

USING THE DUNLOP REPORT TO FULL ADVANTAGE: A STRATEGY
FOR ACHIEVING MUTUAL GAINS

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Using the Dunlop Report to Full Advantage:
A Strategy for Achieving Mutual Gains¹

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For a number of years many of us have been saying that the changes underway in private sector workplace practices call for a major updating and modernizing of national labor and employment policies. The final report and recommendations issued by the Commission on the Future of Worker Management Relations (the Dunlop Commission) have now opened the debate over how to do so. As a member of the Commission I support fully its findings and recommendations.² But, these recommendations are only a first step in what is likely to be a long process of debate. The Commission's recommendations are not as far-reaching as some would prefer. They go only part way toward the type of comprehensive overhaul of the New Deal labor policy framework some of us, including myself, have called for in our individual work (Kochan and Osterman, 1994).

The recommendations also entail some risks. The biggest risk is that business groups, labor unions, the Congress, or the Administration will endorse and attempt to enact only those recommendations that are consistent with their ideological leanings, despite the Commission's strongly stated view that its recommendations are highly interdependent and should not be acted on in isolation. If this happens, the decades long stalemate over labor policy will continue, perhaps until the frustration of American workers and voters boil over and create the type of crisis that finally forces their leaders out of their fixed and partisan positions.

There is an alternative. It is for everyone to see the report and recommendations for what they are, namely sensible and rather simple starting points for building, over time, a fundamentally new labor and employment policy needed to make America competitive at high standards of living. Employers committed to using employee participation to improve

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²See, the Fact Finding Report of the Commission on the Future of Worker Management Relations, May, 1994 and the Commission's Final Report and Recommendations, January, 1995.

productivity and quality can gain the flexibility to do so free of the legal uncertainty that has been hovering over some of these practices. Moreover, employers can further use employee participation and alternative dispute resolution procedures to reduce litigation costs and the burdens of government regulations. Employees can gain what labor law promises but has not delivered for many years--an effective right to choose whether or not to be represented by a union at the workplace and greater choice over the forms of participation and/or representation that best suit their needs. Employees also can gain access to fair, low cost systems for resolving workplace problems and disputes over the rights guaranteed them in employment laws. Unions can expand the broad based labor-management partnerships they have underway in many industries and have a fair chance to organize workers who want collective bargaining,. Further, unions can develop new forms of representation for workers who need more individualistic workplace and labor market services.

These potential mutual gains will only be achieved, however, if everyone focuses on these opportunities presented in the full report, rather than on specific parts that challenge their prior positions. Some employers will not like, but need to face, the finding that labor law is not working to protect individual employee rights to join a union. Some union leaders will not like, but must face, the fact that many non-union employees want to participate in cooperative efforts with employers without the protections a union offers. Women's groups and civil rights advocates will need to recognize the only way to get justice on the job today for all workers without long delays and insurmountable legal costs is to develop fair private dispute resolution procedures.

Taking this perspective requires leadership with a vision of the workplace of the future. The report offers such as vision, based on what workers, managers, and union leaders told us fit their views of a high performance workplace today. We therefore suggest a set of ten goals for the Workplace of the 21st Century (see Figure 1) and propose monitoring the nation's progress toward achieving these goals. Achieving them will require hard work from a coalition of diverse voices in society. The question is whether current leaders in business, labor, the Congress, and the Administration are up to this task.

In this paper I'd like to address the question of "where do we go from here?" That is, given the difficult political climate for labor policy making, how can the Commission's recommendations be used to their maximum advantage to improve workplace relations and performance? I begin by summarizing the Commission's recommendations and commenting on the opportunities and risks they pose to the parties. Then I outline steps that government agencies, public-private groups, and the parties at the workplace can take to promote further innovations in workplace relations. I conclude by sketching several possible scenarios for the future.

The Dunlop Commission's Finding and Recommendations

The Commission was asked to address the following three issues:

What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

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?

What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

In the sections that follow I will use the three topics in our Mission statement to summarize our findings and recommendations.

