management, workers and bosses. There never has been and there never will be a partnership between labor and management. Where was our partnership over the past 12 years—when corporate pay increased by 300 percent while workers' wages were reduced?

Every contract negotiated by management contains a "management rights" clause that reserves for management absolute control over all issues not expressly excluded; and, in the event of a disagreement on the included issues, grants management the absolute authority to determine the final resolution. How can we ever have a "partnership" when one side reserves for itself all power and denies workers any semblance of self-determination? Evidently, workers are "junior" partners with a small "j." And I must assume that in the past 12 years over 2 million displaced workers did not lose their jobs: their partnership was dissolved.

The real tragedy of the report is that the unions that are deeply involved in the cooperative mirages draw support from a weak document that encourages further weakening of the only strength that labor possesses: the joint resolve of its members.

Individuals know that in a competitive society there will be winners and losers. But, if they belong to a union, they should, at the very least, be able fights. Not just during negotiations that occur every two to five years, but every minute, every hour, every day. Granted, militant action is no guarantee that some companies will not shut down or move overseas, or that others will not reduce the size of their workforce—but cooperation has not slowed the trend.

Cooperation?

Tell the more than 2 million displaced workers that their jobs were eliminated while the union and management were "cooperating." Tell the unemployed that 1 million of today's good jobs will not be available tomorrow because labor is "cooperating" with management to eliminate them. Tell the beleaguered workers that they will be expected to be more productive because management and labor have "cooperated" in an increased productivity standard. And when their jobs are finally eliminated after they've accepted wage and benefit concessions, tell them that's a "cooperative" effort too.

Employee-management cooperation is designed to weaken collective action through the subterfuge of fake empowerment. Cooperation by its definition means compromise—and all that a labor leader has to trade off is workers' knowledge, labor and jobs. A boss who asks a limited number of workers to apply their knowledge and creativity to improve productivity intends to deny all their coworkers the benefits of suggested changes. Multiply these individual arrangements by millions of workers under the very best of circumstances and you have productivity increases in major proportions—with a pat on the back and a pink slip in return. Management would have increased productivity with no increased costs and mitigated the workers' militancy as a bonus.

A Postal Example

A perfect postal example would be if the central mark-up employees met "cooperatively" with management and decided they could improve the efficiency of their operation if they received an increased volume of work on Monday (which would permit them to process all forwarded mail by Friday). This would increase productivity in the unit; the benefit would be that all CFS employees could work a

other hand, mail-processing employees would have to work every Saturday and Sunday to forward the mail to CFS. This would fragment the bargaining unit and result in one group benefiting at the expense of another. In addition, after achieving their desired work week, how strongly would CFS employees support the efforts of an LSM cooperative group to change their schedule back to weekends off if this benefits only LSM employees? This process pits employee against employee with the resulting benefit decided not through bargaining with the union, but from the largesse of management.

Labor vs. Management

APWU totally supports cooperation with management on those issues identified by the membership as worthy of attention. The issues are identified in meetings of union members only, without the participation of managers. Whoever heard of a supervisor having a voice and vote at a meeting of union members? At a union meeting, all members are invited to raise any issue of concern, including methods and procedures to improve the efficiency and productivity of their work. And for those who say that union members will not attend meetings: if an employer truly wishes to be cooperative, let them permit the union to conduct workfloor meetings.

At the conclusion of a union meeting, "elected" union leaders are charged to pursue members' goals at structured contractual meetings. If in such meetings management wishes to raise their issues of concern, the "elected" union leaders are prepared to consider, respond and, where appropriate, exact a benefit in return.

QWL programs are intended to have workers identify with the goals of management and adopt a "we" philosophy (workers and management). However, the "we" in labor unions applies to the membership only. How can we identify with management who is trying to eliminate our jobs or reduce our pay?

Union Involvement, Yes!

There is a danger that we can become so impressed with our own importance and knowledge as labor leaders—and while being recognized and entertained by the power brokers of our society—that we lose touch The regularly scheduled photos of a lofty politician shaking hands with a union leader while a photographer just happens to be at hand, the prestigious seat, the invitation to the White House, the golf game at the private country club and the instant recognition in public places—all lead to a message that we have arrived at positions of power. But if we have, why are the members left so far behind? Why hasn't this enlightened leadership and the friendships developed with important people translated into higher wages, more union members and a shorter work week?

And while I am wound up on the subject of leadership, how can we forget the shameful actions of the Clinton administration in passing NAFTA to replace American jobs with low-wage, no-benefits jobs in Mexico? This was not an issue of competition—but an effort to satisfy corporate America and convince them that Democrats can be their friends. And now labor leaders are prepared to make political contributions to those legislators who voted to transfer our jobs.

The role of labor leaders in a competitive society is to lead their members in the fight to achieve a fair return on their investment of time and labor. Leaders, no matter how effective, cannot and were never intended to achieve this alone. It requires the militant, active and concerned involvement of the workers. There can be no compromise on "Union Involvement—Yes!; Employee Involvement—No!"

Promotion Pay

There has been no further progress on resolving the outstanding issues on promotion pay with postal management. At a meeting of the APWU and the NALC, the unions agreed to pursue resolution of the issues separately. Efforts are now underway to schedule meetings with the USPS to determine if agreement can be reached governing APWU-represented employees.

Casuals

As of press time, no meetings had been held with the Postal Service on the implementation of the arbitrator's award on the excessive use of casuals. Any activity will be reported in the ***News Service*** *bulletin.*

SUPPORT SERVICES DIVISION

It's Time The USPS Pulled the Plug on EI

Day in, day out, since 1983, the Postal Service has continued to spend untold millions on outside consultants to develop EI programs (e.g., Total Quality Management, Focus Groups, Quality Improvement, EI/QWL, etc.) to allegedly improve the Postal Service. Yet, over a span of 10 years, and with some 6,000 EI/QWL committees in place, nothing of any real significance has been accomplished! Common sense would dictate that by now the Postal Service would bail out of these schemes that do nothing but divide a proud and already productive work force.

A Strong Critique of EI

It appears the Postal Service stubbornly holds to the popular private sector propaganda that EI programs and other gimmicks promoting "quality" are now a prerequisite for any company to remain competitive in the global economy. Interestingly, this assumption is challenged by a recent study conducted by Maryellen Kelley and Bennett Harrison titled, "Unions, Technology and Labor-Management Cooperation," published in ***Unions and Economic Competitiveness*** *(M.E. Sharp, Armour, NY, 1992). Harrison and Kelley, both professors of the school of Urban and Public Affairs at Carnegie Mellon University in Pittsburgh, surveyed 584 manufacturing plants in an effort to find out if employee-involvement programs really have made companies more efficient.*

In an analysis of this study in the May 1993 national publication of "Training, The Human Side of Business," author Bob Filipczak concludes:

"Kelley and Harrison's findings are not good news for fans of employee-involvement initiatives—or for enemies of unions. Using a strict definition of efficiency based on productivity output per employee, Kelley and Harrison found that: 1) Efficiency was lowest in nonunionized plants where employee-involvement programs were in place; 2) efficiency was significantly better in unionized plants

where employee-involvement programs were in place; and 3) ***efficiency was highest in unionized plants where no employee-involvement programs were in place****. (emphasis added)*

"Harrison and Kelley postulate that, contrary to practically everything written or preached about the subject for the past 10 years at least, the most efficient and productive environment

BY GREGORY POFERL

s, in fact, a traditional unionized workplace. Counterintuitive though hat conclusion may be, the study provides ammunition for those who believe unions should do less cooperating and more confronting. For advocates of adversarialism, the findings confirm that the past decade of labor-management cooperation has been an aberration and a mistake."

The 'Real Story'

The research is very convincing, but we really don't need to rely on academic studies to get the real story behind management's focus on "quality." We experience it first hand. Recently, I had the opportunity to work on a labor-management task force to look for ways to improve operations at the Mail Equipment Shops. Our goal was to keep the shops competitive and eliminate once and for all any need to subcontract. For several meetings we listened attentively to management's concerns regarding operational needs, productivity and outsourcing; but when the union offered concrete proposals to increase efficiency by implementing alternative work schedules and by reducing supervisory positions, management was stunned. It quickly became apparent they only wanted to focus on their agenda.

Recent developments at the Postal Data Centers and Supply Centers show yet another side of management's idea of "cooperation." Management has been using blatant union-avoidance tactics such as "lunch-with-the boss" and workfloor strategy sessions with employees to develop ways to improve morale and quality of service, and to increase productivity. These activities have not gone unchallenged by the APWU locals; however, it is very troubling that, despite the APWU's historic RBCS settlement and memorandum on labor-management cooperation, as well as the 1992 NLRB Settlement Agreement against EI/QWL, postal supervisors and managers continue to ignore their legal and contractual obligations to the APWU!

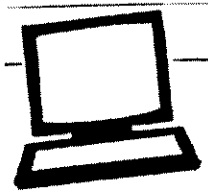
Commitment vs. Productivity

Considering these tactics by management at APWU Support Services Division facilities, I can't help but wonder about the Postal Service's commitment to its agreements with APWU, but I have no doubt about its demands for competitiveness and productivity. The Support Services' facilities (PDCs, Supply Centers, Mail Equipment Shops and Operating Services) were all declared "overhead" during reorganization. As a result, hundreds of APWU bargaining-unit jobs have been eliminated, and, at every facility, employees are being pressured to do more and more while union jobs continue to decline and contract employees and casuals stand in our shoes. Could it be that management uses these multi-million-dollar "EI" programs to make us think that productivity and speed-up are our ideas, or are they simply euphemizing the old management technique of "management by stress?"

We certainly learned lessons during reorganization when the Postal Service accelerated the subcontracting of our work, eliminated jobs, and reassigned our bargaining-unit coworkers and their families to distant facilities. Many of our APWU friends have experienced great loss and hardship over the past two years, and no employee-involvement schemes can mask the harsh effects of privatization, management by stress or the loss of jobs.

I anticipate the Postal Service will continue its numerous EI programs to create illusions of well-being at the workplace. At first glance such programs do appear positive; but as we get closer to the real purpose of these programs, everything becomes clear. They are time-worn gimmicks management uses to increase productivity and speed up the work place. They are cooptive and divide workers and their unions. As the saying goes: "EI is like a dead mackerel on a moonlit beach: it both shines and it stinks."

SUPPORT SERVICES DIVISION



Beware Of the Company Union

On January 6, 1995, I had the privilege of representing the APWU at the annual meeting of the Industrial Relations Research Association in Washington, DC. I participated in a panel discussion on the "potential impact of alterations to Section 8(a)(2) of the National Labor Relations Act (NLRA) on unions and union organizing campaigns."

In light of APWU's major victory in its long battle against USPS labor law violations committed through its EI/QWL programs, postal workers clearly recognize Section 8(a)(2) as the heart and soul of the NLRA in safeguarding the independence of workers to organize and represent themselves. However, recent developments may play a major role in drastically changing this touchstone of industrial democracy that has protected American workers against sham company unions for some 60 years.

