

Nonunion Employee Representation

History, Contemporary Practice and Policy

Edited by

**Bruce E. Kaufman and
Daphne Gottlieb Taras**

Issues in Work and Human Resources



Nonunion Employee Representation

ISSUES IN WORK AND HUMAN RESOURCES

Daniel J.B. Mitchell, Series Editor

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Dedicated to
Diane Moore, Lauren and Andrew Kaufman,
and
Allen Ponak, Matthew and Joel Taras;
the people we love

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Contents

List of Tables and Figures	xi
Foreword	
<i>Daniel J.B. Mitchell</i>	xiii
1. Introduction	
<i>Bruce E. Kaufman and Daphne Gottlieb Taras</i>	3
History: The United States and Canada	
2. Accomplishments and Shortcomings of Nonunion Employee Representation in the Pre-Wagner Act Years: A Reassessment	
<i>Bruce E. Kaufman</i>	21
3. The AFL and the Challenge of Company Unionism, 1915–1937	
<i>Daniel Nelson</i>	61
4. A Road Not Taken: Independent Local Unions in the United States Since 1935	
<i>Sanford M. Jacoby</i>	76
5. Company Unionism in Canada, 1915–1948	
<i>Laurel Sefton MacDowell</i>	96
6. Portrait of Nonunion Employee Representation in Canada: History, Law, and Contemporary Plans	
<i>Daphne Gottlieb Taras</i>	121
Theory	
7. An Economic Analysis of Employee Representation	
<i>Bruce E. Kaufman and David I. Levine</i>	149
8. Nonunion Representational Forms: An Organizational Behavior Perspective	
<i>Tove Hellend Hammer</i>	176
9. Nonunion Employee Representation: A Legal/Policy Perspective	
<i>Samuel Estreicher</i>	196
Contemporary Practice	
10. Estimates of Nonunion Employee Representation in the United States and Canada: How Different Are the Two Countries?	
<i>Seymour Martin Lipset and Noah M. Meltz</i>	223

11.	Contemporary Experience with the Rockefeller Plan: Imperial Oil's Joint Industrial Council <i>Daphne Gottlieb Taras</i>	231
12.	Nonunion Employee Involvement and Participation Programs: The Role of Employee Representation and the Impact of the NLRA <i>Bruce E. Kaufman, David Lewin, and John A. Fossum</i>	259
13.	Do Employee Participation Groups Violate Section 8(a)(2) of the National Labor Relations Act? An Empirical Analysis <i>Michael H. LeRoy</i>	287
14.	Employee Involvement and Representation in Nonunion Firms: What Canadian Employers Do and Why? <i>Anil Verma</i>	307
15.	Advancing Public-Sector Labor-Management Relations Through Consultation: The Role of the National Joint Council of the Public Service of Canada <i>Richard P. Chaykowski</i>	328
16.	The Effectiveness of Diversity Networks in Providing Collective Voice for Employees <i>Roy B. Helfgott</i>	348

International Perspectives

17.	Nonunion Representation in Germany <i>John T. Addison, Claus Schnabel, and Joachim Wagner</i>	365
18.	Nonunion Employee Representation in Japan <i>Motohiro Morishima and Tsuyoshi Tsuru</i>	386
19.	Nonunion Forms of Employee Representation in the United Kingdom and Australia <i>Paul J. Gollan</i>	410

Practitioner Commentary: Employers

20.	Employee Involvement and Section 8(a)(2): EFCO Manufacturing <i>Chris Fuldner, CEO</i>	453
21.	Operation of the Production District Joint Industrial Council, Imperial Oil <i>David J. Boone, Manager of Production Operations</i>	457
22.	Nonunion Employee Representation at Dofasco <i>Mark Harshaw, Acting Director of Human Resources</i>	463

Practitioner Commentary: Employees

23.	Delta Personnel Board Council <i>Cathy Cone, Member, Personnel Board Council</i>	469
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24. Production District Joint Industrial Council at Imperial Oil Ltd.:
The Perspective from the Employee's Side
Rod Chiesa and Ken Rhyason, Delegates, Joint Industrial Council 474
25. Nonunion Employee Representation at the Royal Canadian Mounted Police
Kevin MacDougall, Representative, Division Staff Relations Program 477

Practitioner Commentary: Labor Attorney

26. The Section 8(a)(2) Debate: A Management Attorney's Perspective
Andrew M. Kramer, Partner, Jones, Day, Reavis and Pogue 483

Practitioner Commentary: Organized Labor

27. My Experience with Unionization of Nonunion Employee Representation
Plans in Canada
*Reg Basken, Secretary-Treasurer of the Communication, Energy, and
Paperworkers Union* 487
28. Employer-Employee Committees: A Union Perspective
*Jonathan P. Hiatt and Lawrence E. Gold, General Counsel and
Assistant General Counsel, AFL-CIO* 498

Policymaker Commentary

29. *Electromation*: An Opportunity Lost or Just Postponed?
John N. Raudabaugh, Former Member, National Labor Relations Board 513
30. A Canadian Policymaker's Perspective on Nonunion Representation
*Andrew Sims, Chair, Canadian Federal Task Force on Part I of
the Canada Labour Code* 518

Conclusion

31. Nonunion Employee Representation: Findings and Conclusions
Bruce E. Kaufman and Daphne Gottlieb Taras 527

- Index 559
- About the Contributors 575

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List of Tables and Figures

Tables

1.1	Statutory Treatments of Nonunion Representation in the United States and Canada	5
4.1	Company Unions and ILUs: 1935–1967	82
6.1	American and Canadian Labor Law Provisions with Regard to Definitions and Prohibitions	128
6.2	Fate of “Company Unions” Mentioned in 1919 or 1943	140
6.3	Companies Currently Operating Nonunion Representation Plans	141
6.4	Comparison of Canada and U.S. Contemporary Nonunion Representation Using Lipset and Meltz 1997 Survey	144
10.1	Union Density and Employee Involvement	225
10.2	Nonunion Forms of Employee Representation	226
10.3	U.S. Estimates of Union and Nonunion Forms of Employee Representation by Industry, 1996	227
10.4	Canadian Estimates of Union and Nonunion Forms of Employee Representation by Industry, 1996	228
11.1	Structures and Functions of Resources Division JIC	239
13.1	Employee Participation Groups and Coverage of Section 2(5) Subjects	296
13.2	Employee Participation Groups: Recruitment of Employees, Interaction with Management, and Direction of Group	297
14.1	Comparative Profile of Firms	313
14.2	Comparative Employee Involvement Practices	314
17.1	Coverage and Participation Rights of Works Councils by Establishment Size	372
17.2	The Effects of German Works Councils on Firm Performance	378
18.1	The Structure of Intrafirm Voice Mechanisms	391
18.2	Determinants of the Degree of Employee Voice Related to Working Conditions and Management Factors	394
18.3	Determinants of Separation Rate	396
18.4	Determinants of Employee Perceptions of Voice Related to Working Conditions and Management Factors	398
18.5	Determinants of Company Satisfaction	400
18.A1	Basic Characteristics of Population and Sample	408
18.A2	Variable Definitions and Descriptive Statistics	409

19.1	Strategies and Objectives of Nonunion Forms of Representative Participation	415
19.2	The Extent of Consultative Committees (CC) at Workplace Level in the Union and Nonunion Sectors, 1984 and 1990	423
19.3	U.K. Cases of NER—Structure and Process	426
19.4	Australian Cases of NER—Structure and Process	438
19.5	Content Analysis of Actionable Items Arising from Big Block Constructions Consultative Committee Meetings, June 1993 to September 1994	442

Figures

2.1	Trends in Membership: Trade Unions and Employee Representation Plans, 1900–1940	24
5.1	A Young W.L. Mackenzie King, 1927	96
5.2	Union Density in North America 1921–1993	118
7.1	Demand and Supply of ER Services	160
10.1	Measures of Nonunion Employee Representation	224
11.1	Mackenzie King Letter, August 6, 1914	234
13.1	Section 8(a)(2) Cases Following <i>Electromation</i> and <i>Du Pont</i>	295
14.1	Dimensions of Employee Involvement	309
14.2	Forms of Employee Involvement: Voice in Equity Versus Efficiency Issues	311

Foreword

Daniel J.B. Mitchell

Around the developed world, unionization rates have been declining. Influences behind the decline vary from country to country. However, the global nature of the decline suggests that there are some overriding factors affecting many countries. Global competition in product markets—with its indirect labor-market impact—certainly would be one factor to be cited.

Within the United States there is now a contradiction in public policy. When the Wagner Act of 1935 was adopted, collective bargaining was assumed to be THE vehicle for worker participation and voice. Workers did not have to choose to be represented. But their choice was supposed to be unimpeded by management. Thus, alternative forms of nonunion representation were seen as suspect and viewed as a probable sign of managerial interference with worker choice about unionizing.

Much has changed since 1935. The Great Depression, a major factor in the passage of the Wagner Act, has become a distant memory. During the 1930s, workers with jobs had few labor market alternatives. Bargaining power was therefore tilted toward employers since management controlled access to scarce jobs. The social safety net that exists today, including unemployment insurance, was just being created. Employers could say “if you don’t like it here, go somewhere else” with full knowledge that there was nowhere else to go.

Although there have been ups and downs of the business cycle since the Great Depression—and although concerns about corporate restructuring and downsizing certainly still lead to job insecurity—pressure for employee voice is not what it once was. Many workers who are nonunion would undoubtedly choose to be union-represented if a completely free choice were offered. But, if poll data are to be believed, many workers would not. Such nonunion-oriented employees would like some degree of voice but through mechanisms other than traditional collective bargaining.

This volume, edited by Bruce E. Kaufman and Daphne Gottlieb Taras, explores such alternative mechanisms, taking a multifaceted approach. The various chapter contributors look at nonunion representation in historical perspective and in international perspective. An historical viewpoint is always valuable since it illuminates the path by which current realities came to be. And the international perspective is valuable because it focuses attention on other options. In the matter of employee representation, as in many other aspects of the employment relationship, there is not necessarily one right way of carrying out a critical function.

As the editors note in their introduction, declining unionization has led to calls for legal remedies of various sorts. But even if no legislation is enacted, the legal system itself provides an alter-

native form of employee voice. The drop in the unionization rate in the United States has been accompanied by a rise in various types of workplace-related litigation. Unfortunately, lawsuits are a crude tool for providing employee representation and voice. Thus, if options can be developed privately

to provide satisfactory representation, both sides of the employment relationship—management and employee—will benefit. The Kaufman-Taras volume should be a major reference in the future as issues of employee voice and representation are debated.

Nonunion Employee Representation

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1

Introduction

Bruce E. Kaufman and Daphne Gottlieb Taras

The subject of this volume, nonunion employee representation (NER), until recently has languished in relative obscurity and neglect, particularly in Canada and the United States. Indeed, we are unaware of any book published in several decades in either country that deals explicitly with NER, while journal articles in business and the social sciences on this topic are sparse in number, nearly all historical in nature, and usually focused on the American experience with “company unions” of the 1915–35 period. When the National Labor Relations Act (NLRA, or Wagner Act) banned company unions and most other forms of NER in the United States in 1935, the subject abruptly passed from a major issue of contemporary research and policy debate to a peripheral topic in the field of labor history.

NER has returned as an important and contentious issue in both academic and policymaking circles. Four trends and developments of recent years have infused new life into the subject. The first is the marked long-term decline in the organized labor movement in the United States and, to a lesser degree, Canada and most other industrialized nations in the world. Certainly in the U.S.–Canada context, independent trade unions have for five decades or more been established by law and public policy as the principal and even preferred organizational form for representation of employee interests. When one-third or more

of U.S. private-sector workers in the 1940s and 1950s belonged to unions, and an even larger proportion in Canada, making unions the primary or even sole agency for collective employee representation did not seem unduly narrow or restrictive. But in the late 1990s only slightly more than 10 percent of private-sector employees in the United States are union members, and the Canadian private-sector figures have declined to fewer than 22 percent. Concern is growing over the large and apparently widening gap between the substantial proportion of the workforce that desires representation at work and the dwindling proportion that has such representation through membership in independent labor unions (Freeman and Rogers 1993). There are two main proposed public policy responses to this “representation gap” (Commission on the Future of Worker-Management Relations 1994). The first is to bolster the membership and coverage of unions, both by changing the laws to make organization swifter and surer and by devising more effective union organizing strategies; the second is encouragement of alternative, nonunion forms of representation in the workplace. This second option, such as joint industrial councils, peer-review dispute-resolution panels, joint labor-management safety committees, European-style works councils, and nonunion professional employee associations, is the subject of this volume.

A second trend having much the same effect is the popularization of new forms of management and work organization, variously referred to as participative management, employee involvement, and the "high performance" workplace (Lawler 1986; Lawler, Albers, and Ledford 1992; Levine 1995). In years past, management tended to organize work in a top-down, "command-and-control" system. At the top of the organizational pyramid were high-level executives who designed strategy and established broad company policy directives. In the middle of the pyramid were gradations of staff and management who executed policy, supervised shop floor employees, and reported operational results and problems back up the chain of command. At the bottom were the mass of employees who followed orders and produced goods and services.

Although popular with managers and economically successful for a number of decades, this traditional form of organization increasingly is regarded as anachronistic in an era of heightened global and domestic competition, information and skill-intensive production systems, shortened product and technology life cycles, and greater employee expectation of involvement and satisfaction at work. As a result, leading companies have been developing and implementing new work systems, often called high-performance workplaces. The traditional command-and-control system has given way to decentralized decision making, team forms of production, and enhanced opportunities for employee involvement and participation. In most medium- to large-size work situations, this participation necessarily must be representational in nature for reasons of cost and efficiency. Traditional collective bargaining provides one mechanism for such representation and involvement, but many business executives have neither the basic inclination nor economic incen-

tives to recognize and bargain with trade unions, nor do the majority of workers express a desire for union representation. As a consequence, interest in and experimentation with alternative nonunion representational structures has proliferated in recent years among both management advocates of employee involvement and labor advocates of industrial democracy. By promoting greater opportunities for employee voice in nonunion situations, these representational groups not only serve management interests in improved productivity and communication, but also ensure that employee interests in equitable terms and conditions of employment are factored into management decision making.

