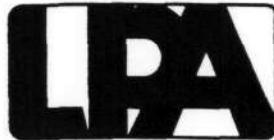


"HOT TOPICS"
Future Worker
Management



STATEMENT OF THE LABOR POLICY ASSOCIATION

BEFORE THE

COMMISSION FOR THE

FUTURE OF WORKER/MANAGEMENT RELATIONS

BY

**BRUCE CARSWELL
SENIOR VICE PRESIDENT, GTE
CHAIRMAN, BOARD OF DIRECTORS,
LABOR POLICY ASSOCIATION**

November 8, 1993

My name is Bruce Carswell. I am the Senior Vice President for Human Resources & Administration at the GTE Corporation. I also serve as Chairman of the Board of Directors of the Labor Policy Association, an organization of the senior human resource executives of more than 200 major U.S. companies. LPA member companies employ more than 11 million Americans, nearly 12% of the employed private sector, non-farm workforce. I am joined this morning by members of our Executive Committee.

We are delighted that the Secretaries of Labor and Commerce created this forum to examine the future of employment policy in America. It provides a welcome opportunity for this critically important area to be given a fresh look both in terms of the substance of those policies and the procedures by which they are formulated.

Regarding the substance of our employment laws, the members of our Association believe that a number of changes are needed. The 21st Century is less than seven years away, yet we are still operating under some labor laws designed for the industrial revolution. Employment practices in the 1930's, 40's and 50's were based on a confrontational style of labor-management relations, and our labor laws were written to provide ground rules for that conflict. Some have withstood the test of time, but others have not. During the last fifteen years, the workplace has been changing dramatically as conflict gives way to more cooperative arrangements. This transformation can be seen in large and small companies alike as the distinction between management and labor is dissolved, unnecessary layers of management are removed, formal front-line supervision is eliminated in favor of self-managed work teams invested with considerable autonomy, and rigid job classifications are abandoned in favor of training employees to perform a variety of tasks common to team members. In this new organizational scheme, the conflict characteristic of the traditional supervisor-worker relationship is minimized as direct supervision disappears and front-line employees are given greater authority over and responsibility for workplace operations.

These changes reflect not only the change in direction that companies are taking, but also what employees want. For example, a recent study issued by the Families and Work Institute, entitled the "National Study of the Changing Workforce," made the following finding:

Workers are more loyal, more committed, more innovative, and more satisfied with their jobs when they have more of a say in how to do their jobs and have more control over scheduling their work hours. And when there are good and supportive relationships among workers and between workers and their supervisors, workers experience less burnout in their jobs, are more loyal to their employers, and are more willing to work hard to help their companies succeed.

Government policy, and yes, even employers and unions, have been slow to recognize these sentiments, and policy makers have been even slower to reform employment policy to support these positive changes. For example, the workplace

revolution has brought change in terms of management-employee relationships, union-employee relationships, management-union relationships, and employee-to-employee relationships. Further, as teams are assembled, reassembled and disbanded, depending on internal and external customer needs at the time, compensation decisions become more difficult as employees are less accountable to their traditional boss and more accountable to their team members. Moreover, greater flexibility in terms of staffing, hours of work, and time off, among other things, can be achieved when employees are making those decisions themselves. This is particularly important in light of the fact that 47% of the workforce is now female and only 10% of households have a working father with a wife at home caring for their children. Unfortunately, many of the current employment laws fail to address these issues.

Our hope is that government policy makers, with the support of industry, unions and employees, will begin to take cognizance of these changes and then develop focused recommendations to change employment law accordingly. We would stress that, thus far, the employee empowerment/flexibility trend has occurred, not because of federal policy, but in spite of it. In fact, one of the most important policy issues now facing the United States may be addressing the problem of governmental institutions not only failing to recognize the changed workplace, but taking affirmative steps to frustrate that change.

A clear example of this trend is the National Labor Relations Board's decision in *Electromation*. It holds that giving employees far more power over their worklives than the sponsors of the Wagner Act would have dreamed possible is illegal. Employee involvement works well in both union and non-union environments, but with 88% of the private sector non-farm workforce non-union, *Electromation* effectively disenfranchises virtually any cooperative effort that gives employees a real voice, unless it takes place in the traditional union setting. This creates a competitive and potential jobs disadvantage for America.

