

Hot Topic
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Management"

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**STATEMENT
OF
JOHN C. READ
CHAIRMAN, NAM EMPLOYEE RELATIONS COMMITTEE
ON BEHALF OF
THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
COMMISSION ON THE FUTURE OF
WORKER-MANAGEMENT RELATIONS**

SEPTEMBER 8, 1994

MAKING AMERICA STRONG



Manufacturing: The Key to Economic Growth

- ✓ U.S. manufacturing's direct share of the Gross Domestic Product (GDP) has averaged more than 21 percent since World War II. And nearly half of economic activity depends indirectly on manufacturing.
- ✓ U.S. manufacturing productivity growth averaged 3 percent during the 1980s compared with almost zero growth in the rest of the U.S. economy.
- ✓ U.S. manufacturing exports have been the *single main source of strength* in the current economy — contributing 30 percent to 40 percent of the nation's economic growth since 1987.
- ✓ Each \$1 billion of exports creates 20,000 new jobs. Since 1985, exports have saved 4 million jobs in U.S. communities.
- ✓ Manufacturing jobs on average pay 15 percent more than jobs elsewhere in the economy.
- ✓ Manufacturing provides the bulk of technological advances and innovation for the economy.

SUMMARY OF RECOMMENDATIONS
BY
THE NATIONAL ASSOCIATION OF MANUFACTURERS
TO
THE COMMISSION ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS

1. No changes in the National Labor Relations Board's election requirements and procedures are recommended at this time. Facts provided by the Commission do not support changes; we know of no data that would.
2. Conduct more thorough analysis of election unfair labor practices and first contract data and circumstances, to determine root causes before recommending corrective action.
3. Focus greater attention on mature collective bargaining relationships and what makes them effective, to establish how worker representation can work in high-performing work systems.
4. Focus more attention to data analysis by the NLRB.
5. Improve data collection and analysis by the Federal Mediation Conciliation Service.
6. Provide more and better-trained mediators.
7. Conduct a joint labor-management study of industrial relations data, as opposed to separate, competing efforts.
8. Develop a public/private effort to consider fundamental change in the industrial relations system and employment law, following the completion of this Commission's work. The charter for such a group should be mutually agreed.

September 8, 1994

STATEMENT
ON
WORKER REPRESENTATION AND COLLECTIVE BARGAINING
BY
JOHN C. READ
NATIONAL ASSOCIATION OF MANUFACTURERS

SEPTEMBER 8, 1994

Mr. Chairman and Members of the Commission, it is a privilege to be invited to appear before you today. I serve as a member of the Board of Directors of the National Association of Manufacturers, and chair its Employee Relations Committee. I have been asked by the NAM to testify on the issues raised in Chapter III of your June 2 *Fact Finding Report*. I will do so as best I can, based on my own experiences at running businesses, in manufacturing-plant management, human resources and labor relations, and in government service at both the federal and state levels.

The NAM is a voluntary business association of more than 12,500 member companies and subsidiaries, large and small, located in every state. Members range in size from the very large to the more than 8,000 small manufacturing firms, each with fewer than 500 employees. NAM members employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufactured goods. The NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

I am familiar with the work of the Commission over the past several months to fulfill

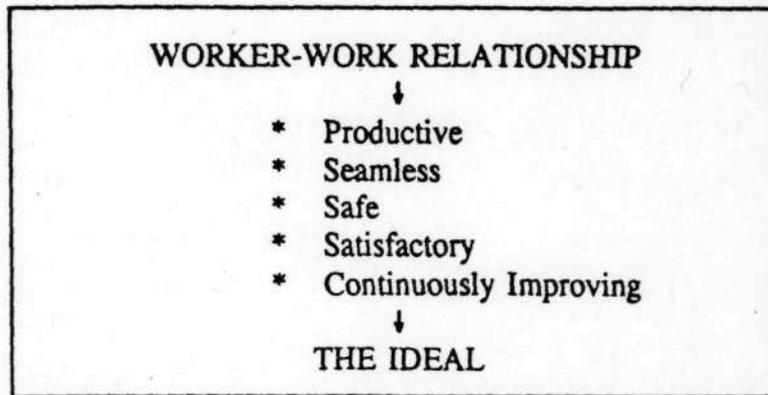
its charter, and applaud the way in which you have sought to conduct an open dialogue on the issues. It is in the experience and perspective of practitioners: workers, managers and union officials that solutions to the issues raised in the Commission's charter may be found. Conducting an objective appraisal of all the facts, and weighing carefully what practitioners believe is doable, should remain in the forefront as you move toward recommendations. For nothing could be less productive than a set of recommendations unacceptable to either of the parties involved in making our industrial relations systems work. Both sides have demonstrated how effective we can be at relegating such recommendations to the shelf.

