CHAPTER II

Employee Participation and Labor Management Cooperation in American Workplaces

1. Introduction

Considerable change is underway in many of America's workplaces, driven in part by international and domestic competition, technology, and workforce developments described in Chapter I. These external forces are interacting with a growing recognition that achieving a high productivity/high wage economy requires changing traditional methods of labor-management relations and the organization of work in ways that more fully develop and utilize the skills, knowledge, and motivation of the workforce and that share the gains produced.

Changes are particularly visible in many large workplaces that have undertaken restructuring in response to economic pressures, in new worksites, industries, in organizations that have utilized these organizational principles from their start, and in work settings where managers, employees, and union representatives have adopted these ideas and built them into the overall fabric of their relationships.

Thus, since the 1980s, there has been a substantial expansion in the number and variety of employee participation efforts and workplace committees in both establishments governed by collective bargaining agreements and those without union representation. These arrangements take a wide variety of forms such as: quality circles, employee participation teams, total quality management teams, team-based work structures with a variety of responsibilities, safety and health committees, gain sharing
plans, joint labor-management training programs, information sharing forums, joint task forces for a variety of problems, employee ownership programs, and worker representation on corporate boards of directors.

Employee involvement is also being practiced in many small workplaces where employees and managers work together and communicate on a more informal and personal basis.

Yet these workplace innovations are only partially diffused across the economy and many remain rather fragile. Some are of limited duration. Others are subject to a variety of risks and obstacles that may limit their sustainability and diffusion and the benefits they can potentially deliver to the nation's economic performance and standard of living.

The first item in the Commission's Mission Statement recognizes both the potential value and the partial diffusion of employee participation and labor-management cooperation. The Commission, therefore, is asked to assess:

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

This chapter reviews the facts with respect to employee participation and labor-management cooperation. The sections that follow report on (1) the views of workers, managers and labor leaders, (2) the extent of employee involvement, (3) the issues addressed in these processes, (4) the evidence on their effects on economic outcomes, (5) their prospects for diffusion, and (6) the legal issues they raise.

2. Views Toward Workplace Participation and Cooperation

A variety of employees, managers, and local and national labor leaders testified and submitted statements in support of the goal of enhancing employee participation and worker-management cooperation.

Workers' Views and Expectations

Both survey data and direct testimony presented to the Commission documented that a majority of American workers want to have opportunities to participate in decisions affecting their job, the organization of their work and their economic future. A 1985 national survey reported that 84 percent of employees working for organizations without an employee involvement or participation program would like to participate in one if given the opportunity and 90 percent of those in organizations with a plan responded that their company's program was a "good idea."!

Other surveys of blue and white collar groups conducted in the early 1980s found similar results. One study found over 80 percent indicated a desire for a say about issues affecting how they did their work, and about the quality of their work, and a majority indicated an interest in having a say about the handling of grievances or complaints, the pace of work, and how technology is used on their jobs.

White collar workers\textsuperscript{2} in this sample expressed higher levels of interest in participation on all these issues than blue collar workers.

Data from recent focus groups interviews carried out by the Princeton Survey Research Center report that hourly workers, professional and technical employees, and supervisors consistently stated that among the things they value most in a job are variety, freedom to decide how to do their work without close supervision, information and communication regarding things that affect their work and their firm, and evidence that their employers seek, value and act on their suggestions for improvement at their workplace.\textsuperscript{3}

Most workers respond favorably when provided opportunities to participate at their workplace. Ms. Deborah Wirtz, an employee at Texas Instruments who testified at the Commission's Houston hearing, described her response to the introduction of self-managed teams in her plant.

"What I really feel, my honest feelings about teaming, is that my self-esteem has improved as a person. Before teaming, you felt like you were maybe a number that was there to produce the daily quota that was expected of you, and you left and went home. Now we feel like we have the capability of making decisions and being heard."

The changing workforce characteristics reviewed in Chapter I imply that the desire for a voice at the workplace has been growing gradually over time and will continue to increase in the future, since interest in participation tends to rise with education. Rosabeth Kanter summarized these long term trends:

"A more educated work force -- as ours has become -- is simultaneously a more critical, questioning, and demanding work force, and a potentially more frustrated one if expectations are not met."\textsuperscript{4}

Some employees remain highly skeptical and fearful of cooperative programs developed by managers in the absence of an independent union to represent workers' interests. The following statement of Labor Notes, a publication of rank and file union activists, expresses these sentiments:

"We have deep skepticism toward the notion that workers and management have much in common in dealing with workplace problems. They compete with each other to divide the economic pie, much as companies compete for market share. The idea that they share interests has historically been used to defeat or preempt unions... Unions remain the only genuine independent employee organizations capable of fighting for the interests of workers on the job."\textsuperscript{5}


Managers and Labor Leaders

A number of managers testified that employee participation and worker-management partnerships are not only desired by workers but essential to being competitive in their markets and industries. Bruce Carswell, Senior Vice President of GTE and Chairman of the Labor Policy Association stated:

"The message that we would like to leave with you today is that our nation can no longer afford to view the employment relationship as American workers and management competing with one another in a zero-sum game. Instead, we need to create a partnership among empowered employees, government, industry, and unions such that everyone is playing on the same team in pursuit of mutually beneficial objectives.

We hope that the Commission has been given a sense of the sea change that has occurred in human resource practice during the past fifteen years and what the implications of that change should be for policy makers...Over the long term the new high performance American workplace will be better able to provide job security for American employees and a more satisfying work environment...The Commission could make an extremely useful contribution to the development of employment policy if the final report were to communicate to the American public the depth of the change in the workplace environment."

At the Houston hearing, Mr. Charles Nielson, Vice President for Human Resources at Texas Instruments, put it this way:

"...teaming, effective participation of people in the business process, is an integral part of our survival. I somehow worry that as persons like myself talk, what you hear is a nice-to-do program. Something that's intellectually interesting. Something that probably is appealing to people and makes them feel good. But I'm afraid somehow we're not communicating that it really is the one hope for us to survive in the [competitive] environment I've just described."

The AFL-CIO issued a report, The New American Workplace: A Labor Perspective, that outlines its support for labor-management partnerships for designing new models of work organization:

"It is incumbent on unions to take the initiative in stimulating, sustaining, and institutionalizing a new system of work organization based upon full and equal labor-management partnerships. Such a system presupposes, of course, partners prepared to deal with each other as equals in an atmosphere of mutual recognition and respect."

Labor leaders appearing before the Commission pointed out that unions provide employees an independent source of power in employee participation. Union-manage-

ment partnerships are more likely to address a wide range of issues of interest to both employees and managers and lead to a sharing of decision-making at all levels of the enterprise. The labor movement believes that the long run objectives of employee participation should be to enhance both economic performance and industrial democracy by providing employees a voice at all levels of decision-making. The AFL-CIO report stated:

"It is unlikely in the extreme that...management-led programs of employee involvement or "empowerment" can sustain themselves over the long term. It is certain that such systems cannot meet the full range of needs of working men and women."

The Collective Bargaining Forum, a group of corporate chief executive officers and international union presidents, has issued two reports in recent years presenting its vision of the type of labor-management partnership needed to pursue the twin goals of competitiveness and a rising standard of living. (See Exhibit II-1.)

Ms. Theresa Roche, Vice President of Human Resources for Grass Valley Group, a medium sized (900 employees) high technology company that designs and produces video equipment, testified at the San Jose hearings that decentralization of traditional managerial responsibilities and the need to train and empower workers to make decisions are especially critical to success in rapidly changing technology driven industries. Ms. Roche, along with several of her colleagues from other high technology organizations, questioned the relevance of traditional labels of "worker" and "manager" or "exempt" and "nonexempt" employees to their industries and organizations:

EXHIBIT II-1

Promoting Joint Approaches to Competitiveness the Collective Bargaining Forum View

To address the competitive challenge...will require a long run outlook and a sustained commitment to joint work among management, labor, and government representatives. Such a commitment also implies:

Adoption of business strategies that can support a high productivity/high wage employment relationship...In return, it implies a responsibility on the part of labor to accept the need for continual improvement in productivity, and to commit its energies to the quality of the good and services produced.