A third, and uniquely American, development that has given much greater saliency to the subject of nonunion representation is the ongoing political debate over reform of the NLRA (Estreicher 1994; LeRoy 1996). The Wagner Act contains statutory restrictions that have had the effect of banning most forms of nonunion employee representation. As stated in the NLRA, it is an unfair labor practice for management to participate in, dominate, or interfere with a labor organization. Forbidden forms of labor organization include various committees, teams, and councils that are of a representational nature and are created, financed, or operated by the employer and involve bilateral discussions about the terms and conditions of employment. Table 1.1 includes the relevant sections of the Wagner Act that pertain to NER. For comparison purposes, Table 1.1 also contains the provisions relating to NER from the U.S. Railway Labor Act (RLA), and an amalgam of twelve Canadian statutes, blended for convenience into what we term "the Canadian approach."

Critics of the NLRA (and, to a lesser degree, the RLA) claim that its strictures inhibit the abil-

Table 1.1

Statutory Treatments of Nonunion Representation in the United States and Canada

Statute	Definition	Prohibition
<i>National Labor Relations Act</i> (Wagner Act, 1935)	Section 2(5). A labor organization is "any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."	Section 8(a)(2). It is an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."
<i>Railway Labor Act</i> (1926)	Section 1. "Representatives" means only persons or entities "designated either by a carrier or group of carriers or by its or their employees to act for it or them."	<p>Section 2(2). Representatives for both management and labor "shall be designated by the respective parties and without interference, influence, or coercion by either party over the designation of representatives of the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives."</p> <p>Section 3(4). It shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining.</p>
Canadian Approach (blending 12 statutes: federal, public service, and 10 provincial labor codes)	Definitions Sections: "Trade union," "bargaining agent," "union," "association of employees," or "labor organization" means an entity that has as one of its purposes the regulation of relations between employers and employees through collective bargaining.	<p>Unfair Labor Practice Sections: It is an unfair labor practice for any employer or employer representative to participate in or interfere with the formation or administration of a trade union, or representation of employees in a trade union.</p> <p>Prohibitions against Certification Sections. Labor boards (or in Quebec, the commissioner-general) shall not certify a trade union if it is employer dominated.</p>

ity of American companies to form and operate employee involvement and participation programs in nonunion workplaces and thereby harm both national competitiveness and cooperative employer-employee relations. For several years running, a coalition of Republican and conservative Democrats in Congress have sought to enact legislation, popularly known as the "TEAM Act," that would weaken significantly the NLRA's Section 8(a)(2) restrictions on "dominated" labor organizations. TEAM Act legislation was passed by both houses of Congress in 1996, was vetoed by President Clinton, and was reintroduced by its congressional supporters. The ongoing debate engendered by this proposed legislation, as well as that precipitated by the hearings and final report of the Clinton-appointed Commission on the Future of Worker-Management Relations (Dunlop Commission), have put the subject of NER squarely on the front burner of the American labor policy debate.

Proponents of the law claim Sections 2(5) and 8(a)(2) are crucial to protecting employee free choice in matters of union representation by preventing employers from manipulating and coercing workers through "sham" company unions. There also are those who agree that the NLRA treatment is problematic, but are gravely concerned that a movement to change the NLRA with respect to nonunion representation will merely allow management to lawfully employ new techniques to defeat unions. Another group would consider a change to the NLRA only if it was accompanied by more sweeping reform to the act in ways that would facilitate an easier transition to unionization where it is desired by employees.

By contrast, Canadians are not engaged in a similar debate. Canadian legislation, which observers would consider similar in most respects

to the Wagner Act, diverged in its treatment of nonunion representation. NER is legal in Canada provided it is not designed to thwart union organizing. In Table 1.1, we blended a variety of Canadian statutes to demonstrate the Canadian approach. At first glance, it appears that the Canadian treatment is quite similar to the American. In Canada, it also is an unfair labor practice for management to participate in, dominate, or interfere with a union. A union that has been influenced by management cannot be certified as a bona fide bargaining agent and will not enjoy the protections of any collective bargaining statutes. Where Canada deviates from the Wagner Act is in the definition of a labor organization. A labor organization means a union, or at the least, a collective entity whose purpose includes regulation of relations through collective bargaining. Management must not interfere with a union, but management may deal openly with groups of nonunion employees on any issue of concern, including the terms and conditions of employment. It is not an unfair labor practice to run a NER plan because Canadian labor boards do not have the reach given to the U.S. National Labor Relations Board by the wording of NLRA Section 2(5). The critical distinction between Canada and the United States rests in the definitions sections of the statutes and not in any departure from the American Section 8(a)(2).

Aside from the contribution the Canadian approach can make in identifying an alternative wording to the NLRA, the Canadian-American divergence has provided scholars with a unique "natural experiment" that hitherto has remained unexploited. Here we have neighboring countries—in broad strokes similar in social, political; and economic institutions and labor policy approaches—that diverged greatly on NER within the corpus of similar labor laws. We think

this provides a remarkable opportunity to shed considerable light on issues that otherwise would remain only topics of speculation. For example, what would have happened to the U.S. nonunion employee representation movement if the Wagner Act ban had not been enacted, and would union membership today be higher or lower?

Finally, a fourth trend that has worked to raise interest in NER is the important role that such representation plays in the industrial relations systems of other major industrial countries outside North America (Rogers and Streeck 1995; Wever 1995). Of most relevance in this regard is the European system of works councils, which are found in countries such as Germany, the Netherlands, Italy, and Norway. These councils typically are mandated or highly encouraged by law. They are plant- or establishment-level bodies of elected worker representatives that exist to promote dialogue and negotiation between management and employees, and formally are independent of trade unions (although the two often have a close relationship). Less well known, but also of interest for a North American audience, are the several forms of NER found in Japanese companies.

Although works councils and various forms of NER have existed in these countries for many years, they have captured noticeably greater attention in North America in the past decade. Certainly a major impetus is the widespread conviction that an important determinant of competitive success in the global economy is each nation's system of industrial relations practices and institutions, a perception that has fueled interest in learning more about alternative systems of employee representation and their impact on important economic and social outcomes. Also important is the Works Council Directive issued in 1996 by the policymaking body of the European

Union, which mandates that all member countries establish joint management-labor consultative bodies in large enterprises. In 1997 the Labor government in Britain accepted these accords, requiring implementation within British firms by the end of the century (Younson 1998).

Thus, the "representation gap," new managerial practices, American public policy debate, and developments abroad have led to a convergence of interest in NER.

Employee Representation: Union and Nonunion Alternatives

This book is about collective representation. We use the term representation to mean that employees have the ability and venue to make their collective needs and opinions known to management. One or more persons must act in an agency function for other employees and communicate, negotiate and/or bargain with company managers over workplace issues of mutual interest and concern. Many companies—even those with high-performance worksites—have no form of employee representation, either because they choose not to as a matter of company policy or because they have not been organized by a labor union.

Employee representation in North America takes one of two basic forms: union or nonunion. The two systems diverge dramatically in a number of key respects.

In a union setting, employees are represented by an independent labor organization, typically a local affiliate of a national or international trade union. In the United States and Canada, the union becomes the exclusive, legally-recognized representational agent of the employees only after it has demonstrated that a majority of the employees desire that it serve this function. In the United States, this typically occurs when a union wins a majority vote of the employees in the designated

bargaining unit in a representation election supervised by the National Labor Relations Board (or National Mediation Board in the transportation industries covered under the Railway Labor Act). The Canadian picture is complicated by the decentralization of labor law in the form of separate provincial and federal government statutes. In all Canadian jurisdictions, unions may gain legal recognition through board-supervised votes, and in some jurisdictions, it is possible for unions to become certified to represent the bargaining unit after demonstration of a majority of authorization cards signed by the workers.

Nonunion forms of employee representation, by contrast, usually are created, structured, and operated by the employer. They are not independent labor organizations but, instead, are one part of a firm's larger system of personnel/human resource management practices. They can be established and terminated at the employer's discretion and in the United States and Canada require neither formal employee approval in a government-supervised representation election nor a grant of recognition by a labor board. In the prohibitions section of Table 1.1, it is clear that public policymakers in Canada never contemplated that nonunion representation would exist within the statutory framework accorded to relations between unions and management.

Labor unions and employer-created representational bodies also fundamentally differ in their structure, operation, and methods. Local union affiliates, for example, usually are chartered and governed by a national or international labor organization. They have written constitutions, elected officers, elected or appointed shop stewards, membership dues, and an independent treasury. They engage in bargaining with employers over wages, hours, and other terms and condi-

tions of employment. They negotiate and sign often lengthy written contracts with employers. Unless expressly forbidden by law, they may strike to win their demands. They also have a formal grievance process that culminates in binding arbitration of disputes arising during the term of the collective agreement.

Nonunion forms of representation in North America are quite different, although some of the more formal arrangements mirror in a number of respects features of bona fide labor unions. Most often, employer-created representational groups are relatively informal, although some are quite well developed. Only a minority have some kind of written charter, constitution, or set of bylaws, while the majority are established and operated with only informal written policy guidelines, a brief written description in an employee handbook, or verbal directives from management. Very few charge any form of dues or initiation fee, and many have no official officers other than an appointed team leader or plant human resources manager.

The structure and purpose of nonunion representational groups are considerably more heterogeneous than is the case with labor unions. Many are limited to only the employees in a particular work area or department of a plant, such as a quality circle or safety committee (the former may or may not be representational in nature, while the latter typically is). In other instances, nonunion councils or committees represent all the employees in an individual plant, mill, or worksite, and on rarer occasions all employees across a large division or entire multiplant company. Almost never, however, do the membership and activities of these groups extend beyond the boundaries of an individual company, unlike many labor unions, which explicitly try to coordinate bargaining and labor standards across firms.

The breadth of issues dealt with by the typical nonunion representational body also differs considerably from the typical labor union. As implied by the terms “quality circle,” “safety committee,” and “peer review panel,” the mission of many nonunion representational groups is to deal with one specific, narrowly defined process or activity. Common examples arise from production and quality concerns, personnel/human resource issues related to safety, dispute resolution, or information sharing. Nonunion representational groups may also handle issues related to traditional bread-and-butter concerns of employees, such as wages, benefits, hours and job security less frequently. There are also instances, although this occurs particularly in Canada, where NER forums handle more issues than would be the case in comparable unionized workplaces and assist in the development and implementation of a wide range of human resource and productivity-enhancing initiatives.

Issues are treated differently in union and nonunion approaches. Nonunion representation plans are much more likely to involve mutual discussion and deliberation between the parties than overt negotiation and bargaining. Nonunion forums adopt problem-solving approaches and usually work by consensus. The taking of votes, or articulation of rigid positions, tends to be discouraged for fear of polarizing dissent between employees and managers.

This last point raises a fundamental difference between union and nonunion forms of representation. A basic premise of trade unions and labor laws is that, to a significant degree, the interests of employers and employees conflict (Hyman 1997). The concern is that in the absence of collective bargaining, individual employees cannot amass sufficient bargaining power to secure their interests; as a result, there might be undesirably

low rates of pay, excessive work hours, unsafe working conditions, and arbitrary and unfair discipline. The purpose of a union, then, is to protect and advance the interests of employees, a process that might introduce significantly more adversarialism into employer-employee relations than would be countenanced by management in a nonunion system. Exacerbating the element of conflict is the use by both unions and management of various coercive tactics to win collective bargaining objectives, including strikes and lock-outs, and work slowdowns or speed-ups.

One of the fundamental reasons that employers create nonunion organizations is to avoid what they regard as the negative features of trade unions and, at the same time, attain more of the positive outcomes that flow from in-house forms of worker-management cooperation. While leery of unions, employers also recognize that collective forms of worker organization can contribute to a number of positive outcomes. For example, NER promotes improved two-way communication between management and shop floor employees, serves as an organizational vehicle to increase worker participation and involvement in the enterprise, provides a mechanism for identifying areas of management practice or policy that need improvement, and rapidly surfaces employee complaints and grievances. NER can be more acutely sensitive to local issues than a large national labor organization. Management also hopes for higher morale and loyalty among employees. NER is well suited to the types of employees who wish to participate in the enterprise, but for whom unions provide little appeal.

Critics claim that these purported benefits of NER are substantially overstated in most cases and usually work only to the advantage of employers. The basic problem, they say, is that employers deliberately structure nonunion representational bod-

ies in ways that render them relatively powerless and unable to pose a threat to management interests. We hear of many nicknames for NER from this perspective, including "toothless dog," "donkey council," and "pet bear." Proponents of NER argue that a closer look reveals that many non-union groups exert real influence and win numerous improvements at the workplace for employees that they otherwise would not obtain. This independent power comes from two sources: management's belief that these employee groups will contribute to increased employee loyalty, commitment, and hard work only if the workers also get visible, tangible benefits; and management's fear that dissatisfied workers will turn to bona fide trade unions if management does not act in an honest, equitable manner. The union threat generates positive outcomes for workers. In this regard, the name "pet bear" is most revealing: "To keep a pet bear in your house," said one senior Canadian industrial relations manager, "you have to keep sweets in your pocket and never turn your back for a second" (Taras and Copping 1996).

Trade unionists and other critics of NER stoutly reject that on balance there are any net benefits and criticize any purported advantages as wishful thinking or employer propaganda. Critics note, for example, that companies create NER forums only when it is in the interest of companies, while employees are unable to initiate nonunion representation systems when they clash with company objectives or philosophies. Thus, what is touted as greater worker-management "cooperation" is really a facade behind which lurks continued unequal bargaining power and inferior terms and conditions of employment for workers. That non-union forms of representation are relatively powerless to protect employee interests is further demonstrated, say the critics, by their lack of in-

dependent financial resources, absence of a credible strike threat, negligible access to outside legal counsel or professional negotiators, and the vulnerability of employee representatives to employer retaliation with any attempt to deal over a truly contentious dispute.