In this regard, it is encouraging to see both our association president, Jerry Jasinowski, and Lane Kirkland express last Fall support for a continuing dialogue on the issues. Later in my testimony, I will reiterate and expand on this commitment.

WORKPLACE OF THE FUTURE

It may be out of fashion to have, let alone to express, a "vision" of the ideal future. However, since it is the foundation for much of what I have to say about Chapter III, I will tell you what mine is.

In my view, the central relationship at the workplace that should drive everything else is that which exists between the Worker and his or her Work. All other things being equal, the strength of this relationship defines the success of the enterprise relative to its competition, no matter the type or size of enterprise, sector, geography, or nature of work. A worker-work relationship that is productive, seamless, safe, satisfying and continuously improving is the ideal.



Where the work to be done and the men and women in place to do it "relate" in this way, high performance occurs: quality is built in, new products are developed, sales get "booked", problems get solved and trust is built. It makes no difference the level of the individual or the type of work involved.

Everything else at the workplace, including our industrial relations system, has the purpose of guiding, supporting and setting boundaries for this relationship. Systems, processes, structures, policies and regulations that don't move the relationship toward the ideal, or prevent it from doing so, serve as an impediment to competitiveness, high wages and security, at least as I see it.

What does this have to do with Chapter III?

From a national perspective, the worker representation issues in Chapter III may appear vitally important to achieving the "ideal" -- whether my vision or someone else's. And, recalling the intensity with which they have been debated in the past, they probably are.

However, on the ground floor of this country where the work gets done, for millions of workers, these are non-issues today. Men and women with their hands on the work, especially those who have made their choice about unions, barely have time for who their

plant manager or business agent is, let alone the assertions of the National Labor Relations Board (NLRB). If it doesn't help do their job better, or affect their pay, job satisfaction and respect, it's probably not important.

The challenge for the Commission in resolving the issues in Chapter III is to keep it this way.

WORK IS CHANGING . . .

The fact that the nature of work is changing is well documented by the Commission and others. So, too, are the skills and perspective of the worker. And each is challenging the other to keep pace. Chapter II of your Report documents very well, I think, the diversity of work structures evolving to support this change. These structures rest on greater involvement on the part of workers in defining how work is done, responding to widespread interest on the part of the workforce for greater influence.

This evolution must be allowed to continue, with new structures taking their shape from the way work is done locally. While it may appear casual or cut-and-fit from the outside, competitive factors and "pressures" from an involved workforce provide the discipline eventually to "get it right" in most cases.

ROLES ARE CHANGING . . .

The roles of participants in our industrial relations system are changing along with work and work structures. While difficult to generalize, I believe it is generally true that managements are becoming more professional in their conduct of the human resources function, and attentive to the needs and interests of their workforce as they pertain to work.

International union officials also are reexamining their role, and becoming more attuned to the needs and interests of today's represented workers and prospects.

Some on both sides have reached this more enlightened state only when their own survival was at stake.

Government's role in industrial relations has changed more dramatically than any other. Whether the cause of the decline in union representation, or a response to it, government regulation and standards have become far more intrusive. The Commission has documented in Chapter IV how many more rules there are, more mandates pertaining to how work is to be done, benefits paid, what constitutes a safe workplace, etc. To some significant extent, this removal of authority from the local parties, whatever good it may also have accomplished, has weakened collective bargaining and diminished the role of unions.

THE SYSTEM HASN'T . . .

In the face of all this change -- in work, worker skills, structures and the role of its participants -- our industrial relations system has remained essentially the same. The system as it has worked for the past fifty years has worked well for millions of workers and workplaces who have made their choice about unions. The system, however, is, according to the AFL-CIO, clearly not working well today for unions and, perhaps, for employees who wish to form a union when they are in the minority. For this reason apparently, the procedures by which union elections are conducted and first contracts agreed, receive such prominence and the issues of Chapter III take on such significance in the Commission's work. In the view of the NAM and its members, these issues have been given far more attention than they warrant in a discussion of the future of the American workplace. And

they are so contentious as to make consensus among practitioners on a set of recommendations extremely difficult.

Nonetheless, having established an overall vision of the workplace of the future and changes already under way, we will provide our view of the issues raised at the end of Chapter III.

CHAPTER III ISSUES

The chapter begins with the chartering statement of the Commission, which invites a broad review of our industrial relations system:

"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?"

The remainder of the chapter, however, narrows the terms of the debate rather sharply to traditional and familiar ground. After describing how election procedures should work, and acknowledging that in most cases those procedures work well, Chapter III establishes that employer abuses are frustrating the legitimate interests of employees who wish to form a union. The facts selected for this purpose involve two key pieces of data: illegal discharges during election campaigns, and the incidence of bad faith bargaining during first contract negotiations. Together these data lay the foundation for the issues on which you solicit comment -- issues that have largely to do with how to "stem the rising tide" of these abuses.