[To achieve these goals requires] expansion of and sustained commitment to joint labor-management activities, such as training, quality improvement, work redesign, appropriate kinds of cost containment, and related activities that are tailored to the specific needs and competitive conditions of individual enterprises. This implies...an ongoing process of adjustment to changing technology and new work design concepts.

"Organizations' continued success require both managers and employees to play profoundly different roles. Employees must now assume many of the responsibilities that once belonged only to managers. They must be better able to direct themselves, be flexible, help make sound decisions and take more accountability for their work and its results."

A large number of employees, managers and union representatives believe that employee participation, work redesign, and worker-management cooperation are essential to being competitive in their industries and markets and to producing the results workers expect from their jobs.

Some employees, however, are skeptical of participation processes in which workers do not have an independent voice or means to represent their interests.

Labor leaders believe the long run objectives of employee participation should be to enhance both enterprise competitiveness and employee voice at all levels of decision-making. They believe these goals are unlikely to be achieved unless employees have independent representation.

3. Extent of Employee Participation and Committees

Surveys of Adoption Rates

There is no entirely reliable census of workplace employee involvement processes, although several recent surveys provide estimates of the current level of activity.

Surveys in 1987 and 1990 of the Fortune 1000 firms by the General Accounting Office (GAO) and the University of Southern California report that 86 percent of these large firms in the manufacturing and service sectors report some experience with employee involvement in their firms. This is an increase from 70 percent in 1987.

Twenty percent of the firms reported employee participation processes that cover a majority of employees in the firm.

The results of a 1991 survey conducted by Paul Osterman of 691 establishments with 50 or more employees are summarized in Exhibit II-2. (See page 35.) It found that 64 percent of these establishments have one or more employee involvement activities covering 50 percent or more of their "core" employees. (Core employees were defined as non-managerial blue or white collar workers directly involved in the production and/or delivery of the establishment's products and services.)

This survey showed that these practices are often combined in various ways, thus Osterman defined significant involvement

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Exhibit II-2
Work Practices in Establishments with 50 or More Employees

(50 Percent or Greater Penetration)

<table>
<thead>
<tr>
<th>Practice Type</th>
<th>Total Sample (in percent)</th>
<th>Blue Collar Manufacturing (in percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>One Practice Only</td>
<td>27.1</td>
<td>24.1</td>
</tr>
<tr>
<td>Teams Only</td>
<td>14.4</td>
<td>5.5</td>
</tr>
<tr>
<td>Job Rotation Only</td>
<td>7.0</td>
<td>11.7</td>
</tr>
<tr>
<td>Quality Circles Only</td>
<td>2.6</td>
<td>4.5</td>
</tr>
<tr>
<td>Two or Three Practices Combined</td>
<td>31.8</td>
<td>36.9</td>
</tr>
<tr>
<td>All Four Practices Combined</td>
<td>4.8</td>
<td>5.0</td>
</tr>
<tr>
<td>None of these Practices</td>
<td>33.0</td>
<td>33.3</td>
</tr>
</tbody>
</table>


as having a majority of core employees covered by two or more forms of workplace innovation. Just over one-third of these establishments met this criterion. This survey documented a wide variety of different involvement plans in existence today.

The survey found no significant differences in the frequency of these practices between union and nonunion establishments.

In a 1993 survey of 51 large firms, Organization Resources Counselors reported that between 80 and 91 percent of these firms had committees dealing with either safety and health, productivity, or quality.9 These companies reported that approximately 25 percent of their employees participated in teams of one form or another.

A survey of predominantly large manufacturing firms conducted by the Labor Policy Association in cooperation with several other industry groups, estimated that 31 percent of the employees in these firms were involved in programs classified as decision-making. Higher percentages were reported to be covered by employee involvement programs that involved collaboration, soliciting ideas, and information sharing (49, 69, and 71 percent, respectively).10

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A 1985 survey of a nationally representative sample of the workforce conducted by Sirota and Alper Associates and Business Associates and Business Week found that 36 percent of the respondents worked in organizations that have some type of employee involvement program and 23 percent of the workforce had been personally involved in some form of employee participation.\(^{11}\)

There is no agreed-upon standard for judging which, or what combination, of these different workplace practices produce results that would warrant the popular label of a "high performance" workplace. Most experts do agree, consistent with the available empirical evidence, that the value of these practices is realized best when combined into a total organizational system that rests on a foundation of trust and combines employee participation, information sharing, and work organization flexibility with reinforcing human resource practices such as a commitment to training and development, gain sharing, employment security, and where a union is present, a full partnership between union leaders and management.

When judged by this systemic standard, estimates of the extent of diffusion of "high performance" employment systems are considerably lower. The Commission on the Skills of the American Workforce and Jerome Rosow, President of the Work in America Institute, each estimate that perhaps less than five percent of American workplaces presently fit this description.

A substantial majority of larger American employers report using some forms of employee participation in their organizations. Many small firms have more informal processes for employee participation. The best available estimates suggest that between one-fifth and one-third of the workforce is covered by some form of employee participation.

A small fraction of these efforts represent the systemic forms of participation consistent with the label of a "high performance workplace."

**Studies of Survival Rates**

Despite the widespread interest in employee participation and cooperative arrangements, the record shows that some employee participation efforts do not survive long enough to have significant positive economic effects. The Osterman survey showed, for example, that only about one-third of these establishments reported their employee involvement efforts have been in place for five years or more. Edward Lawler and Susan Mohrman report over half of the quality circles begun in the early 1980s failed to survive.\(^{12}\) Robert Drago found a similar result for quality circles.\(^{13}\) His results showed a higher survival rate for quality circles in union than nonunion establishments, a finding replicated in a more recent study of labor-management committees in machine shops.\(^{14}\)

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11 Business Week and Sirota and Alper, p. 87.
14 Maryellen Kelley, Presentation to the Sloan Foundation Human Resources Network Meeting, MIT, Cambridge, July 1993. Data are available from Maryellen Kelley, Graduate School of Industrial Administration, Carnegie Mellon University, Pittsburgh, PA.
A number of studies have shown that employee involvement is more likely to survive over time if the effort expands beyond the narrow confines of a single program or process and if human resource practices such as compensation, training, employment security, and managerial rewards systems are modified to support these efforts. Where a union is present survival is increased significantly if the process is governed by a joint partnership between the union and management.15

Some employee participation efforts are short lived. Others have been sustained over a long enough time to demonstrate their value.

Those most likely to be sustained over time are ones in which the parties broaden the scope of issues addressed, and integrate them with the human resource policies of the organization. Those in unionized settings in which the union is involved as a joint partner with management are particularly likely to survive.

4. Key Features of Workplace Participation Processes

Surveys cannot tell us what these participatory processes actually do, the mix of employees and managers involved in these efforts, how participants are selected, or whether they speak only for themselves or implicitly represent others in the organization. These issues are of special relevance to the Commission since they relate to the legal status of employee participation.

The Commission received considerable testimony on these issues in its national and regional hearings. Some of this is presented to illustrate the range of variation in contemporary practice with respect to these issues.

The examples presented below begin with efforts originally designed to focus on productivity and quality improvement issues, and then move on to examples of self-managing work teams and broader work management committees, partnerships and employee ownership arrangements. Any effort to categorize these arrangements is rather artificial, however, since as the examples will illustrate, they tend to evolve and change over time in ways that are not well captured by their popular labels.

The examples are presented in this sequence, however, since labor law attempts to draw a distinction between processes that deal with production or quality issues, and those that involve wages, hours, or other terms and conditions of employment, and between processes in which employees communicate information to management versus those that involve consultation, shared decision-making, and/or representation.

Production and Quality Centered Initiatives

Many participation efforts focus on quality or productivity improvement. For example, a team from Federal Express composed of both management and non-management employees described how it changed the way

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packages are sorted in its Memphis distribution center and thereby improved the company's on-time delivery performance, reduced staffing required for this operation from 150 to 80 employees and achieved annual savings of approximately $702,000.