Some of the same rigidities may be found in the Labor Department's administration of the Fair Labor Standards Act. Its best known anomaly, to give one example, is its aggressive enforcement of the partial day docking rule. The Department has exempted itself from the limitation, but any private sector employer who in the past was generous enough to provide its employees partial day leaves of absence, instead of requiring them to take a full day off without pay, is now looking at tremendous legal liability. DOL is actively pursuing dozens of enforcement actions, including one that was taken all the way to the Supreme Court. The result is that employers are very limited in their ability to grant partial day leaves of absence to salaried employees.

There are many other relics in the FLSA museum of antiquities. For example, there is considerable interest by the Secretary of Labor in promoting gain-sharing programs, a move that many LPA members strongly support. Wage-hour law, however, creates a disincentive for employers to provide lump-sum payments to hourly employees. Often, FLSA regulations require that such payments be figured into the employees' regular hourly rate, which means time consuming calculations must be run to determine the amount of overtime paid to each employee during the period covered by the gain sharing payment. In large units, this is a tremendously burdensome task. More

importantly, if a mistake is made in the calculation, the employer is vulnerable to a FLSA lawsuit. Further, with the blurring of roles that occurs as the country moves towards the high performance workplace model, the time has come to give careful consideration to the issue of the extent to which it is still necessary to divide the American workforce into two classes of employees and maintain hundreds of regulations that govern compensation practices within these two groups. At this time, we are not suggesting any specific changes, but in view of the restructuring of the workplace that is occurring at all levels, careful review is warranted.

The above are but a few examples of the many issues that policy makers need to explore to create an employment code befitting the next century. In the not too distant future, the Association plans to submit to the Commission a list of recommendations regarding the specific improvements that we feel are needed. We have requested the opportunity to appear before the Commission today, however, to present our thoughts primarily on the *process* by which employment policy is made, because until such time as the process is changed, it will be difficult to enact sound improvements in employment policy. We believe the Commission can play a critically important role in recommending positive changes in that process.

We do not come before you to advocate specific changes in the structure of the governmental institutions that develop policy. The problem, as we see it, is one of understanding, process, and potential end results.

For as long as we can remember, policy makers have treated employment policy in terms of "level playing fields" on which the interests of labor and management compete. Decades ago, when the industries we represent dominated both domestic and world markets, that metaphor may have been appropriate. Today, we have to focus on a far more competitive business environment. Not only have the rules of the economic game changed dramatically, there are new players on the field, ones that are at times much stronger, more skilled and backed by greater resources than American labor and management can field.

The hard reality is that American companies are now doing business in a highly competitive global marketplace, no matter how tiresome that phrase may have become. We can complain about this new reality, wring our hands over it, and try to continue playing the game according to the old rules and in the old ways, or together we can accept it and begin redirecting employment policy down paths that will lead to greater long term benefits for American workers. The message that we would like to leave with you today is that our nation can no longer afford to view the employment relationship as American workers and management competing with one another in a zero-sum game. Instead, we need to create a partnership among empowered employees, government, industry, and unions such that everyone is playing on the same team in pursuit of mutually beneficial objectives.

How is that task to be accomplished? Through change. Change not only in terms of the relationship among government, unions and business, but also in a better

understanding of the role of business in society. Some specific process changes we would suggest are the following:

1. The adversarial relationship between our federal governmental institutions and the business community over employment policy must be brought to an end.

It would be refreshing for Congress to hold a set of hearings in which companies were asked questions such as—

What's going on inside your companies that is inhibiting your ability to compete?

How can we work with you to make your companies stronger, more competitive and more successful so that you will be better able to provide more job security for your employees?

Are there problems in federal law, regulations or agency actions that you feel should be addressed in order to create a more positive working environment in your companies?

But that is not how the employment policy process presently works. Instead of alliances being forged, too often divisions are engendered. Instead of government recognizing that ultimately business is the solution and working with business to create a more competitive economic environment for its domestic industries, government frequently views business as the problem, creating employee protections that impose restraints, restrictions, liabilities and burdens that are not cost-benefit justified and that fail to take into account the necessity for companies to be viable economic organizations.