The recently completed report of the Dunlop Commission (established by Secretary of Labor Robert Reich to review whether or not changes in labor laws were needed), has recommended a significant revision of 8(a)(2) which, in the consensus of the panel, would rip out the historical foundations built for a truly independent labor movement. Notwithstanding the moral outrage at any initiative to destroy 8(a)(2), it is certain that legislation will be pushed in the 104th Congress to emasculate the NLRA.

It's a Scam

Panelist Charles Morris, professor emeritus of law at Southern Methodist University, provided a very interesting and critical analysis of the current initiatives to change 8(a)(2). In discussing the ***Electromation*** *case, where the company illegally formed EI-type committees to keep workers from organizing as Teamsters, he emphasized the political axiom, "that sometimes the perception of reality is more important than reality itself," to explain why 8(a)(2) is in danger.*

Morris sees a scam. If the anti-union lobby can use "competitiveness" or "worker-participation" as the perceived rationale for changing the law, legislation may indeed pass, especially in the 104th Congress. He believes that if amendments are made to the law, consistent with the Dunlop Commission Report, or legislation drafted by Sen. Kassebaum (R-KS) and Rep. Gunderson (R-WI)—the Teamwork for Employees and Management Act (TEMA)—it would destroy the fundamental rights of employees to "choose for themselves."

Interestingly, Morris quoted Edward Miller, a management attorney and former chairman of the National Labor Relations Board in his testimony before the Dunlop Commission. Miller stated, "While I represent management, I do not kid myself. If Section 8(a)(2) were to be repealed, I have no doubt that in not too many months or years sham company unions would again recur." Morris adds: "Regrettably, other management spokespersons on this subject have not been so candid, for it is obviously easier for them to sell an

BY GREGORY POFERL

anti-8(a)(2) campaign if the public views that provision not as a shield against sham company unions but as an archaic impediment to worker cooperation and therefore a danger to American competitiveness.

"And that is exactly how the effort to repeal Section 8(a)(2) is being sold. It is the perception of reality that they are selling. The present actual reality is that legitimate nonunion worker participation programs are not being chilled. And the likely future reality as to what will happen if Section 8(a)(2) is repealed—aside from the obvious negative impact which that would have on union organizing—is that the resulting legislative void would dampen some of the best efforts at employee-management cooperation, and the competitiveness of much of American industry could be adversely affected in the long run."

I found Morris's remarks very much on point respective to APWU's Memorandum of Cooperation which has reinforced our own traditional labor-management programs within the context of collective bargaining. We have wisely shaped our approach to labor-management cooperation on the provisions of the NLRA that safeguard real workplace democracy. However, there are those who would seek to dismantle such progressive programs. Morris warns: "It is easy to understand why the nonunion management lobby is so upset by ***Electromation****, and it is not because the case chills 'worker participation' or any meaningful concept of 'employee cooperation.' Those are simply nice buzz words which mask the real concern, which is that something else might be chilled, because* ***Electromation*** *has focused attention on what used to be the best kept secret under the National Labor Relations Act: Section 8(a)(2).*

"As a result of ***Electromation*** *and its progeny, that section has suddenly become the Achilles heel of nonunion employer conduct under the act. Employers long ago learned how not to fear the NLRB or the act, especially its better known provisions: Section 8(a)(3) relating to discharges for union activity, and Section 8(a)(5), relating to the duty to bargain in good faith. They learned that the NLRA could even be used as a buffer against unionization, and that the NLRB, at worst, was but a minor irritant to an employer who was doggedly determined to maintain a nonunion envi-*

Continued on page 13

On the IRRA panel, l. to r. were: Judy Scott, general counsel, IBT; Larry Cohen, director of organization, CWA; Charles Morris, professor emeritus, Southern Methodist Law School; myself; James Rundle, labor education coordinator, Cornell University; and Owen Herstadt, counsel for legislative affairs, Machinists Union.

Support Services—Continued from page 11

ronment. But now the board shows signs of enforcing a potent provision of the act which most employees, especially nonunion employees, didn't even know existed," said Morris.

Reality Sinks in

You really don't need to be a law professor to understand how 8(a)(2) translates on the workfloor. Consider, for example, the real life problems many of our local APWU officers and stewards have faced because of management-created conflict through its multiform EI programs. Saturated in the propaganda of outside consultants, numerous supervisors doggedly attempt to "deal directly with" bargaining-unit employees every chance they get.

Situations arise where management approaches the APWU local with a proposal that has been developed in EI or on the workfloor with "selected" employees. On its face, the proposal may have merit; but if the union okays its implementation, credit typically goes to management and those employees who jumped on management's bandwagon. However, if the APWU, as exclusive representative, rejects such a proposal, dissension among employees may arise, especially if the proposed change would benefit certain employees.

Congressional judgment established 8(a)(2) specifically to safeguard against such rivalries and competing interests instigated by employers. We mustn't forget that the protections demanded by the labor movement and shaped into law by the Wagner Act are as important today as they were to workers in 1935. I hope all unions will follow APWU's lead and lobby hard to keep this critical safeguard of workers' rights intact. The labor movement has learned that when it comes to the longstanding democratic principles of free association and workers' independence, there is no compromise.

INDUSTRIAL RELATIONS DEPARTMENT

What Does EI/QWL Do?

As discussed in previous articles, it has been assumed that because of today's international economy, cooperative program efforts are imperative to assure competitive productivity and efficiency. However, little substantial research has been done on their effectiveness on productivity and efficiency. Many of the so-called success stories need to be viewed with skepticism, because the individuals gathering the data are either plant managers who are responsible for the programs or consultants selling the programs. Most of the research that has been done has focused on unions and their effect on productivity; most research has concluded that unions have had a positive effect on a company's productivity for a variety of differing reasons.

Proponents contend that employee groups generally have a positive effect on productivity. A study from the Manufacturer's Alliance for Productivity and Innovation (MAPI), which summarized a number of studies, contended that quality circles can increase job satisfaction for those employees involved in the programs, and noted that employers experienced "modest economic payoff in terms of productivity, product quality, and cost savings." What is disturbing about these studies is that most tend to focus on perceptions and attitudinal changes by employees and managers.

Corporate management has used these studies as an argument for positive gains in productivity and efficiency. While some measure of productivity and efficiency can be extracted from the studies, even in the best scenarios the gains are only modest.

The Kelley and Harrison Study

The MAPI report and the studies cited within it concluded that companies with EI/QWL programs modestly add to productivity and efficiency. This conclusion was not seriously challenged until recently—in a study ("Unions, Technology and Labor Management Cooperation") of more than 1,000 large and small establishments in the domestic metal-working machinery industry conducted by Maryellen Kelley and Bennett Harrison. Their goal was to find out whether employee involvement programs have made companies more efficient and therefore more productive.

Using a strict definition of efficiency based on productivity output per

employee, Kelley and Harrison found that:

1) efficiency was lowest in nonunionized plants where employee involvement programs were in place; 2) efficiency was significantly better in unionized plants where employee involvement programs were in place; and 3) efficiency was highest in unionized plants where no employee involvement programs were in place.

There could be a number of explanations for these results. One is that **a union presence** in a workplace setting can result in more efficiency and better production. Among other

BY THOMAS A. NEILL

things, union presence has been found responsible for reducing quit rates, increasing communication through a collective voice, establishing seniority systems, reducing rivalry among workers, and decreasing the number of arbitrary decisions about workers by managers. Another explanation is that unions are able to increase productivity by forcing management to adopt better personnel practices. (This is known as the "shock effect" of unions.) This evidence adds a strong argument for those advocating a strong adversarial union movement.

What Do EI/QWL Plans Really Do?

If productivity and efficiency are not increased by EI/QWL, then what role do they play? Studies show that most plans, after a brief honeymoon, peak and fade away—or fail altogether. Some studies have found that up to 95 percent of the programs have no significant impact on quality or efficiency.

What the programs tend to do is modify behavior which can lead employees to believe (falsely) they are empowered in decision making. Another result may be a stronger identification with the company. In turn, this may lead to manipulation, whether intended or not, of employees for the good of the company. Historically, it is employees who have suffered job losses and givebacks that result from unilateral management decisions.

Author Michael Parker has outlined an argument against EI/QWL programs, citing three reasons why unions should not enter into these cooperative efforts:

1. EI/QWL training is not "neutral" and is designed to make workers think like management.
2. EI/QWL destroys the traditional adversarial relationship between management and the union; QWL promotes competition between union members, pitting union member against union member.
3. EI/QWL makes other union jobs less attractive because participants are looked upon favorably by the organization.

The above arguments are grounded in the philosophy that the inherent differences between management and employees will always be present and, by leading employees to think more like managers, employees will lose sight of their own goals.

The Postal Service and EI

The Postal Service has been involved in EI/QWL programs since the early '80s. It established EI/QWL committees throughout the country in response to growing tension between labor and management, evidenced by an increase in grievances and EEO filings, increased absenteeism and, in general, poor job performance. The USPS signed EI/QWL implementation agreements with three of its four unions; APWU is the exception.

The USPS program was set up to train all employees in employee involvement techniques, including effective communications, group dynamics and structuring collaboration and team building. EI groups consist of equal numbers of management and union members.

The curious thing about the program is that the USPS has sanctioned no studies on the effectiveness of EI/QWL in the Postal Service. One study, done by a graduate student, centered on whether EI/QWL has made a difference and sought to assess whether there was a shift from an autocratic environment to a more participatory culture. This study focused on the NALC program in the Roanoke, VA management section; it found that there was little or no change in the organizational structure and little/no cultural change because of the EI/QWL approach. The study did not answer the question of whether there has been any improvement in productivity and efficiency.

The APWU Position

The APWU has stood alone among the USPS unions in its refusal to accept EI/QWL for its members. We have contended that employee involvement programs are not a substitute for union involvement. APWU believes that the traditional adversarial relationship is the best way to serve its membership.

This stance has raised some interesting legal issues on the bypassing of the union and infringement on the collective bargaining rights of our union. APWU's non-involvement has created problems for the EI/QWL programs of the NALC, the Mail Handlers Union and the Rural Letter Carriers Union. Some of the projects that their EI committees have undertaken have infringed on the APWU's role as exclusive bargaining representative for its members. These conflicts have culminated in a national

Continued on page 13

INDUSTRIAL RELATIONS DEPARTMENT

EI/QWL: Why It Doesn't Work

The number of employee involvement (EI) or "cooperative" workplace programs has been increasing exponentially since the 1970s. They have taken many forms and have been the focus of much controversy. While proponents generally believe that cooperative programs are necessary for US industry to compete in the world market, some unions believe that they undermine the very fabric of the traditional adversarial relationship between labor and management and weaken the collective efforts of unions.

In a series of articles I will tell you why I believe these programs do not work. Future issues will focus on the development of the law as it relates to "cooperative efforts" and what these efforts really do. This month's issue will highlight the historical development of EI as a business management theory.

A. The Early 1900s

Cooperative efforts and EI arrangements have become increasingly popular over the past 30 years. The roots of the movement go back to the turn of the century, a period of great labor-management conflict. Management used many tactics in attempting to quell this labor strife, one of which was alleged "cooperation" with unions. Companies believed that this would facilitate acceptance of economic reforms and curb union strength. They combined this approach with a scientific approach to management called "Taylorism;" its main elements include centralized managerial planning, analysis of production phases and hierarchical monitoring of the time and motion of narrowly defined work tasks, and incentive payment schemes to motivate workers.