At the New United Motors Manufacturing (NUMMI) operations in California, team members are trained to use a six-step problem-solving process. This process requires team members to explore potential root causes associated with, among other things, the way work is organized, how individuals perform their work, the staffing and scheduling of activities, and other personnel and employment practices. Toyota's manufacturing facilities in Kentucky follow similar training, problem-solving, and kaizen (continuous improvement) processes.

The type of root cause analysis described at NUMMI and Toyota is central to most Total Quality Management (TQM) processes that have become increasingly popular in U.S. industry.

In Atlanta, Bell South and representatives from the Communication Workers of America described how their quality of working life program that carried over from the early 1980's later embraced TQM practices, and has evolved to the point where employees and workers meet with key customers to demonstrate their commitment to total customer satisfaction. Their program, like nearly all the others described to the Commission, entails a strong commitment to training in problem-solving, statistical methods, and related quality practices.

In Louisville, the Commission heard about quality improvement teams at Alliant Health Care Systems. Alliant relies heavily on use of temporary task force teams to solve specific problems that cut across traditional functional and/or hierarchical groups. In response to a question Mr. Rodney Wolford, former CEO of Alliant, described the changing membership and structure of these task forces:

"When it comes to specific projects or specific improvement efforts, those are typically cross-functional teams made up of front-line workers, with some involvement by management, and certainly a responsibility of management to monitor the process and to be involved to some degree, but not necessarily to run the process.

Often-time those teams may even be chaired by front-line workers who have undergone specific training to be able to manage the team process. In terms of who goes on those teams, it's simply what makes sense representatives of all the various functions that may be involved or have some ownership accountability to any aspect of the process."

In San Jose, the Commission heard testimony from small and large high technology firms working to embed participatory principles into their organizational cultures through a wide variety of practices. Again, a common practice in these firms is to use temporary task forces or teams made up of a diverse cross section or a "vertical slice" of employees and managers. Ms. Deborah Barber, Vice President of Human Resources at Quantum Corporation, described the fluid nature of assignments in her corporation:

"High performance groups are assembled to address specific needs, whether the need is in design or manufacturing or sales and marketing or distribution, and since many of these high performance work groups are associated with the management of a particular process or product, they need to
Exhibit II-3
Self-Managed Teams at D.D. Williamson and Company

We have eliminated all supervisory positions and we have gone to self-managed work teams. Our Louisville plant runs 24 hours a day, five days per week. Shift leaders and teams were chosen by the associated themselves in something similar to a baseball draft. And team leaders rotate on a semi-annual basis. Along with the increase in responsibility, there's an extensive training. For the most, associates can now do several tasks ...The work teams are also responsible for their own hiring and firing. We have some base education and personality screens that we use but after that the team does the interviewing and the team does the hiring.

Two years ago...we began a program to see that all associates visit our customers. And many times it required an overnight stay.

The principles underlying TQM encourage team members to explore root causes of problems and alternative solutions that involve human resource practices and policies.

Quality improvement teams often mix together individuals from different hierarchical levels and functional groups in ways designed to overcome traditional status distinctions and job definitions.

Over time it becomes increasingly difficult if not impossible to draw a line between production issues and employment practices, and among "employees," "supervisors," and "managers" in the most successful productivity and quality improvement efforts.

Self-Managed Work Teams

As illustrated above, some employee participation processes that begin as production or quality focused problem-solving groups evolve over time to take on issues and responsibilities that in the past would have been handled by a supervisor or manager. In self-managed work teams a number of duties traditionally reserved to

be constantly reconfigured and reassembled as the products and processes change."

While the survey evidence suggests that formal participation arrangements are more prevalent in large than small establishments, the Commission heard testimony from small employers about the diverse and informal ways these principles are applied in their organizations. For example, Ms. Cheryl Womack, Chief Executive Officer of VCW, Inc., a 75-person insurance company in Kansas City, described a wide range of informal communications, rewards, quarterly meetings, and advisory committees in her firm. She stressed particularly, the importance of the communications that flow out of breakfast meetings company officers hold each month with the winner of their "employee of the month" program.

Both temporary and ongoing production and/or quality focused efforts often expand over time to address issues that fall within the category of terms and conditions of employment.
managers are explicitly delegated to team members. At the Louisville hearing, for example, Mr. Ted Nixon, CEO of D.D. Williamson and Company in Louisville, a food processing manufacturer of caramel colored products with 105 employees, described the responsibilities of the self-managed work teams in his company. (See Exhibit II-3.)

Self-managed work teams take on responsibilities traditionally performed by supervisors and managers and may deal with a variety of issues that affect wages, hours, and other terms and conditions of employment.

Workplace Committees and Partnerships

A variety of firms and labor organizations described their efforts as full-fledged partnerships and committee structures. Some of these focus on specific issues such as safety and health while others address a wide range of issues and span multiple levels of the organization.

Safety and Health Committees

Among the most longstanding and widespread types of issue specific committees found in American workplaces are those that focus on monitoring and improving workplace health and safety. According to the 1993 survey of the National Safety Council, workplace safety and health committees are found in 75 percent of establishments with 50 or more employees and in 31 percent of establishments with less than 50 employees. This study also reported that safety and health committees exist in 89 percent of unionized establishments and 56 percent of nonunion establishments. Under collective bargaining, union safety and health committees often have access to union-provided professional experts to assist in these matters. The role of committees or other approaches to employee participation in safety and health will be discussed in more detail in Chapter IV.

Multi-Employer and Union Committees

A distinctive feature of collective bargaining in some industries or regions has been the creation of multi-employer-labor union committees. These committees address a variety of workplace problems that can be more effectively handled on a multi-employer level than within an individual enterprise. Such committees have existed since the earliest days of collective bargaining and have been concerned with issues such as training, health and safety, grievance handling, and productivity. Examples have occurred in industries such as anthracite mining, electrical contracting, men’s and women’s clothing, retail food stores, and longshoring.

Broad-ranging Committees

In a number of union and nonunion firms, employee participation and labor-management cooperation processes take on a variety of issues and are overseen by one or more committees.

Ford Motor and the UAW have had an employee involvement and labor-management cooperation program in place since 1979. (See Exhibit II-4 page 58) They summarize the key lessons learned over this period as follows:

The Ford-UAW experience has demonstrated two especially sig-

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nificant lessons about joint programs. The first is that leadership, trust and funding are critical ingredients -- not structure. The second is that an evolutionary approach, progressing from fairly simple applications to those that are more comprehensive and integrated, is important to create and to sustain large-scale transformation.

Peter Pestillo added another point:

"If management wants unions to help make companies more competitive and to be an ally in the struggle with foreign competitors, management must accept the validity of employee chosen unions as a legitimate institution in our society. Management must accept this union role, must honor it, must value it, must work with it. A strong alliance requires two strong members. There should be no quibbling about that."

The National Steel Company and the United Steelworkers described the evolution of their partnership as one that now goes from the shop floor to the corporate boardroom. Steelworkers' former president Lynn Williams commented on how his union extended the approach used at National Steel to other major steel companies in their 1993 negotiations:

"We have in our minds closed the circle by including board membership. We're not taking over the boards of these companies...but we are going to have one person on each of these boards there to represent the general interest of the worker constituency. [W]e'll be functioning at every level of the company."

AT&T and the CWA described a similar integrated partnership they call the "Workplace of the Future" that is built on extensive employee involvement and team systems at the workplace, consultation at the business unit level where long term competitive issues are discussed, and a corporate-wide human resource council that includes labor, management, and outside experts in discussion of long range plans.

William Ketchum, Vice President of AT&T, described Workplace of the Future as a "framework for change which includes unions as joint partners in planning and implementing change based on mutual respect and mutual gain." Morton Bahr, the president of the Communication Workers of America, testified that "the critical element of success" is that for workers to effectively participate in workplace decision-making, front-line workers must first have their own organizations, educated leadership and significant resources in order to have the confidence and preparation to participate as equals and without fear.

At the Commission's Michigan hearing, Miller Brewing Company and representatives of the UAW described how they jointly planned and designed a team-based highly participative work system in a new plant. The management system of this plant includes union representatives at all levels of the organization. (See page 58 for Exhibit II-4.)