NER also has adverse social and economic effects, say the critics. For example, because non-union representational groups are limited to individual plants or companies, they cannot stabilize or standardize wages and labor conditions across firms in a particular product market, maintain aggregate purchasing power by making sure that wages grow in line with increased profits, or offset the power of business interests in the legislative and regulatory process. Indeed, without resources of their own, the only time that non-union groups can enter the political arena is to lobby on behalf of employer interests. Finally, it is charged that the main reason employers establish nonunion employee groups is to thwart organizing by outside labor organizations, an action that violates widely accepted legal and ethical principles of freedom of association and due process in the workplace. For all these reasons, critics of nonunion forms of employee representation feel they are aptly called "sham organizations" and "sucker's unions."

Unlike Canada and the United States, many European countries make provision for the establishment of works councils in individual plants. Works councils offer, in effect, a "middle course" in employee representation. As noted earlier, these bodies are organized on an individual plant basis without regard to unionization, but at the same time employers are required by law to recognize and deal with the councils upon request of their employees and to discuss and gain their approval regarding changes in a wide range of in-plant employment practices. Although a seemingly

attractive mix of union and nonunion systems of representation, often non-European business people and trade unionists express serious reservations. To many North American business executives, for example, works councils are excessively bureaucratic, cumbersome, and political. To North American unionists, who are accustomed to a system that grants exclusivity to union representation, works councils frequently are seen as pale substitutes for real industrial democracy, potential threats to union organization and bargaining success, and vehicles for coopting employee discontent before it can be transmuted into genuine worker power.

Then, finally, North Americans know much less about the various forms of employee representation that exist in other industrial countries. One case in point is the United Kingdom, where nonunion forms of representation have only recently appeared in any number—due in part to the recent arrival of a number of Japanese manufacturers. And then there is Japan itself. Approximately one-third of the Japanese workforce is represented by labor unions, but often these unions are “enterprise unions,” which encompass only a particular firm, represent lower-level managers as well as wage earners, and emphasize cooperation and consensus over adversarial bargaining and strikes. Among nonunion companies, a number have voluntarily created various forms of employee representation committees and councils, but these neither are mandated by law nor are employers required to deal with them.

The conclusion that emerges from this brief survey is one of great variation across nations and cultures in the kind and extent of employee representation, as well as significant changes over time in the mix of representational forms in a number of individual countries. Also apparent are the significant similarities and differences that

emerge when comparing the structures, purposes, and methods of the two major forms of employee representation in North America—union and nonunion. Considerable divergence of opinion exists about their relative advantages and shortcomings for employers, employees, and the broader economy and society. Probably the only thing that can safely be said is that the debate over alternative forms of employee representation and their associated legal regimes will intensify in coming years in the respective worlds of academic research, business and trade union practices, and public policy, both in North America and other parts of the world.

Overview of the Book: Issues, Research Design, and Philosophy

Given this brief introduction to the subject, we next want to describe the major issues to be addressed in the chapters that follow; explain the research design that motivated the choice of topics and focus of analysis; and discuss the intellectual philosophy that guided our selection of authors, choice of topics, and editorial policy regarding alternative perspectives and opinions on this controversial subject.

Issues and Research Design. Since little research of modern vintage has been done on NER, the range of important and unanswered issues relating to practice and policy is broad indeed—a fact reflected in the sizable number of chapters in this volume. Following this introduction there are eighteen academic chapters, eleven practitioner contributions, and a concluding chapter. We chose to emphasize coverage of three different dimensions of NER: history, contemporary practice, and policy, and to utilize a comparative, cross-country research design.

An emphasis on the history of NER might at

first seem an odd choice, since it is the one area of the subject that has been extensively investigated, and upon which a rough consensus appears to exist. After our own in-depth review of this literature, we became convinced that there is much more that can and needs to be said about the historical dimension. Here is why.

We believe that a thorough, balanced assessment of the present-day potentialities and pitfalls of NER hinges critically on an accurate knowledge and evenhanded interpretation of the historical record. For example, were early twentieth-century nonunion plans largely motivated by antiunion animus, or did employers instead create them primarily as a means to promote employee involvement and fair dealing? Were these plans ineffective, employer-manipulated “shams,” or did they provide genuine voice and a demonstrable record of achievement for both employees and employers? Finally, what were the reasons behind the statutory treatment of NER? Why was the Wagner Act so forceful in rejecting the possibility of NER, while the Canadian approach allowed NER practices to persist? The extant historical literature falls considerably short of providing the needed answers. The problem areas are several.

First, American labor historians have done the great bulk of historical research on NER. While ably done and richly detailed, this literature nonetheless suffers from shortcomings that together result in an overly negative assessment of NER. The focus of labor history, as the name suggests, tends to favor the worker side of the employment relationship and, most particularly, the role and development of the organized union movement. The role of employee representation in management thought and practice (for example, as an instrument of strategic human resource management) is

slighted in favor of its impact—typically thought to be quite negative—on the union movement. There also exist studies, we note, commissioned or sponsored by companies that are unduly celebratory of the in-house NER systems (e.g., Chase 1947; Kline 1920), presenting unrealistically fawning accounts that cannot withstand serious scrutiny.

A second problem is that nearly all of the historical literature focuses on the United States. But these plans also appeared in Canada at approximately the same time (1915 to 1920) and then rose and fell in numbers and social approval in more or less lock-step fashion with their American counterparts through the mid-1930s. Very little in-depth analysis of the early Canadian experience with employee representation has been done, despite the obvious opportunity to learn more about the dissemination of these plans and set the context for some Canadian companies’ continued use of NER.

Third, and most startling, is the almost complete neglect in the historical literature of the dramatically different fortunes of NER in the two countries in the post-1935 period. While the United States banned most forms of NER with the passage of the Wagner Act, Canada continued to allow employers to maintain and operate these plans. Hence, history has provided scholars with a unique opportunity to perform comparative research on two countries with industrial relations regimes that are broadly similar except for their notably different treatment of nonunion employee representation groups. Such research can shed light on a number of interesting questions. What, for example, might have happened to the American NER movement had the Wagner Act not contained the restrictive Sections 2(5) and 8(a)(2)? Would NER have remained a niche

phenomenon, or grown in numbers and influence? What would have been the relationship between NER and the organized labor movement? A major purpose of this volume is to utilize the natural experiment created by the divergent histories of the two countries to begin formulating responses to these important questions.

Not only is little comparative U.S.–Canada research available, but there also exists a dearth of comparative analyses among other industrial countries. Several previous studies have noted that the subject of NER suddenly burst into prominence at roughly the same time—the years surrounding World War I—in most of the industrial countries of the world. But little beyond commentary on this fact has to date been published, a lacuna this volume makes an initial step toward filling.

The first five chapters of the volume are devoted to the historical record on the origins and evolution of NER. There are three U.S. chapters and two Canadian chapters. Bruce Kaufman provides an extensive review and reevaluation of the American experience in the pre-Wagner Act years. Daniel Nelson analyzes the evolution of thinking on the part of the American union movement. Sanford Jacoby examines the transition from “company unions” into “independent labor unions” after the Wagner Act. Attention then switches to Canada, where in the fifth chapter Laurel Sefton McDowell provides a thorough review of the birth of the Canadian employee representation movement in the 1910s and traces the waxing and waning of its fortunes through the 1940s. In the final chapter of the history set Daphne Gottlieb Taras reviews the development of labor law on NER in Canada, examines the current status of a sample of Canada’s early employee representation plans, and demonstrates that some prominent Canadian companies practice

precisely the types of NER that the Wagner Act banned in the United States.

The historical experience with NER also is covered in several later chapters, although it is not their primary focus. In particular, each of the three “international” chapters on Germany (by John Addison, Claus Schnabel, and Joachim Wagner), Japan (by Motohiro Morishima and Tsuyoshi Tsuru), and the United Kingdom and Australia (by Paul Gollan) provide insight into the origins and development of NER in these countries.

We now come to the second and third major issues of the volume: the contemporary practice of NER and the nature of public policy toward it. We chose to make these major themes of the volume for several reasons.

First, there is a great need to explore and extend a largely neglected subject in the now burgeoning literature on employee involvement and participation (EIP) programs. Numerous studies describe the reasons companies adopt EIP, its various forms, and its benefits and costs. So far, however, very few studies examine the role of representation in the structure and delivery of EIP and even fewer have investigated the extent to which companies make use of various types of representational committees, teams, councils, and so on. But, we think, it is an interesting and timely issue both from an academic and practitioner perspective to understand better why and under what conditions an organization will want to implement EIP and, concomitantly, utilize some form of employee representational body to help structure and deliver the program.

This consideration immediately leads to what has become a major subject of debate in American legal and policymaking circles. In their search for a competitive edge, American companies are considering greater employee involvement and

an increased willingness to incorporate employee input into strategic thinking. Great concern is voiced in certain quarters that the nation's labor law, and most particularly Sections 2(5) and 8(a)(2) of the NLRA, hamstringing the ability of nonunion companies to implement EIP and other high-performance work practices effectively lest they run afoul of the law's restrictions on "dominated" labor organizations. The contentious 1992 NLRB *Electromation, Inc.* decision has served as an exemplar in this debate. The NLRB's ruling that forced the company to disband employee committees in the aftermath of an unfair labor practice complaint by the Teamster's Union, as well as several subsequent cases, fueled a major controversy over the extent to which American labor law impedes legitimate efforts of nonunion companies to promote EIP.

The American law is relatively clear, but its implications for American managerial practice are not. Studies are urgently needed that provide hard empirical evidence on questions such as these: Are nonunion companies actually constrained in their ability to respond to changes in managerial philosophy and the challenges of global competition? If yes, how serious a problem is this? Are these concerns acting as a subterfuge for weakening the NLRA's protection of employee free choice in the matter of union organization? The volume provides such evidence through several field-level studies that examine the interface between EIP in nonunion companies, the role played therein by employee representation, and the degree to which the NLRA is a significant constraint on employers. Particularly noteworthy in this regard is the inclusion of a chapter on EIP programs in Canada by Anil Verma. Since Canada does not have impediments to NER, we can infer that differences in the extent, scope, and function of such representation in Canadian companies, as com-

pared to American, reflect the influence of divergent statutory treatments of NER.

We begin our scrutiny of contemporary issues with an attempt to build a firmer conceptual and theoretical foundation. Toward that end, we commissioned academic researchers from three different disciplines—Bruce Kaufman and David Levine from economics, Tove Hammer from organizational theory and behavior, and Samuel Estreicher from law—to use the extant theory of their respective fields to derive insights and predictions about NER.

Next come seven empirical chapters on NER in the United States and Canada, all by academics. To set the stage, Seymour Martin Lipset and Noah Meltz present the first-ever quantitative evidence on the extent of NER in both Canada and the United States, gathered from a recently completed survey in the two countries. Then, a discussion of contemporary American experience begins with the chapter by Bruce Kaufman, David Lewin, and John Fossum. They investigate through field research and detailed case study evidence the extent to which the NLRA appears to constrain the ability of nonunion companies to structure and operate advanced EIP programs. Next is the chapter by Michael LeRoy, which also examines the impact of the NLRA, but with a particular focus on the scope and operation of employee teams in nonunion companies. The third American chapter is by Roy Helfgott, who examines a relatively new and specialized forum of employee voice—diversity caucuses—and the lessons they have for NER.

The volume also features three empirical chapters using the Canadian setting. Daphne Gottlieb Taras begins with the results of an in-depth study of the Joint Industrial Council at Imperial Oil Limited. This formal and highly developed representation plan, long assumed defunct in Ameri-

can circles, has been in continuous operation in Canada for over seven decades. Of particular interest in her chapter are the bargaining relationships and tactics that are used in a complex and enduring NER plan. Next is the chapter by Anil Verma, which parallels the Kaufman, Lewin, and Fossum chapter in that he too examines the role and scope of employee representation in advanced EI programs. His objective was to determine to what extent NER is more frequently and/or extensively done in Canada in the absence of American NLRA-like legal impediments. Finally, Richard Chaykowski provides a detailed examination of the history and performance of NER in the Canadian federal public sector, with particular emphasis on the evolving relationship between the coexistent systems of union and nonunion representation.

The set of academic chapters is completed by the three on NER in Germany, Japan, and the United Kingdom and Australia. We thought it important to examine contemporary practice and policy regarding NER beyond the borders of North America. There is potentially much to learn from other countries in Europe and Asia, even though their economic, social, and political systems differ from our own, and from each other. John Addison, Claus Schnabel, and Joachim Wagner provide a detailed account of the origins and development of the German works council system and an in-depth review and evaluation of the empirical evidence on the outcomes of that system vis-à-vis both economic performance and improved employer-employee relations. They find, in particular, that works councils are associated with higher wages, lower profits, and reduced turnover. They conclude that the economic case for works councils is decidedly mixed and certainly less persuasive than claimed by some of their proponents.

To date virtually nothing has been written on Japan's NER in the English language. Filling this gap is the chapter by Motohiro Morishima and Tsuyoshi Tsuru, who first describe the various forms of NER found in Japan and their structure, function, and status under Japanese labor law. Morishima and Tsuru then present results from an analysis of several recent survey datasets regarding the impact of NER in Japanese companies on outcomes such as productivity, wages, and employee satisfaction. They find that while NER does strengthen employee voice, it does not lead to improvements in either employee separation rates or reported satisfaction with the company.

The third international chapter by Paul Gollan on the United Kingdom and Australia yields evidence from the Anglo-Saxon system of nation-states and industrial relations systems. He provides for each country an overview of the historical development of NER, its current status and treatment, the place of NER in contemporary industrial relations, and findings on the relative effectiveness and performance of NER as revealed in recent surveys and quantitative studies.

There are of course many other selections we might have made besides these three, but each of our international chapters offers evidence of NER within systems whose union-management relations are relatively accessible to a North American audience and whose national contributions to the global economy are widely acknowledged.

In an unusual and, we think, innovative step, we also asked a number of practitioners and policymakers to write eleven short chapters on the twin issues of contemporary practice and policy regarding NER. These people have been "in the trenches" and thus have firsthand knowledge of the subject that is an important complement to the evidence assembled from academic research.