In 1901, the National Civic Federation (NCF), an organization formed by and including both labor leaders and corporate executives, proposed "trade agreements" as the resolution to labor unrest. "Trade agreements" were an attempt to ease the transition to scientific management. However, trade agreements were unable to stop labor conflicts, primarily because of the strict work standards developed by scientific management.

In 1904, another program, or concept, called "welfarism," arose. This concept was also initiated to give workers a better feel for their work environment. Although it tended to give workers some sense of belonging, its long-term effect was devastating on unionism. However, reliance on this concept was short lived. By 1905, intense strikes and labor management conflict were again the norm. Once again workers realized that the demands placed on them by a new work model of productivity were excessive.

By 1920, a new model of labor-management cooperation was constructed called "welfare capitalism." The objective of this model was to promote "harmony of interest" and "cooperation" between labor and management. According to historian Elizabeth Cohen, the ultimate goal of welfare capitalism was a favorable atmosphere of labor relations. A successful welfare capitalist program would result in reduced labor turnover, improved productivity, an increase in job applicants and, most importantly, smooth labor waters, untroubled by strikes and agitation. This concept had two main components: 1) employee representation plans (or "company unions") and 2) welfarism.

The concept of welfare capitalism took a turn for the worse after the stock market crash and the Depression. Both the economic problems associated with these events and the incipiency of active govern-

BY THOMAS A. NEILL

mental involvement in labor relations negatively affected welfare capitalism programs and led to their failure. The goal of companies utilizing these various approaches was to make employees perceive that they were working for the betterment of the company and themselves, regardless of whether any benefit resulted. After this period of turmoil, labor relations changed dramatically with the passage of the Wagner Act.

Between 1932 and 1947, federal policy began to change, encouraging both union organizing activity and the collective bargaining process. The regulation of industrial relations shifted to a federal rather than a state responsibility. Prior to this, the courts played a modest role in the creation of policy; between 1890 and 1920, federal law was articulated in a series of decisions which were given force by agencies. In 1933 the National Industrial Recovery Act (NIRA) was enacted, giving employees the right to organize collectively. The American Federation of Labor (AFL) applauded the NIRA's recognition and protection of collective bargaining.

However, with no enforcement powers and the lack of clear policy directives from the federal government, labor conflict escalated. Needing to find some way to resolve the conflicts and get the provisions of the NIRA policed and enforced, the Roosevelt administration established the National Labor Board (NLB). Although the NLB began "with no clear policies, uncertain authority, and no independent enforcement powers," the NLB (and its successor, the National Labor Relations Board ["NLRB"]), took an activist role in forming federal labor policy. With the union movement solidifying itself and the threat of company unions dying out, the roots of the new era of collective bargaining took hold under the umbrella of the Wagner Act. This continued through to the early 1970s when companies again attempted to establish some form of company unions under new names, such as "Employee Involvement," "Quality of Worklife" and "Total Quality Management."

B. The 1970s Through the Present

Present day cooperative programs started in Japan in the 1960s. Dr. Edward Deming introduced an emphasis on quality control in the Japanese rebuilding program that followed World War II. His focus on quality was embraced by the Japanese government and set the stage for the development of "quality circles" in the 1960s. However, the spread of these participatory programs in the United States did not occur until the early 1970s.

While these programs have come in a variety of forms, they share the common theme of "participation." EI/QWL programs are seen as the alleged sharing of influence or decision-making between hierarchal superiors and their subordinates. However, this supposed sharing is normally a one-sided process.

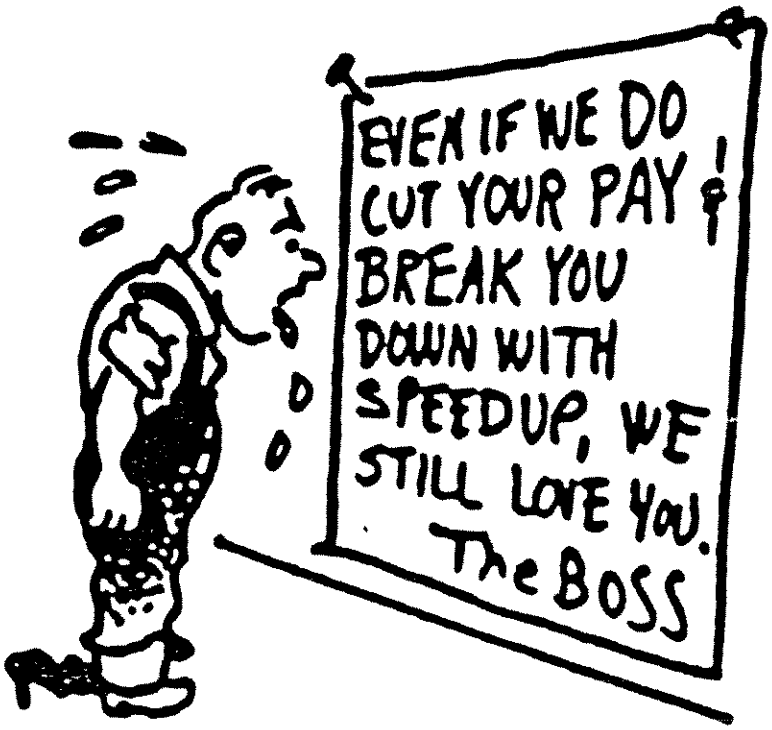
In the 1970s, employee involvement programs were initiated in the United States as experiments in improving the "quality of working life." Low morale, high absenteeism and an antagonistic labor relations climate all played a part in the establishment of this new reform effort.

The 1980s saw rapid growth of these programs. Of the 92 largest unionized manufacturing plants in which EI/QWL programs are in place, over 90 percent were established after 1980. Most experts agree that use of these programs was triggered by changes in external economic conditions and a willingness by managers to try a new approach.

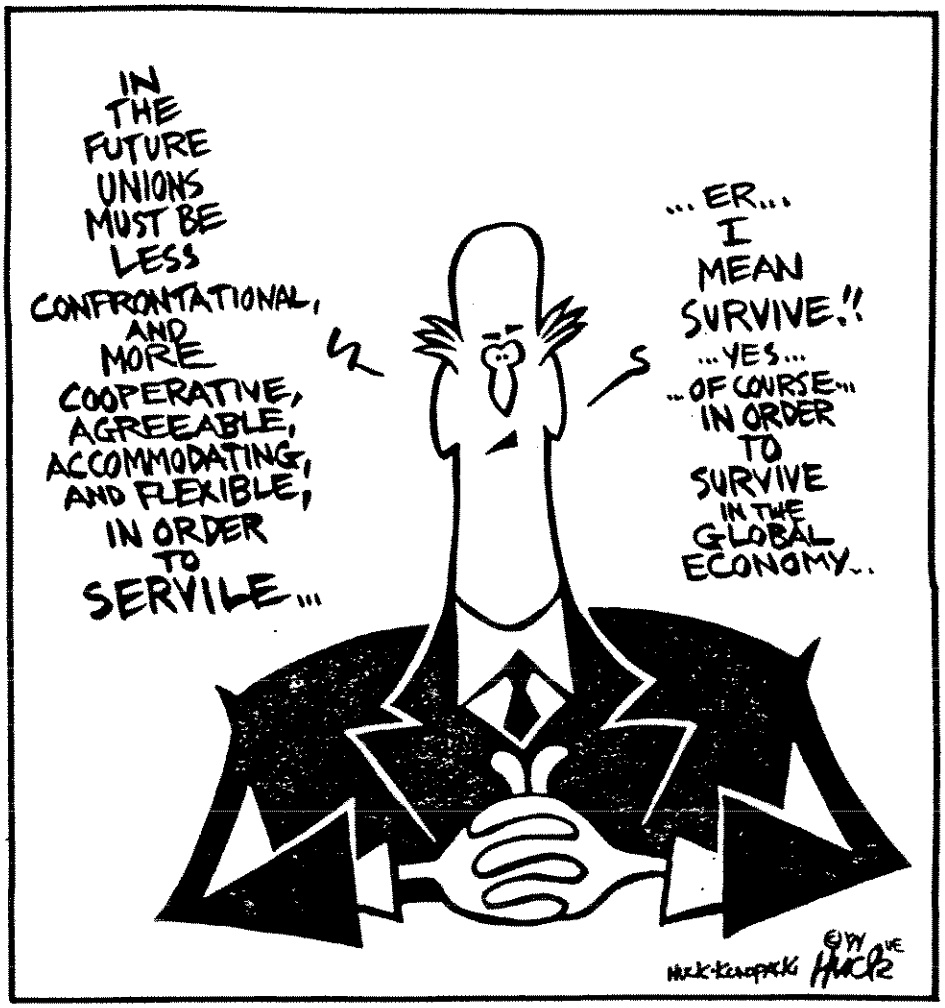
Because history has shown us that EI programs are not anything new and that they have failed in the past, APWU firmly opposes them and instead advocates **Union Involvement** (UI). Many of our problems are caused by the inability to solve them at the lower levels of the grievance procedure. The PMG has repeatedly said that he wants to change the culture of the Postal Service. I would like to suggest that he start with the line supervisors.

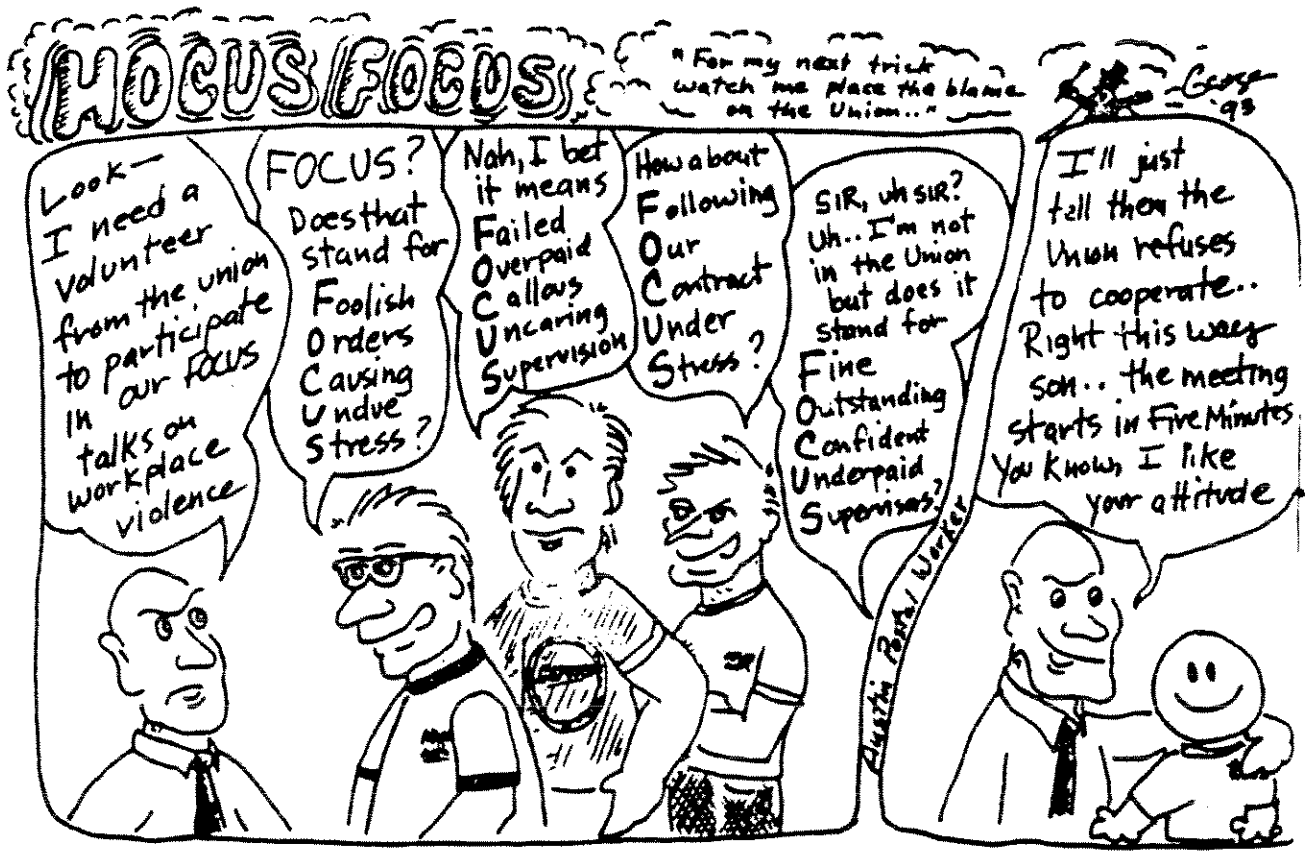
The struggle continues.