Since enactment of the first major labor laws in the 1930's, the principal focus of federal employment policy has been on workplace equity. We believe strongly in treating people fairly and in the basic principles that those laws are intended to promote. It has been the experience of LPA member companies that it is very difficult for a corporation to survive and prosper in today's world if it does not recognize that a committed workforce is its most important asset. It is difficult for a company to develop a committed workforce if fairness and equity are not woven throughout the fabric of its employment practices. We are very concerned, however, that in the zealous pursuit of perceived equity standards and their attendant regulatory institutions, government may have lost sight of the necessity to strike the proper balance between equity and economic viability. Government must realize that it cannot continue heaping dozens of mandates on the private sector without there being a negative impact on job growth, productivity and competitiveness. Yet, the regulatory burden is clearly out of control.

For this reason, we were encouraged by Vice President Gore's report, *Creating a Government That Works Better & Costs Less*. One of the issues that he addresses is regulatory excess, pointing out that "the cost to the private sector of complying with

regulations is at least \$430 billion annually—9 percent of our gross domestic product!"¹ The Vice President's recommendation for reducing the "red tape that makes our governing processes so cumbersome," as he puts it, is the following:

We must clear the thicket of regulation by undertaking a thorough review of the regulations already in place and redesigning regulatory processes to end the proliferation of unnecessary and unproductive rules.²

We hope his message will not be ignored.

One of the principal reasons for this lack of balance may be that Congress tends to legislate by "horror story." The process begins with Congressional staff and interest groups searching the country for the most egregious examples of newly defined unfair employment practices. While the unfortunate experiences of the victims of these wrongs are often representative of only a tiny fraction of the workforce, they are frequently characterized as examples of standard industry practice that needs immediate rectification. The collection of these isolated horror stories is then used to justify the drafting of overly broad legislation that creates regulatory obligations and legal liabilities that go far beyond remedying the harm described by the victims. At the same time, legitimate complaints about the unnecessary and excessive burdens that would be imposed by the measures under consideration are summarily dismissed by proponents who have wrongly prejudged the motives of the questioner.

The way in which OSHA reform legislation is being considered in Congress is a good example of this trend. The threshold issue is, why was this legislation introduced? What are the specific problems that the sponsors feel need to be addressed? Unfortunately, other than a general allegation that OSHA is not working as well as it could, the premise for the legislation has never been established. Instead, a solution has been proposed before the problem has been defined, and then those who question the premise of the solution are characterized as obstructionists. Reviewing the rhetoric that has accompanied introduction of the legislation, most of which is highly critical of the business community, one can only speculate whether there is more interest in scoring political points on the employment policy playing field than actually improving policy.

In this debate, the business community is often accused of responding to the proposals put forth by the legislation's proponents with a "deafening silence." Yet one problem that has been clearly identified is workplace substance abuse—employees who harm themselves, their coworkers and the public because they are acting while under the influence of illegal drugs. No one would dispute that improper drug use among employees has been a major factor in a large number of serious industrial accidents. Moreover, keeping those who are under the influence of drugs away from driving heavy

¹ P. 32.

² *Id.*

equipment, operating cranes and forklifts, and being responsible for potentially dangerous process controls would be an excellent first step in creating a safer and more healthy work environment. Bipartisan legislation to achieve that end was first introduced in Congress in 1989 by Senator Hatch and Senator Boren, but to this day both the House and Senate Labor Committees have refused to even acknowledge the existence of the legislation, let alone hold hearings on it. The silence, we would suggest, is unfortunate.

In view of the above, the Commission could make a significant contribution to improving the employment policy development process by taking a long, hard look at the way policy is currently developed and recommending needed improvements. There are three that we would suggest:

- a. The federal government should begin viewing the business community as an ally in the struggle for job growth and working with it to formulate policies that will keep employment opportunities from being captured by foreign competitors. Consideration should be given to developing some means of looking at both sides of employment policy issues in a more balanced manner.
- b. Federal lawmakers must develop a far better understanding of the day-to-day operations of business organizations and then use that knowledge to formulate better designed employment policies.
- c. Congress must begin placing far greater emphasis on oversight of existing federal programs, policies and laws and then legislate improvements before creating additional burdens for employers.

Regarding the first point, it is often said that American companies must do more to provide employees with a sense of job security and that guarantees of lifetime employment are a prerequisite to a successful human resource environment. Our companies are keenly interested in providing that security, but it must be understood that we operate in competitive markets, and in such markets there can be no job security unless there is customer security, and, unfortunately, there is no such thing as customer security. One need look no farther than the turnover in the Fortune 500 during the past twenty-five years to get a sense of how much security corporate America can realistically offer.