Several nonunion firms described enterprise-wide councils or committees in their organizations. In Michigan, a team from Donnelly Corporation described their longstanding (established in the 1950s) Scanlon Plan that has since expanded to include an employee council that not only reviews employee suggestions but consults on the full range of human resource policies. Donnelly's system is described in Exhibit II-5. Another Scanlon Plan that has been in place for over thirty years at Herman Miller

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Corporation is also described in Exhibit II-5. (See page 59)

At the Boston hearing, the Commission heard accounts of the events that led to the termination of a longstanding and broad ranging employee committee at the Polaroid Corporation.

Mr. MacAllister Booth, the Chief Executive Officer of Polaroid Corporation, described his frustration with his decision to disband an elected employee committee that had been in place since 1949 after an employee filed charges with the Department of Labor over the legality of the company's procedures for electing the committee's officers. The elected representatives of this committee discussed the full range of personnel practices and policies at Polaroid. Subsequently, a charge also was filed with and a complaint issued by the National Labor Relations Board finding the committee violated Section 8(a)(2) of the National Labor Relations Act banning company dominated organizations.

Following the Labor Department charge, and in anticipation of the 8(a)(2) charge, the company disbanded the committee and in its place Polaroid established an Employee Ownership Influence Council which serves as a "focus group" for communications between employees and managers. This new entity has considerably less power to review and consult on employment policies and practices than the disbanded employee committee. This case raises the issues of what companies can do within the law to establish committees of workers to resolve problems. The mutual frustrations of Mr. Booth and Ms. Charla Scivaly, the employee who filed the complaint, are summarized in Exhibit II-6. (See page 60)

Consultation in Japan

Labor-management consultation forums exist in over 70 percent of Japanese firms and establishments. In contrast to European works councils, these operate in the absence of any formal statutory obligation. Instead, they have been promoted by the Japan Productivity Center as a means for, among other things, discussing the relevance of macro economic trends and performance to the wage and other policies of specific enterprises. Professor Haruo Shimado from Keio University in Japan indicated that consultation now covers a wide variety of issues ranging from safety and health to new technology and investment plans and is viewed by both employer and worker representatives as an essential component of Japan's industrial relations system.

Australian Strategies for Workplace Reform

In the mid-1980s the Australian Confederation of Trade Unions (ACTU) conducted an international study that produced a new strategy promoting union mergers and consolidations, work restructuring, commitment to training and development, decentralization of wage setting and collective bargaining, and labor-management consultation.

Between 1987 and 1991 Australia's Industrial Relations Commission issued decisions calling for enterprise level bargaining over work restructuring and pay systems that reward skill attainment and productivity improvement and labor-management consultation. In 1991 the federal government initiated a "Best Practices" program that provides grants and awards to firms and unions to promote workplace reforms. In 1993 the requirement for consultation was enacted into federal law.

The Australian approach involves legal requirements for safety and health committees, incentives and recommendations for workplace reforms, enterprise wage agreements, and labor-management consultation in return for greater flexibility and decentralization in wage determination, and a "Best Practices" recognition and grant pro-
gram. These reforms have produced the following results to date:

- Approximately 40 percent of Australian workplaces, covering 65 percent of the workforce are covered by safety and health committees;

- Quality management techniques that rely on employee involvement are found in 26 percent of the workplaces;

- The greatest amount of workplace reform has occurred in workplaces with an active union presence; and

- Managers report consultation has resulted in improvements in management-employee relations in 90 percent of the workplaces, improvement in the process of introducing change in 81 percent, and improvements in productivity in 70 percent.

Works Councils in Europe

Works councils are elected bodies of employees who meet regularly with management to discuss establishment level problems. Works councils are widespread in Europe because most countries require them by law, if employees indicate an interest in creating such a body. In Germany, for example, if employees want one, an establishment with five or more employees is required to have a council that is elected to represent the entire workforce in the establishment. This does not mean that all workplaces have them, for in many smaller enterprises, employees and managers choose less formal modes of communication and consultation. The prime difference between the U.S. and Germany in this respect is that workers can "trigger" the formation of councils.

Exhibit II-7 summarizes some of the key features of works councils presented to the Commission at its meeting on international experiences. (See page 61)

Some workplace committees and labor-management partnerships address a wide range of employment and managerial issues while others are focused on specific topics such as workplace health and safety.

In some cases these structures cover individual establishments. Others are enterprise-wide and few cover an entire sector in a community or nationally.

Establishment or enterprise-wide committees that cover the full spectrum of work-place issues are more prevalent in unionized companies. However, examples of such structures are found in some non-union firms as well.

Committees in nonunion firms operate with some uncertainty over their legal status.

Establishment or enterprise-wide consultative arrangements are less widely diffused in the U.S. than in firms in Japan, Australia, or in European countries with works council legislation.

Employee Ownership

Employee stock ownership plans (ESOPS) have increased in recent years to the point where they now are estimated to cover as much as 11 percent of the labor force. While all ESOPS provide employees with a direct financial stake in the economic performance of their enterprise, the vast majority are mainly contingent compensation plans and do not provide any role for employees in firm governance (beyond the voting rights associated with share ownership). Some of these have been established to achieve the favorable tax treatment available to such plans or to help ward off the threat of a hostile takeover.

Other ESOPS, such as those at Lincoln Electric or the Bureau of National Affairs, have been in existence for many years, include extensive employee participation
and a formal role for employees in the governance of the firm. ESOPS that provide for employee participation and representation in firm governance perform better than those that do not. The empirical evidence on the effects of ESOPS on firm performance can be summarized as follows.\(^\text{17}\)

1. No studies show that ESOP plans reduce productivity or profitability.

2. Some studies show that ESOPS are associated with higher performance compared to non-ESOP firms or compared to the same firms prior to the introduction of the ESOP. Some of these estimated effects, however, are not significant and are sensitive to changes in the statistical modes and tests used.

3. ESOPS are more likely to be associated with higher performance when combined with participation of employees at the workplace than when there is only representation of employees on the board of directors.

ESOPS have grown in recent years. While some include a role for employees in organizational governance and/or workplace participation, many do not. Those that include employee participation appear to perform better than those that do not.

**General Patterns**

These are only some of the examples described in Commission hearings and in the materials submitted to the Commission. This evidence suggests the following general conclusions regarding what these committees and employee participation processes do and who is involved in them.

1. There is no single dominant form of employee participation today. While many efforts began with a focus on productivity and or quality improvement, most of those that endure over time go on to address other workplace issues as well. Some address a variety of terms and conditions of employment such as training, safety and health, communications and information sharing, employee selection, performance evaluation, work assignments/rotation, job descriptions and procedures, staffing levels, work hours and scheduling, overtime, pay system design and administration, discipline, and grievance resolution. Some deal with issues traditionally reserved to management and supervision such as customer service, new plant design, design and implementation of new technologies, equipment, or products, and long-range human resource planning.

2. Some workplace participation efforts are ongoing while others are temporary task forces established to solve specific problems and then disbanded or reconstituted for other purposes. In some cases, employees participate in these processes while continuing working in their regular jobs or participation becomes a normal part of the job itself. In other cases employees may be asked temporarily to serve as facilitators or team leaders in a fashion traditionally reserved for managers or supervisors. In some cases their primary co-workers are peers doing similar work while at other times they work in cross-functional task forces that mix together hourly employees with technicians, professionals, and managers. Sometimes the work may be on-site during regular work hours but in cases where customer service or external benchmarking are involved, it may require travel and irregular hours.

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3. Few of these efforts remain constant over time. Those that endure over time often expand or modify the issues included and the personnel involved. Indeed, the lines separating production, employment, and managerial issues are often impossible to draw or to enforce in the most successful programs.

4. Participants are chosen for these processes in various ways. In some cases individuals volunteer to participate in problem-solving teams. In other cases management selects team or committee members, however, there are also some cases where employees elect representatives. In union-management committees it is customary for the union leaders to arrange for the selection or for unions to elect their representatives.

5. The line between communication and shared decision-making is difficult to draw in these processes. In some cases decision-making authority is delegated to the teams; in others committees make suggestions that are advisory to management, and in other cases, committees consisting of employees and managers make decisions and allocate resources. Regardless of their formal authority, workers and managers tend to remain committed to these arrangements only if they believe they are exerting a constructive influence on the issues involved.