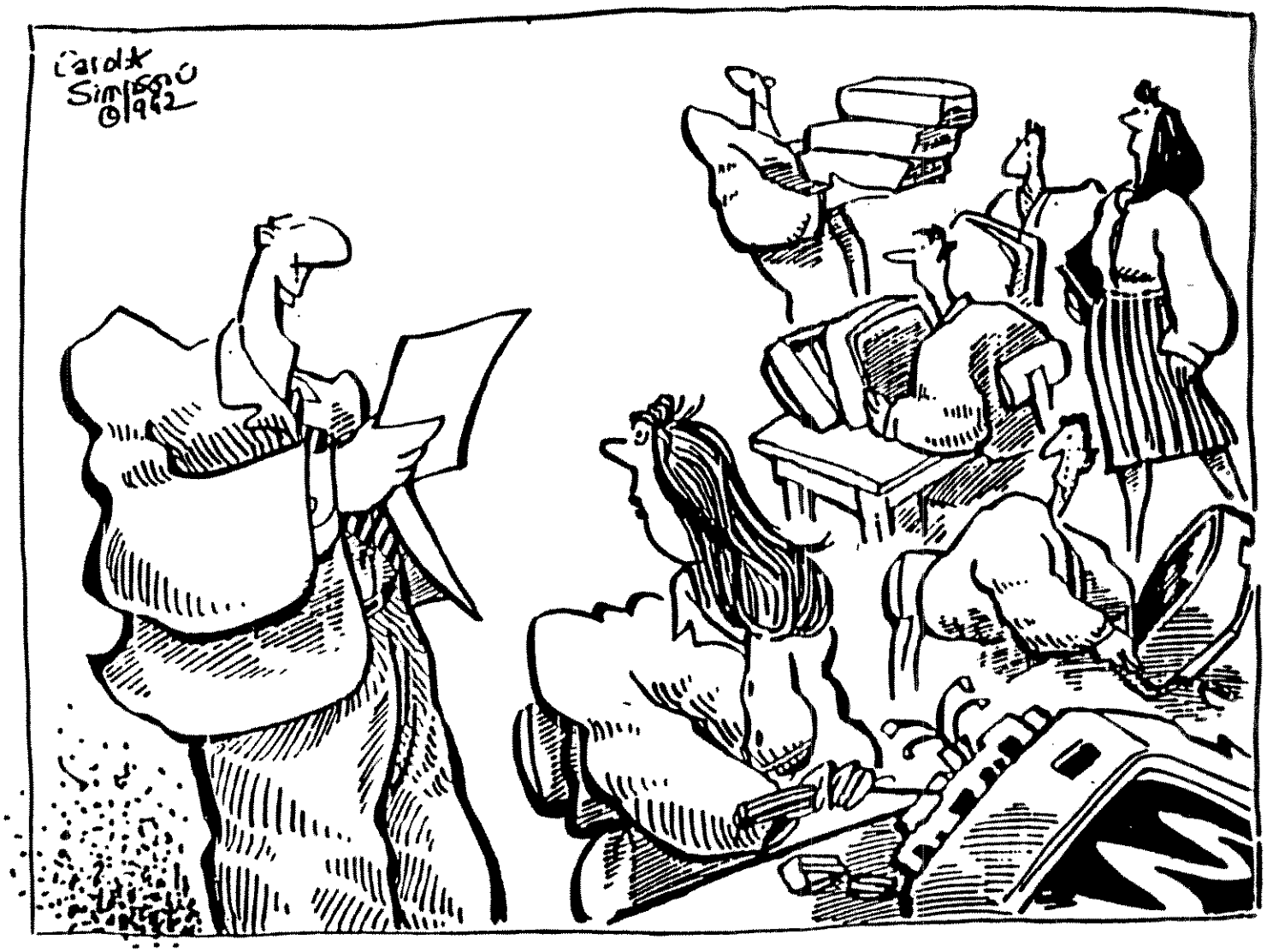
Note: Research for this series was done by APWU staffer Ro Lesiw.



This cartoon appeared in the April 1949 issue of *Ammunition*, a United Auto Workers magazine. The accompanying article ridiculed the "human engineering" advocated by Henry Ford. In a forerunner of modern-day QWL, the Magazine reported, "Foremen are attending schools throughout the country to receive training in the art of convincing workers that they really are deeply beloved by the boss."

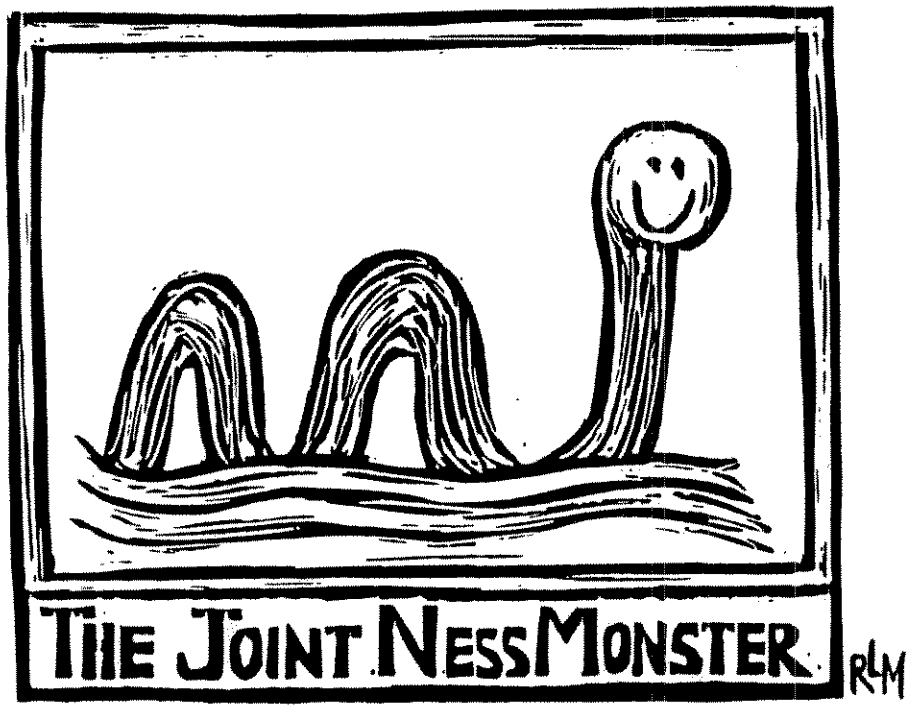

IN THE FUTURE UNIONS MUST BE LESS CONFRONTATIONAL, AND MORE COOPERATIVE, AGREEABLE, ACCOMMODATING, AND FLEXIBLE, IN ORDER TO SERVILE...
...ER... I MEAN SURVIVE.!! ...YES... ...OF COURSE... IN ORDER TO SURVIVE IN THE GLOBAL ECONOMY..
Mark Knopfler
©IN HACK WE


HOCUS FOCUS
"For my next trick watch me place the blame on the Union..."
George '95
Look— I need a volunteer from the union to participate in our focus talks on workplace violence
FOCUS? Does that stand for Foolish Orders Causing Undue Stress?
Nah, I bet it means Failed Overpaid Callous Uncaring Supervision
How about Following Our Contract Under Stress?
SIR, uh SIR? Uh.. I'm not in the Union but does it stand for Fine Outstanding Confident Underpaid Supervisor?
Austin Postal Worker
I'll just tell them the Union refuses to cooperate.. Right this way son.. the meeting starts in Five Minutes You know, I like your attitude



"I thought I'd introduce a little democracy to this department. Bring me your suggestions and I'll vote on them."