The practitioner/policymaker section begins with three essays by employers and managers. Chris Fuldner, chief executive officer of EFCO Manufacturing Co. in Monet, Missouri, reports on his company's system of nonunion employee committees and teams and discusses the charges subsequently filed against EFCO for violation of NLRA Section 8(a)(2) and the lengthy litigation that ensued. Next is a chapter by David Boone, manager of Production Operations for Imperial Oil, giving his perspective on Imperial's purposes in encouraging NER and the pros and cons of the Joint Industrial Council system in Canada. A third employer essay is by Mark Harshaw, then acting director of human resources for one of Canada's largest steel companies, Dofasco. Harshaw describes Dofasco's long history with a type of NER known in Canada as "the Dofasco way."

Next are three essays by employees who serve as worker representatives or delegates in NER systems. The first is by Cathy Cone of Delta Air Lines, headquartered in Atlanta, Georgia. She serves as one of seven employee representatives on a companywide employee committee called the Personnel Board Council. The second essay is by Rod Chiesa and Ken Rhyason of Imperial Oil, who are top elected employee delegates on the company's Joint Industrial Council. The third essay in this cluster is by Kevin MacDougall of the Royal Canadian Mounted Police, who serves as a full-time employee representative on the RCMP's Division Staff Relations Representation Program.

Representatives of organized labor contribute two essays. The first is by Reg Basken, until recently vice president of the Canadian-based Communication, Energy and Paperworkers Union. He has had considerable experience in dealing with NER in Canada, and he provides a candid assessment of their purposes, strengths, weaknesses, and potential as a source of new union member-

ship. He reviews union organizing strategies that work to attract employees represented by nonunion systems. The second essay is by Jonathan Hiatt and Lawrence Gold, general counsel and assistant general counsel, respectively, of the AFL-CIO. They explain why, from the perspective of the AFL-CIO, employer-created "company unions" are neither socially desirable nor serve to meet employees' interests, and why the NLRA does not adversely interfere with legitimate employee involvement programs at nonunion companies.

The way in which American law has been crafted to ban company unions poses intriguing problems for labor law practitioners. In his commentary, Andrew Kramer of Jones, Day, Reavis & Pogue describes some of the difficulties faced by attorneys when advising their clients of the pitfalls of operating nonunion representation systems.

The volume concludes with two essays on public policy. John Raudabaugh is a former member of the U.S. National Labor Relations Board, and he wrote an opinion in the *Electromation, Inc.* decision. He reflects on the events leading up to *Electromation, Inc.* and provides an assessment of the key policy issues involved in the case, and offers recommendations for future public policy. Andrew Sims, a former labor board chair in Alberta and head of a recent major Canadian federal government task force into labor law reform in the federal arena, expresses his thoughts on the current needs of nonunion employees and the bigger picture of crafting public policy to incorporate the needs of both union and nonunion employees in the face of major changes in the nature of employment.

Philosophy and Values

We end this introduction with a brief statement of the philosophy and values that guided our

choice of topics, authors, and perspectives. This is important, we believe, so that readers can more accurately assess and evaluate the content and conclusions of the book, as well as to allay possible fears that the volume is intended to promote a partisan position either for or against non-union employee representation.

Our conviction as editors is that the topic of NER is of growing importance in North American industrial relations and merits a more detailed, analytical investigation. That the topic is so highly controversial should attract, rather than dissuade, scholarly attention. In putting the volume together, we have striven to present a diverse but balanced set of views and opinions. Toward that end, we carefully selected authors who are well known, respected, and representative of a range of disciplines, countries, and policy positions. We also sought to achieve a balance between theory and practice by inviting academics and practitioners and policymakers to participate.

This volume by no means is the last word on nonunion employee representation, but it does, we think, materially advance the state of knowledge and debate on the subject.

Acknowledgments

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essarily reflect those of our sponsors. In bringing together a large and international group of scholars, practitioners, and policymakers, the conference provided fertile terrain for the exchange of views and the advancement of knowledge. We gratefully acknowledge the vital role played by the Banff Conference sponsors and participants.

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History: The United States and Canada

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Accomplishments and Shortcomings of Nonunion Employee Representation in the Pre–Wagner Act Years: A Reassessment

Bruce E. Kaufman

Recent years have seen a major revival of interest in methods that promote greater employee involvement and participation (EIP) in the workplace. To provide an organizational infrastructure for EIP, companies often create various kinds of teams, councils, committees, and review boards that are representational in nature and are intended to facilitate information exchange and two-way communication, improve efficiency and product quality, promote joint problem solving, decentralize decision making, delegate power and responsibility to lower-level employees, and increase morale and organizational commitment. In some instances, the structure and operation of EIP is jointly negotiated by a company and labor union through the collective bargaining process. Given, however, that today only one out of ten private-sector workers in the United States is covered by a union contract, most EIP initiatives are in nonunion firms and are thus management designed and operated.

Provisions of the National Labor Relations Act (NLRA, or Wagner Act) enacted in 1935 place significant constraints on the form and operation of EIP programs in nonunion companies. Although not discussed further in this chapter, the same is true of amendments made in 1934 to the

Railway Labor Act. Section 8(a)(2) of the NLRA makes it an unfair labor practice for a company to “dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.” Section 2(5), in turn, defines a labor organization quite broadly as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

In a series of cases extending from 1937 to the present—but most notably in *Electromation, Inc.* (1992) and *E.I. Du Pont de Nemours & Co.* (1993), the National Labor Relations Board (NLRB) has ruled that a wide variety of EIP teams, councils, and committees in nonunion companies violate these provisions of the NLRA and are thus illegal (see the Estreicher, Kaufman, Lewin, and Fossum and LeRoy chapters in this volume). Great concern has been voiced by employer groups and a number of policymakers that these decisions, and the provisions of the NLRA that underlie them, harm American competitive-

ness and undermine efforts to improve employer-employee relations (Maryott 1997). Many others, however, support the NLRB decisions as a necessary bulwark against coercion of employees and the reappearance of the sham “company unions” of the 1920s-30s that Sections 8(a)(2) and 2(5) were meant to eliminate (Morris 1994).

The chapters in this volume all seek to provide additional perspective and evidence on the role and operation of nonunion forms of employee representation in the workplace and, in particular, on the pros and cons of the NLRA’s ban on most types of these organizations. Since the impetus for passage of the NLRA and inclusion of Sections 8(a)(2) and 2(5) grew out of the economic and political events of the 1910s-30s, it seems appropriate that this chapter should reexamine and reassess the historical record on nonunion representation. Accordingly, in what follows I sketch the origins, development, and operation of the nonunion employee representation plans (NERPs); assess both their accomplishments and shortcomings; and conclude with implications from this analysis for both contemporary practice and public policy.

Origins and Development of Nonunion Employee Representation

Employee-formed trade unions date from the early 1800s in the United States, and by 1900 they had a membership of roughly 1 million. Company-established employee organizations, in contrast, emerged almost a century later. The first appearance of a formal plan of employee representation is uncertain. Hogler and Grenier (1992) claim the first NERP was established in the late 1870s at the Straiton and Storm Co., while Nelson (1982) cites the Filene Cooperative Association, established by the Wm. Filene Sons Co. in Bos-

ton in 1898. Yet another source—a report by the National Industrial Conference Board (NICB 1933)—states that the first NERP was a nonunion shop committee established in 1904 at the Nernst Lamp Co. in Pittsburgh. Whatever the case, in the early years of the twentieth century only a handful of nonunion representation plans existed in American industry. The most notable was the “industrial democracy” plan created by John Leitch in 1912 at the Packard Piano Company (Brandes 1976).

By common assent, one of the most influential developments in the history of employee representation took place in 1915 when the “Rockefeller plan” was inaugurated at the Colorado Fuel & Iron Company (CF&I) in the aftermath of a bloody miners’ strike popularly known as the “Ludlow Massacre” (Gitelman 1988). The Rockefellers were the largest shareholders in CF&I, and John D. Rockefeller Jr. was widely criticized in the aftermath of the strike for the calamitous state of labor relations at the company. In order to restore order at the company and burnish his public image, Rockefeller hired a Canadian labor expert and future prime minister, William Lyon Mackenzie King, to investigate labor conditions at CF&I and make recommendations. King’s advice, which was radical at the time, was to establish a formal plan of employee representation in which workers elected delegates who then met with management on an ongoing basis to discuss mutual workplace problems and issues. Rockefeller agreed to King’s suggestion, and a representation plan was installed amid great national publicity. Rockefeller shortly thereafter became a convinced advocate of employee representation and strongly promoted it in speeches and meetings with fellow businessmen (see Rockefeller 1924).

Further stimulation to both union and nonunion

employee representation resulted from conditions created by World War I. At the start of American involvement in the war in 1917, trade union membership stood at 3 million, while nonunion representation plans covered a few thousand workers in a dozen or so plants (see Figure 2.1). Soon the combination of tight labor markets and rapidly rising prices spawned by the war set in motion numerous strikes, increased union organizing activity, and tremendously high levels of labor turnover. As indicated in Figure 2.1, by 1920 unions had added over 2 million new members. But the number of workers covered under nonunion employee representation plans also grew quickly. The impetus came from five factors (Wolf 1919; NICB 1922; French 1923):

- Rulings of various government wartime emergency boards, such as the National War Labor Board and the Shipbuilding Labor Adjustment Board, that mandated establishment of nonunion works councils and shop committees in over 125 firms threatened by strikes and other forms of labor unrest.
- The onrush of union organization caused a number of employers to establish a NERP as a stopgap union avoidance device.
- The wartime drive to “make the world safe for democracy” in the political sphere led to an upsurge of public sentiment in favor of “industrial democracy” in the economic sphere, motivating some employers to experiment with formal plans of employee representation.
- Rampant employee turnover, mounting labor unrest, and falling rates of productivity led a number of employers to become interested in more modern, progressive methods of personnel management, and NERPs were thus attractive as a means to promote improved two-way communication, greater opportunities for em-

ployee participation, and more equitable resolution of employment disputes.

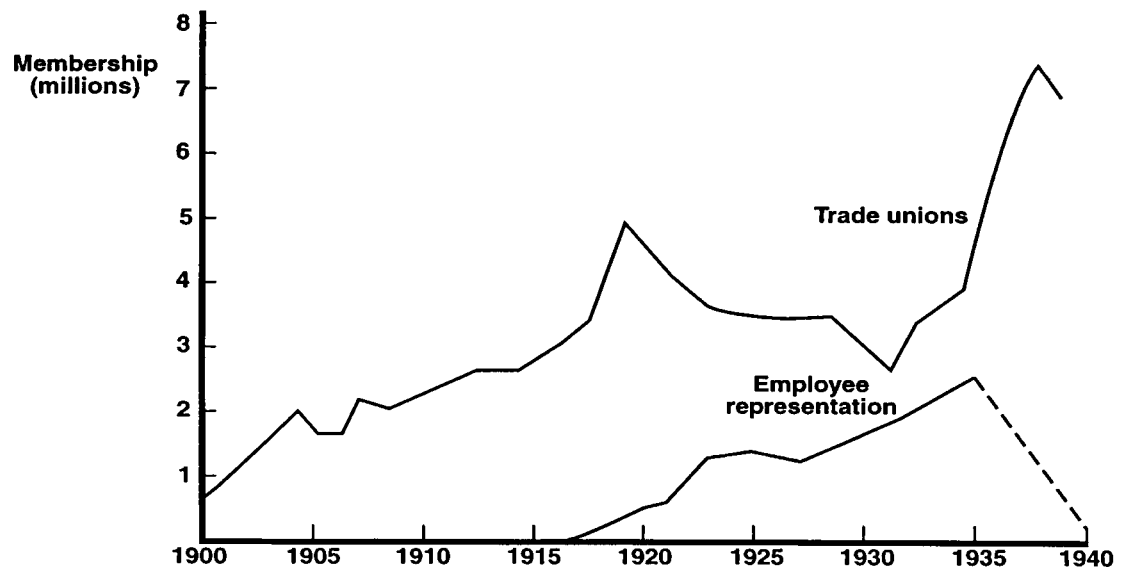
- A palpable sense of fear spread among business interests in the late 1910s that worker unrest was plunging the nation toward socialism, Bolshevism, or “IWWism” (i.e., revolutionary unionism, as espoused by the Industrial Workers of the World) and NERPs were seen as an antidote that provided employees a modicum of greater power and influence without threatening the underlying system of property rights and management control of the workplace.

As a result of the combined impact of these five factors, by 1919 employers had established 225 nonunion plans covering over 400,000 workers (NICB 1922).

The boom in employee representation in America during World War I was also mirrored in a number of other countries (Miller 1922; Burton 1926). In reaction to widespread labor unrest and calls for greater democratization of industry, laws mandating some form of works council were enacted in Austria, Germany, Czechoslovakia, and Norway. Responding to similar conditions, the English government created a multiple-tier system of industry and national joint company-union representative boards called Whitley Councils. The Whitley plan influenced the early development of NERPs in the United States (Wolf 1919), although the American version did not provide a formal role for unions. As detailed in the chapter by MacDowell in this volume, numerous NERPs similar to those in America also appeared among Canadian firms at about this time and were likewise influenced by the English Whitley Council plan.

After the war, the fortunes of trade unions and NERPs diverged sharply. As a result of a combination of factors, including the lifting of wartime

Figure 2.1 Trends in Membership: Trade Unions and Employee Representation Plans, 1900–1940



Sources: Nelson (1982); Bureau of the Census, Historical Statistics of the United States, 1789–1945, Part 1, p. 177.

protections of collective bargaining, the sharp depression of 1920–21, and an open-shop drive by antiunion employers, union membership plummeted from 5 million in 1920 to 3.6 million in 1923. At the same time, a survey by the National Industrial Conference Board revealed a net increase in the number of NERPs (NICB 1922). In 1922, for example, 385 companies had active employee representation plans that covered 690,000 workers. The bulk of these employee representation plans were in manufacturing, railroads, and utilities, but a few were found among such diverse groups as postal employees, teachers, and office and clerical workers. Although many of the wartime shop committees imposed by the government had already disappeared by the early 1920s, several hundred new plans emerged during the same time.

Over the course of the 1920s, the era of “Wel-

fare Capitalism,” union membership continued on a path of slow decline with the loss of several hundred thousand more workers by the end of the decade. Although the number of firms with NERPs reached a high point in 1926 and then also declined (from 432 in 1926 to 399 in 1928), in terms of workers covered the Conference Board surveys revealed substantial growth—from 690,000 in 1922 to 1.5 million in 1928 (NICB 1933). This divergent pattern was the result of the growth of NERPs among a modest number of large firms and a simultaneous abandonment of NERPs by a greater number of small- to medium-size employers.

