

HOT TOPIC BOX
"Future Worker
Management Relations"

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The Dunlop Commission
Fact Finding Report
May, 1994
Analysis and Comment

LABOR NOTES
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I. The Envisioned Crisis

The unanimous Fact Finding Report of the Commission of the Future of Worker-Management Relations begins with a discussion of the changing economy:

The rate of growth of productivity [in US manufacturing] fell in the 1970s but recovered in the late 1980s and 1990s to its historic level of approximately 2.5% per year.... [S]tarting with the first oil shock of 1973 ... the decline in the rate of productivity growth was greater in many countries than in the US.... The US has on average the highest productivity per worker and per hour among major economies, although Western Europe and Japan are not far behind.... Total R&D in the US exceeds those of our four closest industrial competitors -- Japan, West Germany, the United Kingdom, and France.¹

Despite these cheery numbers the report is gloomy because other factors² show the US standard of living and lead over other countries won't widen even further:

Slow productivity growth makes it difficult for Americans to enjoy rising standards of living and bounds the feasible increases in wages and benefits that firms can pay and their international competitiveness at any given exchange rate of the dollar.³

The productivity numbers above don't justify this crisis-mentality.⁴ Why then would the report lead with this view? The answer seems to be to motivate the promotion of employee participation plans (EPPs) in the following chapter, the centerpiece of the report:

1 Page 2.

2 The US rate of productivity growth in the service sector since the oil shock, longterm US productivity growth generally, and R&D expenditures as a percent of GDP.

3 Page 2.

4 Also unquestioned is the premise that there is virtue in the US leading other countries. Cf page 139. An article of faith also is that distribution of income between workers and managers is fixed and the only way to increase US living standards is to enlarge America's economic pie.

[E]xternal forces are interacting with a growing recognition that achieving a high productivity/high wage economy requires changing traditional methods of labor-management relations and the organization of work....⁵

II. The Envisioned Solution: Employee Participation Plans

A. The Nature And Extent Of EPPs

EPPs in a wide variety of forms are found to be growing and partially diffused throughout the US. They extend to between a fifth and a third of the workforce,⁶ but are often transitory.⁷ Factors retarding their spread are said to be lack of trust by workers and unions, EPP history as a union-avoidance technique, layoffs, downsizing, management hostility, high up-front costs, high employee turnover, low employee education, low technology, and government policy.⁸ The report says 40-50 million workers want to participate in decisions on their job but lack the opportunity to do so.⁹

The report places emphasis on something called the "high performance" workplace, but gives no precise definition of the term.¹⁰ It says most experts agree EPPs are most valuable in a company when (1) there is a totally system-wide "foundation of trust" and (2) EPPs are combined with information sharing, work organization flexibility, commitment to training and development,

5 Page 29.

6 Page 55.

7 Pages 36-37.

8 Pages 49-52.

9 Page 52.

10 Pages 36, 45. The DOL's Office of the American Workplace (OAW) assisted the commission's work. In a June 15 interview its resigning director said the OAW has "essentially answered the question 'What do you mean by a high-performance workplace?'" The OAW has not published the definition and the commission did not adopt it. "OAW Head Suggests Easing Union Constraints", 146 LRR 270, 272-73 (6/27/94).

gain sharing, employment security, and full partnership with the union if there is one.¹¹

Citing two studies, the report estimates "high-performance" workplaces to exist in no more than five percent of workplaces."¹²

The section titled "Key Features of Workplace Participation Processes" says there is no single dominant form of EPP today. The only common feature is that employees participate in them. Lean production is not a key feature.¹³ Nor are "democracy" or "voice-giving."¹⁴

B. The Economic Outcomes Of EPPs

The commission heard from 354 witnesses. The hearing transcripts run to 3858 pages.¹⁵ After receipt of considerable evidence, the pivotal section titled "The Effects of Employee

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- 11 This is a peculiar formulation. One would suppose intuitively if there were really a system-wide foundation of trust in a workplace the second-listed elements would be superfluous.
- 12 Page 36. One of the two, Jerome Rosow of the Work in America Institute, actually pegged the figure at 2%. Commission 9/15/93 Hearing 199. So the "high-performance" workplaces are doing worse than the unions, which represent 11.2% of nonfarm private sector workers. Page 24.
- 13 Nor is it mentioned in the section on changing technology. Page 6. Just-in-time inventory management systems are mentioned only in connection with the vulnerability of auto companies to a railroad strike. Page 100. Increased workplace stress is referred to by implication in the section on rising workers compensation costs. Page 23.
- 14 Herman Miller Inc is a company featured in a box at page 59 of the report. The box notes regular information meetings, employee stock ownership, an internal appeals board, caucuses and councils, and a suggestion review board with diagonal representation of employment. Omitted is that at the East Lansing hearing on October 13, 1993, the Herman Miller representative agreed on a question of commission member Doug Fraser its EPP was not "democratic."
- 15 Page xii.