6. These features all make it difficult to draw a clear distinction between "exempt" and "nonexempt" employees as defined in various labor and employment laws and regulations.

5. The Effects of Employee Participation on Economic Outcomes

The Commission received considerable testimony on the effects of employee participation efforts and reviewed the case studies and quantitative research on these efforts. The evidence to date suggests that many programs improve the quality of work life and in some cases raise productivity and product quality. More specifically:

1. One by-product of employee participation is to increase investment in education and training of the workforce. This point was made in almost every case described to the Commission. This is also consistent with the evidence in the Lawler, et. al., Osterman, ORC, and other studies.

2. While most of those testifying about their efforts reported their programs resulted in improved productivity, quality, or some other indicators of economic performance, the empirical studies on this issue completed to date show mixed results.

Some of these efforts fail to survive long enough to produce significant economic gains. Studies that have attempted to isolate the individual effects of single programs such as quality circles or teams tend to find small or insignificant effects on performance. One study found that union companies with joint committees use significantly less production time per unit of output than nonunion companies with such committees. Other studies have suggested that employee involvement or gain

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19 Maryellen Kelley and Bennet Harrison, "Unions, Technology, and Labor-Management Cooperation," in
sharing under collective bargaining has greater effects when the union supports the effort and jointly administers the program.  

The largest positive effects on economic performance have been found in studies that measure the combined effects of workplace reforms (i.e., where participation is combined with changes in employment practices, manufacturing policies and management structures and decision-making procedures).

Studies examining these systemic forms of workplace change at Xerox, in an international sample of auto assembly plans, and in a sample of plans in the steel industry all conclude that the more systemic the involvement efforts, the greater the economic benefits.  

Another exhaustive review of all the studies of employee participation and work redesign that were carried out since the 1970s reached a similar conclusion with respect to the effects of participation on various economic and psychological results.

A study of the effects of human resource management innovation on profits and returns to shareholders found similar results, namely, the more comprehensive the human resource innovations, the greater their economic effects.

Thus, broad based workplace innovations that remain in place over an extended period of time and are integrated into a system's approach to workplace innovation and change produce the most improvements in economic performance.

3. The effect of these efforts on employment security is limited, at best. Many of the organizations that have initiated these efforts did so in response to an economic crisis so it is difficult to determine what would have happened to job growth or loss in the absence of these efforts. But clearly, employee participation or workplace committees alone do not necessarily produce new jobs. However, we did receive testimony from a number of people indicating that market share improvements resulted that created or maintained jobs, and from others that new investment was authorized because of the improved relationships and economic effects of these programs. Phillip Morris, Saturn Corporation, Ceiba Gigy, Miller Brewing Company, and others were all cited as cases where new jobs were


created as a direct result of cooperative efforts.

6. Will Contemporary Efforts at Employee Participation and Cooperation be Sustained and Diffuse Across the Economy?

"If these efforts work so well, why aren't they adopted more widely? Do they constitute a real change in work relations or another management fad?"

These are big questions facing this Commission and others concerned with the American Workplace. A bit of history will help explain these concerns.

Earlier Examples of Committees

The period since the 1980s is not the first time American industry experienced an increase in the use of worker-management committees. Indeed, worker-management cooperation has ebbed and flowed at various points in history both under collective bargaining and in nonunion workplaces.

In earlier years these arrangements were often called "employee representation plans," "works councils," or "shop committees." Among the earliest of these works councils, outside of collective bargaining, was one established at the Filene's store in Boston in 1898. Employee committees were elected and a board of arbitration heard any matter brought by an employee. The employees' association owned a large block of company stock and nominated persons to the Company board of directors.

Historically, employee representation and participation plans, outside of unions, have involved in varying degrees three themes: more efficient production and higher quality; workplace democratic values and participation; and discouragement of "outside" labor organizations.

During World War I the National War Labor Board required the establishment of shop committees where unions did not exist. The American Federation of Labor (AFL) initially viewed these committees as a possible step in the evolution of unions. In the post-war period of conflict, however, the AFL stated at its 1919 convention:

"We heartily condemn all such company unions and advise our membership to have nothing to do with them; we demand the right to bargain collectively through the only kind of organization fitted for this purpose, the trade unions."

Employee representation plans and shop committees, outside of collective bargaining, grew during the 1920s. By 1924 virtually all the plans started by the government in World War I were abandoned or superseded by plans drawn up by employers themselves. By 1928 there were 869 plans in 399 companies with 1.5 million employees. The depression after 1929 eliminated many of these plans except in the largest companies. In 1933 and 1934 employee representation plans expanded.

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As will be described in more detail later, employer-dominated committees or "company unions" were outlawed by the National Labor Relations Act in 1935 and by the 1934 amendments to the Railway Labor Act.

Labor-management committees devoted to workplace problems under collective bargaining also have a long history. Instances of labor-management cooperation in the 1920s and 1930s were most noteworthy in the men's and women's garment industries on various railroads such as the Chesapeake and Ohio and Baltimore and Ohio, and in the Naumkeag Steam Cotton Company. Beyond these cooperative programs addressing costs and competitive conditions, many collective bargaining relationships historically included provisions for cooperative activities on a wide range of workplace and industry issues such as safety, quality, and training.

Most of these examples from earlier periods took the form of indirect participation or representation (i.e., they involved workers selected by management or elected by employees to represent them in consultations or negotiations with management over a variety of enterprise issues). Few were as focused on direct employee participation and work redesign as are contemporary initiatives.

This history adds considerable controversy and concern to current debates over employee participation and labor-management cooperation. Some critics believe that today's participation efforts are in some ways an effort by employers to return to the past whereby weak forms of management controlled participation and representation are substituted for independent forms of worker voice. Some skeptics also believe that the changes occurring in the workplace today are merely another in a long history of temporary fads that will ebb and flow as did past episodes of labor-management cooperation.

History tells us that labor-management cooperation in the U.S. tends to periodically ebb and flow. It is hard to sustain in the American environment and institutional setting, and often fails to diffuse widely across the economy.

Obstacles to Diffusion of Contemporary Practices

If American history indicates that sustaining and diffusing cooperation is difficult, and the current data suggest that participation is now partially diffused, the logical question becomes:

"What will influence the staying power and diffusion of contemporary forms of employee participation and worker-management cooperation?"

A number of managers testified that market pressures will force firms to adopt these practices.

Employee participation is more widespread in industries exposed to international and domestic competition than in industries with less competition. How-

26 Kochan and Osterman, *The Mutual Gains Enterprise*; McMahan and Lawler, "The Effects of Union Status on Employee Involvement."
ever, within all industries, a considerable number of firms and employees do not have any significant amount of employee participation or workplace committees. Once the effects of product and labor market competition are controlled, the evidence suggests that size of firm, managerial values, the type of competitive strategies adopted by the firm, the relative influence of human resource considerations in top management decision-making, and in unionized settings, the extent to which the union is involved as a joint partner, all influence whether employee participation will be adopted and sustained over time. Thus, managers, and in collective bargaining relationships, managers and union leaders, have considerable discretion over whether or not to initiate and sustain these workplace innovations.

While there is no clear consensus on what keeps workplace innovations from spreading more widely, some of the most frequently mentioned factors are summarized below in order to stimulate further discussion on this vital question.

**Lack of Trust**

Workers must trust management to use the fruits of worker participation to benefit employees as well as shareholders.

Data obtained in a series of recent focus group interviews conducted by the Princeton Survey Research Center provides insights into the sources of employee skepticism. Consistent with the evidence on workers views summarized earlier, most of the employees in these focus groups responded positively to the idea of employee participation around quality and general organizational improvement. Moreover, many examples of successful quality improvement programs were cited and evaluated favorably by the focus group participants. But many also noted that too often in their experience top management fails to follow through and stay committed to these efforts. Suggestions are not taken seriously or implemented, or the initial commitment to TQM fades as customer pressures to implement these programs fade. Those with such experiences expressed considerable distrust of their managers. These interviews suggest that some employees view these initiatives with a rather skeptical eye based on their past and current experiences.