The Great Depression began in late 1929, and economic activity dropped sharply until the nadir of the slump was reached in the winter of 1932–33. Both trade union membership and

workers covered under NERPs decreased during this period, an outcome not unexpected given the steep decline in employment. Given the low and falling level of union membership and power, the extreme pressure on companies to reduce costs, and the reluctance of employees to push grievances in an environment of great job insecurity, it would not have been surprising to see many employers abandon NERPs during this period. Although some did, a surprising number maintained their plans, albeit at a less active level in a number of cases. The Conference Board found, for example, that from 1928 to 1932 workers covered by NERPs dropped only 18 percent, compared to a decline in manufacturing employment of 40 percent.

In March 1933 Franklin Roosevelt became president, and in June he signed into law the centerpiece of his legislative program to spur economic recovery—the National Industrial Recovery Act (NIRA). The purpose of the NIRA was to restore confidence and boost purchasing power and aggregate demand (Kaufman 1996). To do so, the NIRA sought to end the deflationary spiral of wage and price cuts, increase jobs by reducing weekly work hours, promote a gradual increase in wages and household income, and “prime the pump” through increased public works spending. One method adopted to accomplish these aims was to promote collective bargaining, reflected in Section 7(a) of the NIRA, which stated that employees had the right to “organize and bargain collectively through representatives of their own choosing” free from coercion by the employer (Farr 1959).

Passage of the NIRA, and Section 7(a) in particular, precipitated a largely unexpected and tumultuous period of union organizing, strikes, and government intervention in employee-employer relations. Unions, which only a few short months

previously had been largely moribund, sprang into action and in a year’s time recruited nearly a million new members (see Figure 2.1). A portion of the union resurgence arose from mounting worker discontent and sense of grievance over the deprivations caused by the depression and real and perceived injustices at the hands of employers. Another portion arose from a desire to promote the president’s economic recovery plan, a widespread belief that the NIRA either strongly encouraged or mandated collective bargaining, and the perception of employees that they needed to organize in order to have political clout in Washington to offset the influence exercised by employer groups in the determination of the minimum-wage and maximum-hour provisions mandated by the NIRA (Kaufman 1996). At the same time as membership in trade unions rebounded sharply, numerous companies rushed to establish some form of NERP. According to one estimate, by the middle of 1934 workers covered under some form of “company union” amounted to 1.8 million and rose to 2.5 million by 1935 (Bernheim and Van Doren 1935). As in the World War I period, the motivation driving employers to establish NERPs were diverse, but a consensus opinion was that the primary motive in many cases was to forestall union organization.

The proliferation of nonunion employee representation plans in 1933–35, their evident role as union-avoidance devices, and the belief of the Roosevelt administration that the spread of NERPs was impeding the economic recovery process envisioned in the NIRA (a process predicated upon higher wages) led to a growing crescendo of criticism against them. The foremost critic of NERPs was Senator Robert Wagner, who repeatedly referred to them as “sham” organizations. In early 1935 Wagner introduced new legislation in Congress that was aimed at substantially

increasing the protection of workers' Section 7(a) rights contained in the NIRA and outlawing the "dominated" form of company union. To many people's surprise, this legislation—called the National Labor Relations Act—passed both houses of Congress and was signed into law by Roosevelt in the summer of 1935. As enacted, the NLRA contained both the Sections 8(a)(2) and 2(5) previously described.

Most companies with NERPs maintained them, given their expectation that the NLRA would be declared unconstitutional (as had the NIRA). When in 1937 the Supreme Court on a 5-4 vote ruled in favor of the NLRA in the *Jones and Laughlin* decision, the NLRB aggressively moved to disestablish nearly every type of employer-sponsored representation plan. The board's actions were supported by the Supreme Court in the first major Section 8(a)(2) case to come before it. In *Newport News Shipbuilding and Dry Dock Co. vs. NLRB*, the Court ruled in 1939 that the company's in-house representation plan was illegal even though the plan had been in existence since 1927, the company had ceased paying the employee representatives wages for time spent on council business, and the employees had voted in a secret ballot election in favor of the employer's representation plan over outside union representation. This decision effectively foreclosed the ability of companies to maintain a NERP, and by the end of the decade the plans had for all intents and purposes disappeared, either from abandonment, transformation into a local unaffiliated union, or absorption into a national or international labor union (see Jacoby 1989; Jacoby and Verma 1992; the Jacoby chapter in this volume). The movement spawned by the Rockefeller plan in 1915 had thus come to an abrupt and largely

unexpected end in the relatively short time span of two decades.

The Structure of Nonunion Employee Representation

Although there is a sizable case study literature on nonunion employee representation in individual firms and industries, as well as a number of interpretative and overview pieces by modern-day scholars, no recent study I am familiar with provides a detailed cross-section "portrait" of the structure and operation of these plans. Knowledge of these organizational details, however, is crucial for both understanding the strengths and weaknesses of NERPs and evaluating the degree to which modern-day EIP programs parallel the NERPs of six decades earlier. Accordingly, this section provides a brief overview of the structure of NERPs and the next section examines their purpose and operation.

Nomenclature

When the NERP movement began in the mid-1910s, these employee organizations were most often referred to as either a *works council* or *shop committee*. Other names, such as *industrial council* and *employee association*, were also sometimes used. The National Industrial Conference Board (NICB 1922, pp. 1–2) defined a works council as "a form of industrial organization under which the employees of an individual establishment, through representatives chosen by and from among themselves, share collectively in the adjustment of employment conditions in that establishment."

By the early- to mid-1920s the terms works council and shop committee began to be replaced by two other names. The first, favored by man-

agement spokesmen, was *employee representation plan*, a terminology gradually adopted because it was more generic and inclusive. The second, originally used by trade unionists and other critics of NERPs in the 1920s, was *company union*. As noted in a Bureau of Labor Statistics study (BLS 1937), the term “company union” had by the mid-1930s become the most widely used label for these organizations, even though it was misleading in certain respects and carried a strong connotation of opprobrium. As described below, NERPs in a number of cases were, for example, not companywide, were not intended to function as a bargaining agent for dues-paying members, nor were they the toothless creatures of management domination as so often portrayed. These caveats notwithstanding, the company union label has stuck and is the term most often used today to describe these management-sponsored employee organizations. To keep the discussion on neutral ground, the term “nonunion employee representation plan” (NERP) is used in this study, although on occasion “company union” will also be used for descriptive convenience.

Structure

At the beginning of the employee representation movement in the mid- to late-1910s, it was customary to distinguish between two different organizational forms of NERPs (NICB 1922; BLS 1937).

The first was the *governmental or federal* type plan (also known as an *industrial democracy*-type plan) popularized by management consultant and “industrial evangelist” John Leitch. Modeled on the U.S. government, the Leitch plan called for a cabinet composed of upper-management executives, a Senate of management-selected foremen

and supervisors, and a House of Representatives of elected employee representatives. Matters of interest to employees could be introduced in the House and, once passed on a majority vote, transmitted to the Senate for its deliberation and vote. If passed there, the proposal would go to the cabinet, where the company executives could approve the proposal, veto it, or send it back for further consideration. Although not a necessary part of a federal-type NERP, Leitch also maintained that the success of employee representation depends on some form of gain-sharing with employees, and thus many Leitch plans contained a profit-sharing arrangement called a Collective Economy Dividend (Leitch 1919).

In practice, the Leitch plan proved cumbersome and time-consuming, and firms that adopted it often collapsed the cabinet and Senate into one body or went even further and integrated the management and employee representatives into one joint deliberative body (Carpenter 1928a), a form of organization that became indistinguishable from the “committee” type of NERP discussed next. Of the several dozen Leitch plans put into operation, one of the best known and most enduring was the Industrial Assembly at Goodyear (Carpenter 1928b; Nelson 1982, 1988).

The second type of early NERP was the *committee or Rockefeller*-type plan pioneered by MacKenzie King at the Colorado Fuel & Iron Co. King’s system proved far more popular than Leitch’s and in one form or another became the standard organizational structure for formal plans of employee representation. In this plan, a plant or company committee was established with an equal number of management and employee delegates. The management representatives were appointed by the senior executives of the company, and the employee delegates were typically elected through a secret ballot process by all the

nonsupervisory employees of the firm, including in a number of cases office and clerical workers. Sometimes, however, eligibility requirements were stipulated, such as over eighteen years of age or American citizenship. In small firms the employee representatives were often chosen in a companywide election, while in larger firms the employees were subdivided into election units, such as individual departments or mines, and then chose delegates (generally based on some formula stipulating the number of representatives per hundred employees) to represent them on the companywide or establishmentwide NERP.

Like the Leitch plan, the Rockefeller plan evolved in a number of directions and developed numerous permutations (NICB 1922; Burton 1926; Carpenter 1928b; BLS 1937). Some firms, for example, established a hierarchy of committees to deal with issues at, respectively, the department, plant, and company level. In some cases, the employee representatives also reported to the board of directors or were given a seat on the board (Selekman 1924). Other plans established special standing committees, sometimes a half dozen or more in number, with responsibility for particular issues, such as wages, grievances, company housing, safety and health, and recreation. Temporary or ad hoc committees were also frequently established to deal with special issues (what are today often called *project teams*). Other plans made provision for the employee delegates to hold separate meetings without management in attendance (a feature that became more common after passage of the NIRA). As described more fully in a moment, some committee-type NERPs were intended to function solely as advisory bodies or conduits for two-way communication, but in the majority of cases they were given varying degrees of authority to investigate problems, make proposals, and in some cases render a decision or request arbitration of disputes.

Other forms of nonunion employee representation appeared in several firms or industries, but none proved as popular as the committee type. Several NERPs were established, for example, on a multicompany basis (BLS 1937). The largest and most publicized was a World War I vintage organization called the Loyal Legion of Loggers and Lumbermen. It grew to include over 100,000 employees from numerous lumber firms located in the states of the Pacific Northwest. During the NIRA period, Saposs (1936) reports that a movement for confederating company unions emerged in several industries and that a district council of company unions had been established in the steel industry. Another permutation was the employee representation plans on many railroads during the 1920s and early 1930s (BLS 1937). These came the closest to fitting the label "company union" in that they were organizations solely for employees, were companywide and company created, collected dues from members, and negotiated written agreements. Although they had a number of unionlike features, these NERPs were not independent unions because their existence was at the pleasure of the company, the workers' representatives were limited to only company employees, and they eschewed strikes and other forms of economic coercion.

The formal plans of employee representation discussed here were the most visible and highly publicized forms of EIP in the 1920s, but they were only the tip of the iceberg. The final report of the second labor-management conference organized by President Wilson in 1919 noted that recent events "reveal a desire on the part of workers to exert a larger and more organic influence upon the processes of industrial life" (quoted in *Industrial Management* 5, no. 20: 349). Unwilling or unable to institute a formal plan of representation, many companies instead opted for more

informal and small-scale employee committees—per the observation of one personnel management executive (Benge 1927, p. 125) that “committees are dotted throughout most industrial organizations, with varying degrees of responsibility and authority.” Little else is known about their structure or operation, however.

The Operation of Nonunion Employee Representation

The next dimension of employee representation plans to be examined is their operation.

Establishment

NERPs were established both by government compulsion and as a voluntary decision by management. Indeed, it is possible to distinguish three distinct periods in the NERP movement in this regard (Nelson 1982, 1993). The first is the World War I period when the majority of shop committees and works councils were forced upon oftentimes reluctant companies by wartime government agencies. The second is the period roughly from 1920 to 1932 when NERPs were established as a matter of voluntary management action. The third period is the NIRA period from 1933 to 1935 when the majority of newly established NERPs were hastily erected either to comply with employers’ belief that Section 7(a) required or strongly encouraged some form of collective bargaining and/or as a deterrent to union organization. In the overwhelming number of cases where NERPs were voluntarily established, it was at the instigation of management, although scattered examples arose where employees took the initiative in proposing a NERP.

Nearly all consultants and writers on employee representation strongly advised management to

avoid unilateral imposition of the plan, as this practice undercut the spirit of cooperation that was the desired end product (NICB 1922; Cowdrick 1924; Myers 1924). Approximately two-thirds of employers heeded this advice in some form (BLS 1937). Most often it was by asking employees to vote yes or no on a proposal that management had already drawn up and was presenting for approval. The more liberal or progressive employers went further and included employees on the drafting committee or solicited their advice before presenting the plan for a vote (Carpenter 1921). Proponents of NERPs, sensitive to the charge of management domination, noted that the elections on plan adoption were often by secret ballot, and on occasion the employees voted down the proposal and the plan was shelved. Critics, on the other hand, noted that management frequently exerted both subtle and not-so-subtle pressure on employees to vote yes, and the choice on the ballot was limited to the status quo (individual bargaining) or a company union and almost never included the option of trade union representation (Dunn 1926).

Larger-size NERPs frequently had some form of written constitution or bylaws. These would typically explain the purpose of the plan, describe the structure of representation, the procedure for elections, and so on. Many began with some type of mission statement. The purpose of the employee representation plan on the Pennsylvania Railroad, for example, was stated to be “To give all employees an opportunity to have a voice in the management in all matters affecting their wages, working conditions, and welfare, and in other matters of mutual concern affecting the welfare of the company and the public which the company serves” (Pennsylvania System 1922, p. 3). Among plans adopted prior to the New Deal, constitutions exhibited a good deal of variation

in terms of specific provisions and procedures; after passage of the NIRA, however, firms in their haste to set up representation plans often copied nearly verbatim a constitution or set of bylaws provided by an industry association or dominant firm (Saposs 1936).