The closest a corporation can come to achieving customer security is to satisfy fully customer needs over the long-term. Those needs, however, are constantly changing, and a business providing goods and services to meet those needs must be able to anticipate change and restructure itself accordingly. A vibrant business organization dedicated to continuous improvement, total quality and customer satisfaction, one that is designed with highly flexible environments and capable of rapid change, is a business that will be able to survive and prosper in today's economy and provide long term

employment opportunities. Decisions regarding such basic issues as where and how a product will be manufactured or a service delivered, how a facility will be staffed and operated, and how customer concerns will be addressed must be made as quickly as possible in order for the business operation to maintain a competitive edge.

In addition, while there is much that can be improved in federal employment policy, there are also a number of policies that need to be protected. We feel strongly that policy makers need to compare U.S. employment law with the laws of foreign countries to insure that the competitive advantages that U.S. law gives companies doing business in America is preserved. There is considerable discussion of American companies moving jobs overseas, the reason most often given by commentators is that it is done to exploit low wage rates in third world countries. The real answer, however, is far more complex. In order to preserve American jobs, it is often necessary to locate the production of labor-intensive, low-skilled work offshore, with final assembly and servicing conducted domestically. At the same time, however, if American companies are going to compete globally, they need to operate globally in terms of locating production, supply, service and distribution facilities close to the market.

In this debate, however, there is another important issue that is being overlooked. Why is BMW building a major automobile manufacturing plant in South Carolina? Why has Mercedes-Benz selected Alabama and not one of the German states as the next site for a major assembly plant? Why are so few U.S. companies considering locating operations in Germany? Why has the French chemical company Rhone-Poulenc entered into a joint venture with Eastman Chemical to build a major chemical manufacturing facility, not in France, but in the United States? Why are so many Canadian companies moving production operations from provinces like Ontario and Quebec into the United States? Is there something in the laws and employment practices of the United States that draws this level of investment from abroad?

Much has been written about German works councils and the expansive labor laws in Canada and why those same laws should be emulated in U.S. law. Yet few seem to be taking a careful look at whether there is a relationship between the historically high unemployment that is common in Canada and the EC countries and the rigidities in their employment laws and practices that make necessary personnel actions so difficult to implement. From the experience of LPA member companies who do business in nearly every country in the world, the rigidity, inflexibility and cumbersomeness of certain foreign laws and practices have been instrumental in pushing high wage, high skill jobs into this country. Indeed, on October 21, 1993, German Chancellor Helmut Kohl in a speech to the Bundestag chided German citizens for letting their country fall behind the United States, saying, "Our competitors are undertaking stronger efforts to increase their own performance and competitiveness." Indeed, he might make a good witness for this Commission.

We would urge the Commission to study these developments carefully. With capital and technology so mobile, a country's competitiveness depends increasingly on the structure and quality of its employer-employee relations. Because the rapid advances in technology are readily available to everyone, a company seeking to maintain a

competitive advantage must make fundamental changes in the way it is organized and staffed, the way its various functions relate with one another, and in the way decisions are made. We hope policy makers like yourselves will do all in your power to ensure that existing employment policies that do give the U.S. a competitive edge are protected.

Regarding the second point, understanding modern human resource practice, we are concerned that neither members of Congress nor their staffs are spending the time necessary to become thoroughly acquainted with the administration of human resource programs in the modern corporation. We would be very surprised, for example, if more than a handful of people in Congress understand the concept of employee involvement, let alone have seen it in action. We wonder how many in Congress know what Executive Order 11246 is, let alone understand how a large company prepares an affirmative action plan with its attendant goals and timetables. In 1988 Congress enacted the Worker Adjustment and Retraining Notification Act, and amendments are now pending to make the bill more stringent. We wonder whether anyone in Congress understands the machinations some large companies go through to comply with its terms and the effect the law is having on employees in large companies with elaborate bumping systems. Many of the employees are never laid off, but routinely receive WARN notices because that is what the law requires. Congress has just enacted the Family and Medical Leave Act, and we are not here to question the basic principles of that law. However, in view of the many conflicts between the FMLA and preexisting tax law dealing with employee benefit plans, it is obvious that no one in Congress took the time to visit a corporate personnel office to determine how such plans would need to be redesigned to meet the requirements of the new mandate. The same is true of the comprehensive OSHA bill under consideration. Has anyone in Congress met with the safety officials of both large and small companies at their worksites with an open mind to determine what the impact of their legislative theories would be?