Employee Participation

The Commission concluded that employee participation and labor-management cooperation are in the interests of workers, employers, and the national economy and therefore ought to be supported by national policy. This implied a need to address the constraints imposed on employee participation by Section 8(a)(2) of the National Labor Relations Act (NLRA). At the same time, the Commission was equally determined to not encourage or allow the return of company dominated unions that this section of the law was designed to eliminate.

Various modifications of the doctrines governing Section 8(a)(2) were proposed to the Commission. They ranged from maintaining the status quo, to modest expansions in the issues that employee participation groups could address legally, to allowing expansion of employee participation subject to meeting certain minimum standards (e.g. allowing employees to vote on or select their representatives on teams or committees). The Commission concluded that a modest departure from current doctrines was the best approach. Instead of trying to draw a new line over permissible and non-permissible subjects or individuals to be involved, we recommended clarifying the law and its interpretation by the NLRB so that employee participation would not be judged illegal solely because participants discussed terms and conditions of employment as an incidental part of the process. The ban on company dominated unions would continue.

We also endorse use of employee participation on certain workplace topics regulated by public law such as workplace safety and health, and encourage use of private dispute resolution procedures for resolving alleged violations of worker rights, provided that these processes meet certain guidelines or quality standards. Guidelines and standards are appropriate in these areas because they involve rights and duties of employees and employers contained in public law. Therefore, we are delegating responsibility for enforcing these rights to the parties at the workplace. In this way employers, employees, and unions have both the opportunity and the responsibility to manage these issues without having to rely solely on enforcement and litigation

through government agencies or the courts.

The Commission made three other recommendations in this area of the law. First, we recommended strengthening and extending protections against discrimination for participating in these programs, speaking about them at the workplace, or requesting assistance from outside organizations. Second, changes in the definition of supervisor were suggested to avoid having workers who make supervisory decisions as a result of participation in new work systems lose their right to collective bargaining as the Supreme Court had ruled in cases involving university professors (Yeshiva) and registered nurses (Health Care Corporation). Third, we recommended allowing pre-hire agreements where a company with an existing bargaining agreement opens a new facility. The purpose of this recommendation was to allow companies and unions to do what General Motors and the United Auto Workers did in creating the Saturn Corporation, i.e., to negotiate a state-of-the-art labor agreement before a plant opens or the workforce is in place, subject to a subsequent vote or card check certification by the workforce after the facility is in operation.

These recommendations pose both risks and opportunities. The obvious risk is that some employers will abuse the discretion provided by setting up participation programs to defeat or discourage efforts of employees to join independent unions. Yet survey data have consistently documented that a majority of workers want to have greater influence and voice on their job and at the same time want sufficient independence to choose their representatives (Freeman and Rogers, 1994). This set of recommendations opens the door for considerable institutional innovation with respect to employee participation. My personal view is that these recommendations will only achieve their intended results if they give rise to a wider array of participation processes. How might this be done?

One way would be for unions and professional associations to offer the services and expertise needed to promote the various forms of employee participation. That is, I believe that the best way for unions to represent workers effectively in the future is to become "full service agents" by providing collective bargaining representation, individual representation to workers in enforcing their legal rights, promoting self-governance at the workplace, and consultation and technical services to workers on matters such as safety and health, new work systems, education, training, labor market information, and other issues that are subject to employee-management consultation. The Commission's recommendations clearly allow for development of these types of roles and organizations by expressly noting that workers should have the right to draw on outside assistance, or join and be represented by organizations of their own choosing.

A full service union or professional association would have three ways of recruiting members. First, it could continue to organize workers for the purposes of collective bargaining. Second, individual memberships with a variety of representational and technical services such as those suggested above can be offered to those who either do not want exclusive representation and collective bargaining or who cannot convince the majority of their peers to vote for collective bargaining. This is akin to the professional association model of representation. Finally, unions can also offer workers a full range of services including support for participation

in workplace affairs, collective bargaining over wages, hours, and working conditions, and representation at the strategic level of enterprise decision-making. That is, they can market their services as a complete representational package, something that no non-union firm can match through management designed employee participation or dispute resolution programs.

These recommendations also provide employers with an opportunity to expand employee participation without fear of breaking the law simply because the issues discussed cross over into conditions of work. Employers and employees can go further and extend participation to other areas of employment relations that involve public rights such as workplace safety and health or dispute resolution systems if these processes meet the general guidelines established by the agencies responsible for enforcing these statutory rights. I believe that this is one of the most important opportunities for institutional innovation encouraged by the Commission's recommendations.