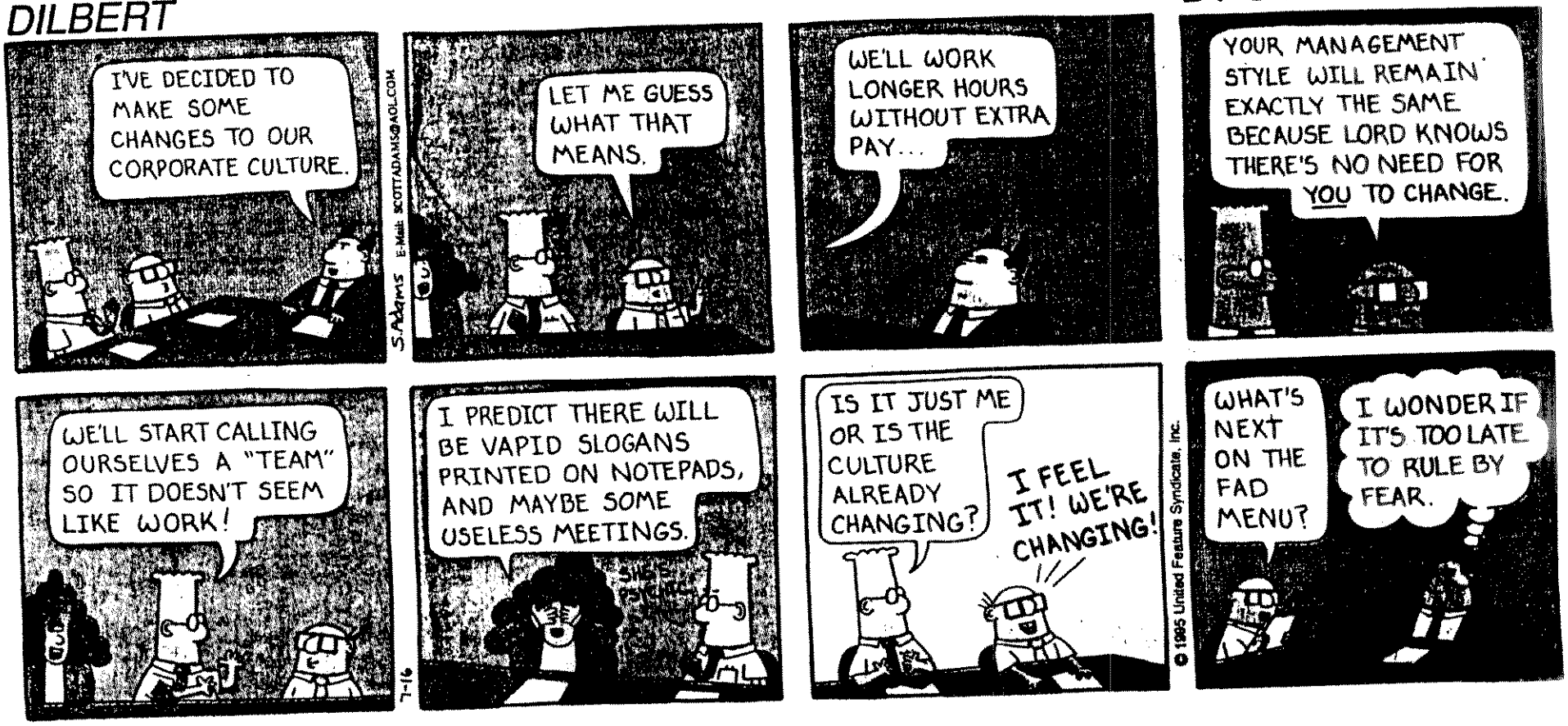

SO..... WE'RE NOT A TEAM.....
JOBS GO SOUTH
THE BOSS
BIG DEAL ..... I LIED
JOBS
PLANTS CLOSE
THE BOSS
Al Chase CAW 199
CAW 199 / CALM 1-92



Widely believed to be a dinosaur from an earlier era, "Nessy" sightings have occurred in the 1890s, 1920s, 1930s, and 1990s.

DILBERT

BY SCOTT ADAMS



CANADIAN UNION OF POSTAL WORKERS
SYNDICAT DES POSTIERS DU CANADA

AFFILIATIONS: CANADIAN LABOUR CONGRESS • POSTAL TELEGRAPH, TELEPHONE INTERNATIONAL
CONGRES DU TRAVAIL DU CANADA • INTERNATIONALE DES POSTES, TELEGRAPHES, TELEPHONES

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July 25, 1995

Greg Poferl
National Business Agent
American Postal Workers Union AFL-CIO
One Appletree Square
Suite 1401
Bloomington, Minnesota, USA
55425

Brother Poferl:

I thought I would send you two recent brochures that are part of the Union's counter-campaign to Canada Post's "Re-inventing the Post" program.

If you would like further information at the national level, please feel free to contact Sister Deborah Bourque, 3rd National Vice-President, at 377 Bank Street, Ottawa, K2P 1Y3 (613-236-7230).

Hope this is informative.

In solidarity,

Fred Furlong

Fred Furlong
Education & Organization Officer

ds/opeiu 225
Enclosures

Issue # 29
July 20, 1995
Union Labour: OPEIU 225

ATLANTIC POSTAL WORKER

SERVICE PLUS MEETINGS EQUALS TEAM CONCEPT

The Union has spent a lot of time (and a lot of paper) advising the membership of the pitfalls and hazards of the "Team Concept, QWL, Employee Involvement" programs of Canada Post.

Many members will get a first-hand look at this type of program when "Service Plus" takes place soon in your town.

A word of caution - these programs are fairly slick and disguised so as not to be seen as 'team-concept'. The employer denied any reference to this style of co-opting. We would like to suggest that you judge for yourself.

Take the time to read the rest of this bulletin and the brochure titled "Canada Post Re-invents Reality".

This "Service Plus" is all part of the new Learning Institute; those slick, glossy books and pamphlets you have received lately. Keep in mind that while Canada Post encourages you to improve yourself and advance in Canada Post, they have also recently laid off 205 UPCE and 105 APOC members and 180 managers! Advance to a position that has no job security? Right - and we will all jump off cliffs too!

COME ON! GET SERIOUS!

Canada Post managers have indicated to the Union that their hands-on, touchie-feelie, mumbo-jumbo "Customer Service Plus" workshops will take place in the Atlantic commencing the end of July.

At a meeting with Regional and Nova Local Officers, CPC managers assured the Union that, among other things, this program is not a productivity initiative.

Get serious! What does "Service Plus" imply? It suggests improved customer service and satisfaction, meaning increased productivity. The focus, though, is not improving the overall service, but improving relations with the corporate customer. It does not in any way suggest increased door-to-door delivery, more services at more postal outlets and general public access to the service.

The Union suggested that rather than spending $58 million dollars on this co-opting strategy, why not use that money to really improve the service?

One aspect of this program spends a lot of time talking about trust and mistrust, teamwork, motivated employees, empowerment and operating principles.

Get serious! Trust?! How can someone develop a trust with blue-suited, white males who consistently order their lower-level managers to contravene, avoid and ignore the agreement that the Corporation signed? When was the last time you saw the employer violate this trust? Ten minutes ago? This morning? Last night?

They will talk of motivated employees willing to go above and beyond the call of duty to improve customer relations. Don't they have a staff of people who already work in customer relations? Postal workers want to perform their duties and shouldn't be coerced into undertaking duties which are not theirs. The Union and the employer negotiate what the workers' duties are.

OPERATING PRINCIPLES

They will also want to talk about Canada Post's operating principles - let's take a look at them....

1) Respect - "...treat each other with respect... regardless of rank or seniority..."

Well that would be nice if they respect the workers and their seniority - they seem to forget how important seniority provisions are.

2) Reliability - "Follow through on our commitments and promises."

Hah! Let's see them follow through on the negotiated commitment to create jobs. Their commitment and promises to whom? Bell Canada? Federal government? Possibly to other employers who have been slashing jobs!

3) Recognition - "...through immediate positive feedback..."

We are recognized by our negotiated benefits and wages. We don't need pats on the back or keychains.

4) Role of Unions - "Acknowledge the role of collective agreements and unions, and their place in the Corporation's success."

Anyone can acknowledge that there is an agreement and a union - what about respecting the agreement? What about listening to the Union? The Union's idea of a successful corporation is one that we have been promoting for years - improved services, extended door-to-door, return to Saturday services, expansion of retail. These suggestions create jobs. Doesn't a successful company create jobs?

5) Health and Safety - "...make the workplace efficient healthy and safe..."

Come on! That's outrageous. Just ask your local's health and safety reps about what the Corporation hasn't done to improve the environment. Ask them how long unresolved issues stay on the agenda. Why? The Corporation's response is usually "that's someone else's responsibility" or "no funds for that". Canada Post has the worst health and safety record in the country!

6) Communication - "...share information about the business..."

Once again I say "Come on!" Why does it take weeks, no, sometimes months to receive the negotiated information required to supply to the Union and its members?

7) Learning - "...opportunities to learn and improve...the source of the problem is often a flaw in the system, not in the people."

Now this one is really slick. Here's where they want you to identify problem areas (whose problem?) and suggest faster, more efficient ways that usually mean more work for fewer people.

8) Belief in Others - "...people's sense of responsibility and commitment to doing a good job helps bring out the best in everyone."

See # 7. Here's where they want people to be monitoring each other - just read between the lines - they want people to encourage each other to pull up their socks and get committed. They want us to keep an eye on each other and encourage other workers to work faster, smarter. Once again, come on! Get serious.

Bring a large grain of salt with you to these meetings and ask Canada Post's representative some tough questions. I think their answers will speak for themselves.

"Teach me to pronounce 're-engineering'"

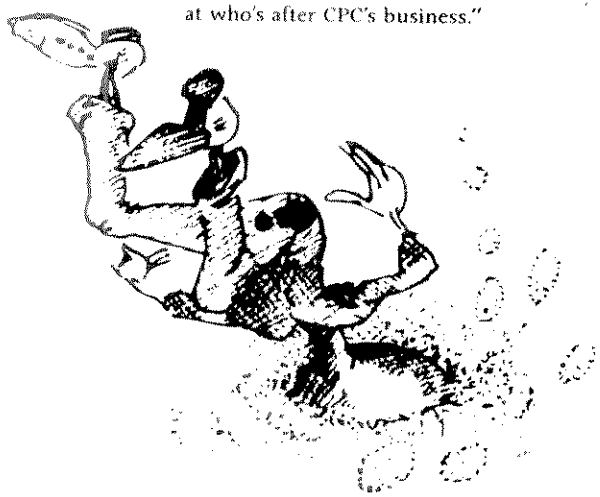
But does it really mean lost jobs?

It did to US postal workers that accepted a similar program. A group of New York mail handlers won the USPS "Best of Best" award for suggesting shrinkwrapping bulk mail and putting it on wood palettes. The award-winning suggestion — which the post office had heard many times — cost half the jobs on the dock.

The New York mail handlers eventually dropped out of the program because the post office dropped any suggestion that "Employee Involvement" had anything to do with improving worker morale.

"Increasingly, they emphasized the need to make the service competitive against Federal Express, UPS and other private sector companies," according to New York local's president Larry Adams.

And Canada Post appears to be a carbon copy. The April 1995 issue of *Performance* features a full page picture of a shark, titled "confronting the competition: a look at who's after CPC's business."



Is a better post office a bad thing?

Of course not. But employee participation plans are about cutting back and shutting down the post office.

CUPW is involved with Canada Post in trying to improve post office services. We have been for years. We've been calling for longer hours at wickets, extending door-to-door delivery, a return to Saturday delivery, expanded retail, contracting-in.

The list is long and varied. But all our suggestions create jobs. Good jobs.

And at the last round of negotiations, Canada Post agreed to job creation targets. And agreed to stop closing post offices and to stop contracting out almost completely.

We got where we are through collective bargaining, not through the good graces of management.

These victories didn't come from quality circles, or any kind of management mumbo-jumbo. They came because post office workers were willing to stand together on the picket line to get the kind of post office we want.

For more information, contact your local executive or shop steward.

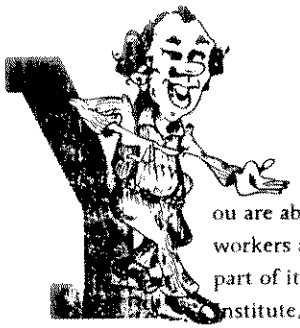
We got where we are through collective bargaining, not through the good graces of management. These victories didn't come from quality circles, or any kind of management mumbo-jumbo. They came because post office workers were willing to stand together on the picket line to get the kind of post office we want.

CUPW OPEIU225

CANADA POST RE-INVENTS REALITY

a union guide to Service Plus

PRODUCED BY THE CANADIAN UNION OF POSTAL WORKERS



ou are about to be told that your co-workers are not your co-workers. As part of its $50 million "Learning nstitute," Canada Post is about to have you spend two days hearing about how your co-workers are really customers, like people who buy stamps or send parcels.