For workers the biggest fear is that employee participation and productivity improvement will result in the loss of their jobs. At the San Jose hearings, Mr. Romie Manan, an employee of National Semiconductor, told of how he and his fellow employees were bitter about being laid off after contributing ideas to improve productivity of his operations. The company was now planning to transfer this work to a new plant in another state:

"The company claims that these teams give us a voice in running the plant and a place where we can talk about our problems. In reality, however, in these groups, all the company ever wants to talk about are ways to make National more productive, more efficient, and more profitable.

Over the past seven or eight years, our company has shifted production from our plant to lower wage plants in Arlington, Texas and Portland, Maine. Thousands of my fellow workers on the fab lines have lost their

27 See McMahan and Lawler, "Effects of Union Status on Employee Involvement," and Kochan and Osterman, the Mutual Gains Enterprise.
jobs in this process. I will lose mine too, next week after working many years in that factory."

Some middle level managers, first-line supervisors, and workers also are skeptical of management's motives or fear that these initiatives are just another passing managerial fad. One survey of middle level managers reported that 72 percent of these managers felt employee involvement was good for their company, 60 percent felt it was good for rank and file employees, but only 31 percent felt it was good for them.28

Some union leaders distrust managers' motives because they see employee participation initiatives as union avoidance techniques. This distrust has deep historical roots. As noted earlier, union avoidance has historically been one of several factors motivating management to implement workplace committees. Union avoidance has also been documented as one, but not the sole, motivation for some of the workplace innovations introduced by nonunion employers in the current period as well.29

Union leaders are sometimes asked to support and participate in cooperative efforts in one facility at the same time an employer with multiple facilities opposes union representation in others, often newer worksites. This has been a major factor chilling the diffusion of employee participation in unionized facilities and holding back

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**Exhibit II-8**

**AFL-CIO Principles for Labor-Management Partnerships**

First, we seek partnerships based on mutual recognition and respect...A partnership requires management to accept and respect the union's right to represent the workers in units already organized and equally to accept and respect the right of workers in unorganized units to join a union.

Second, the partnerships we seek must be based on the collective bargaining relationship. Changes in work organizations must be mutually agreed to -- and not unilaterally imposed -- and must be structured so as to assure the union's ability to bargain collectively on behalf of the workers it represents on an ongoing basis.

Third, the partnerships must be founded on the principle of equality. In concrete terms, this means that unions and management must have an equal role in the development and implementation of new work systems.

Fourth, the partnership must be dedicated to advancing certain agreed-upon goals reflecting the parties' mutual interests.

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labor leaders from becoming more active and visible champions of employee participation. It is not coincidental, for example, that the union leaders who appeared before the Commission in support of worker participation with individual companies such as AT&T, Phillip Morris, National Steel, Scott Paper, and Miller Brewing were all cases where the issue of union representation in new facilities had been worked out to the parties' mutual satisfaction.

Some managers likewise distrust or are skeptical of union leaders' ability to support cooperation and employee participation, believe unions will hold cooperation hostage to achieve other objectives, or are unwilling to share information and power with union leaders in the belief that the company will be "contractually" bound to continue joint decision-making in the future.

A number of individual unions, including the Steelworkers, CWA, the Amalgamated Clothing and Textile Workers, and the Grain Millers, have recently publicly endorsed employee participation and labor-management partnerships as an explicit policy and objective. As noted earlier, the AFL-CIO recently did so as well. The principles it believes should guide these partnerships are summarized in Exhibit II-8. Whether these principles will be accepted by employers and provide a basis for overcoming the mutual skepticism and mistrust between some labor and management leaders are questions worthy of further discussion.

**Economic Factors.** Building a trusting relationship between workers and employers so that workers are highly motivated and contribute their ideas to the firm constitutes a long term investment. Thus, it is no surprise that management surveys report layoffs and downsizing are the single biggest threat to the continuity of employee participation in industry today.30

Employee participation and related workplace changes entail high start-up costs for training, consulting services, and management and employee time away from "normal" activities. Yet the benefits are not likely to be realized until some time in the future and often are difficult to predict or to measure. This often produces conflicts within management between advocates for these changes and those who want to measure their costs and benefits of these efforts before the benefits are realized. Indeed, the Labor Policy Association reported that other managers were a more significant source of resistance to employee involvement efforts than were employees or unions. Specifically, among those reporting their efforts had been less successful than expected, 42 percent cited management resistance, 39 percent cited employee resistance, and 28 percent cited union resistance as a problem.

Some executives report that the investment community has little knowledge or understanding of workplace innovations. Others go a step further and argue that pressures for short term results from the financial community coupled with the lack of information on the benefits of workplace innovations and the high up-front costs of these efforts produce a systematic under-investment in these initiatives.

In businesses where employee turnover is routinely high, where the education of workers is low, or where the technology of jobs is such that employee participation is unlikely to add much to economic performance, participation may not spread no matter how much it succeeds in other areas.

**Employee Options to Initiate Participation.** The vast majority of employee partici-

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30 Lawler, Mohrman, and Ledford, *Employee Involvement and TQM.*
pation efforts have been initiated by senior managers. Lawler et al., for example, reported that the stimulus for employee involvement came from employees in only 18 percent of the cases. In nonunion settings, management traditionally retains control over whether to initiate, change, or abandon employee participation. Outside of union settings, employees have little independent means for initiating these efforts.

Surveys consistently find that over 80 percent of American workers want a say in decisions affecting their jobs and how their work is performed. A recent survey by the Gallup Organization and the Employee Benefit Research Institute found that 83 percent agreed or strongly agreed that most companies do not give workers enough say in decisions that affect them. Combining these percentages with the number of workers not now covered by some form of participation process, this implies that there may be as many as 40 to 50 million workers who want to participate in decisions on their job but lack the opportunities to do so.

The focus group interviews again provide some insight on the difficulty employees have in acting on their preferences for greater involvement. Most participants felt that their managers would feel threatened by efforts of employees to propose formation of groups or teams to solve problems. Some feared retaliation. Others believed their employers would view this as an effort to organize a union and this would put at risk the jobs or careers of leaders of this type of effort. Others simply expressed a sense of futility about their ability to initiate changes that did not have the active support of their supervisors or top management. Taking the initiative to propose changes in ways that went beyond individual efforts and involved any group or collective process was seen by most participants as risky or futile.

**Government Policy and Legal Issues**

The international evidence presented to the Commission documented that governments can and do promote diffusion of workplace reforms in a variety of ways. Australia and several Canadian provinces require safety and health committees. European countries require work councils if employees express a desire for them at their workplaces. The Japanese Productivity Center encourages and supports labor-management consultation through its data gathering, information dissemination, and related activities. The Australian "Best Practices" program, along with its national arbitration awards, encourage consultation and workplace reforms.

The U.S. Government has no program of a magnitude, visibility, or impact that comes close to any of these international approaches.

Labor law casts a cloud that some believe limits the scope of participation. Seventy-six percent of the managers who responded to the Labor Policy Association survey indicated their organization saw sig-

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31 Lawler, Mohrman, and Ledford, *Employee Involvement and TOM*.
33 This estimate was calculated as follows: 111 million wage and salary workers - 19 million government employees = 92 million private sector wage and salary workers. 92 million (.88)(.67)(.80) = 43.4 million. .88 = percentage of private sector non union work force; .90 = percent expressing a desire to participate on issues normally covered in employee participation processes. This calculation assumes all union members have access to participation through their collective bargaining representatives. Relaxing this assumption and including both the union and nonunion labor force in the calculation increases the estimate to 49.3 million private sector workers. (92)(.67)(.80) = 49.3 million.
significant problems with the government's views of employee involvement programs. Sixty-eight percent indicated that the government's views either are of concern to them (45 percent) or are making them more cautious about broadening existing or implementing new programs (23 percent). Those most vulnerable to legal challenge are precisely those that take a broader, more systemic approach to participation that the evidence suggests have the greatest long term positive effects on economic performance.

7. Legal Issues Regarding Workplace Employee Participation

Section 8(a)(2) of the National Labor Relations Act makes it an unfair labor practice for an employer to "dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to it." In turn, Section 2(s) of the Act defined "labor organization" 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." The underlined phrases indicate how broad and how important Congress intended this legal prohibition to be.

