



NFIB
National Federation of
Independent Business

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

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STATEMENT OF
THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

*NFIB is the nation's largest small business advocacy organization,
representing more than 600,000 small and independent business owners nationwide.
NFIB's positions on legislative issues are established by its members.*

Subject: Small Business and the Work Place

Before: Commission on the Future of Worker/Management Relations,
Department of Labor

Date: December 15, 1993

On behalf of its over 600,000 members, the National Federation of Independent Business (NFIB) welcomes the opportunity to present the views of small businesses on labor law reform.

NFIB is the nation's largest small business advocacy organization. Its members employ on average 8 employees and have a median gross sales of approximately \$250,000. The NFIB membership reflects the national business population of retail, service, manufacturing, farming and other business entities. Most importantly, NFIB sets its policy by directly polling its membership on critical issues. When asked about reforming our nation's labor laws, many small business owners have some strongly held concerns. This testimony will first give the Commission members pertinent background on small business in America, then it will address how current labor laws and regulations affect the workplace. Finally, it will focus on how some changes in labor law might affect the workplace.

In order to understand the impact of labor law reform on small business, it is important to have an idea of the composition of the business community and some of the demographics of small business owners. First, it is important to look at the business community as a whole. One inaccurate perception in this country is that all business is big business. This, in fact, is not correct. There are five million employers in the United States today. Of those five million, 60 percent employ 4 employees or fewer and 94 percent of employers employ fewer than 50 employees. These figures illustrate what is typically lost while debating the impact of certain legislation and regulations -- small business by pure volume dominates this country's economic engine. It is important to remember this as changes in labor law are considered.

Another misleading perception is that a small business is just a little big business. Nothing could be further from the truth. For example, one-half of small business owners start their business with less than \$20,000 dollars, most of which is personal or family savings. Most small business owners do not make a lot of money (40 percent earn less than \$30,000); they survive on cash flow, not profitability. Start-up small businesses are the most vulnerable. Of the 800,000 to 900,000 businesses that start each year, half will be out of business within five years. While it is rough going at the start, the small businesses that do make it are the major job generators in this country. From 1988 to 1990 small business with fewer than 20 employees accounted for 4.1 million net new jobs, while large firms with more than 500 employees lost 501,000 net jobs in that same time period.

So why do small business owners risk their hard earned savings to start a business in the first place? Because of independence. The primary reasons people go into business are to strive for personal achievement and the desire to be their own boss. Some wonder why small business owners object so vehemently to outside interference in their efforts. The answer is simple -- they object because interference challenges their fundamental reasons for going into business. They see interference as an infringement on their personal freedom and a type of economic censorship. It is akin to the idea that if you own a house, nobody tells you what color to paint the kitchen or when to mow the grass. Unfortunately, government interference has hampered the ability of the entrepreneur to be independent and to implement what entrepreneurship is all about.

Small business is also different from big business with respect to labor-management relations. Most small business owners are former employees. The owner is also an employee of the business, working alongside other employees performing the day to day tasks which are necessary to keep the business operating. In addition, the small business owner must act as the lawyer, accountant, human resource specialist, immigration expert, environmental engineer, etc. Small business is a family affair. The owner realizes that the employee is important because most small businesses are labor-intensive. Usually the owner knows the names of the employees' sons and daughters. The owner also realizes that employees are human beings that have special needs and concerns.

However, the employer's number one priority in the decision making process and how it affects employees is the survival of the business. It is ultimately the responsibility of the employer whether the business is a success or failure. The owner knows that if the business succeeds so in turn do the employees. Unfortunately, small business owners have seen their ability to control their own businesses diminish over the years because of excessive government regulations, statutes, and controls. This is especially true in the area of labor law.

Current labor laws do not fit well in a small business setting. The small business work environment must be flexible so firms can respond to new challenges and opportunities. Unlike large businesses, small businesses usually fill niches and must be able to adapt to market changes in order to stay solvent and grow. Increased rigidity in the workplace through excessive regulation and government mandates tends to stifle economic growth, decrease employment, and stagnate job growth. Nowhere is this trend more evident than it is in Europe.