And they'll go to great lengths to tell you that (to be competitive) you have to give it your all to provide the best service possible to all — both the people who use the post office, and those people who up to now you always thought were doing a job to keep a roof over their head. Those people just like you.

If this seems like mind games, you're right.

They'll tell you that person ordering you around isn't really a supervisor. She or he is just a client too.

You're being sent for attitude adjustment training. It's part of a larger program — whose public relations name is "Re-inventing the Post" — designed to coax us into supervising ourselves and boosting our productivity at the expense of our sanity, working conditions and maybe even our jobs.

These sorts of employee participation programs have been around for a long time, though their emphasis has changed.

In the 1970s they used to be known as Quality of Work Life. Management set up 'co-operative' committees of workers and managers to improve working conditions — usually bypassing the workers' elected representatives.

When the 1980s rolled around, 'team concept' became the buzzword. The co-operate with management part remained. But the notion of improving working conditions took a back seat to beating the competition to save your job.

A few years ago, Total Quality Management became the buzz phrase for 'worker empowerment'. But by then, the workers were out of the picture entirely. TQM was a top-down approach which used workers' knowledge to rid the workplace of "unproductive activity."

The latest rage is to talk about 're-engineering.'

And that's what Re-Inventing the Post is about. Finding different ways of doing things. That would be the nice way of describing it.

Here's how Michael Hammer and James Champy — two American "Re-engineering experts" — pitch re-engineering to management:

"We are going on a journey. On this journey, we will carry the wounded and shoot the stragglers. You can either get on the train or we'll run you over with the train. Nuke it. To succeed at re-engineering, you have to be a visionary, a motivator and a leg-breaker."

Ah... but what will really change?

You're still paid by Canada Post to do a job. Your co-workers are in the same situation. Management still gives orders, and decides when you've been bad or good.

They just don't want you to think about your co-workers as allies — people who share your concerns, and your interests.

And Canada Post will still bring in the new flat sorting machines. And mechanized sequencing. These two initiatives will cost us thousands of jobs.

Eliminating jobs with technology is a time-honoured tradition in Canada Post, from the first coding machines right up to the VES and the Supermailbox.

THE LABOR-MANAGEMENT MEETING

BACKGROUND:

Management has downsized the facility over the past two years and fewer employees are doing the same amount of work.

There is an increasing amount of stress at the work place. Discipline for attendance-related factors is up.

The APWU and USPS at the National level have agreed to implement a 10/4 program at installations where the local parties are open to such a program.

Management's Agenda	Union's Agenda
• Productivity; More With Less	• Employee Morale
• Overtime Waivers	• Organizing Around 10/4
• Re-posting/Change of Duty Assignments	• Reduce Stress
• Less Sick Leave	• "Three-Day" Weekend
• Less Emergency Annual Leave	• Flexible Begin Tour Starts
• Less Break Time	• Less Supervisors

Scene 1:

Management's consultant, "Big Bucks Betty" meets to coach management team on the best approach to take with APWU at the Labor-Management meeting.

Scene 2:

At a union caucus the Chairperson (Local President) discusses strategy and reviews talking points developed through interaction and communication with local members.

Scene 3:

At the Labor-Management meeting.

Scene 4:

APWU CAUCUS

Scene 5:

WRAP-UP

PLAYERS

Union Committee

Local President

Chief Steward

APWU Member

APWU Member

Research & Education Director

Management Committee

Consultant

Service Manager

Operations Manager

Human Relations Representative

204b

LABOR-MANAGEMENT COMMITTEE

Union Document

Strategies:

- Get relevant information and background data prior to meeting.
- Maintain an arms-length relationship with management.
- Remember, the labor-management committee is a two-way street.
- The membership's needs and concerns come first and foremost.
- Be respectful, but aggressively pursue the Union's agenda.
- Be open-minded, but careful.
- There's no rush. Take time to review issues, take time to caucus during the meeting if necessary.
- Don't hesitate to thoroughly clarify issues. Clearly state your position.
- Take good notes to prepare a summary report for the membership. Use the report at meetings, in the newsletter or for posting on union bulletin boards.
- Show a united front. Decide on who will speak for the union.

Monday
MAY 20, 1996

Monday
Business

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SECTION

Star Tribune

Commentary

Is the changing workplace getting more democratic?

'Teamwork Act' makes promises, but stronger unions needed for protection

By Peter Rachleff

Are the changing U.S. economy and workplace moving in a more democratic direction?

In "Workplace Democracy," (Harper, 1980), Daniel Zwerdling suggests six crucial characteristics of a democratic workplace: regular participation of employees in decision-making, frequent economic return to employees, access to management information, guaranteed civil liberties, independent boards of appeals for disputes and democratic values and attitudes.

Most of our workplaces fall far short of these standards. Nor is there anything in U.S. law or jurisprudence that guarantees us these things. Zwerdling emphasizes the irony: "In a society which is founded on the ideals of democracy, there is no democracy at work."

A vast majority of us — three-quarters of the work force — are "at will" employees. Unprotected by union contracts or civil service rules, we can be discharged without cause at any time. We have no civil liberties, such as the right to free speech, at work. We can be ordered to remove buttons, hats and T-shirts with slogans, and we can be denied the right to post or circulate written materials or speak to our colleagues and fellow workers on the job. Whatever access to information and due process rights we enjoy can be taken away from us at a moment's notice. This is not a climate in which democracy can flourish easily.

About the author

➤ Peter Rachleff is a professor of history at Macalester College in St. Paul.

In the 19th century, independent artisans decried factories as "Tory institutions." They rejected as "wage-slavery" the employer-employee relationship characteristic of these new workplaces, and they expressed doubts that the men who toiled within them could merit the responsibilities of "citizenship."

Factories replace shops

Over time, factories did replace artisan shops. But the workers in these factories did not meekly submit to the new forms of industrial discipline that denied basic democratic rights. They organized unions to negotiate limits on management's authority and protect workers from discriminatory treatment. Union contracts spelled out workers' rights to meet, speak and act with other workers, to distribute and post literature, and to have a voice in job descriptions, promotion and layoff procedures, and other important conditions of their employment. Grievance procedures offered some modicum of due process. Unions also sought shorter working days so that working men and women could have the time to participate in their communities' civil and political lives.

Of course, this is not the 19th century. In fact, we're on the verge of the 21st century. And business leaders and their academic and mass media spinmasters tell us that we've already entered a "new" workplace characterized by "participatory democracy" — where workers are referred to as "associates" and belong to "teams," where their input is elicited at "quality" meetings, and where profit-sharing often supplements wages.

The "Teamwork for Employees and Management Act" introduced last year by Rep. Rep. Steve Gunderson, R-Wis., and Sen. Nancy Kassebaum, R-Kan., would replace Section 8(a)(2) of the National Labor Relations Act, which since 1935 has prohibited employers from dominating, assisting or financially supporting a labor organization. In place of the "anti-company union clause" of the NLRA, the TEAM Act would allow 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."

Bill pending

Sen. Bob Dole, R-Kan., the Senate majority leader and likely the Republican party's nominee for president, has attempted to tie the "TEAM Act" to the "hot" issues of an increase in the minimum wage and a cut in the gasoline tax. Dole says this bill will enable employers to "talk to their workers." But it does much more in the name of competitiveness and labor-management cooperation.

In a future shaped by the TEAM Act, "associates" (formerly known as "workers" or "employees") will participate in workplace "committees" (formerly known as "company unions"). There, they can "share" ideas with their supervisors, build a sense of "teamwork," and improve their company's "competitiveness" in the "global marketplace."

As a result, independent labor organizations (formerly known as "unions") will be unnecessary.

We are "beyond unions," proclaimed the CEO of a nonunion supermarket chain.

While the ideology of the new workplace praises democracy, its reality has more in common with Orwell's 1984 than it shares with the 1776 spirit of American artisans.

Only a revival of the labor movement, one that not only spreads unions into new quarters but also re-energizes unions where they already exist, can expand the scope of workplace democracy and thereby change work from "wage slavery" to an experience of "industrial citizenship."

AFL-CIO News
2-19-96

Unions counter business blitz for TEAM Act

Company union bill at dangerous juncture

By James B. Parks

The high-powered business lobby turned up the volume in its efforts to deliver a veto-proof vote for the misnamed TEAM Act, but unions issued a stern warning that the legislation would turn back the clock to a time when companies set up unions to foil workers' desire for real representation.

The so-called "Team Coalition," led by the U.S. Chamber of Commerce and the National Association for Manufacturers, has hired Tim Penny, a former Minnesota congressman, to lead the charge for company unions. At a Feb. 7 news conference, he tried to sell the bill as the only way to promote teamwork in American workplaces.

But in testimony before a Senate panel, AFL-CIO General Counsel Jonathan Hiatt pointed out that employers and workers are engaged in legal cooperative efforts in thousands of workplaces, and suggested that the proponents of the TEAM Act have an ulterior motive.

Hiatt cited a memo from the business coalition that describes the bill as allowing employers to create structures "to deal directly and exclusively with terms and conditions of employment," and leaves the "formation, composition and operation" of these structures in the hands of the employer.

The memo, Hiatt said, makes clear "that the 'involvement' proponents of this bill seek is 'involving' employees in management-created and management-controlled decision-making processes, which create the form — but not the substance — of joint decision-making."

Hiatt was joined before the Senate Labor and Human Resources Committee by UAW Legislative Director Alan Reuther, who said the TEAM Act would allow employers to dominate decision-making and increase corporate power at a time when it needs to be balanced by authentic worker voices.

The bill "would give carte blanche to unscrupulous employers to establish phony, company-dominated

Continued on Page 5

Labor warns TEAM Act would violate worker rights

Continued from Page 1

committees in which management would effectively dictate who would speak for the workers," Reuther said.

S. 295, formally known as the Teamwork for Employees and Management Act, would amend Section 8(a)(2) of the National Labor Relations Act, which bans company unions and bars employers from dominating or interfering with the formation of a labor organization.

A group is considered to be a labor organization if it deals with management on issues related to the terms or conditions of work, such as wages, benefits, hours of work and grievances.

The TEAM Act, sponsored by Sen. Nancy Kassebaum (R-Kan.), the committee chair, would add language to the section to permit employee-dominated labor organizations. The House passed a similar bill in September. President Clinton has said he will veto the measure.

Nothing in current law bars businesses from seeking suggestions from their employees, and the AFL-CIO strongly supports partnership between management and workers, Hiatt noted. "In workplace after workplace, labor unions are taking the lead in forging new partnerships with management to transform the way work is accomplished and the way labor and management relate to each other."

But where employee representatives are involved in discussing terms of employment, employees must be free to select their own representatives and to set their own agenda, Hiatt said. "It is not our view that nonunion employees should be denied a voice in the workplace. We insist only that where employees are given a voice, it should be the authentic voice of the employees, advanced by independent representatives," he said.

The bill also does not prohibit employers from intimidating teams working on issues involving wages, benefits and working conditions, he said.