Participation on Economic Outcomes" cites few positive outcomes.¹⁶

The first is only a byproduct. It is increased investment in training and education. However the effect of these efforts on employment security is limited at best, the report says. EPPs alone do not produce new jobs.

The other outcome is the effect on productivity and quality. The report says results here are also mixed. Some EPPs don't last long. Others such as quality circles and teams produce small or insignificant gains. The largest positive effects were found where EPPs were combined with huge management changes,¹⁷ none of which are again mentioned in the report.

The big positive effects are documented in just four cited studies. Two are unpublished.¹⁸ The third is about Xerox Corporation, of which commissioner Paul Allaire (who reported for the commission's working party on workplace committees) is chairman and CEO.¹⁹ The fourth concerns a mixed sample of both US and foreign auto plants.²⁰

16 Pages 45-46.

17 Employment practices, manufacturing policies, management structures, and management decisionmaking procedures.

18 Casey Ichinoiski, Kathryn Shaw, and Giovanna Prennushi, The Effects of Human Resource Management Practices on Productivity, unpublished paper, Carnegie Mellon University (March, 1994); Mark Huselid, Human Resource Management Practices and Firm Performance, unpublished paper, Institute of Management and Labor Relations, Rutgers University (June, 1993).

19 Joel Cutcher Gershenfeld, The Impact on Economic Performance of a Transformation in Workplace Practices, 44 Industrial and Labor Relations Review 241-60 (January, 1991). The Report of the AFL-CIO Committee on the Evolution of Work also cites Xerox as a company which moved with its union to alter in the most basic way the manner in which work is organized, the business is managed, and labor and management treat each other. Daily Labor Report 2/23/94, E-4.

20 John Paul MacDuffie and John F. Krafcik, Integrating Technology and Human Resources for High-Performance Manufacturing: Evidence From the International Motor Vehicle Research Program in Thomas A. Kochan and Michael Useem (eds) Transforming Organizations, 209-26, New York, Oxford University Press (1992).

Ignored is Maryellen Kelley's and Bennett Harrison's finding that plants with joint committees are significantly less efficient than those without them. Depending on the size of the firm, non-union firms with committees are on average 33-35% less efficient than those without. In unionized firms there is also no positive correlation of joint committees to productivity.²¹

The section concludes without explanation or documentation that the best innovations are those which are broad-based, long-living, and "integrated into a system's approach to workplace innovation and change".²² Based on this thin reed, the report says the evidence suggests programs:

that take a broader more systemic approach ... have the greatest long term positive effects on economic performance.

...

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.²³

The report concludes in visionary terms:

21 Kelley's and Harrison's data and conclusions are well-known and the commission cites them approvingly on another point, that joint committees in union plants are more efficient than those in nonunion plants. Page 45. Maryellen Kelley and Bennet Harrison: "Unions, Technology, and Labor-Management Cooperation," in Lawrence Mishel and Paula Voos: Unions and Economic Competitiveness, Washington, DC, Economic Policy Institute, 1992.

22 Whatever that means. Page 46. See also page 36.

23 Pages 53, 56.

Chapter II, for example, focused on innovative practices found in many firms that provide employees a voice in decisions that affect their jobs and the performance of their enterprises. American employers have been world leaders in introducing some of these workplace innovations. Some American firms have served as benchmarks for employers around the world, while others have learned from the practices of leading firms in other countries. These innovations are helping American employers be competitive on world markets.²⁴

Again, this says nothing about the extensive management changes accompanying EPPs being the real factors responsible for American leadership.²⁵

C. Legal Problems And Proposals

The report then turns to what it says is the big problem:

Those [EPPs] most vulnerable to legal challenge are precisely those that take a broader, more systemic approach to participation that the evidence suggest have the greatest long term positive effect on economic performance.... How should legal uncertainties and limits on EPPs and labor-management cooperation be addressed without discouraging workplace innovations that enhance the competitiveness of the modern workplace and without risking a return to the conditions that motivated passage of these protections?²⁶

24 Pages 139-40.

25 The report's preface takes care to note that in some cases the evidence is weak. But on the general presumption that it is better to have some occasionally weak evidence than no evidence, the commission says it tried to make use of all the information, albeit weighing the different forms. Page xii. Unfortunately this caveat is not repeated or underlined in making the conclusions about the economic outcome of EPPs.