Many in America mistakenly point to the policies of Europe as a way to reform our labor markets. But take a closer look and one will find those economies crumbling. According to Roger Cohen of the New York Times, "more than 11.3 percent or 19.1 million people in the 12 European [EC] countries are unemployed." In addition, roughly half of those who are unemployed in Europe have been out of work for more than a year, as opposed to 6% in the U.S. [Time, "Farewell to Welfare," November 22, 1993]. Even more troubling is the lack of job generation in Europe. As reported in the Wall Street Journal on December 9, 1993, a study by the Organization for Economic Cooperation and Development shows that Europe has failed to create any net new jobs in the private sector over the past 20 years. What do many Europeans think this problem is caused by -- rigidity in the workplace.

In an article in The Economist entitled "Getting Europe Back to Work" the author is quoted as saying, "...Europe's rigid labour laws made [employment] matters worse, by delaying job cuts and making employers think three times before hiring new staff. The result: more unemployment, not less."

A recent article about the European economy by Peter Gumbel of the Wall Street Journal points out that, "Some of the social and labor policies put in place over the last 40 years..., it turns out, are in fact increasing social misery. That is because the status quo, with its tangle of labor regulations and rising costs for employers, acts as a major disincentive to job creation."

Unfortunately, the United States Congress has not taken note of this. Mandate after mandate is either proposed or signed into law and it becomes more difficult for small business to compete or even stay in business.

And it is especially hard for the small business owner to keep up with the ever increasing administrative burden of labor law. In a report by Stephen Moore for The Institute for Policy Innovation, Mr. Moore writes: "One area where regulation has increased dramatically is labor law. Labor regulations are often well-meaning mandates on business to provide benefits and protection to workers. But they often carry a heavy price tag in lost jobs and higher consumer costs. For example, the 1989 minimum wage increase is believed to have contributed to a record high 24 percent teenage unemployment rate in 1992. Mandatory benefit requirements, such as health and leave policy, have reduced workers real wages."

Mr. Moore goes on to illustrate this point by referring to a chart prepared by the Labor Policy Institute that shows the increase in the number of new labor laws since 1945. By 1950 there were 3 new labor laws enacted. By 1970 there were 19 new labor laws enacted. By 1991 there were 90 new labor laws enacted.

Moreover, in 1990 there was a total of 65,000 pages of regulation in the Federal Register. How does a small business owner keep up with all of this? The owner does not have the time or resources to continually browse through the pages of the Federal Register to see if the business is in compliance with federal rules.

Instead the small business owner is worried about keeping the business going and meeting the payroll each day. With all these labor laws and regulations, it is a wonder that the employer and employee can have a cooperative work environment at all.

Yet the laws and regulations keep coming from Washington. One such example is the Family and Medical Leave Act. This law requires employers with 50 or more employees to provide up to twelve weeks of unpaid leave. Many proponents argue that there is no cost associated with this legislation. Unfortunately, this is not accurate. According to a Joint Economic Committee report, the out-of-pocket expenses such as health insurance premiums, for twelve weeks of unpaid leave in 1991 were \$1995 per worker.

In all businesses, and particularly in small businesses, benefit packaging is a zero-sum game. There are only so many dollars to go around. Given the limited resources a small business has at its disposal, it is inappropriate to mandate that a benefit plan contain a parental leave provision when such a mandate might well preclude the offering of other benefits, such as paid prescription drugs, life insurance or health insurance, which could be more important to that business' employees. Rather than allow the employer and employee to decide what works best for their situation, this law assumes a one-size-fits-all attitude. More onerous, this law interferes with small business owners' right to run the business to the best of their ability. It assumes that government lawmakers know what is best for a given small business and its employees.

Another example of inappropriate government interference which will hamper flexibility in the workplace is the proposed OSHA reform bill now before Congress (S.575/H.R.1280). This legislation would establish mandatory workplace labor-management committees in worksites where there are 11 or more employees. These mandatory committees in a small business are anti-competitive because precious time and resources are directed away from production. More importantly, this type of legislation draws away from the cooperative work environment. Rather, joint committees are successful when they are mutually established with the cooperation of both employers and employees to fit the needs and real life situations in a particular small business. A one-size-fits-all approach does not respond to real workplace needs.