The stated aim of the NLRA is to encourage collective bargaining through representatives of the employees' own choosing. Unions whose activities are limited to employees at a single firm are perfectly compatible with this policy as long as they are not created or controlled by management. The law says employees may not be exposed to employer-dominated structures that "deal" with "conditions of work." Congress' assumption, based on the experience with the employee representation plans of the 1920s reviewed earlier, was that the presence of such company-dominated unions would unduly influence employees in their judgment about whether they needed and wanted to be represented by an independent union.

Only during representation election campaigns is it illegal under the NLRA for employers to unilaterally grant benefits to employees. Management-created representation plans are illegal at any time.

By the end of World War II, Section 8(a)(2) was generally conceded to have eliminated as a significant phenomenon the form of "company unionism" that had developed prior to the enactment of the NLRA. Though Congress chose not to relax this provision in the 1947 Taft-Hartley amendments to the NLRA, the principal use of Section 8(a)(2) from the mid-1940s to the mid-1970s was to bar employers from recognizing minority unions, to require company neutrality between two unions seeking to represent its employees.

In the late 1970s and early 1980s, several legal controversies arose about the original intent and contemporary relevance of Sections 8(a)(2) and 2(5) of the NLRA.

34 The Supreme Court so held in Exchange Parts (1964).
35 Or so the Supreme Court appeared to rule in its two major decisions interpreting this statutory policy: in Newport News Shipbuilding & Drydock (1938), regarding the Section 8(a)(2) concept of "employer domination"; and in Cabot Carbon (1957), regarding the Section 2(5) phrase "dealing with".
closely-divided National Labor Relations Board found that employer participation in grievance adjudication committees constituted performance of management functions on behalf of their employer, rather than representation of employees in dealing with the employer (Mercy-Memorial Hospital (NLRB), 1977)). That same year, a unanimous Board panel concluded that a job enrichment program under which production employees were divided into small teams, that by consensus divided up their own work and overtime assignments, did not constitute illegal "dealing with" the employer about conditions of work (General Foods (NLRB, 1977)). Meanwhile several appeals court panels, most conspicuously on the Sixth Circuit (e.g., in Scott and Petzer (6th Cir. 1984)), were giving narrower reading to the key statutory terms "labor organization" and "employer domination." A sentiment that ran through several of these judicial opinions was that the adversarial conception of the employment relationship that had led to the 1935 Wagner Act was incompatible with the cooperative relations that were necessary in the modern economic and human resource environment.

The topic returned to the national legal agenda with the Electromation case of 1992. Management of Electromation, reacting to employee displeasure about the company's new pay and attendance policies, established five committees to address these and other issues such as pay progression, no smoking, and the communication network. The committees were principally comprised of employees selected by management from volunteers, along with one or two supervisors or managers. The committees began to meet weekly to talk about these subjects. However, after the Teamsters Union surfaced with a petition to represent the employees, the company campaigned actively against union representation of the workers and announced that it would not continue with the committee format until after the NLRB-conducted election. Shortly before the election a Section 8(a)(2) charge was filed with the NLRB along with a Section 8(a)(1) charge alleging unlawful employer interference with the election.

The Board scheduled the case for special oral argument at which a variety of employer groups argued that Sections 8(a)(2) and 2(5) do not apply to these forms of employee involvement. However, the four members of the Board were unanimous in finding a violation of the Act in the circumstances of this case. Though they authored four different opinions explaining their respective views about the relevant legal principles, their decision in this case reinforced the traditional board interpretation of this feature of the NLRA, rather than accept a narrower view that would exclude most or all employee involvement programs found in many workplaces today. Electromation is now on appeal to the Seventh Circuit Court.

Few cases have actually been brought to the NLRB on these issues. A recent study36 found an average of about three such NLRB decisions a year over the last quarter century. This may change in the future, however, given the visibility and importance attached to the Electromation case. For these reasons, a number of employer representatives suggested the Commission recommend major revisions in this area of labor law. Most labor leaders believe no change in the law is required.

If changes to 8(a)(2) are to be considered, two related legal questions will need to be addressed. The first reflects the same arms-length adversarial philosophy of workplace

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representation embodied in Section 8(a)(2). This issue concerns exclusion of all supervisors and managers for the rights and protections of national labor law. This statutory exclusion rests on the assumption (see Bell Aerospace, (1974)) that employers need the undivided loyalty of management in representing shareholder interests where these conflict with the interests of the work force. If a more cooperative conception of the employer-employee relationship is embodied in labor law so that representation does not necessarily imply the existence of an adversarial relationship, it may be necessary to reconsider whether supervisors or middle managers should be denied the right to union representation or collective bargaining.

The second question also involves the managerial exclusion doctrine in the NLRA and arises out of the Supreme Court's 1980 Yeshiva University decision. The Court found that university faculty were excluded from the NLRA because as a group they influenced their employer's policies about curriculum content, teaching staff, and so on. Up to this time, that brand of legal exclusion has been applied principally to university faculty and other professional-level employees. However, as noted earlier in this Chapter, even under current labor law more and more employers are choosing to delegate to work teams considerable autonomy to shape the make-up of their group, their mode of operations, materials and equipment used, and so on. It would seem inconsistent with the intent of the NLRA if, in pursuit of more innovative and cooperative work relationships, employees were denied the right to independent union representation.

8. Summary and Questions for Further Discussion

The Commission's findings with respect to employee participation and labor-management cooperation can be summarized as follows:

1. Employee participation, in a wide variety of forms, is growing and is partially diffused across the economy and the work force, extending to upwards of one-fifth to one-third of the workforce. Adding the more informal styles of communication and involvement found in many small establishments would likely increase the number covered.

2. The trends in the workforce and the economy identified in Chapter I suggest interest will continue to grow in future years as the education of the workforce rises, technology creates more opportunities to share information and delegate decision-making authority, and the pressures of competition require continuous improvement in productivity and quality.

3. Survey data suggest that between 40 and 50 million workers would like to participate in decisions on their job but lack the opportunity to do so.\footnote{37 See footnote 33 for the calculations of these estimates.}

4. Labor representatives view employee participation as a means to enhance both competitiveness and workplace democracy. They believe that independent representation is essential to achieve both of these goals. Most management representatives see employee participation as an integral part of the work process and believe

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Effective participation can be achieved in both union and nonunion settings.

5. The labor and employment legislation enacted in the 1930s has raised questions about a variety of forms of contemporary employee participation. This is particularly true of (1) employment laws and regulations that try to draw a distinction between "exempt" and "nonexempt" employees or among "workers," "supervisors" and "managers," and (2) labor laws that may tend to limit the scope of employee participation in both union and nonunion settings.

6. Where employee participation is sustained over time and integrated with other organization policies and practices, the evidence suggests it generally improves economic performance. If more widely diffused and sustained over time, employee participation and labor management cooperation may contribute to the nation's competitiveness and standards of living.

7. Both historical and contemporary evidence suggests that employee participation and labor-management cooperation are fragile and are difficult to sustain and diffuse in the American environment.

8. The available evidence does not provide a clear understanding of the factors that limit the diffusion or sustainability of employee participation and labor-management cooperation. Four factors that appear to be important include: insufficient trust, the inability of employees to initiate participation, economic pressures on employers, and government policies and legal issues. Further understanding is needed, however, of these and other barriers and potential strategies for overcoming them.

These findings suggest a number of questions on which the Commission invites further discussion and analysis:

1. How can the level of trust and quality of the relationships among workers, labor leaders, managers, and other groups in society and at the workplace be enhanced?

2. Is there a deep unrealized interest in participation in the American workforce? If so, what keeps these employees from taking the initiative on these matters?

3. Should employees have some voice in initiating employee participation? If so, how might this be done?

4. Should employees have some voice in determining whether, once started, a given employee participation process should be continued, changed, or terminated? If so, how might this be done?

5. How serious are the economic obstacles such as downsizing pressures for short-term results, high start-up costs, and lack of understanding in the investment community? What, if anything, can be done to address these issues?