Some of us on the Commission would have preferred to go a step farther and, consistent with our prior writings, recommend creating an American version of European works councils on either a voluntary or mandated basis (Kochan and McKersie, 1989; Weiler, 1990; Rogers and Freeman, 1993; Kochan and Osterman, 1994). The problem was that, aside from some academics (Adams, 1985), there was no constituency in favor of this! If there is to be anything like works councils in the U.S., it is clear that they will need to emerge incrementally and experimentally in the same fashion as employee involvement programs and other workplace innovations evolved over the past two decades or so. While the Commission's recommendations do not explicitly propose formation of councils that reflect the full makeup of an establishment's workforce, they clearly allow for experimentation with such bodies on selected issues such as safety and health and other workplace regulations.

Worker Representation and Collective Bargaining

The Commission was able to draw on considerable empirical evidence generated by independent researchers and government data in analyzing the current state of the law and practice concerning the exercise of workers' rights to join a union and engage in collective bargaining. The evidence presented in these studies led to the following key conclusions that then framed our recommendations:

1. Representation elections as currently conducted are highly conflictual for workers, unions, and firms. This means that many new collective bargaining relationships start off in an environment that is highly adversarial.
2. The probability has increased over time that a worker will be discharged or unfairly discriminated against for exercising legal rights under the NLRA.
3. Roughly a third of the workplaces that vote to be represented by a union do not obtain a collective bargaining agreement.

4. About one third of unorganized workers would vote to be represented by a union if an election were held at their workplaces.

Given this record, the only conclusion one could reach is that the law is not delivering on its promise--to provide workers' the right to choose whether or not to be represented by a union for the purposes of collective bargaining.

A large number of recommendations were presented to the Commission on how to remedy problems with the law. These ranged from those that would stay within the basic framework of exclusive representation and collective bargaining to those that would allow for different forms of representation including works councils, minority and/or members' only unionism, worker representation on corporate boards of directors, etc. Specific recommendations proposed increased penalties for violations of law, suggestions for reducing delays, stronger protections against employee discharge, speedier procedures for reinstating employees whose rights are violated, and arbitration of first contracts.

The Commission took a relatively conservative approach to changes in this area of labor law by recommending strategies to reduce conflict, encourage prompt elections, require the NLRB to obtain injunctions to reinstate workers who are fired illegally, and create a dispute settlement process including, as a last resort, binding arbitration of first contract disputes.

One of the most significant recommendations in this area is the dispute settlement procedure for first contracts that includes, as an option, binding arbitration. The Commission calls for creation of a tripartite First Contract Advisory Board by the Federal Mediation and Conciliation Service (FMCS) that would decide on whether an impasse in first contract negotiations should be referred to the parties for direct action (strike or lockout) or to arbitration for a binding decision. The goal of this settlement procedure is to encourage the parties to reach agreements and avoid a spillover of the conflict and efforts to defeat the union into the first contract negotiation process. Making this process work will require that the tripartite advisory board functions as a neutral group of labor relations professionals and not as narrow partisan advocates.

Workplace Regulation, Litigation, and Dispute Resolution

The third item on the Commission's agenda opens up a wide range of possibilities for workers, unions, and employers to develop workplace systems for resolving disputes and adapting regulations to fit the varying circumstances of different workplaces. As the Fact Finding report noted, the Commission generally believes that the tools of our field--mediation, arbitration, employee participation, and other alternative dispute resolution procedures--could be more fully used to resolve issues that now end up in the courts or backlogged in enforcement agencies.

These recommendations also offer a way to separate employment relationships with effective workplace institutions that can take on some of the regulatory functions from those

without such institutions and therefore need to remain subject to the standard approach to regulation and enforcement.

The Commission recommended that OSHA establish guidelines for effective workplace safety and health programs that include employee participation. Workplaces with these types of programs in place and that demonstrate adequate levels of safety performance would not be subject to OSHA's normal inspection and penalty procedures. In contrast, the workplaces without such self-governance programs and/or that have not demonstrated adequate performance would continue to be subject to standard enforcement procedures. Other regulatory agencies are encouraged to develop similar approaches tailored to their particular regulatory issue.