26 Pages 53, 56. See also employer views on the subject at pages 52-53, 54, and 56.

The question is posed in both nonunion and union settings.²⁷ The major question is identified as whether the NLRA should be amended to permit nonunion firms to develop (1) self-managed production teams, particularly those that address working conditions,²⁸ (2) in-house dispute resolution procedures including employees as advocates or judges, and/or (3) undefined "joint quality of working life committees."²⁹

Another question is the exclusion of supervisors and managers from NLRA coverage.³⁰ This springs from findings about production- and quality-centered initiatives and self-managed work teams.³¹

Curiously, as noted the report mentions legal problems for EPPs in union plants. But it gives no specifics in that context. What could they be?³²

The report notes four different policy positions being advanced.³³ The first is to leave 8(a)(2) alone. This is Labor Notes' view.

27 Page 56.

28 Interestingly, the human resources vice-president of Toyota's nonunion plant in Georgetown, Kentucky, testified Section 8-(a)(2) was not a hindrance to the Toyota production system. Commission 9/15/93 Hearing 172-73 (Heltman).

29 Page 57.

30 Page 55.

31 Pages 6, 37-40, 45. The actual extent of these particular types of EPP is not documented. There are a number of mentions of "temporary task forces" which may be intended or included.

32 Labor Notes pointed to some in its submission. A union would be liable for breach of duty if it delegated any bargaining authority to an autonomous dual organization on the shop floor. The employer would not know which one to deal with. A member fired by a jealous supervisor for complaining about product quality (as opposed to working conditions) would be unprotected by the NLRA. An autonomous EPP entity itself might be suable in its own name, especially if by word or deed it assumed a duty of fair representation. The greater amount of traditional management responsibility it assumed, the greater would be its duty.

33 Pages 56-57.

The second is the Gunderson/Kassebaum/TEMA position that employers should be able to "deal" but not "bargain" with dominated committees.³⁴

The third would permit employers to establish EPPs if they meet certain standards about employee selection, access to information, protection against reprisals, and the like. The source and motivation for this proposal are not identified.

The last would require the EPPs permitted in the third proposal. This is the approach of the pending COSHRA bill pushed by AFL-CIO.³⁵ It would amend OSHA require employee committees to address health and safety. The bill as it now stands would allow employers to dominate the committees, though this was not originally part of the bill. Seizing on this Gunderson tried to amend the bill in March so the dominated committees would be allowed to range onto subjects outside the safety area. Democrats wavered for a week and then said no.

D. Labor Notes' View

In addition to some similarly-inclined individuals,³⁶ Labor Notes' paper "The Independence of Labor" was quoted in the report:

34 The Teamwork for Employees and Management Act (TEMA), S 669 and HR 1529. Labor Notes' paper to the commission dealt specifically dealt with the TEMA bill.

35 HR 1280.

36 Polaroid employee Charla Scivally, historian David Brody, National Semiconductor worker Romie Manan, academics Fred Foulkes and David W. Ewing, labor educator Jim Rundle. Pages 42, 48-50, 54, 60.

We have deep skepticism toward the notion that workers and management have much in common in dealing with workplace problems. They compete with each other to divide the economic pie, much as companies compete for market share. The idea that they share interests has historically been used to defeat or preempt unions....

Unions remain the only genuine independent employee organizations capable of fighting for the interests of workers on the job.³⁷

Other worker-friendly individuals and organizations also testified or gave submissions.³⁸

E. Union Views

Several skeptical unions testified at commission hearings, though their views are not elaborated in the report.³⁹

The report notes AFL-CIO views on various subjects.⁴⁰ Instructive is the difference between the AFL attitude in 1919 and the AFL-CIO attitude today. After an initial view of shop committees as a possible step in the evolution of unions, in 1919 the AFL convention said:

we heartily condemn all such company unions and advise our membership to have nothing to do with them....⁴¹

37 Page 31. Labor Notes, The Independence of Labor, paper submitted to the commission (October, 1993).

38 Jim Green, Kate Bronfenbrenner, Steve Early of Jobs with Justice, Nancy Lessin of MassCOSH, and Elly Leary of UAW New Directions testified January 5, 1994. Charles Morris testified February 11, 1994. Lewis Maltby of the ACLU testified April 6, 1994. Of the 354 witnesses listed, there are certainly many others who gave good testimony.