An important provision included in many constitutions was a statement of nondiscrimination against union members with respect to election to the shop council and to the administration of shop rules. Some went further and mandated that no employee representative could be discharged without top-management approval, realizing that employee fear of retribution for speaking up is a major deterrent to successful operation of a NERP. As with most other aspects of employee representation, the farsighted, progressive employers generally followed this policy, partly in order to preserve the legitimacy of the plan in the workers' eyes and partly because they came to learn that putting the union supporters and "kickers" (chronic complainers) on the shop council turned many into conservative "company" men (Ozanne 1967). Other employers, however, mouthed nondiscrimination but made sure that only "safe" employees were elected or otherwise exerted pressure on worker representatives not to rock the boat. Such efforts could backfire, however, as employees who felt the system was rigged responded by either showing their disdain, say by electing representatives who could not speak English, or their anger, say by electing union militants in the hopes of using the council as a springboard for organizing (Myers 1924).

Employee representation, if done properly and with the right spirit, was a costly undertaking for firms. Typically the company paid all expenses, such as providing a meeting place and paying for employee time spent at council meetings. In the best plans the representatives were also given time

off from work to handle grievances, talk with constituents, and so on. These hours, coupled with the frequently high demand on executive time, entailed significant costs and redirection of management attention. At International Harvester (Ozanne 1967, p. 145), for example, senior executives met frequently with the councils, and three to five management staff persons of the industrial relations department were assigned full-time to council activities. Likewise, over 8,500 hours of employee and management time were reportedly devoted to one year's operation of the works council turned independent local union at Jersey Standard's Bayway refinery (Chase 1947). Another not inconsequential element of cost is that the employee committees surfaced thousands of requests for wage increases, piece-rate adjustments, reduction of hours, improved working conditions, and reinstatement of discharged employees. Again, in the better-operated plans the employees won substantially more than half of these requests (Burton 1926; Leiserson 1929), which in most instances represented additional expense to the company.

Finally, managers also found that employee representation restricted their flexibility of operation. In some cases management would propose a change in policy only to encounter strong employee opposition, forcing either abandonment of the proposal or a scaling back. In other cases it might take several months or longer for the council to deliberate the matter and reach an agreement. A prime example of both occurred in the 1920–21 depression, when firms in most industries started cutting wages soon after the slump began. In this situation, and others similar to it, companies with NERPs typically reacted in one or a combination of three ways. One was to bypass the council and unilaterally implement the change in policy, a practice that accomplished

management's goal but at the cost of undercutting the continued viability of the representation plan (NICB 1922). A second was to accept the time delays and inflexibilities as the price that had to be paid to gain the long-term benefits of employee cooperation. A third, longer-term option was to redesign the structure of the plans in order to speed up decision making. Not only did companies pursue this by abandoning the bicameral structure of the "federal" plan in favor of a unicameral "committee" plan, but during the course of the 1920s they also decentralized the latter by creating standing and/or ad hoc subcommittees, such as for grievances, safety, or company housing, that could meet more frequently and handle routine business that did not need to come before the full council (Carpenter 1928b).

Issues Covered

The majority of employee representation plans permitted joint consultation on all matters of concern to the employer and employees, including wages, hours, and working conditions. Many constitutions contained a "management rights" clause, however, that stipulated certain matters, such as the right to hire and fire, were sole prerogatives of management.

One contemporary study of employee representation concluded that the issues discussed could be grouped into four categories (Burton 1926): wages, hours, and other terms of employment; adjustment of grievances and complaints; production; and living and working conditions. The author of this study interviewed a large number of managers and workers involved with NERPs and examined the minutes from numerous meetings of different councils. The typical pattern was that during the first year or so, a flood of individual and group grievances were put on

the table, as well as numerous requests for wage adjustments and wage increases (also see NICB 1922). After this "break-in" period, however, a wider range of issues came to the fore in the successful councils, while the meetings in the less successful ones degenerated into forums for making announcements or consideration of minutiae.

A sense of the type of issues that came before the NERPs, and their relative numerical importance, can be gleaned from data presented by the National Industrial Conference Board (1922) and Burton (1926). The former presents data on issues considered by the NERPs of the Bethlehem Steel Co. Over a two-year period (1918–20), for example, 1,045 issues were considered by the NERPs in the company's five plants (p. 78); 31 percent involved some aspect of wages, 28 percent involved working conditions, 12 percent involved production methods, and 10 percent involved safety issues; and 71 percent were decided in favor of the employees (46 percent in the case of wages). The latter study provides data on issues considered by an unidentified "large manufacturing company" for the years 1918–25 (Burton 1926, p. 269). A total of 2,664 issues were put on the table; the distribution by topic is employment and working conditions (24 percent), wages (23 percent), safety (14 percent), production (10 percent), sanitation (7 percent), pensions (6 percent), housing (4 percent), and other (12 percent). Two-thirds of these were decided in the employees' favor.

These numbers, and the substance of the issues considered, may perhaps be made more concrete with a third example. The National Industrial Conference Board (1922, p. 82) listed all the agenda items considered over the course of a year by an unidentified western agricultural machinery manufacturer. Here are the first eight of forty-two: wage differentials of certain molders,

drinking fountains needed, change in method of paying shop employees, exhaust fan needed in main plant, suggestion for starting foundry oven one hour earlier, better tools needed in machine shop, wheel trucks for foundry bull ladles needed, and clean-up on Saturday nights needed. All are reported as approved or satisfactorily adjusted.

Authority and Power

As on other dimensions, the amount of authority and power possessed by NERPs varied tremendously. On one extreme, some NERPs were set up solely as an advisory body or communication device and had no authority and little power over any issue of administration or policy. On the other extreme, a handful of companies placed significant portions of the management function in the hands of the employee representatives, including seats on the board of directors and final say over discharges. The great bulk of NERPs, however, were located somewhere in the middle of this spectrum.

Authority and power are separate concepts. Authority is a right to do, power is the ability to influence. Whatever authority was given to NERPs, it was always understood to be a delegated authority from the owners of the companies to the employees (Cowdrick 1924). Thus, employee representatives might have authority to bring grievances up before the joint committee, but this authority was unilaterally bestowed by management and could be unilaterally withdrawn or disregarded at its pleasure. On their part, most employers with NERPs realized that once the rules and expectations concerning these groups were in place, they either had to abide by them (or appear to be doing so) or risk destroying management's credibility and the viability of the NERP (Ozanne 1967). Indeed, it was for this reason that many employers felt deep ambiva-

lence about employee representation in the knowledge that breaking the implicit contract established with the employees concerning joint dealing and due process would certainly cause anger and demoralization and possibly a drive for union representation. Most concluded that the costs and risks were too great, or the benefits too small or uncertain, and elected not to go down the road of employee representation. Certainly many concluded that if union avoidance is the chief goal there are easier, less costly, and more effective ways to accomplish it (e.g., firing union activists, labor spies, yellow-dog contracts) than forming an employee representation plan. Not only were there cheaper and more effective methods of antiunionism, a number of employers objected to the notion of sharing management with the employees as a dangerous experiment tinged with Bolshevism (Ching 1973). To a significant degree, NERPs were thus caught in the middle of an ideological tug of war—damned by organized labor as toothless shams of employer control and rejected by the traditionalists in the business community as agents of creeping socialism.

On the part of employees, they generally entered into employee representation with considerable skepticism, knowing that their newly bestowed "rights" were not rights at all but privileges given at management's discretion—a skepticism compounded by the conviction that no matter how good something sounds, if management proposes it, then the chances are good that the company's gain will be at the workers' expense. To overcome this skepticism, managers knew that it was crucial in the beginning of employee representation to live up to the expectations and responsibilities they had created so as to create an atmosphere of trust and credible commitment. Not infrequently, they also gave the employees a few strategically timed "wins" to

further promote the image of genuine joint dealing. From a trade union perspective, however, the “bottom line” was always that these commitments were likely to be honored only as long it was profitable to do so, and hence the promise of nonunion industrial democracy was, in a memorable phrase, a “delusion and a snare” (wording in a resolution condemning company unions passed at the 1919 AFL convention in Atlantic City, New Jersey).

Given that the grant of authority to the employees was conditional, it was in a number of cases nonetheless shared in some meaningful ways. According to accounts written by firsthand observers, for example, the two largest sources of employee dissatisfaction came from the petty tyrannies of the foremen and the ever-present threat of discharge without recourse to appeal (NICB 1922; Burton 1926). A significant number of NERPs were given authority over grievances and discharges in an effort to curb these abuses. In a 1935 government survey of company unions (BLS 1937), for example, 70 percent were given authority to review grievances and two-thirds could review complaints over safety and health. Arbitration of unresolved disputes was provided for in 40 percent of the company unions surveyed, although in half of these cases both management and the employees had to give agreement. The government investigator concluded that approximately one-third of the company unions that dealt with grievances did an “effective” job and another one-third did a “modestly effective” job.

NERPs were also given authority in a number of other areas of the business. A common practice, for example, was to give the NERP some role in administering the welfare, safety, and recreation programs (Brandes 1976). A number of firms with company housing delegated all or a

portion of its management to the employee representatives, reportedly with considerable satisfaction on both sides.

Perhaps no issue associated with employee representation plans was in the end to generate as much controversy as their power, or lack thereof, in furthering the interests of employees. A basic division of opinion existed over the years on the purpose of employee representation. Some maintained that NERPs were mainly a method of “group dealing” and were intended to foster greater cooperation and integration through improved communication, mutual understanding, and grievance resolution (Hicks 1941). From this perspective, the entire purpose of employee representation is to shift the focus of labor and capital away from an adversarial struggle over terms and conditions of employment to cooperation and mutual gain. While power is the key consideration for both sides in an adversarial “we versus them” game, promoting effective teamwork is the key consideration if the game is instead framed as “win-win.” To put it another way, the distribution of intraorganizational power is irrelevant if both sides have the same interests and are pulling in the same direction.

Other people among both proponents and critics of employee representation maintained that the purpose of NERPs was not only collective dealing but also collective *bargaining*. The term “bargaining” implies a process of haggling or negotiating between two sides whose interests are not identical and the outcome of which has a large element of win-lose (a zero-sum game). From this perspective, conflicts of interest between labor and management are inevitable, and those who propose otherwise are engaged in wishful thinking or self-delusion. The key question then becomes how best to represent and protect the interests of both sides.

The answer of the critics of employee representation is that workers need independent trade unions (Dunn 1926). The starting place for their position is that the individual employee suffers from a distinct inequality of bargaining power vis-à-vis the employer (Kaufman 1989, 1993). This inequality arises from the basic fact that the worker needs the job more than the company needs the worker, and thus the company can drive the harder bargain. The end result is lopsided terms and conditions of employment, such as poverty-level wages, few benefits, lack of job security, and harsh treatment at the hands of supervisors. The solution to the worker's lack of individual power is to form a trade union and gain collective power through group action, such as striking. Only when power confronts power on equal terms will the outcome be a reasonable one, in this view.

To the critics of employee representation, it is manifestly clear that NERPs dismally fail the test of equal power. Ozanne (1967, p. 123) described the councils at International Harvester as "weak and dependent" and (p. 153), "reek[ing] of paternalism." No person was more eloquent on this matter than Senator Robert Wagner. He said, for example, "I cannot comprehend how people can rise to the defense of a practice so contrary to American principles as one which permits the advocates of one party to be paid by the other . . . collective bargaining becomes a sham when the employer sits on both sides of the table or pulls the strings behind the spokesman of those with whom he is dealing" (National Labor Relations Board 1985, p. 2489). As he saw it, NERPs were indeed a sham because the employee representatives were fearful of being discharged if they pressed the employees' interests too forcefully, companies stage-managed the agenda and meetings, management was far better informed about

prevailing conditions at other firms than were the employee representatives (asymmetric information in modern-day terms), strikes were forbidden, and the company was free to abrogate at its pleasure any agreement or understanding with the employees.

Other people, including many proponents of employee representation (e.g., Teagle 1933), adopted the "bargaining" perspective but nonetheless maintained that NERPs were good for employees as well as employers. Their case was built on two premises. The first is that trade unions and collective bargaining are in certain respects deficient and thus need to be supplemented or replaced by employee representation. Here the schools of thought branched off in two directions. The basic dividing line was whether employee representation and trade unions are viewed as *complements* or *substitutes* (Douglas 1921; Seager 1923). Proponents of the former view maintained that NERPs and trade unions both serve useful, albeit quite different, functions in the industrial relations system. This group was sympathetic to organized labor, but recognized that in-plant shop committees are the superior mechanism for promoting efficiency of production and adjusting the myriad of day-to-day problems and grievances because they are closer to the shopfloor and less adversarial in approach. Trade unions, in contrast, are far superior in dealing with industrywide conditions, such as wage rates and hours of work, because of their marketwide coverage and substantially greater bargaining power. Thus, this school of thought favored a two-tier system of bargaining: in-plant bargaining by some form of employee representation and marketwide bargaining by trade unions (Seager 1923; Tead and Metcalf 1933).

Proponents of the "substitute" view were more critical of unions and believed that, on net, they

did not serve the long-run interests of employers, workers, or the community. The substitute they endorsed in place of the trade union was employee representation. From their perspective, unions are an outside “third party” that depend on conflict and acrimony for their survival, are driven by internal political dynamics to “milk the cow” (the company) for “more, more, more” at the expense of future jobs and company well-being, and are too often led by people who are overly militant and/or unscrupulous, autocratic, and corrupt. As one person put it: “Why should we overthrow the autocracy of the employer, an autocracy which doubtless oftener than not is a benevolent autocracy . . . in order to establish a meddlesome oligarchy whose interests are frequently quite different from the interests of the workers for whom it speaks?” (Hotchkiss 1920, pp. 113–114).

Putting aside the “substitute versus complement” issue, and given the consensus opinion that some form of joint dealing is necessary in large-scale enterprises, the second premise of those holding the “bargaining” perspective is that employee representation is superior because it provides a middle level of power between two unworkable extremes: domination by the employer in a system of nonunion individual bargaining and domination by the trade union in a system of collective bargaining. That some NERPs did indeed have power and sometimes exerted it in ways that favored employee interests over employer interests is clear from the case study literature. At the Dan River Mills, for example, Smith (1960, p. 277) notes: “in 1922, despite the disapproval of management, the House and Senate voted to close the mills for two weeks at Christmas time.” Later, a company executive remarked about the incident: “I was confident that the legislative bodies would take their cue from the implied wish of the management and vote for

the shorter shut-down. But democracy is no mere form at Danville; it is not a game of ‘follow the leader’ but a business of building up independent thought and action” (p. 277).