My colleagues on this panel have or will express our collective view about the changes in the NLRA these issues pose, or imply. To summarize the issues:

-- Are new procedures required to deal with discriminatory discharges, bad-faith bargaining or other illegal actions?

-- Are changes in the law appropriate to provide for minority representation, union access to the workplace, or a first contract without mutual agreement?

And to summarize our response:

The data cited in the Report support none of these new procedures or changes, and we know of no data that would.

ILLEGAL DISCHARGES

A careful review of the source data, particularly the study by Meltzer and LaLonde, points out how much confusion there is on the actual number of such discharges. While there appears to be no argument from the sample data that such discharges have increased in recent years, the absolute numbers are far from clear.

It is even less clear what to make of the data. A running exchange in the Chicago Law Review about the Meltzer study between Paul Weiler, the Commission's general counsel (who has strong views on this range of issues), and Dr. Leo Troy document some of the confusion. I understand from Professor Meltzer that his own view of the data may soon be published, adding to the debate.

It appears that the source data have been interpreted more than they have been examined. There are a finite number of such discharges. A careful study of root causes would shed light on appropriate actions to correct or prevent such discharges from occurring.

For example, regarding recent illegal discharges, the following questions merit further study:

- What are the typical circumstances surrounding the employee's actions, and the employer's response?
- How many employers are involved? (The Meltzer data indicate 2.2 employees per §8(a)(3) charge.) What sectors, size of firm, unions and union tactics are involved?
- Who won the election? Was the reinstatement the result of a negotiated settlement or Board action?
- What advice was available to the employer during the campaign, and was it followed?

A crucial question pertaining to the broad issue of sanctions:

- What evidence suggests that moving to the "modern" standard of punitive damages will reduce or discourage illegal discharges?

Whether a matter of ethics, or just campaign tactics, it is in no one's interest that employees be discharged illegally. A more careful study of these circumstances may reveal causes other than willful non-compliance. Further study is needed before changes in the law as contentious as these would warrant support.

This is our first recommendation, Mr. Chairman. In addition, we believe that much can be learned from a more careful look at NLRB data, and we would encourage the Commission to recommend that the Board invest in this area. Incidentally, Professor Meltzer makes some useful suggestions in this area.

FIRST CONTRACTS

Data establishing the rate of success in achieving a first contract, as well as the

incidence of bad faith bargaining were difficult to come by. The Commission acknowledged that its principal source (an FMCS report) came to light only recently, and was largely unanalyzed.

Here again, one can acknowledge that a problem may exist in the form of failed efforts to achieve an agreement, and find the data inconclusive as to what to do about it. The Commission acknowledges that there are any number of reasons why the parties might not reach agreement, none the least of which are raised expectations during a union campaign that cannot possibly be fulfilled. Similarly, there are reasons mistakes get made the first time around in contract negotiations, other than willful non-compliance.

Further study of these situations is warranted before a change in the law is considered, particularly one that might undermine the fundamental principle of collective bargaining that agreement should be mutually agreed, not imposed.

For example, regarding first contract situations, the following questions warrant further study:

- Are the FMCS data a valid representation of first contract situations? Does the absence of a notice in FMCS files mean no contract was reached?
- What were the demographics and the circumstances surrounding alleged "bad faith" bargaining? What common problems occurred? Could they have been prevented through effective mediation or good legal advice?
- What are the characteristics of successful first contract negotiations? How might they be replicated?
- How might the expectations on both sides be brought in line with what is mutually agreeable?

- Are the issues leading to a failure to agree largely economic or non-economic?
- What has been the experience with arbitrated or otherwise assigned agreements? Is this an acceptable alternative in light of this experience?

In respect to both first contract and employee discharge data, more needs to be known and understood as to the extent of the problems and why they occur. While there is no doubt that in some instances, willful violations do occur and should be remedied, the "good guy - bad guy" approach to corrective action here will prove especially divisive without a more complete understanding of the facts than time has permitted this Commission to provide.

As the Chairman has pointed out, previous commissions over the last century have had more time and resources to devote to the issues. It is clear from the complexity of the facts and data why this has been necessary. An advantage to the composition of this Commission, however, is the distinguished level of scholarship represented here. We trust that during the course of your deliberations, the weakness in these data will be clear, and steps will be taken to provide a more thorough analysis.

We recommend that the FMCS be encouraged to upgrade its data gathering and analysis capability, in order to take the guesswork out of experience with first contracts in the future.

In addition, there may be a role for mediation in resolving first contract issues, either through the FMCS or private means. We agree in principle with Mr. Kramer's testimony, being presented today, that building up the mediation skills of FMCS, and in the country generally, is an important objective. When the Commission turns its attention to the Alternative Dispute Resolution (ADR) issues contained in Chapter IV of the Fact Finding Report, this will become even more apparent.