39 IBT General Counsel Judith Scott and CWA Organizing Director Larry Cohen testified January 19, 1994. OCAW President Robert Wages testified February 11, 1994.

40 Pages 33, 47, 50-51, 73, 74, 77, 88, 95.

41 Page 47.

Today this is changed. The report highlighted the 1994 Report of the AFL-CIO Committee on the Evolution of Work:

First, we seek partnerships based on mutual recognition and respect.... A partnership requires management to accept and respect the union's right to represent the workers in units already organized and equally to accept and respect the right of workers in unorganized units to join a union.

Second, the partnerships we seek must be based on the collective bargaining relationship. Changes in work organizations must be mutually agreed to -- and not unilaterally imposed -- and must be structured so as to assure the union's ability to bargain collectively on behalf of the workers it represents on an ongoing basis.

Third, the partnerships must be founded on the principle of equality. In concrete terms, this means that unions and management must have an equal role in the development and implementation of new work systems.

Fourth, the partnership must be dedicated to advancing certain agreed-upon goals reflecting the parties' mutual interests.⁴²

Though in other passages the AFL-CIO acknowledges "it is the nature of things that workers and the employers for which they work do have some conflicting as well as common interests,"⁴³ the inherent differences are soft-pedalled. It urges workers through their unions to become "stakeholders in the enterprise,"⁴⁴ a role at odds with labor's traditional goal of taking wages and conditions out of competition.⁴⁵ Thus:

42 Page 50.

43 Daily Labor Report 2/23/94, E-2.

44 Daily Labor Report 2/23/94, E-5.

45 Daily Labor Report 2/23/94, E-3.

Many unions have become accustomed, of necessity, to rallying workers in response and often in opposition to decisions made by management. A new work system will require union leaders to assume new and quite different roles and responsibilities for which they have not always been well prepared.⁴⁶

Unions identified in the report as having publicly endorsed EPPs and labor-management partnerships as an explicit policy and objective are the Steelworkers, CWA, ACTWU, and the Grain Millers.⁴⁷ Union leaders are portrayed as satisfied with EPPs at AT&T, Phillip Morris, National Steel, Scott Paper, and Miller Brewing.⁴⁸

Despite the AFL-CIO's seeming willingness, it has not proposed any specific legislative deal. The commission points to no proposal of the AFL-CIO to trade easing of organizing restrictions for NLRA Section 8(a)(2).⁴⁹

From Labor Notes' point of view, this is fortunate.

III. The Background

Chapter II on EPPs is preceded by Chapter I, which sets out most of the well-known changes in the US working environment of recent decades. Some of it is interesting. Beginning with the above productivity figures, it goes on to discuss trends in the economy and the workforce, problems of labor outcomes, the decline of unions, and the rise of government regulation.

46 Daily Labor Report 2/23/94, E-6. The resigning OAW director listed some of these, noting they are traditionally thought of as the sole province of business: operations analysis, finance, accounting, and quality and process management. "OAW Head Suggests Easing Union Constraints", 146 LRR 270, 272 (6-/27/94).

47 Page 51.

48 The commission notes that at these companies, unlike other unionized companies with EPPs, the issue of representation at all the company's plants was settled. Pages 50-51.

49 Section 8(a)(2) is what prohibits employers from dominating, assisting, or financially supporting a labor organization. It is the provision which was at issue in Electromation and DuPont.

Noteworthy are the millions of establishments of different sizes,⁵⁰ corporate mergers and restructuring, a more educated workforce, increasing workforce shares of minorities, women, aging baby boomers, and immigrants, lower standards of living, longer hours of work, unfair wage distribution, more contingent workers, more people incarcerated,⁵¹ and increased loss of time for injury and illness. It states:

A healthy society cannot long continue along the path the US is moving, with rising bifurcation of the labor market.⁵²

Despite an assertion that all the issues it addressed are interdependent,⁵³ the commission discusses no proposals for dealing with the social problems implicated by some of these findings.