We would strongly urge both members of Congress and their staff to visit workplaces around the country in order to become more familiar with day-to-day human resource practice. In this regard, several LPA member companies and their employees would be delighted to host such tours, not only for Congressional policy makers but for the members of this Commission as well. We would agree that briefings by workplace committees in a room such as this are highly instructional, but we would suggest that even more instructional would be Commissioners interacting with those employees on their home turf and studying their teams in action.

Regarding the third point, the government's oversight function also needs substantial improvement. There is no question that oversight, if properly done, can be a dreary business, requiring policy makers to sort through the specifics of complex federal programs. There is also no question that a new law or federal program is far more interesting, exciting and newsworthy than oversight of an existing one. At the same time, when oversight is conducted by Congress, too often it is used to create headlines, not better workplace policy. In view of the gridlock the country is now experiencing in terms of job growth, the limited resources available for the budgets of the labor-related agencies, and the fact that existing employment laws have not kept up with the times, more needs to be done to improve existing mandates before creating new ones.

For example, Congressional oversight of the Fair Labor Standards Act would help in determining whether the way the law as now structured is capable of accommodating today's highly flexible work schedules. Similarly, better oversight of the National Labor Relations Board may have avoided the problems that are now being encountered because of its decisions in *Electromation* and *Dupont*. Further, more careful review of the Occupational Safety and Health Administration may result in the identification of specific problem areas in the administration of the OSH Act that would enable Congress to move towards substantive policy making instead of non-productive political polemics.

2. Employment policies based on division, confrontation and harsh penalties must be abandoned in favor of ones that correct the wrong without hampering competitiveness.

Symptomatic of the adversarial relationship between government and industry is our system of remedying unfair employment practices. The U.S. spends far more of its GNP on litigation—2.5%—than any other nation on earth. We have more lawyers per capita than any other nation. Our laws and courts impose harsher employment law damages than any other country. Multi-million dollar jury awards against companies for employment law violations, unknown outside our borders, have now become routine in the United States. Of great concern within the business community, policy makers are now calling for increasing the size and broadening the scope of those damages.

The country is paying a price for its litigiousness. According to a 1992 Rand study, "the employment response to increased wrongful-termination liability is consistent with about a ten percent increase in wages."³ What should be even more disturbing to policy makers, the study concluded that the threat of unlimited damages discourages companies from hiring. In fact, the report concludes, "states recognizing both tort and contract causes of action will have about 4.7% lower employment."⁴

There is no question that there are employers who treat their employees improperly, and that improper treatment must be remedied. But the issue that we would encourage the Commission to address is the appropriateness of the remedy. We strongly believe in equitable remedies that redress the wrongful act. We are strongly opposed to unlimited jury awards and their use by plaintiff attorneys to shake down employers over questionable claims. Employment remedies need to be thought of in terms of settling disputes, bringing the parties together, and healing unhealthy work relationships, not in terms of turning the parties into vengeful litigants and increasing their legal weaponry.

For example, we would like to see Congress giving less attention to legislation that promotes harsh penalties and unlimited damages. We would like to see more attention being given to proposals like the Employment Disputes Resolution Act that was

³ Dertouzos, J. and Karoly, L., *Labor-Market Responses to Employer Liability*, RAND Institute for Civil Justice, 1992, p. xiii.

⁴ *Id.*, p.51.

introduced in the last Congress by Senator John Danforth and in this Congress by Rep. Steve Gunderson as H.R. 2016. It would establish in federal law an alternative dispute resolution procedure that would encourage the parties to mediate their dispute before initiating litigation in the federal courts.

3. There must be a recognition that there is a cost attached to each employment policy and regulation and that the impact of those costs must be given far more serious consideration in the promulgation of the policy or regulation.