We also recommend experimentation with private voluntary procedures including arbitration for resolving disputes involving workers' statutory rights. A set of "quality standards" covering issues such as the right to outside representation, the qualifications of neutrals, cost sharing arrangements, arbitrator selection, arbitration procedures, the standards for agency and judicial review, etc. are also suggested for these systems.

A number of difficulties need to be addressed in implementing these recommendations. One is overcoming the high level of skepticism and criticism that some arbitration arrangements have come under recently. This is one reason for specifying clear and stringent quality standards for arbitration. A second and more difficult problem is how to overcome the skepticism of womens' and civil rights' organizations that have worked over the years to strengthen individual rights and gain access to federal courts to enforce these rights. Three major concerns were raised by these groups: (1) Private arbitration might reduce the deterrent effect of the threat of lawsuits and jury awards, (2) private dispute resolution systems will freeze or reinforce the power imbalance that currently exists between individual workers and employers, and (3) employers should not be allowed to implement these systems unilaterally and make them a term and condition of employment.

The Commission's recommendations attempt to address these concerns while strongly endorsing and encouraging experimentation with high quality dispute resolution systems. We stress the principle that employees should have a voice in the design and oversight of workplace dispute resolution procedures. Liberalizing employee participation to insure the legality of employee participation in the design and operation of voluntary dispute resolution systems should provide such an opportunity. Encouraging unions and professional associations to expand the services they provide to individual workers in this area should as well.

We explicitly recommend against allowing employers to impose binding arbitration unilaterally as a condition of employment. Instead we propose beginning on a voluntary basis. The EEOC and enforcement agencies in the Department of Labor explore ways to encourage use of procedures that meet the recommended quality standards and that provide for employee participation.

Another area of employment regulation that the Commission recognized as needing

attention concerns the definitions of employer and employee in contingent work settings. Ambiguity over who is the employer to be held responsible for meeting the requirements of employment and labor laws for contingent workers sometimes results in a breakdown in coverage for some, often low wage employees. Moreover, the economic incentives to misclassify workers as independent contractors to avoid responsibilities under labor, employment, and tax laws results in significant revenue losses as well as a gap in the legal and financial protections these laws are designed to provide.

The Commission lacked adequate data for addressing the full range of issues associated with the growth of contingent work. Therefore we made only modest recommendations in this area and urged these issues be studied more thoroughly as more data become available. Our recommendations are to move to a standard definition of the terms employer and employee for the purposes of labor and employment law. This is also an area where the NLRB needs to reexamine its doctrines and we recommended it do so as well.

Blueprint for Action

Congress

Given these recommendations, how can we best move forward to sustain and diffuse the positive innovations at the workplace and tackle the major obstacles limiting their potential? The obvious first step is to enact the changes in law and to authorize the administrative experimentation suggested in the recommendations. A comprehensive bill would include the following elements:

1. Changes in the NLRA needed to implement the recommendations on employee participation, representation election procedures, and first contract dispute resolution.
2. Clear directives to OSHA, other Department of Labor regulatory agencies, and the EEOC to experiment with alternative dispute resolution and self governance programs that conform to the quality standards suggested in the report. This directive should also encourage federal agencies to initiate coordinated experiments with state agencies that regulate the same issues.
3. Directives to all regulatory agencies to move to a common definition of employer and employee for the purposes of enforcing labor and employment laws using an economic realities test as the basis for these definitions.
4. Authorization and funding of the National and local forums and the supporting research and analysis group called for in the recommendations.

Although not included in the Commission's recommendations, some employers and some members of Congress (particularly Congressman Richard Gephardt) have expressed an interest

in establishing a Workplace Excellence Award modeled after the Baldrige Award for quality. Such an award has proven helpful in focusing the private sector's attention. If the Congress decides to create a Workplace Excellence Award, I would urge that the goals for the Workplace of the 21st Century presented in the Commission's report serve as the award criteria. Such an award would both encourage workplaces to monitor their performance on the full range of goals listed in the report and would continue to call attention to the interdependent nature of these workplace issues.