As in this example, sophisticated managers of firms with representation plans realized that a certain degree of power sharing is actually in the company’s best interests, as it promotes enhanced organizational effectiveness. Thus, giving employees some say over discipline and discharge cases; a forum for communicating to higher management about production problems, poor supervisory practices, or sources of employee discontent; and an opportunity to participate in decision making and develop personal leadership qualities helps build improved employee morale, plant efficiency, and the quality of management, and at the same time it reduces the rampant apathy and sometimes simmering discontent that pervades most workplaces (NICB 1922; Hall 1928). Thus, from this perspective, it is true that NERPs do not have as much power as trade unions, but the converse is that to be successful, a NERP must confer some power to employees or it will have a short half-life and this power, limited as it may be, will in the long-run gain for the employees more of the high wages, job security, and self-respect that workers want and that trade unions claim to gain. Thus, NERPs do engage in collective bargaining, but in a limited manner that avoids the economic costs and hard feelings that go with adversarial-style trade union collective bargaining.

Evidence, as documented below, can be adduced to support all sides of this argument—a fact noted by Leiserson (1928, p. 119) six decades ago when he observed: “almost anything that may be said about employee representation will be true.” Thus, in some employee representation plans, the employee delegates seldom spoke

out in meetings or lobbied for redress of grievances on the part of their fellow workers (Ozanne 1967). They were, in effect, the puppets of management that Senator Wagner railed against. Many of these plans, as indicated above, soon fell into disuse or later germinated into full-fledged trade unions, such as in the steel industry in the mid-1930s (Hogler and Grenier 1992). But in other companies the power of the NERP was real and visibly exercised, as evidenced by the vociferous debates in council meetings, the large proportion of grievances and proposals decided in employees' favor, and the choice of employees to keep their representation plans even when given the opportunity in a secret ballot election to have union representation (Bruere 1927, 1928; Chase 1947; Gray and Gullett 1973).

To a degree that only a few prescient observers then realized (e.g., Commons 1919, 1921), the issue of power and the efficacy of NERPs versus trade unions as a protector of employee interests hinged critically on the macroeconomic environment and, in particular, the level of unemployment. In a prosperous, relatively full-employment economy, such as the 1920s, firms had both the financial wherewithal and the incentive to "do the right thing" by employees, part of which took the form of joint dealing/bargaining with employees through employee representation plans. But in a depression economy, such as the 1930s, where companies face the imminent threat of bankruptcy and a sea of desperate job seekers, incentives for voluntary power sharing disappear for all but the most forward-looking employers, and it is "every man for himself." In this environment, inequality of bargaining power becomes transparent, and NERPs inevitably appear impotent in the face of declining wages, speed-ups, and the inevitable harshness and arbitrariness that creep into management practices during hard times (Asher, Edsforth, and Boryczka 1995).

Why Firms Adopted Employee Representation: A Closer Look

The discussion just completed highlights the fact that any assessment of the pros and cons of employee representation must come to terms with what exactly was its purpose. Whether this purpose was improved communication, union avoidance, or participative management makes a big difference. Hence, in what follows I take a closer look at this subject.

The more candid writers on employee representation were quite frank in admitting that management adopted NERPs largely on the basis that it was a good business decision (Cowdrick 1924). As previously noted, ethical and philosophical considerations associated with the industrial democracy movement during and shortly after World War I also played a role in the initial spread of NERPs (Derber 1970; Lichtenstein and Harris 1993), but typically bottom-line survival considerations of profit and control were dominant over the longer term and in the large corporations where the executive function was vested in salaried managers rather than an owner/entrepreneur.

Appreciation of the reasons why a NERP might be a good business decision for firms of that era, and the objectives that management hoped NERPs would accomplish, requires a brief examination of the nature of work, methods of personnel management, and state of labor-management relations in 1915 to 1930.

Initial Conditions

Prior to World War I, the management function of personnel administration was practically nonexistent (Jacoby 1985; Kaufman 1993, 1998). A few scattered firms had some form of employment office or an employment manager, but in

the great bulk of companies the plant manager or mill superintendent set the broad outlines of personnel policy and then delegated the administration of this policy to the various department foremen, supervisors, and gang bosses. They generally had a high degree of autonomy and authority to run their departments as they saw fit, including decisions about hiring, firing, pay, discipline, and the organization and performance of work. Hiring was often done at the plant gate by the individual foreman in a fairly haphazard, arbitrary manner (e.g., selecting only those men who had calluses on their hands, who came from a particular country or ethnic group, or who had family or friendship ties); employment was “at will,” and workers were routinely laid off or fired with little or no reason or advance warning; rates of pay were also determined arbitrarily and frequently differed markedly between gender and ethnic groups and even for people working side by side at the same job; the typical form of motivation used by front-line supervisors was the “drive system,” which relied on tactics such as shouting, cussing, pushing, and threatening the workers; and although executives often professed that they had an “open door” for those who had a grievance, the workers quickly discovered that this door was all too often a one-way exit to unemployment (Williams 1920; Gibb and Knowlton 1956).

This system of personnel management, when combined with large-scale plants employing hundreds and thousands of workers; a growing trend toward absentee ownership by dispersed stockholders; long work hours (twelve-hour shifts in steel); fatiguing, dirty, and dangerous work; lack of even the most basic amenities (e.g., clean drinking water, bathrooms); and a workforce composed of numerous immigrants, many of whom spoke

no English and came from a preindustrial, peasant background; resulted in tremendous rates of employee turnover, labor unrest, low productivity, and waste of human and physical resources. Prior to World War I, most employers were either ignorant or insensitive to the large costs and amount of conflict this system generated. When the nation entered the war in 1917, however, events quickly coalesced in a manner that forced employers to rethink fundamentally the way they managed people. Out of this rethinking was born a new human resource management (HRM) paradigm and the employee representation movement (Kaufman, 2001).

A New HRM Paradigm

The wartime economy had a number of negative repercussions upon employers. As previously described, productivity declined precipitously, and employee turnover, strikes, and union organizing all rose substantially. Added to employers' woes was the fact that government policy shifted toward accommodation with organized labor and support of collective bargaining, evidenced in new promulgations that asserted workers' legal right to organize and rulings of the National War Labor Board that forced employers to recognize and deal with trade unions (French 1923).

These problems led to a major transformation in management thinking about labor. The most visible sign was the emergence and popularization of a new field of management, variously called *industrial relations*, *employment management*, *personnel management*, or *personnel administration* (Jacoby 1985, 1997; Kaufman 1993, 1998). The idea expressed by the early founders of personnel management was that the plethora of labor problems experienced by employers was the

inevitable outgrowth of a system of labor management suffering from a lack of sound, scientific principles about work organization, efficient administration, and human psychology; little systematization and formalization of personnel policy; excessive decentralization of authority to foremen; a “commodity” view of workers and a “hire and fire” approach to employment; loss of personal contact and communication between management and the workers; the blind eye turned to the numerous injustices and petty tyrannies inflicted upon employees; and the lack of elementary workplace rights and procedures for assuring due process and fairness in the resolution of disputes. A flavor of the labor philosophy embedded in this system, and the practices associated therewith, is given in these remarks of a company executive in 1920 (Smith 1960, p. 263): “One of the great evils that grew out of [the pre-war] system, was the tendency of those who employed labor to buy it just exactly as they would the machinery and materials required; to obtain it at the lowest possible price and get as much out of it as they could. . . .”

An outgrowth of the “new thinking” was the establishment of the first personnel departments by a number of medium-large firms and the creation of a new executive position responsible for development of personnel policy and its administration. Another outgrowth was a new and rapidly expanding literature written by both academics and practitioners that expounded the new themes of this movement—the importance of scientific principles in “man management” and “human engineering,” the importance of taking into account the “human factor” in designing work and managing people, the payoff to be gained by replacing adversarial relations with cooperative relations, the benefits of eliciting employee goodwill and participation, and the necessity of en-

suring both sides of the employment relationship some channel for voice in the enterprise and a “square deal” in the administration of justice.

The intellectual groundwork for employee representation was thus laid in the late 1910s in a series of books, such as John R. Commons’ *Industrial Goodwill* and *Industrial Government* (1919, 1921), Mackenzie King’s *Industry and Humanity* (1918), John Leitch’s *Man-to-Man* (1919), Paul Litchfield’s *Industrial Republic* (1920), William Basset’s *When the Workmen Help You Manage* (1919), John D. Rockefeller’s *The Personal Relation in Industry* (1924), and Whiting Williams’s *What’s on the Worker’s Mind* (1920), as well as a host of articles in management publications, such as *Factory and Industrial Management* and *Bulletin of the Taylor Society*, by consultants such as Ordway Tead (1917) and Mary Parker Follett (in Urwick and Metcalf 1940) and personnel practitioners. No one label was attached to the new HRM paradigm espoused in these publications, but frequently it was referred to as the “employee goodwill” model—a term popularized by Commons in *Industrial Goodwill* to connote a new strategic perspective on labor management (Kaufman 1998, 2001). The proponents of the goodwill model touted it as a superior way to do business because it would lead to greater work effort, loyalty, and harmonious relations and, thus, greater profit. In addition, it was in keeping with American political principles of democracy and due process and Christian ethics of “do unto others.”

At a practical level, the impetus for employee representation came from two different sources. One was the necessity of dealing with the host of labor problems previously detailed. The second was to rid the workplace of the interference of third parties, most particularly labor unions. Most employers were antiunion as a matter of principle, and their

experience during World War I with numerous sympathy strikes, jurisdictional disputes, demands for a closed shop, and union leaders who too often, from the employers' perspective, preached class warfare and acted in a high-handed, irresponsible manner only further stiffened their antiunion resolve.

Given this historical context, the reasons employers established nonunion employee representation plans and the purposes they were to serve come into better focus (Kaufman 2000). Without question, union avoidance was a strong, ever-present motive. During periods of aggressive, widespread union activity, such as 1917–20 and 1933–35, union avoidance was typically the salient motive (see Bernstein 1970; Ozanne 1967). Other motives of course figured in the decision to set up employee representation, as a period of crisis is often a catalyst for moving managers to adopt labor reforms that are long overdue, but the historical evidence is clear that absent the overt threat of unionization, it would have been “business as usual” for many of these new converts to employee representation.

During periods of union stagnation or quiescence, such as 1921–32, other motives came to the surface as the primary reason for the establishment of NERPs. Union avoidance was of course still an important goal, but the lack of a tangible union threat meant that it could remain largely latent and out of sight, while managers focused on other issues. And these other issues were the labor problems that the World War I experience, and its immediate aftermath, had so painfully and clearly brought to the surface.

Modern academic research in management and industrial relations has notably failed to appreciate two aspects of the employer response to the resolution of these labor problems in the late 1910s and early 1920s. The first is that this re-

sponse was, at least in the liberal/progressive wing of the employer community, to put together a well-thought-out, systematic *human resource strategy* (Kaufman 2001). The second aspect is that the new HR paradigm they attempted to implement is in many respects a 1920s version of today's much discussed *high-performance workplace* model (Commission on the Future of Worker-Management Relations 1994; Kochan and Osterman 1994; Kaufman 1997).

A business strategy is an integrated, comprehensive plan that identifies one or more objectives of significance to the growth and survival of the organization and a set of methods or actions that, if successfully executed, will achieve the objectives. The conventional wisdom is that in this historical era companies' HR practices and policies, to the degree they existed, were largely piecemeal, administrative, and reactive in nature—which is to say the antithesis of “strategic” (Dulebohn, Ferris, and Stodd 1995). But this view is seriously misleading.

The evidence is clear-cut that a new paradigm of labor management emerged during World War I; that it entailed major changes in organizational structure, management practices, and the treatment and utilization of labor; and that the executives realized full well that adopting this new paradigm was a strategic decision of the highest kind (Gibb and Knowlton 1956). As described below, only a minority of companies, generally from the progressive/liberal wing of the business community, actually adopted this new paradigm. Examples include Standard Oil of New Jersey, U.S. Rubber, General Electric, International Harvester, and Bethlehem Steel. These firms were part of the “leading edge” of employers—a minority of employers that Commons estimated to be 10 to 25 percent of the total. The apex of the employee representation movement, and the

Welfare Capitalism movement in general, was composed of ten firms, including those listed above, that were members of a then-secret group called the Special Conference Committee (Ozanne 1967; Scheinberg 1986; Jacoby 1997). These firms had close links to the Rockefeller interests, to the Rockefeller-supported consulting firm Industrial Relations Counselors, and they promoted adoption and development of progressive employment practices through monthly meetings of top executives and extensive sharing of information and personnel.

In contrast, most small-to-medium-size firms, and many large ones too, chose to travel a different path (Jacoby 1997). Examples include most of the member companies of the National Association of Manufacturers (preponderantly small-to medium-sized firms) and large corporations, such as General Motors and U.S. Steel. Unlike the progressive, leading-edge firms, once the union threat of 1917–20 had passed, these companies largely reverted to traditional labor-management practices, albeit sometimes shorn of their more egregious rough edges. This, too, was a strategic decision for many of these companies, as they concluded that traditional methods of organization and personnel management could more easily and inexpensively accomplish their profit goals.

It is also noteworthy, as previously stated, that this new paradigm of HR management involved many of the conceptual underpinnings and management practices associated with what today is called a high-performance workplace. In their description of the new paradigm of HR management, for example, Beer and Spector (1984) list fourteen guiding principles, including a systems perspective, a mutuality of interests, extensive communication and information sharing, a problem-solving approach to dispute resolution, gain

sharing, and power equalization. Similarly, Levine and Tyson (1990) conclude that successful employee participation programs involve four fundamental components: assured individual rights, gain sharing, employment security, and a reduction in status differentials.

Many of these same principles were essential parts of the new HR paradigm that emerged in the late 1910s and were then implemented in the 1920s under the banner of Welfare Capitalism (Jacoby 1997; Kaufman 2001). The starting point of the new paradigm was a three-part hypothesis: (1) that the employment relationship contains elements of both cooperation and conflict, (2) superior organizational performance and job satisfaction come from a cooperative relationship, and (3) it is possible through appropriate management policies and practices to turn a conflictual employer-employee relationship into a cooperative one. *Cooperation* was the touchstone theme of the new management paradigm. The Conference Board (NICB 1922, p. 53) echoed this theme in stating: “the ultimate objective of employee representation may be regarded as the achievement of cooperation between management and men—the substitution of cooperation for antagonism.”