After all the years we have served as HR practitioners in large companies, we still find incredible the extent to which virtually every aspect of human resource practice is regulated by federal, state and local employment laws and regulations. At the same time, we find incredible the extent to which the cost impact of those laws and regulations is given such short shrift during their formulation stage. For some reason, the term "cost/benefit analysis" is not politically correct inside Washington. However, with the focus of the legislative and regulatory process on increasing these regulatory burdens each year, much more needs to be done to determine which regulations have outlived their usefulness, the extent to which the objectives of existing regulations could be achieved in a more cost effective manner, and, before new regulations are created, how their policy goals could be realized at the least possible cost.

4. The nation's employment laws would be substantially improved if the legislative branch of the U.S. government were to become a testing ground for and an exemplar of progressive employment policies instead of being exempted from the laws it requires of all others.

"Do what we say, not what we do," seems to be the employment policy agenda of the U.S. Congress. Members of Congress have fully or partially exempted themselves from coverage under the full range of employment laws. Where coverage does exist, the laws are not applied uniformly throughout the institution. Where violations are found, the institution relies on self-enforcement measures which are substantially more lenient and cheaper than those facing private sector employers. If Congress feels that the laws and mandates it places on all others are necessary and appropriate, it should embrace these same laws itself. The legislative branch of the federal government employs more than 40,000 employees, a very sizeable workforce. It would be an excellent laboratory for testing the legislative concepts it imposes on the 91 million Americans who comprise the private sector workforce.

Conclusion

From our statement, we hope that the Commission has been given a sense of the sea change that has occurred in human resource practice during the past fifteen years and what the implications of that change should be for policy makers. There has been considerable public attention focused on the negatives of that change, primarily the attrition that has occurred in America's largest companies as the workforce is restructured at all levels, including reducing the number of decision makers and streamlining the flow of work. Those negatives, unfortunately, have tended to obscure the positives, primarily the extent to which the reorganization of work has given front-line employees, both exempt and non-exempt, and at all levels of the company, greater autonomy over their work lives. While these changes have produced dislocations in the short term, over the long term the new high performance American workplace will be better able to provide job security for American employees and a more satisfying work environment. The members of our Association, however, continue to be surprised at the apparent lack of understanding by those outside the workplace of the magnitude of these positive changes and their importance for public policy. The Commission could make an extremely useful contribution to the development of employment policy if its final report were to communicate to the American public the depth of the change in the workplace environment.

We also hope that the Commission will take full advantage of the unique opportunity it has been given. The easy path would be to develop a set of recommendations, some of which would be looked upon favorably by organized labor and criticized by management, and vice-versa, hoping to elicit the same degree of praise and reproach from both communities as an indicator of fairness and impartiality. The more difficult path would be to move beyond the conventional wisdom, discover what is really going on in the workplace, and develop a sense of the feelings, wishes and desires of today's empowered employees.

For example, it is the experience of the member companies of the Labor Policy Association that cooperative efforts, employee involvement, self-managed work teams and the like are effective in traditional union settings and in non-union work environments alike. The focus of your recommendations, we suggest, should be on how such programs can be encouraged from within, not on imposing cumbersome structures from without. Secondly, if forty years ago we as senior human resource officers of major corporations had proposed to our managements the kind of human resource practices that are being vigorously pursued today, most of us would have been summarily dismissed. In other words, we as professional HR practitioners must change as well. At the same time, it cannot be underscored too strongly that the traditional supervisor-worker employment relationship is rapidly changing. That means a union's role in representing employees who work in this new relationship must also change.

We ask you, therefore, to go out into the high performance workplace in union and non-union settings alike. We ask you to stand in the shoes of today's empowered worker. We ask you to look out through his or her eyes, discover the feeling of

ownership that these team members have in the process, and capture the sense of what it is like to be part of something that sees job security, not in terms of successfully competing with management, but in working on a team of front-line managers competing successfully with the company's economic competitors.

Notwithstanding these points, however, there is a threshold issue that must be resolved before any major changes in federal employment policy can be made absent the application of brute political force. There must be a change in the way in which the country goes about considering revisions in employment policy. A process must be created that brings together government, industry, unions and employees to review recommendations and formulate changes instead of the present system which keeps these constituent groups divided. Our companies are rapidly moving to more cooperative systems for developing policy at the workplace level. We now need to see the same commitment for cooperation at the federal level in order to give suggested improvements in statutory and regulatory policy the consideration they deserve. In view of the competitive situation which we all face, the future of worker/management relations can afford no less.