While each of these legislative changes is needed in its own right, piecemeal efforts to patch up the current law will do more harm than good. There are both technical and fairness reasons for this judgement.

The technical reasons are pointed out in the report. Increasing flexibility for employee participation requires that workers be given the opportunity to decide on their own whether or not to join a union. The current law fails on this account. The changes in labor law designed to reduce conflicts and delay in organizing efforts and to improve the effectiveness of the negotiation of initial agreements are needed to ensure workers' rights are realized in practice. Moreover, clarification of the law governing employee participation is necessary to open the door to self-governance and experimentation with private voluntary dispute resolution procedures in which employees have an active voice and role in shaping and running. Likewise, true self-governance requires that workers have a choice over the forms of participation and/or representation that best suit their circumstances.

So one can easily see the technical interrelationships among these recommended changes in the law. But there is a more important and subtle reason that reflects the present climate of labor-management relations in the country. Any effort to pick and choose only those changes in the law that suit one party's narrow self determined interest will intensify the polarization that the full set of recommendations is designed to reduce. Trust at the workplace cannot be built in a national environment of political stalemate and polarization between leaders of business and labor.

The Administration

The Clinton Administration will need to take equally strong steps to implement these recommendations. Every agency regulating some aspect of the workplace should be required to develop a plan for acting on the recommendations to encourage fair and efficient private resolution of disputes and self-regulation and governance procedures. Together with Congress, the Administration should provide the investment funds needed to initiate and test self-regulation and dispute resolution procedures appropriate for each agency and area of law. But to provide further incentives, the Administration and the Congress should make it clear to individual agencies that their budgets will suffer significantly if they fail to develop and implement appropriate plans consistent with the general principles outlined in the Commission's report.

The Administration can go considerably farther than the report suggests by working with

corresponding state government agencies that share jurisdiction over workplace issues to insure that workers and employers face only one common set of legal requirements and that those that choose to experiment or adapt self regulatory and dispute resolution systems are not constrained or sidetracked by state regulations. At a minimum, the Department of Labor might designate one or more of its regions as laboratories for federal-state partnerships in experimenting with this approach. Indeed, the history of workers' compensation, safety and health, unemployment insurance, and child labor all suggest that the models for future national policy are likely to come from innovations at the state level. All of these now widely accepted federal laws were built on models provided by state-level experiences. Perhaps it is time for individual states to propose this type of experimental approach to the federal government.

The Labor Movement

The labor movement has an important choice to make. It can oppose the Commission's recommendations because of its view that the expanded flexibility recommended for employee participation will be used to further undermine union organizing efforts. Or it can voice its concern with this particular recommendation but accept this challenge provided the other recommendations are also implemented. If the labor movement uses the Commission's report to fashion a positive image and strategy it will have a fair chance to reverse its long term membership losses by marketing its full service representational capabilities. If, however, labor leaders oppose these changes and stay with a more limited strategy, unions risk further declines in both their public image and membership.

Representatives of Business

The business community also has an opportunity to take a new approach by joining a broad based coalition in support of modernizing the full range of labor and employment laws. Or it can continue to stonewall every effort to face the facts regarding the most egregious violations of worker rights documented in the Commission's findings and to rely on its newly won political influence to block any changes in public policy that improve the positions of workers and their representatives. Labor policy need not continue as a zero sum game, but it surely will unless the voices of employers who are already engaged in workplace innovations and who respect worker rights prevail over those committed to a more oppositional course.

Forums for Ongoing Dialogue and Learning

The Commission recommended creating several new institutions to promote on-going dialogue and analysis of employment issues including a National Forum for the Workplace, a National Labor-Management Committee, a group to provide research support on workplace issues, and comparable forums at local and sectoral levels. These institutions could turn out to be either a waste of effort or constructive means of fostering continued learning and the gradual development of a more analytical approach to labor and employment policy making and evaluation. If the representatives participating in these discussions use them to continue to

advocate their narrow rhetorical positions not only will no useful purpose be served, but again real harm could be done by serving as an obstacle to experimentation with truly new ideas and approaches to addressing workplace issues.