And how was cooperation to be achieved? Here the proponents of the new HR paradigm took, per the advice of Beer and Spector, a systems perspective. They argued that achievement of a cooperative model requires that labor and management recognize that they have a mutuality of interests (Hicks 1941). Given such a recognition, workers and managers will conclude that they are members of the same team, that they win or lose together, and thus that they have every incentive to cooperate for the best interests of the organization. High levels of work effort, output, product quality, attendance at work, and so on, will

inevitably flow, leading to a “win-win” combination of growth in profits, wages, and employment.

Consonant with a strategic systems perspective, the pioneers of the new HR paradigm developed a comprehensive, integrated set of new management practices and policies. And at many companies employee representation was the crown jewel of this new paradigm (Leiserson 1929; Brandes 1976; Gitelman 1992).

One prong of the new paradigm was, following Frederick Taylor, to apply *scientific management principles* to the organization and performance of work and labor management (Nelson 1980). Accordingly, during this period progressive firms took the lead in establishing the first personnel departments. The function of these departments was to centralize, standardize, and professionalize the management of the workforce. This meant, among other things, application of scientific principles and theories from fields such as engineering, psychology, and economics to the design and administration of production methods, employee selection procedures, incentive and gain-sharing pay programs, and dispute-resolution procedures. These scientific-based practices, it was thought, would increase both efficiency and equity in the workplace and, by fostering both greater loyalty to the company and a larger financial stake in its success, create a mutuality of interests.

A second prong went under the rubric of *human relations*. Contrary to conventional wisdom, the term “human relations” and the essence of human relations as an intellectual construct were not the product of Elton Mayo and the Hawthorne experiments in the late 1920s and early 1930s but emerged in the late 1910s in the writings and speeches of various business practitioners and consultants (Kaufman 1993). Their essential point was that relations between labor and capital are, in fact, relations between human beings and that

a cooperative employment relationship thus requires systems of leadership, motivation, and interpersonal and group relations that maintain dignity, foster human development, and promote justice. Accordingly, an essential element of the new HR paradigm was to move away from “hard” methods of labor discipline, the drive system, and the commodity treatment of labor toward more humane and democratic methods. Examples included the first training classes for foremen in human relations, establishment of “just cause” procedures for discipline and discharge, and extensive company-sponsored communication and recreation programs.

The third prong of the new paradigm was extensive provision of *employee welfare benefits* (Gitelman 1992). The Industrial Welfare movement had originated at the turn of the twentieth century, so the provision of benefits to employees, such as company housing, accident insurance, and a company doctor, was not a new idea by the 1920s. What was new was the notion that the welfare benefits should not be a relatively autonomous activity the company does for paternalistic motives; instead, they are a strategic part of the company’s overall labor policy and are offered and structured in ways that are better linked to profit and loss.

The fourth prong of the new paradigm was employee representation. Some progressive/liberal employers implemented the other components of the new HRM model but did not adopt representation. Examples include Western Electric (Cohen 1990), Endicott-Johnson (Zahavi 1988), and International Business Machines (IBM). Nonetheless, among the firms in the vanguard of the new HRM movement, such as Standard Oil of New Jersey, Procter and Gamble, Goodyear, Du Pont, Eastman Kodak, and Swift, employee representation was ubiquitous. These employers believed that NERPs served several

valuable functions (Calder 1924; Hall 1928). One was to improve two-way communication between management and workers. Another was to promote efficiency and economy in production. Yet another was to educate employees on the problems and perspectives of management and at the same time sensitize managers to the problems and perspectives of wage earners. Also important was extinguishing the smoldering fire of resentment and injustice among employees caused by unsettled grievances and perceived injustices. Finally, firms saw that providing employees with voice and participation in company affairs promoted loyalty and work effort.

Companies realized two important benefits from these considerable expenditures of time and money on improved employer-employee relations. The first was lower operating cost, higher product quality, and greater organizational learning (NICB 1922; Burton 1926; Bruere 1927, 1928); the second was union avoidance. Both are discussed in more detail below.

The Evolution of Employee Representation Up to the New Deal

The nation experienced a short but very sharp depression in 1920–21. This event represented an effective end to the wartime economy and the labor unrest that followed in its wake. The union movement was quickly deflated and put on the defensive, a position which it would occupy until mid-1933. In contrast, the decade of the 1920s was a period of sustained growth for NERPs and represented the “mature” phase of the employee representation movement. By the mid-1920s almost all of the compulsory World War I works councils had disappeared and what remained were 800–900 NERPs, many of which were operated by roughly forty large multiplant companies.

A detailed look at the experience of NERPs in the period from 1921 to 1932 is instructive because it is during this period of relative normalcy that an accurate assessment of both their accomplishments and shortcomings can best be made. In addition to the growth of employee representation, some consideration must also be given to the reasons for the decline in the organized labor movement, given the frequent charge that the latter is often a function of the former. Several aspects of this record, I argue, have too often been ignored or misinterpreted by contemporary scholars.

NERPs: A Mixed Record of Performance

The historical evidence suggests that the record of employee representation in the 1920s was a mixed one. Employee representation in some companies was quite successful; in others the performance was mediocre; and yet in others representation accomplished very little. I present four cases to illustrate the diversity of experience.

One of the most successful experiments in employee representation was at the Standard Oil Co. of New Jersey. Employment conditions at Jersey Standard prior to World War I were primitive and arduous, and supervisors and foremen administered personnel policy in a largely autocratic and oftentimes discriminatory fashion (Gibb and Knowlton 1956). The result was simmering discontent that erupted into large-scale, bloody strikes in 1915 and 1916. Jersey Standard was a Rockefeller company, and John D. Rockefeller Jr., based on his experience at Colorado Fuel & Iron Co., decided that fundamental change was needed in the company’s approach to employee relations. Toward that end, he installed Walter Teagle—a proponent of more modern and progressive management practices—as

president. Under Teagle, the company became a leading example of the Welfare Capitalist HRM model. The company established a personnel and training department, inaugurated a host of new employee benefits, reduced hours and increased wages, established an extensive new internal communications program with the workforce, and created an employee representation plan at its various facilities. Of these changes, Gibb and Knowlton state (1956, pp. 578–579), “No one of the many measures adopted in this first year of great transitions was unprecedented, but the comprehensive scope and the total effect of all the efforts imparted to company policy an almost revolutionary character.” They go on to say (pp. 594–595, emphasis added), “In labor relations as in technology the company deliberately set as its goal the attainment of an *entirely new performance level*”—language clearly evocative of the goals of today’s high-performance workplace model.

To administer the new labor relations program, Jersey Standard hired Clarence Hicks—the person Mackenzie King had earlier recruited to manage the NERP at CF&I—and made him an executive assistant reporting directly to Teagle. Under Hicks’s guidance, employee representation plans were established in 1918 at the company’s various refineries and facilities and operated continuously until 1937 when the company was forced by the newly enacted NLRA to disband them. According to Gray and Gullett (1973), who examined minutes of local council meetings at several refineries and interviewed workers, the representation plan

contributed significantly and positively to harmonious industrial relations within the company. The plan influenced the development and usage of new formal channels of communication between management and the workforce. Through these channels employees filed grievances and made requests

for improvements in wages, hours, and working conditions. Using these same channels for transmitting information to the operating employees management explained its position on numerous matters of concern to the workforce. Evidence was presented which suggests that both sides were fairly successful in influencing the attitudes and actions of the other. (p. 38)

The evident satisfaction of the employees with the representation plans is illustrated by the fact that in numerous plant elections ordered by the NLRB during the late 1930s and again in the early 1940s over 97 percent of Jersey employees elected to keep their company unions in the form of “independent local unions,” rather than join an AFL- or CIO-affiliated national union (Chase 1947).

A second example of progressive employment practices and successful employee representation is the Leeds and Northrup Company. *Forbes* magazine sponsored a competitive selection process in 1931 to identify companies with “the soundest worker-management relations” (Balderston 1935, p. v). Leeds and Northrup won first prize. In describing why the company was selected, Balderston says: “It is natural to expect that a program honored in this signal fashion would have the usual arrangements that one expects to find in a firm with advanced personnel policies, that is, *employee representation*, retirement annuities, group insurance, and systematic guidance of wage rates and promotion” (p. 141, emphasis added). Fittingly, the name chosen for the representation plan was the “Cooperative Association.” As an indication of the work of the Council, Balderston relates that “since old age without income is another threat of insecurity that preys on the minds of workers of advancing years, the employee representatives in council requested, in 1926, that this subject be considered. A joint committee, on which council members predominated,

worked on it assiduously for many months, finally reporting a plan of old age retirement allowances which was approved and put into operation in 1927" (p. 147).

Other employee representation plans achieved more mediocre results. One example is the plan established by Mackenzie King at the Colorado Fuel & Iron Co. According to Benjamin Selekman and Mary Van Kleeck (1924), who spent over five months in Colorado interviewing managers, miners, and union officials, the plan was still "an incomplete experiment" eight years after its inauguration (p. 398). In some areas employee representation had made a noticeable contribution, principally with regard to living conditions and settlement of individual grievances. Selekman found, however, that most miners expressed apathy toward the plan and voted in elections for representatives only at management's insistence. One major source of discontent with the NERP, according to Selekman, was that it gave the miners no voice in the determination of wages. (The plan mandated that the company would pay competitive wages, but it was reserved to management to determine what these were.) Another was that the plan allowed certain first-level supervisors to serve as employee representatives, but the miners did not trust that they would fairly represent their interests. Perhaps of most importance, despite Rockefeller's vow that the plan would establish a "partnership" between management and the miners, Selekman and Van Kleeck found that the employees were given no real opportunity to develop a sense of participation. Instead, management simply solicited the workers' suggestions or listened to their complaints and then announced a decision. That these shortcomings were real was evidenced, first, by several strikes in the early 1920s and, finally, by union organization of the company in 1933.

Finally we come to an example of a NERP that did little more than engender resentment and dissatisfaction among the employees. Margaret Meyer, a master's student at Cornell University under Sumner Slichter, studied the operation of the works council at the Schenectady, New York, plant of the General Electric Co. (Meyer 1927). During the World War I period the skilled workers at the plant were organized into several unions. The unions were militant and used their strike threat to settle most grievances in favor of the workers. But after the war the company ousted the unions after a long strike and operated the plant on an open-shop basis. In 1922 the plant manager presented a plan for employee representation to the workers, but they voted it down by a large margin. After letting some time go by, in 1924 the manager announced without taking a vote that a new works council plan was being put in effect. Its purpose was limited to "facilitating an exchange of views" and did not even provide a role for representatives in settling individual grievances. The most substantive issue put before the council was an employee request for establishment of old-age pensions. After the plant manager initially gave the go-ahead and a draft proposal was worked up, he changed his mind and stated that a pension program was not feasible at that time and that a jointly funded relief and loan program for employees was preferable anyway. Accordingly, such a plan was prepared and adopted, despite repeated statements by council members that they continued to desire the pension system. Other reasons why the shop council was not favorably viewed by employees included the fact that the company refused to distribute the minutes of council meetings, questions concerning wage rates were ruled out of order, and alleged discriminatory layoffs of older workers was met with a pledge of "we'll investigate it," after which nothing more was heard.

The Central Motive: Union Avoidance or Mutual Gain?

If NERPs were largely antiunion avoidance devices, it is reasonable to predict that during the course of the 1920s, when the labor movement was in marked decline, many employers would let their representation plans lapse, and few new ones would be established. The facts are just the opposite. As previously noted, the number of NERPs and employees covered by representation plans was higher in 1929 than ten years earlier. Perhaps more remarkably, even during the darkest days of the depression in 1931–33, relatively few companies (at least the solvent ones) disbanded their NERPs even under the pressure of extreme financial exigency and a close-to-zero probability of union organization.

The more compelling explanation for the expansion of NERPs during the 1920s has to do with the spread and consolidation of the new HR paradigm born during the World War I years and its central business motive: cooperation and mutual gain. If adoption of this new paradigm was indeed a *strategic* decision by these companies, they would be likely to stick with it over the long haul, unless of course it either proved ineffective or external conditions changed radically. And the evidence, I believe, is that most did stick with the new paradigm and, indeed, further refined and strengthened it.

The central purpose of employee representation and all other accoutrements of Welfare Capitalism was universally agreed by management spokespeople to be *cooperation* and *unity of interests*. W.T. Holliday (1934), president of Standard Oil of Ohio, states: “It [employee representation] originated as a part of the development of modern management, for the realization that mutual understanding and cooperation

between management and the men were necessary for sound and efficient operation; that there could not be a proper and effective organization unless its men felt that they were being fairly and justly treated and had proper opportunity for their complaints and advice to be heard” (p. 100). In a similar spirit, E.K. Hall (1928), vice president of personnel at AT&T, said that employee representation originated from “the theory that it ought to be possible to unite every element in industry and tie it up tight for coordinated, effective action” (p. 77).

Skeptics are right to discount management rhetoric on this subject as tainted with self-interest, but according to outside and largely impartial observers at the time the goal of increased cooperation through “mutual gain” employee relations was indeed the central animating motive of Welfare Capitalism. Certainly two of the most credible eyewitnesses to employee representation are Sumner Slichter and William Leiserson, former students of John R. Commons and noted scholars, consultants, and arbitrators in the 1920s and 1930s.

The fact that labor’s cooperation and goodwill, rather than overt and suppressive union avoidance, was the animating motive behind the personnel management is testified to by Slichter (1929) when he states: “*In short, every aspect of the post-war labor situation might be expected to cause employers to abandon their newly acquired interest in labor’s goodwill and to revert to pre-war labor policies.* And yet this has not happened. On the contrary, the efforts to gain labor’s goodwill have steadily grown” (pp. 396–397; emphasis in original). He goes on to say that “dread of labor troubles” remains an ever-present concern, but that “possibly the most important determinant of post-war labor policies during the last four or five years has been