Paige One Photography

AFL-CIO General Counsel Jonathan Hiatt and UAW Legislative Director Alan Reuther testify against TEAM Act.

Hiatt cited a recent decision by the National Labor Relations Board, reached Dec. 18 and released Feb. 7, that shows that employers may experiment with employee participation, but cannot create or dominate a labor organization.

In the case of Vons Grocery Co., the board found that there was no pattern of using the employee-involvement committees to discuss working conditions, although the Vons committee discussed issues that fell within the domain of the union contract — dress codes and an accident point system. The issues were taken up by the Teamsters, which represented the employees, and settled through collective bargaining.

The NLRB found in three other cases that the employers had set up and dominated illegal labor organizations to discuss wages and working conditions. In all three cases — Webcor Packaging in Michigan, Dillon Stores in Kansas and Reno Hilton Resorts — the employer created company committees to make recommendations on working conditions.

It is that kind of domination that Section 8(a)(2) was designed to prevent, Hiatt said, and proponents of the TEAM Act want to re-establish.

If the bill's backers really want to increase employee empowerment and participation, "the first priority should be to reform the NLRA to make it less costly, time-consuming and threatening" for workers to exercise their right to form a union, Hiatt said.

UPS Workers Resist Team Concept

by David Levin and Bob Machado

United Parcel Service is among the newest advocates of the "team concept." The company's rank and file Teamster workers, as well as the International Teamster leadership, distrust its motives, however.

Having seen how team concept was merely the prelude to union-busting at Caterpillar, Staley, and elsewhere, Teamsters are justifiably suspicious of the company's intentions.

The International has strongly urged resistance to UPS's team concept and demanded to negotiate over the company's unilateral implementation of this program. But UPS continues to stonewall at the national table while trying to circumvent the union at the local level.

UPS's team concept program was designed by Cooper and Lybrand of New York. These are the folks who did the job on Saturn and General Motors.

After spending four months in the field evaluating UPS management, they concluded that 85% of management time was spent on auditing and had no effect on customer service whatsoever.

Their recommendation? Free up management's time (and also put a bunch of them on the street) by having drivers and part-timers do much of the training of new workers, vacation coverage, safety training, annual rides, and customer contact.

They proposed a steering committee in each building comprised of a center manager, the division manager, the business agent, two stewards, and half a dozen rank and filers. This steering committee is to help formulate the plans and pick who will work on these plans in three-month increments.

If this sounds like it doesn't leave much room for an independent, adversarial union, well, UPS doesn't mind.

NO MORE TRUST

When they're selling the team concept program, UPS is all for "communication" and "trust." But when members raise questions, that's another story. Across the country, management is cracking down where members are talking about what the team concept will mean for their union.

In Milton, Pennsylvania Local 764, management was alarmed by the appearance of anti-team concept leaflets on the bulletin board, but found themselves in a bind. They knew they couldn't selectively censor only certain speech by tearing down just the team concept leaflets, so they came up with a better solution. They tore down the bulletin board altogether.

Management also went ballistic over an IBT-produced video, *Actions Speak Louder Than Words*, which showed the union-busting side of team concept. Noting that Teamster employees were asking to have the video shown on UPS premises, a blizzard of internal management memos suddenly appeared.

"Do not allow the video to be shown in any UPS facility," one memo cried. "We will not allow our facilities to be used as a forum to spread disinformation and propaganda about our company."

PARKING LOT VIDEO

In Allentown, Pennsylvania, management told Local 773 stewards that they could not use UPS electricity to show the video. Undeterred, the stewards found an understanding neighbor. They ran an extension cord 200 yards and showed the video before work from the back of a 4X4 in the UPS parking lot.

This form of petty harassment has a chilling effect on union members' rights, but even more serious are the company's attacks against stewards who are active in the team concept fight.

At the Atlanta hub's Douglasville Center, Local 728 steward Randy Brown has been fired for fighting the team concept.

After he spoke up against member participation in team concept in a pre-work meeting, management slapped Brown with a verbal warning and told him he would need "prior approval" to speak up in such meetings—a rule that never existed before.

When Brown attended a team meeting at the request of a driver who wanted representation, management tossed him out and began spying on his route. In October, they fired him on trumped up charges of stealing company time.

That hasn't stopped Brown or Local 728. The firing is being taken through the grievance procedure and in the meantime the local has hired Brown as an assistant business agent.

UPS doesn't like active stewards at Local 804 any better. For more than

(continued on page 12)

The *Lean Workplace:* A Union Response

VIEWPOINT

Hotel Union Needs Clean-Up

by Ed Simadiris

Los Angeles H.E.R.E. Local 11 Trustee Kim Geron reports [Labor Notes—December] that everything is peaches and cream in that local, that the International wants more than ever to have rank and file participation in union affairs, and that it is an insult for any member to hint that there is corruption and organized crime influence in our International.

As an active member in New York's H.E.R.E. Local 6 for 50 years, I know that nothing could be more opposite from the above than the sick and decadent state of affairs in our Local 6.

When Vito and son Vincent Pitta took over power in 1978 with the help of H.E.R.E. General President Ed Hanley, they established a dictatorship second to none. This doesn't even exist in Russia. They installed obscene and illegal nepotism. They permitted corruption to flourish and balloon during their present reigns.

Vito and Vincent illegally rigged our by-laws to where it has been virtually impossible for any member to get nominated for any office for the past 17 years. The Pittas required you to have 25 members physically present to second your nomination.

To propose a by-law change you are required to obtain 1,000 signatures merely to have your proposal read before their stooge Delegate Assembly.

We had a local convention every three years. They eliminated it. The election of business agents was eliminated. Department committees were eliminated. Department membership, delegate, and committee meetings were eliminated.

General membership meetings were only called to ratify contract proposals which were rammed down the membership's throat without any discussion.

It has been virtually impossible for a member to get nominated for local office for the past 17 years.

When Kim Geron says our International wants more active grass roots participation, he or she must be hallucinating. To Hanley and gang this is a disease they run away from.

Vito Pitta installed as elected officers and appointed business agents his family, relatives, and friends. His son, Vincent Pitta, became the union attorney right after graduating law school. Eva Rodriguez, Vito's girl friend and secretary, soon became secretary-treasurer. Peter Ward, his son-in-law, recently replaced him as business manager. A close friend drives him daily to work in a limousine paid by our dues.

For 17 years members have had no say in making Local 6 policy. When asked who is the negotiating committee, Pitta replied, "I am."

Pitta and his kangaroo trial board expelled me and two other members for allegedly not reporting management violations of the banquet contract to the union. This is the same charge we have made over the years where Pitta has allowed the bosses to violate our contract at will.

The U.S. Labor Department has accepted our protest over the illegal nominating procedure required by the Pittas. A decision calling for a new election may soon be announced.

Reams of documentation showing proof of illegalities, corruption, nepotism, and dictatorship have been sent to Edward Hanley for the past five years. He has done nothing except to give his approval and blessing to all of Pitta's corrupt practices.

Pitta was indicted in October 1984 for mob ties. For some reason the government temporarily dropped the charge. I assure you the government is still on his tail.

'CLASSIC EXAMPLE'

In 1984 a Senate subcommittee reported evidence that organized crime had penetrated the national office right after Ed Hanley became General President in 1973. One Justice Department report charged that "Ed Hanley represents the classic example of an organized crime takeover of a major labor union." The committee recommended that Hanley and six other officers be removed.

Hanley took the Fifth Amendment numerous times during a federal racketeering suit. AFL-CIO laws state that any officer who takes the Fifth Amendment should be removed.

Removing racketeers and corrupt officials is only part of the answer. How can we make certain that they will be replaced by honest trade unionists? Ron Carey, international president of the Teamsters, is a shining example. He was elected by a membership who pressured federal monitors such as our Kurt Muellenberg to ensure fair elections.

We must urge Kurt Muellenberg to give members the right to enact democratic by-laws and to ensure that those who are elected have worked for at least two years in the industry and are not outsiders, like the relatives and cronies with whom Vito Pitta has infected our Local 6. □

UPS Teamsters vs. Teams—cont'd

(continued from page 5)

15 years Teamsters at the Elmsford, New York facility have been holding weekly union meetings off the clock before going to work. But when stewards started to distribute educational materials about team concept, UPS decided that the union meetings weren't such a great idea after all.

In October, a division manager banned all union meetings at Elmsford unless members tell management in advance what they'll be discussing. Then he tried to fire two stewards for allegedly violating this policy. Local 804 has slapped UPS with unfair labor practice charges and is taking the discharges to arbitration.

YOU ARE NOT ALONE

One of UPS's favorite tricks is to play the divide and conquer game, telling local unions that they are the only one opposing the program.

The union has countered with a series of letters from elected representatives of one local to the members of other locals, assuring them that they are engaged in a common struggle.

"The position of Teamsters Local 344...is that employees should not voluntarily participate... While you may hear from management that the programs are working well in Wisconsin, including the Wausau center, I can assure they are not," wrote Paul Lovinus, secretary-treasurer of Local 344.

"If UPS approaches you with the team concept idea, ask them to contact the union—it's not your duty to train, supervise, or possibly discipline your co-workers," added John McCormick, president of Local 705 in Chicago. □

[Bob Machado works for Teamsters for a Democratic Union. David Levin is a freelance writer who works for several Teamster Locals in New York and New Jersey. A version of this article appeared in TDU's Convoy Dispatch.]

AFL-CIO News
2-19-96

Teamsters cry foul over UPS Team Concept

Actions speak louder than words, union says

By David Kameras

In the corporate league of teams, United Parcel Service Inc. may never win a contest.

The world's largest package carrier last year put into effect its "Team Concept" program in selected locations, purportedly to give workers a greater voice on the job. Instead, management seems intent on dividing union members, increasing workloads and undermining basic contractual rights, the Teamsters say.

"Management talks about care, they talk about love, and they say things they think we'd like to hear — like, 'Now we're a partner' — but they really want to distract Teamsters members from issues like subcontracting and health and safety," said IBT President Ron Carey.

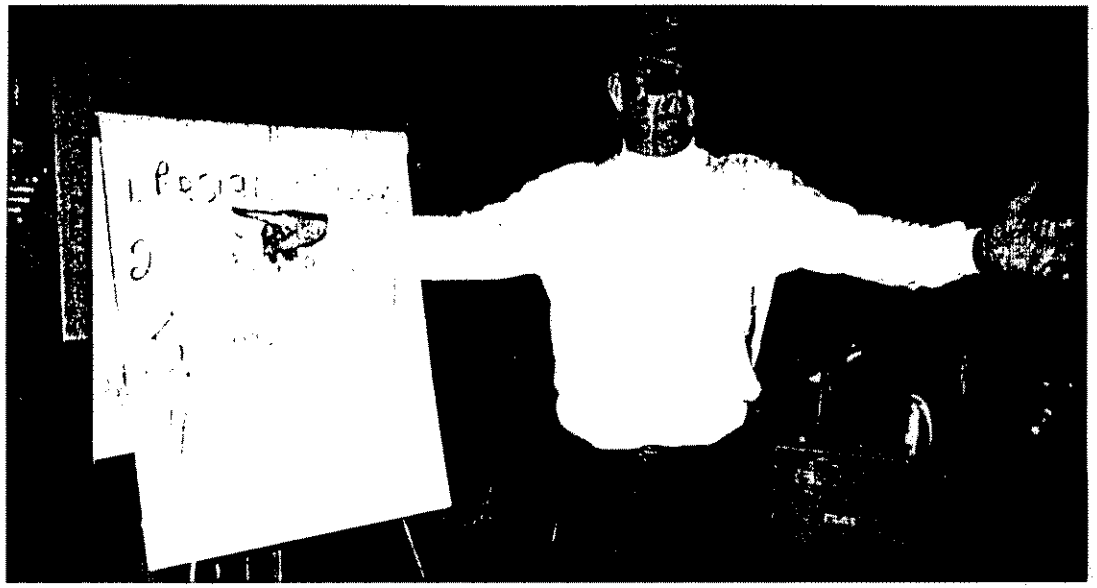
The union is concerned that self-directed teams will be pressured to discipline fellow union members and assume other supervisory tasks, all the while without regard to seniority or compensation.