IV. Collective Bargaining

Chapter III discusses the "dismal side" of American labor relations.⁵⁴ Two-thirds of the US public think that unions are good for the nation as a whole.⁵⁵ But one worker in 48 who voted for a union in the late 1980s was illegally fired, according to NLRB statistics.⁵⁶ This is way up from the figure of one in 689 in the early 50s.⁵⁷ The number of meritorious employer unfair labor practices found was more than seven times higher in 1990 than in the early 50s.⁵⁸ A third of employers in first-

50 Perhaps this is a tip of the hat to "virtual corporations."

51 There is no discussion of homelessness.

52 Page 26.

53 Page 140.

54 Pages 76, 79.

55 Page 63.

56 Page 83.

57 The real figures are undoubtedly worse, because these numbers concern discharges which were litigated to where the employer had to capitulate and offer reinstatement.

58 Page 83.

contract negotiations bargain in bad faith, and this reduces the odds a contract will be secured or if it is that the bargaining relationship will survive the next round of negotiations.⁵⁹ Penalties for unfair labor practices are light compared to other employment legislation.⁶⁰ The highly confrontational representation process colors labor-management relations after a union win.⁶¹

By contrast in the public sector, where employers do not campaign against unions, certification win-rates average 85% nationwide.⁶²

The commission does not try to assess the role of particular campaign tactics, legal or illegal, on election outcomes.⁶³ And despite extensive treatment of reasons why EPPs have not spread in the US,⁶⁴ it attempts no explanation for the decline in union representation.⁶⁵

The commission notes five labor recommendations to amend the NLRA representation process: stronger penalties for violations, expedited election procedures, equal access time for unions, card-check bargaining orders, and first-contract arbitration.⁶⁶ The commission seems bothered by anti-union employer actions, and is likely to recommend some of these changes.

It is also bothered by the noncoverage of the contingent workforce.⁶⁷ There is a separate section on the construction sector, which it notes is also contingent.⁶⁸

Interestingly, representatives of both management and labor testified the Railway Labor Act is working well and should not be

59 Page 74.

60 Pages 72, 73, 111.

61 Page 75.

62 Page 78.

63 Page 78.

64 Pages 47-53.

65 Page 78.

66 Striker replacement is not mentioned.

67 Pages 93-94.

68 Pages 95-98.

changed. With a near-100% unionization rate and few work interruptions, the commission seems mostly pleased with the RLA.⁶⁹

V. Employment Regulation

Chapter IV discusses employment regulation, litigation, and dispute resolution. Concomitant with the decline of unions, it notes the rise in workplace regulation in areas of "value-laden" concern.⁷⁰ It seems to ask whether legislation like OSHA has really made for safer workplaces⁷¹ or ERISA for better pensions.⁷² For every dollar paid to a deserving claimant, at least another dollar goes for litigation costs and defense of other claims. Access to legal relief is not uniformly distributed, because high-paid executives and professionals present the cases lawyers are most likely to take.⁷³ Jury verdicts are often high, but the overall pattern shows "a rather lottery-like response" to workplace problems.⁷⁴

Most employers and unions accept the need for these laws, but the commission recommends a "more service-oriented approach."⁷⁵

There follows an extensive treatment of suggested non-judicial dispute mechanisms, unions not being one of them.⁷⁶ Joint committees are discussed, but only in the area of safety and not in all the other areas that concern workers.⁷⁷

69 Pages 98-103.

70 Page 109.

71 Page 23.

72 Page 110.

73 Pages 112-13.

74 Page 113.

75 Pages 110-11.

76 Pages 113-22.

77 Pages 121-22, 126.

VI. Conclusions Of The Report

Chapter V repeats general observations. In a Detroit speech June 14 John Dunlop denied it, but the report seems to opt for a package: "High-performance" through employee cooperation is the way to go, employers should be nice to unions, and current employee formations -- both unions and nonunion EPPs -- should be somehow harnessed to take the place of legal regulation. Growing diversity is cited to motivate this.

Of course, diversity contains no natural dynamic leading this way. It could just as easily be used to demonstrate the need for unionization.

In an appendix the commission suggests a major congressional commission or a continuing labor-management committee of top-level representatives.⁷⁸

The commission will issue a final report in December, and has invited further submissions, particularly on EPPs.⁷⁹

Labor Notes will continue to monitor the commission's progress, and expects to make further submissions to it.

78 Page 144.

79 Pages 56, 57.