Finally, with respect to the last issue posed by the Commission pertaining to mature bargaining relationships, we believe there is a rich body of experience here that has gone largely unnoticed in the Commission's work thus far. An increasing number of collective bargaining relationships are seeking to evolve toward less adversarial and more productive methods. Far more workplaces can benefit from an understanding of how mature bargaining relationships are reducing conflict, building trust, improving communications and providing for employee involvement in a represented environment than from changes in election procedures.

New roles for stewardship, facilitation, due process, oversight and training are possible for employee representatives, that make for more flexible, productive and competitive workplaces. And these new forms of working together can still leave room for the constructive tensions and hard bargaining that accompany, for example, wage and benefit determination. Anyone who believes that high-performance workplaces are "casual" or "tension-free" hasn't worked in one. There is plenty of room for problem resolution and representation within such work systems.

AN ALTERNATE VIEW OF THE ISSUES

To return to the vision of the Worker-Work relationship expressed earlier, it is my experience that, as Tip O'Neill might have said, "All industrial relations is local." Trust, communication and continuous attention to training (or their absence) tend to figure into about every workplace problem. Improvement starts with where things really are at each workplace, not where corporate headquarters, the International president, or Washington thinks they are.

While our current industrial relations system has proven remarkably resilient and, in our view, continues to work pretty well, it encourages none of the characteristics described above, whether in union or non-union situations, let alone workplaces in transition between the two.

To organize a workplace effectively, a union must actively take the offensive to amplify the weakness of management, and drive a wedge of distrust between managers and their workers. The "better" the management is in its human resource policies, the greater the amplifications required.

To defend themselves, managements must resort to tactics which actively downgrade the role a third party can play.

The result is a high-cost, highly charged situation designed to create winners and losers. Mistakes get made. One side or the other will step over the line. Things get said that will never be forgotten. Whoever wins, everybody loses for a time.

It may be time to consider an alternative framework, more in keeping with the needs of today's workers and tomorrow's workplaces. Much has been learned from the "survival" work that businesses and unions have undergone over the past 15 years. Quality tools are being used in a variety of situations besides reducing scrap or winning the Baldrige Award. With nowhere else to turn, it may be possible to apply these same tools to construct a different approach to industrial relations.

Moreover, it may be time to do this work jointly, rather than have each side finance its favorite academics, to produce its preferred conclusions.

A new industrial relations system might consider the following:

- Representation geared to building trust, due process, competitive

compensation, and safe, productive and improving Worker-Work relationships.

- Constructive methods for root-cause analysis and joint problem-solving.
- Alternative methods for binding resolution of disputes, with full access to remedies provided in applicable laws.
- Cooperative approaches to compliance with government requirements, with possible private certification (ISO 9000 model).

An industrial relations system formed around such principles provides a very different framework for resolving today's more controversial issues. For example, there is a world of difference today between what one would consider a "team" versus a "union" versus a "works council" versus a "committee," and millions of dollars will be spent with attorneys to make the necessary distinctions. In a different framework, these structures have more in common than they have differences, and the differences aren't worth fighting about.

A change in the "command-and-control" approach to the regulation and enforcement of employment law by the government must be a central consideration in changing the industrial relations framework. The NLRA is not the source of business' problems with today's industrial relations system. Rather, it is the larger body of labor law and regulation that pervades the workplace and the non-productive costs it generates.

The problem is not any particular law or regulation, but their collective weight. And the cost is not so much the penalties, as the litigious process and delay.

The framework we refer to in broad outline, as an alternate means for dealing with Chapter III issues, is not new to the Commission. Elements of a new industrial relations system can be found in Chapter II and Chapter IV, in the way you have broadened the scope of your inquiry for those issues. Indeed it is regrettable that the scope of Chapter III has

been drawn up so narrowly. We strongly encourage the Commission to broaden its inquiry of worker representation issues beyond NLRA election procedures, and to lay the groundwork for more creative solutions than those implied in the factfinding.

However, whether the Commission chooses to pursue a more fundamental review of the industrial relations system, or merely to develop and analyze the data on first contracts and unlawful discharges, it is clear to us that more time is required if consensus recommendations are to be possible. We continue to be willing to participate in a dialogue on these issues. A process of the sort Chairman Dunlop has suggested from time to time, in which labor and management leaders discuss the full range of employment law issues, may be an appropriate next step, once this Commission has completed its work.

We are not naive about the complexity of the issues to be discussed, nor the broad areas of disagreement. However, if we believe collective bargaining at the local level can be more effective at settling differences, it may be time for national leaders on both sides to "walk the talk" as well.

The alternative, a replay of the labor law reform fight of the late '70's, is far less desirable.

Thank you.