

DISSENTING OPINION OF DOUGLAS A. FRASER

Section 8(a)(2) stands as a bulwark against forms of representation which are inherently illegitimate because they deny workers the right to a voice through the independent representatives of their own choosing and put the employer on "both sides of the table," to quote Senator Wagner's words from 1935.* Thus, I cannot join in the majority's recommendation that "Congress clarify Section 8(a)(2)" by somehow providing that "employee participation programs should not be unlawful simply because they involve discussion of terms and conditions of work or compensation where such discussion is incidental to the broad purposes of these programs."

Given the legal and factual uncertainties that exist as to the scope of 8(a)(2), and the danger that any statutorily-created exception would be an invitation to abuse, at the very least the prudent course would be to allow the administrative and judicial processes to address the issue of "incidental discussion" in the first instance. If problems were to develop — if, in fact, the law in practice were shown to substantially interfere with incidental discussions of terms of employment — Congress could then take up the subject against a far clearer legal and factual background.

In no event, should employer-dominated employee representation plans be permitted merely because they are limited to dealing with specified subjects such as safety and health or training. Employer-dominated representation

is undemocratic regardless of the particular subjects with which the employer-controlled representative deals.

In dissenting from the recommendation to amend Section 8(a)(2), I wish to make clear that I do not minimize the value of encouraging "employee participation" and "labor-management cooperation." But to my mind, the kind of "participation" and "cooperation" that should be encouraged is democratic participation and cooperation between equals. I agree with Peter Pestillo, the Executive Vice President of Ford Motor Company, that "A strong alliance requires two strong members. There should be no quibbling about that." And I likewise agree with Morton Bahr, the President of the Communication Workers of America, that:

to effectively participate in workplace decision-making, front-line workers must first have their own organizations, educated leadership, and significant resources in order to have the confidence and preparation to participate as equals and without fear. [Sept. 15, 1993 tr. at 63]

Because I am deeply committed to the principal of workplace democracy, I cannot join in any statement that proclaims that you can have fully effective worker management cooperation programs without having a truly equal partnership based upon workers having an independent voice. I must therefore dissent.

*Legislative History of National Labor Relations Act pp. 1416-17.