Alternatively, if guided by a clear sense of purpose, these discussions might encourage local, state, and regional experimentation with different approaches to the workplace issues. Moreover, by including women and civil rights representatives in these forums the voices of the workforce of the future are represented and the traditional labor versus business lines of demarcation and political battle might be blurred somewhat. If used for these purposes, these forums may make significant contributions to labor and employment policy and practice.

The research group that supports these discussions can help to open dialogue on a wider range of ideas and alternative institutional approaches than would be considered if left to business and labor. While the researchers need to be responsive to the priorities established by the Forum and the Labor-Management Committee, they need to retain sufficient independence to do objective work and sufficient discretion to support research that examines options that none of the interest groups involved would find acceptable today. Exploration of new ideas or alternatives that lie beyond the limits of acceptability is critical if we are to ever get beyond the incremental modifications of existing practices.

The Workforce

Ultimately, the American workforce will need to demand that their elected representatives and leaders at the workplace take a mutual gains approach to these issues. Workers should insist on exercising their rights to participation, independent representation, and access to fair procedures for resolving workplace disputes. They should likewise insist on sharing equitably in the gains produced by their efforts to improve the economic performance of their workplaces and enterprises. The Worker Representation and Participation Survey done for the Commission (Freeman and Rogers, 1994) provided a clear picture of what American workers want on their jobs today. American workers reported that they want more involvement and greater say in their jobs, they would like this involvement to take the form of joint committees with management and would prefer to elect members of those committees rather than have managers select them. They prefer cooperative committees to potentially conflictual relationships. A sizable minority are in workplaces where they and their fellow workers want to be represented by a union.

The Commission's recommendations only provide a starting point for responding to these expectations. Clearly, the first necessary steps are to deliver on the promise of labor law to provide workers with a real choice over whether or not to be represented by a union. Clarifying the law to insure that it no longer limits sensible and modern forms of employee participation and labor-management cooperation is an equally necessary starting point. But if we are to fully respond to what workers are saying, further experimentation with new institutional forms are needed as well. Workers, not labor and management representatives, appear to be calling for institutions that resemble representative councils similar to the European style works councils.

The Commission did not recommend creation of these types of councils because of opposition from business representatives and lack of strong endorsement by labor. But clearly, there is room for experimentation that, over time, might produce an acceptable and effective American version of a workplace council.

Making the Most of the Recommendations

If taken together and implemented in a coordinated fashion, the package of legislative, administrative, and private actions could improve the climate for employment relations, and produce the mutual gains expected by the workforce and needed by the national economy. But, if history is any guide, the process of creating a new labor policy will take a long time. Although there is no clear consensus over labor policy, some small steps have been taken to open and broaden the debate and to include some new voices in the process. Even assuming the appropriate legislation is enacted it will undoubtedly also take time for experimentation at the grass roots level to develop the same empirical base of experience and the political constituency for new forms of workplace governance.

In summary, the New Deal labor policy framework has been opened up for debate. Some appropriate and necessary repairs to it were suggested that allow workers to exercise the rights it promises and allow employers and employees to gain maximum value from employee participation. Opportunities to develop new models of governance are provided for those willing to take advantage of them.

Future Scenarios

While it is impossible to predict the future given the range of choices facing these different parties, at least three future scenarios can be envisioned, depending on what Congress, the Administration, and leaders of labor, business, women, and other civil rights groups do with the Commission's recommendations.

Scenario 1: Continued Political Stalemate

Unfortunately, the most likely outcome of the forthcoming debates over labor policy is continued stalemate. The conservative dominance in Congress makes it more difficult for the Administration to carry forward a comprehensive modernization of labor policies called for by the Commission's recommendations. The labor movement is also wary of opening up labor law in what it views as a hostile Congress. Instead, debate may be sidetracked over efforts to dismantle certain aspects of New Deal labor policies without reconstructing them in a fashion appropriate to the modern workplace.

If the stalemate over labor policy continues, we can expect continued union membership declines, increased polarization of labor and management at the national level, more resistance by union leaders and workers to innovation within individual enterprises, and further growth in the gap in income and working conditions between those with and those without individual labor

market power derived through education. As a result, the gap between worker expectations and workplace reality will widen for many workers.