Instead of mandating safety committees, agencies should provide greater information on the best practices small business should undertake and give more attention to the Occupational Safety and Health Administration's (OSHA) no-fault safety audit program that permits a safety expert to look at a business and point out potential problems that should be addressed. Since cost is a major factor to small businesses and dampens their ability to grow and expand, instead of simply slapping on high penalties, the government should assist small business with compliance. Agencies should make it easier to get advice and counsel rather than instilling fear of going to the experts due to high levels of fines and heavy-handed inspectors. Safety is likely to increase when OSHA is more user friendly. This Commission should look into adding incentives for safety rather than forcing employers to hide from OSHA because of overly-harsh actions. Small business owners need to know what can be adapted to their business, instead of a cookie-cutter mandate approach that only adds to confusion and misinterpretation.

Another proposal that will make it more difficult for small business to be flexible is striker replacement legislation (H.R.5/S.55). If enacted, the bill will upset the current balance between labor and management in labor law, thus, creating a climate that would lead to an increased number of strikes. Not only would this trigger a ripple effect causing lost jobs for suppliers and businesses throughout local communities, but it would create the antithesis of a cooperative workplace setting.

Equally harmful to the flexibility of the workplace would be mandating that all employers provide health care coverage for all employees. Many small businesses have been calling for reform of health care for years. In fact, many of them feel everyone should be entitled to health insurance. However, requiring that all businesses pay for health care insurance will have economic consequences. Not only would this strain a business' limited resources by creating more administrative paperwork, but it would lead to excessive job loss because an employer could not afford the additional costs. Because these additional costs could not be absorbed, the owner would then have to lay off employees or pass costs onto consumers. Again, a mandate of this type would not give a business owner the flexibility to respond to a crisis or opportunity in the market place. In addition, this type of rigidity strains an employee's flexibility by removing choices such as a higher salary, a pension plan, or whatever fits their specific life needs.

Since it is the mission of this Commission to explore changes in labor law and the future of employer-employee relations, the first place to look for a model of workplace cooperation is the small business. As previously mentioned, the small business owner has typically been an employee for someone else before starting the business and understands the concerns employees have since the owner works along side them on a daily basis. Most disputes are resolved in an informal basis and most small business owners know that a successful and efficient workplace comes from cooperation and teamwork. Some might argue that employee concerns are best represented by a union. From a small business view point, unions are not necessarily the best tool in a small business environment. In some cases, inserting a union between the small business owner and the employees can actually diminish cooperation by leading to an "us versus them" attitude.

Many employees in small business have chosen not to be represented by a union. In fact, as a recent Bureau of Labor Statistics report indicates 88 percent of the private workforce is not unionized for one reason or another. Many in organized labor contend that the reason union population is declining in the U.S. is because current labor law is unfair and gives the employer an advantage in opposing union organizing efforts.

However, this view completely overlooks the obvious question: If unions are so beneficial to the American worker, then why don't more workers join the union? There are several reasons why employees of small businesses decide against union representation.

Most often, employees in a small business setting conclude that they have sufficient access to communicate their concerns and resolve their disputes directly with their employer. Many believe this access will not be improved, but may even be inhibited by the presence of a union. Employees also conclude that union dues and restrictions are not necessary or useful in that particular workplace setting. They see certain union rules or regulations as restrictive in nature inhibiting their ability to have a flexible work environment.

Yet labor union leaders continue to argue that the playing field is not level when it comes to labor law. They argue that the decline in union membership signals the fact that employers have an advantage in organizing efforts. However, recent statistics as cited in the Bureau of National Affairs Daily Labor Report suggest this not to be the case. While union membership has seen a decline, the rate of union election wins has hit its highest point since 1984. Unions won 50 percent of the elections which were held in 1992, up from 46.8 percent in 1991. This does not seem to suggest a disadvantage; on the contrary, it seems to indicate a very level playing field.

Break these statistics down further and something else is apparent. Labor may well complain that it can't win against big business. The 1992 figures indicate only a 27.5 percent win rate in units with more than 500 employees. However, this is not true in the small unit workplace. For the same period, unions were successful 54.1 percent of the time where elections were held in units with fewer than 50 employees. When faced with aggressive organizing effort, some small businesses are clearly easy targets for union organizing efforts.