6. How should the legal uncertainties and limits on employee participation and labor-management cooperation be addressed without discouraging workplace innovations that enhance the competitiveness of the modern workplace and without risking a return to the conditions that motivated passage of these protections?

7. What, if any government strategies can assist the diffusion of employee participation and labor-management cooperation?

The issues raised in this chapter should not been seen in isolation. They are tightly interrelated with the issues discussed with respect to collective bargaining in Chapter III and government regulations and dispute resolution in Chapter IV.

With respect to future legal policy, the major question is whether, and if so, how,
the National Labor Relations Act should be revised or interpreted to permit nonunion firms to develop one or more of the array of employee participation plans that have been challenged under Section 8(a)(2) of the Act:

- Self-managed production teams, particularly if the team addresses not only efficiency and product quality, but also workplace safety, assignments, and other matters of direct concern to employees.

- In-house dispute resolution procedures in which employees may participate either as members of the committee hearing the matter or as representatives of the employee with a grievance.

- Joint quality of working life committees in some of which employee members are selected by management, and in others by the employees.

- With respect to these and other forms of employee participation that have become more common in the modern workplace, very different policy positions are now being advocated from different quarters:

- Section 8(a)(2) should be retained in its present form.

- Section 8(a)(2) should no longer limit the freedom of nonunion employers to establish procedures by which its employees will "deal with" (as opposed to "collectively bargain" about) conditions of employment.

- Section 8(a)(2) should be relaxed to permit employers to establish such employee participation procedures dealing with conditions of work, if these procedures meet certain standards about employee selection, access to information, protection against reprisals, and the like.

- Section 8(a)(2) should be altered to require employers to offer their employees participation procedures meeting these minimum quality standards.

In the second stage of its proceedings, the Commission would like to hear from interested parties about which of these (or other) options are preferable (and what, if any, revisions might also be made in the scope of the managerial exclusion from the NLRA).
Exhibit II-4
Two Cases of Partnerships in Union Settings

I. Ford-UAW

The Ford and UAW joint initiatives are national and local. At both levels, they address matters of common concern in areas such as product quality, education and development, employee involvement, team structures, work redesign, health and safety, ergonomics, employee assistance, apprenticeship, and labor-management studies.

Job security protection, wide information sharing, and profit sharing are all important building blocks for this structure of workplace cooperation.

A negotiated central fund and local training funds, projected to total $75 million in 1993, support these joint endeavors. Administrative direction is furnished by the first National Training Center ever negotiated in the United States, plus a network of national and local committees that extends to all 71 Ford-UAW locations in the U.S.

Each workplace program has a purpose, structure, and focus of its own. Some have large programs within programs. For example, there are more than 20 individual programs in education and development.

Source: 1993 UAW-Ford Joint Programs Key Documents.

II. Joint Approach to New Plant Design at Miller Brewing Company

In October 1990 the decision was made to open Miller Brewing Company’s plant located in Trenton, Ohio. Planning at the earliest stages assumed that our workforce at the new facility would be unionized. The planning team decided that if the workforce chose to be represented, a significant investment would be made in communicating with the union leadership about issues facing the plant, the company, and the industry.

While certain decision-making responsibility would still reside with management, union involvement in plan operational planning, problem-solving, and goal setting would be sought at every level and few decisions would be made without the union leadership’s consent and endorsement. In practice, this meant that the plant’s management team would not only have to include the union in weekly staff meetings, decisions, and planning, but would also have to re-think which decisions required staff-level attention and involvement.
Exhibit II-5
Two Cases of Plans in Nonunion Companies

I. Donnelly Corporation
[The Scanlon Plan] was introduced in 1952...in the late 1960s Donnelly had worked with the Scanlon Plan for a fair amount of time but we really introduced what we call the "Team Concept" in the late 1960s....We also started at that time trying to provide an alternate forum for due process...the Equity Structure began in the late 1960s as basically an employees' committee....Now it's developed over time to a representative structure to make sure that it satisfied two fundamental purposes. These representatives sit on committees, and we have sort of a hierarchy of committees. Eventually, the top committee in this structure is the Donnelly committee, which has 15 voting members, one of whom is the president of the company. So again, it is a diagonal slice; there are representatives from all different section of the company.

This structure has two fundamental purposes....it provides a safety net on issues of fairness, the whole issue of due process, grievance processing. We also call it the issue resolution process, so I think that's a very interesting commonality there.

Also, we ask our equity structure to guarantee that people have a voice in the development of policies that affect them and in fact, we ask our Donnelly committee to unanimously agree on all personnel policies that we put into place in the company.

II. Herman Miller, Inc.
We began to practice participative management in the 1950s with the adoption of our Scanlon Plan...Every month we hold informational meetings to inform all employees of business conditions and our performance to plan. Every full-time tenured employee, regular employee, with one year of tenure, is given stock in the company throughout profit sharing plan.

[W]ithin our organization we have an internal Appeals Board, which is made up of management and employees. There is a group of ten people who an employee an choose [five] from and appeal a decision to them.

We also have what we call caucuses and councils. Caucuses are used for information sharing, for seeking charity, for groups, and they elect an individual who is able to act as an information source for that group of employees in the organization.

We have what we call a Suggestion Review Board, which is made up of representatives from all disciplines in the organization, and it is a diagonal representation of employment.
Exhibit II-6
The Polaroid Problem

I. The Employee’s Complaint
I was elected to the Employee’s Committee in 1992...I ran on a platform of reform. The word around the company was that the Employees Committee was a tool of management and did not represent the employees and had been that way for a long, long time.

So I filed a complaint with the Office of Labor Management Standards...They did an investigation and found out, yes, that...these officials of the union should be elected by the membership.

There was a special meeting of the Employees’ Committee....shortly thereafter where Mr. Booth appeared along with other corporate executives, and said he had decided to do away with the Employees’ Committee...

It was widely known in the company that this organization was not in compliance with the law, but nobody filed a complaint about it. But, they [employees] wanted reform. We all wanted reform. They said it didn’t represent us. I was there trying to do what I felt I had been elected to do. That was to make this body of people represent the employees of this company. That was what they had elected to do. Then, all of a sudden, it was gone.

II. The Company’s Dilemma
What it needed for sure is greater freedom to try new ideas and methods of participation without the fear, that merely discussing vital workplace questions with employees, means being charged with unfair labor practice violation. It seems terribly unreasonable for federal policy to urge workplace cooperation and then put out of bounds open discussion on the most vital issues for employees—pay, policy, and benefits.

As a practical matter, I can’t figure out how to engage in any meaningful discussion about any workplace issues without treading on those important matters. Employee involvement is about new creative ideas and solutions. That is what our country’s history has been all about. So why have barriers to trying out different forms of employee creativity in the workplace to solve matters are so important to everyone?
Exhibit II-7

Works Councils in Europe

1. Councils are elected by and cover all employees (up to the most senior executives) in an establishment. Works councils have information sharing rights on issues affecting the enterprise and consultation rights on a wide array of human resource policy issues. In Germany work councils have joint decision-making rights on some specific workplace issues.

2. Works councils operate separately from unions though in most countries unions representatives make up the majority of council members and unions sometimes provide technical advice and other supports to council members. Works councils are reported to be more effective where there is a strong union presence and support for council activities. They are least effective in France where they lack support from either employers or the ideologically divided French unions.

3. In some countries unions and/or employers initially oppose works council legislation. In countries with legislation works councils are now generally accepted by both unions and employers with France again serving as the exception to this generalization. British employers generally oppose works council legislation both within their country and through directives of the European Commission.

4. Works councils encourage employers to consider and consult on human resource issues when planning major restructuring or modernization decisions and encourage employees to recognize the need for such plans. Some see this as a major benefit; it elevates the importance and integrates human resource policies with other strategic decisions. In addition, councils tend to: (a) improve communications and assist in resolving grievances, (b) delay decisions but improve their quality; (c) provide flexibility in adapting regulations to fit the needs of different worksites, and; (d) support diffusion of work redesign and decentralized decision making.*

5. But these benefits are not costless. Councils slow decision-making. Some see them as to formal and less flexible than the informal small group problem solving processes found in American firms, especially when faced with the need for major restructuring often called for by current competitive conditions.