The growth in employment litigation is likely to continue as these frustrations mount. In this environment, anti-union and anti-government sentiments will intensify among employers and the cycle of conflict and distrust will only escalate. This scenario therefore essentially puts off the task of modernizing labor policies to a later date, perhaps only when these pent up worker, labor, and employer tensions reach their boiling point. The question in my mind is not if but when this point will be reached.

Scenario 2: Congressional Stalemate and Administrative Experimentation

Even if Congress remains stalemated over the basic provisions of labor law, the Administration could experiment with some of the ideas suggested in the Commission's report. For example, the NLRB can use its rule making authority to address some of the problems associated with joint employer and contingent work settings. OSHA might experiment with self-enforcement systems with a variety of different forms of employee participation and labor-management committee arrangements. Other Department of Labor offices could step up their efforts to encourage and defer to alternative dispute resolution processes and take a more outcome oriented approach to workplaces that have active self-governance systems in place. The EEOC could likewise step up its experimentation with ADR systems and high quality private dispute resolution procedures. The labor movement could continue to encourage expansion of labor-management partnerships in settings where unions now represent workers and incrementally negotiate expansions of the issues and the workers brought under the umbrella of these partnership arrangements. Employers might support continued experimentation and some employers might even take steps to integrate their employee participation, union-management partnerships, and dispute resolution systems into a comprehensive approach to workplace governance. Some states might step forward and provide models for future national policies.

This scenario would produce both some continued incremental innovation but at the same time result in a corresponding growth in battles between workers and managers in those employment settings where either management or union representatives remain committed to traditional views of each other and of their respective roles in employment relationship. Thus, there would be few macro-economic benefits and considerable macro-economic and social risks associated with this approach. Whether islands of innovation could survive and expand or get swamped in the larger sea of conflict would remain to be seen.

Scenario 3: A Coalition for Mutual Gains

However unlikely it now seems, it is possible to envision what could happen if a broad based coalition took full advantage of the starting points provided in the Commission's report by enacting the necessary legislative changes, taking the required administrative actions, and promoting continued innovation in America's workplaces. One major benefit would be a significant improvement in the climate for labor-management relations at national and workplace

levels. It would open the door to experimentation with new approaches to participation, representation, and workplace governance. Whether this would be enough to reduce the gaps in earnings and expectations that now exist in American workplaces is still unclear. Whether it would usher in an era of more continuous learning and change in public policy also remains to be seen. But this is the best chance we have to achieve these results.

While obviously I believe Scenario 3 offers the best hope for achieving results that are mutually beneficial to workers, employers and the American economy, at the moment it seems the least likely of the three scenarios.

FIGURE 1
GOALS FOR THE 21ST CENTURY WORKPLACE

Expand coverage of employee participation and labor-management partnerships to more workers and more workplaces and to a broader array of decisions.

Provide workers an uncoerced opportunity to choose, or not choose, a bargaining representative and to engage in collective bargaining.

Improve resolution of violations of workplace rights.

Decentralize and internalize responsibility for workplace regulations.

Improve workplace health and safety.

Enhance the growth of productivity in the economy as a whole.

Increase training and learning at the workplace and related institutions.

Reduce inequality by raising the earnings and benefits of workers in the lower part of the wage distribution.

Upgrade the economic positions of contingent workers.

Increase dialogue and learning at the national and local levels.

References

Adams, Roy, "Should Works Councils be used as Industrial Relations Policy," Monthly Labor Review, July 1985, 25-29.

Freeman, Richard B. and Joel Rogers, "Worker Representation and Participation Survey," Princeton, NJ: Princeton Survey Research Associates, 1994.

Kochan, Thomas A. and Robert B. McKersie, "Future Directions for Labor and Human Resource Policy," Relations Industrielles, 44, 224-243.

Kochan, Thomas A. and Paul Osterman, The Mutual Gains Enterprise. Boston: Harvard Business School Press, 1994.

Rogers, Joel and Richard B. Freeman, "Who Speaks for Us? Employee Representation in a Nonunion Labor Market," in Bruce Kaufman and Morris Kleiner (eds) Employee Representation: Alternatives and Future Directions Madison: WI: Industrial Relations Research Association, 1993, 13-80.

Weiler, Paul, Governing the Workplace Cambridge: Harvard University Press, 1990.