In reality it is the small business owner who is at a disadvantage when it comes to union organizing campaigns. Not only do small businesses lack counsel on labor laws, but they lack the resources, knowledge and time it takes to defend themselves against a sophisticated, organized union campaign. The small business owner does not sit in a board room giving orders. He or she is usually the accountant, the human resource specialist and the substitute for any employee off work. The small business owner does not have the ability to print placards or organize employee gatherings to discuss the owner's views on unions. Furthermore, the small business owner is sharply restricted by law and the National Labor Relations Board (NLRB) decisions as to the type and content of contacts with employees on the union issue. Frequently, the employer is unaware of any union organizing campaign until presented with the certification petition by the NLRB.

Small business is already up against a wall when it comes to union organizing. Yet organized labor wants to use the government to change labor laws and, thus, make the organizing process even easier. That is why it is a concern to NFIB members when labor leaders such as AFL-CIO President Lane Kirkland are quoted as saying that the union plans to seek labor law reform which will "keep employers out of the election process." In the unions' view, the "ultimate aim of the labor laws and their enforcement should be the principle that a worker's decision on whether or not to join a union is none of the employer's damn business." [Daily Labor Report, June 18,1993].

It is this kind of philosophy that most concerns small business owners when it comes to the question of union representation in their businesses. Most small business owners, frankly, see unions as an outside entity that comes in and tries to tell the small business owner how to run the business. The owners see this as a violation of the independence which made them become entrepreneurs in the first place. In addition, many small business employers see unions as eroding their cooperative workplace. In other words, they see the union as a middleman which inhibits their ability to work directly with their employees. The small business owner views unions as having a "one-size-fits-all" attitude as illustrated when unions negotiate pattern bargaining agreements which may not be appropriate for the particular economic or competitive circumstances of the business. They worry that unions are not always doing what's best for the employees at the particular business but doing what is best for the entire union. Ultimately, it is the small business owner who is at stake for the success or failure of the business. The decisions that are made must react to ever changing conditions and must reflect what is best for the success of that particular business and its employees. Nobody can better make those decisions than the small business owners with input and cooperation from the employees. Unions many times can entangle this delicate decision making process through overriding strategic or political considerations.

Many of the unions proposed "reforms" in labor law will be similar to legislation which was considered in 1977-1978. Then and now, NFIB members have opposed any legislation which would give an advantage to the unions in organizing efforts.

NFIB members have long opposed drastic revisions in labor law, such as accelerated "quickie" union elections or union certification without secret ballots elections, which would make it easier for unions to organize and would reduce the opportunity for workers to make an informed and uncoerced choice on the important issue of union representation. Most NFIB members, 92 percent, believe employees should have the right to vote by secret ballot on representation issues.

Public opinion polls are also in line with this stand. According to a 1991 Penn and Schoen poll 73 percent of the public think that unions have the right amount of power or too much power. In that same poll 64 percent of the respondents felt that unions have sufficient safeguards and Congress does not need to pass more legislation.

Any changes to labor law which tilt the organizing advantage to unions that are recommended by the Commission would only set back employer-employee relations. Instead, the Commission must realize the cooperative nature which currently exists in the small business setting. It is a myth that employee involvement only works or works best in a union setting. It is also a myth that there is a single model for successful forms of employee involvement. In fact, worker empowerment has happened without government mandates, without massive labor law "reform" -- and it is working.

In conclusion, this Commission is charged with looking toward the future. It is charged with providing recommendations for the future of the American workplace. When NFIB testifies before a Commission or Congressional hearing it tries to give a complete picture of how issues affect small business in America.

This testimony is no different. It tries to show that excessive regulation is hindering the American workplace. It tries to point out that over the last 40 years this type of excessive regulation has put the European community in a crisis. And finally, it tries to point out that while unions play an important role in our society, they are not always the best alternative for promoting more cooperation in the small business setting.

Thus, on behalf of its members, NFIB asks that the Commission make recommendations which allow the workplace to progress in a cooperative manner, and that rather than using the government to force artificial cooperation, that it encourage more flexibility in the workplace so employers and employees can strive for mutual success.

Winston Churchill once said: "Some see private enterprise as a predatory target to be shot, others as a cow to be milked, but few see it as a sturdy horse pulling the wagon." As you deliberate, keep in mind that the horse needs nourishing and room to pull the wagon.