IBT has demanded that UPS provide complete program details and objectives, in the meantime directing local unions not to participate.

Rather than accede to a process that ignores the collective bargaining process, "the better approach has been to use the slogan, 'Actions speak louder than words,' " the title of a video on the subject the union is distributing to members, said IBT spokesman Rand Wilson. The national master agreement is "our record of cooperation," he said.

"There would be more teamwork if the company followed the Teamsters contract," Ken Hall, interim director of IBT's parcel and small-package division, says on the tape.

In addition, the Teamsters Education Department launched a program to brief members on Team Concept. If required to attend team meetings, members are being advised to raise questions, like:



IBT photo

IBT Local 828 driver Dave Dunn briefs fellow members of the Mason City, Iowa, union on the types of perils they may expect during UPS team meetings that management is seeking to impose.

- Why is management implementing Team Concept without negotiating with the international union?
- Who will keep the money management saves by laying off supervisors?
- Why is UPS talking about teamwork while attacking members' rights?
- Can the team make decisions to improve working conditions, like increasing staff?
- Can a team make decisions to create more full-time opportunities for part-timers?

Under no circumstances should teams discuss discipline, "set up" co-workers, help eliminate jobs, violate seniority rights, pressure co-workers to work at an unhealthy speed or violate the contract, members are cautioned.

The IBT notes that while UPS says it wants to create the spirit of "one big company family," it refuses to negotiate a final agreement on key safety issues and is fighting to get Congress to gut labor and safety laws.

Those struggles on Capitol Hill contrast "with the happy talk of Team Concept," Wilson said.

Local union leaders who attended regional meetings in Chicago, Los Angeles, Orlando and Washington were unanimous in voicing opposition to the Team Concept plan, a sentiment that seems to accurately reflect that of much of the rank and file.

Chicago driver Jim Pufpaf, a member of Local 705, doesn't want less-senior workers in charge of telling more-senior workers what to do.

"Team Concept rewards people for how well they kiss up, not for the time they've dedicated to the company — and that's not right," he said. "UPS knows they're wrong, but they're trying to go around the contract and see how much they can get away with."

Fully 100 percent of Local 828 members in Mason City, Iowa, declared that they will not voluntarily participate in a new member-to-member training program until management talks with the international.

"If management was being honest about wanting more teamwork, they'd negotiate with the international union about ways to achieve that," said driver Dave Dunn. "Since they won't, a lot of people think they're just trying to bust the union."

"The true motive behind Team Concept is to destroy the union," said Local 386 steward Gaylord Phillips, who said the program had turned worker against worker at the UPS center in Ceres, Calif. Members succeeded in forcing management to drop the program.

"Giving workers extra duties and not rewarding us for it is not building teamwork," Phillips said. "With all the talk about using our skills more, the company is just trying to fool us by stroking our egos."

LABOR NOTES

7435 MICHIGAN AVE., DETROIT, MICHIGAN 48210 PHONE (313) 842-6262 #207 JUNE 1996

Sexual Harassment at Mitsubishi: Where Was the Union?

EEOC: a Scapegoat for Slumping Sales?

'Team Players' Don't File Grievances

by Kim Moody

A long history of sexual harassment at Mitsubishi's Normal, Illinois plant caught national attention when about 2,500 employees demonstrated at the Equal Employment Opportunity Commission's Chicago office on April 22.

The employees, both hourly and white collar, union and management, were protesting the EEOC's class action suit filed against Mitsubishi on April 9. The employees had been given the day off with pay, bused in at company expense, and provided a free lunch if they attended the demonstration. Those who did not attend had to report to work. The company kept records of who attended and who did not.

The suit comes after a 15-month investigation of sexual harassment at Mitsubishi found as many as 500 of the 893 women in the plant victims of "unwanted groping, grabbing, and touching"; threats of job loss if they refused sexual favors or complained; "sexually derogatory" comments; and sexual graffiti that sometimes named specific women.

The harassment came from both hourly workers and management personnel. The EEOC says that Mitsubishi management failed to take "appropriate corrective action." Indeed, scores of interviews done by the EEOC and the *Washington Post* show that management participated in the harassment.

A separate private suit filed by 29 current and former women employees alleges, in addition, that company managers organized sex

(continued on page 14)

Postal Service Ends Letter Carriers' 'Employee Involvement' Program

by Michael L. Willadsen
President, NALC Branch 86

On April 15, the U.S. Postal Service announced it was ending its Employee Involvement program with the National Association of Letter Carriers.

In a letter to NALC President Vincent Sombrotto, USPS Vice President Joseph Mahon gave the following reasons for terminating the program: decreases in overall productivity, increases in grievance activity, the politicization of NALC facilitator appointments, and the withdrawal of "jointness" at the national level whenever the parties engage in collective bargaining.

The Letter Carriers union has been a strong proponent of E.I. The program dates from 1982, when NALC members were informed that the union and management were trying to devise a program to reduce, if not eliminate, the "...bitter, adversarial relationship detrimental to the interests of all concerned—the

(continued on page 10)

In This Issue:

Employees Dis-Involved at USPS—cont'd

(continued from page 1)

workers, management, and, of course, the American mailing public..."

Then-Postmaster General William Bolger said he wanted to "...redirect postal philosophy toward understanding and meeting workers' needs, and toward recognizing more fully the contributions employees make to the Postal Service..."

In a joint statement, the NALC and the USPS declared their 100% commitment to the Employee Involvement process. The agreement specified that individual involvement was to be voluntary, and that the accord could not interfere with, or upset, the collective bargaining agreement.

DIFFICULTIES

There were those, perhaps many, who harbored no belief that the adversarial labor-management relationship would ever change—certainly not for the better.

Stewards were accused by coworkers of becoming soft. Supervisors were accused by mid-level managers of giving the "house" away. E.I. workteam members were accused of only being involved to get out of carrying their routes.

Tempers flared when non-union members were included in any phase of the process. Budget-conscious supervisors canceled meetings, precipitating the filing of grievances—the very things the process was designed to reduce.

Some reform groups within the postal community (Workers for One Postal Union, Rank and File Coalition, NALC New Vision, and the New Generation Leadership) adopted anti-EI/QWL philosophies, and even ran candidates against top union leaders on an anti-E.I. platform.

And the largest postal union—the American Postal Workers Union—categorically rejected E.I. from its inception. APWU President Moe Biller likened the process to company unions. APWU members tenaciously monitored the process at all levels to ensure that nothing resulting from E.I. affected them.

While the NALC was, as some opined, "in bed" with postal management, the APWU was experiencing a contentious relationship with postal management.

WHIPSAWED

The Joint Bargaining Committee, once encompassing all four craft employee unions, was reduced to just the APWU and the NALC for the last several rounds of negotiations. Then, partly due to differences over E.I., the NALC chose to go it alone in the 1994 talks, even though the APWU had voted to continue bargaining together.

The result? The NALC did not reach one agreement with postal management, while the APWU reached over 90 agreements on working conditions.

The significance? One would think that postal management would reward the union that sought labor peace, while at the same time punishing the union that didn't. What is evident is that postal management is intent on keeping the craft unions "whipsawed" against one another—instead of united against them.

The Postal Service had the opportunity to be a leader in progressive labor relations. Instead, it bought into the theory—harbored mostly by publicly-owned corporations—that employees can only be responsive to the employer's goals when they are beaten into submission.

Employee Involvement assisted management in this goal by giving the employees a false sense of being an integral part of the organization, while at the same time detaching them from the reality that it is the union that gives them their only true voice in the workplace. □

GM Gets Mean Over Outsourcing—cont'd

(continued from page 5)

On the other hand, this spring Alli had asked for strike authorization from the UAW leadership in Detroit.

GM's newly found moral rectitude came just-in-time to head that off and is certainly a function of its new get tough, get competitive stance.

CONTRACT ACT?

The issue at Dayton had been outsourcing of antilock brake production to a nonunion plant in North Carolina owned by German brake maker Robert Bosch. At Lordstown the issue that led Alli to seek strike authorization was the outsourcing of seat production to Lear Corp. Lear, though union, pays much less than GM.

Outsourcing, however, is where GM is drawing the line this year. Outsourcing, GM says, is the only way it can become competitive with other auto makers.

Speaking to the *Wall Street Journal*, one unnamed GM official said, "I think the strategy is to send a clear message to all of GM's operations. We're looking at all these plants, not just Delphi," GM's in-house parts division.

Indeed, when Alli met with plant management after asking union leaders for strike sanction, a GM official reportedly told him, "You strike and we will shut this plant down."

Much of this posturing by GM's so-called labor hawks seems to be about this year's Big Three contract negotiations.

COMPETITION NEVER ENDS

Behind GM's competitiveness rhetoric, however, the number one auto maker's performance looks a lot better than it wants its workers to believe. Years of plant closings or sales, plus Ignacio Lopez's legendary 1992-93 cost-cutting binge, have produced big changes.

Productivity has risen 35% and profits have almost tripled since 1993. GM's return on equity is running twice that of Ford and well ahead of Chrysler, according to *Business Week*.

Since 1988, *Ward's Auto World* reports, GM has reduced its in-house proportion of production from 70% to 45%, much closer to Ford's 39% and Chrysler's 36%.

On top of that, GM reports that it has reduced the unprofitable plants in its 194-plant Delphi parts division from 50 in 1993 to 14 today. Delphi has been profitable since 1993.

So, is this new toughness about finishing the last few yards of the global auto race to less than 40% in-house production?

Yes, but not just that. The big difference between in-house and out-of-house production is union wages, benefits, and working conditions. The more production that goes out-of-house and nonunion, the greater the pressure on union labor to curb its demands and boost its production—working sweatier, not smarter.

The race for profits, politely known as competition, never ends. Just where GM holds, as opposed to draws, its line in the sand will depend, as it always has, on where (and how) the UAW digs in for a fight.

Beyond the 1996 negotiations and improved contract language on outsourcing lies the job of organizing the parts industry, now down to about 25% union.

The day these plants become union with wages and benefits rising toward those of the Big Three is the day outsourcing will cease to be a big business buzz-word. □