

Contemporary Issues in Employment Relations—A Roundtable

DAVID LEWIN, MODERATOR

For the 2006 LERA research volume, leading scholars were assembled in a roundtable for the purpose of eliciting their views on key contemporary industrial relations issues. The roundtable members were Adrienne E. Eaton, professor and director of labor extension in the Rutgers University School of Management and Labor Relations; Thomas A. Kochan, the George M. Bunker Professor of Management and director of the Institute for Work and Employment Research in the MIT Sloan School of Management; David B. Lipsky, the Anne Evans Estabrook Professor of Dispute Resolution and former dean of the School of Industrial and Labor Relations, Cornell University; Daniel J.B. Mitchell, the Ho-Su Wu Chair in Management in the UCLA Anderson School of Management and former director of the UCLA Institute of Industrial Relations; and Paula B. Voos, professor and chair of the Department of Labor Studies and Employment in the Rutgers University School of Management and Labor Relations. The key issues were posed as questions, and the responses are summarized below.

Lewin: In view of the secular decline of unionism in the United States and abroad, what is the potential for the emergence and growth of other forms of worker representation?

Lipsky: There are two fundamental forms of worker representation, I believe; one form I label “independent,” the other “dependent.” Unionism is clearly an independent form of worker representation that allows workers to establish and maintain an organization “of the members, for the members, and by the members.” A principal characteristic of independent representation, therefore, is that the workers themselves control their representatives. There are several means by which workers can exercise such control, but two stand out: they can elect their representatives or, alternatively, they can hire them. In the vast majority of unions

the officers are elected by the members, but in some unions business agents and administrators are hired by the organization. Indeed, in certain civil service and professional associations, top-level administrators (“executive directors”) exercise more influence on the organization’s policies and practices than do elected officers. A hallmark of independent worker representation is that the policy makers and administrators are ultimately accountable to the members of the organization.

Probably the best-known type of dependent representation is the so-called company union, but there are many other varieties of this form. Any organization or entity that purports to speak for (i.e., “represent”) workers but is not actually controlled by workers is a form of dependent representation. Every student of labor relations knows that the Wagner Act banned company unions. That statute made it an unfair labor practice for an employer “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.” The Wagner Act virtually eliminated the company unions that were so prevalent during the 1920s. But in the last quarter of the 20th century, the increasing use of teams in American business enterprises once again raised the specter of company unionism. Teams have many of the characteristics of unions, but is there any doubt that they are really established, financed, and ultimately controlled by employers? (No!)

In the political arena, there are countless organizations that claim to represent the views of workers and their families. Some of them have been created by the labor movement (e.g., the AFL-CIO’s Working America) and some are closely allied with it (e.g., the Alliance for Retired Americans). But it is quite evident that the vast majority of political action groups that claim to speak for American workers are neither financed nor controlled by them. To illustrate, consider the National Right to Work Committee, which asserts on its website (<http://www.nrtwc.org/about/>), “The members of the Committee are men and women—in all walks of life, from every corner of America, union members as well as nonunion employees—who, through their voluntary contributions, support the work of the Committee.” This statement fails to mention that the committee is financed almost entirely by employers and business groups.

It is probably no coincidence that the relative decline of authentic unionism in the United States has been accompanied by a dramatic increase in the use of teams in American industry. Also, political action groups and other organizations allied with the labor movement have struggled to maintain their strength, while various entities that profess to act on behalf of workers but are actually financed by business and conservative interests have proliferated. In other words, for three decades

or more dependent representation has been replacing the independent representation of American workers. I do not foresee a reversal of this trend in the immediate future because all the key factors that have contributed to this development—globalization, deregulation, technological change, and the rebalancing of political power—will continue to shape the future of worker “representation.”

Eaton: I think we need to broaden our understanding of what a union is. For decades, scholars and trade unionists themselves have equated “union” with a collective bargaining agent, and the Wagner Act framework has limited our thinking in this regard. More recently, both of those groups have been reconsidering this narrow definition. In a recent article in *Labor Studies Journal* focused on “managerial unionism,” Paula Voos and I harked back to Sydney and Beatrice Webb to argue for a return to an expanded definition of unionism. As we point out, “The Webbs broadly defined a union as a ‘continuous association of wage-earners’ for the purpose of maintaining or improving the conditions of their working lives” (Eaton and Voos 2004, p. 25). We further explored this notion through the lens of the Webbs’s “methods of trade unionism,” which included collective bargaining as well as mutual insurance and legal enactment, but then expanded it to include the contemporary concept of “skill development and career assistance.”

We then used this broadened definition to frame a review of organizational types created by managerial employees to improve the conditions of their working lives. These include intraorganizational forms like networks and caucuses, cross-organizational forms like professional associations, and, in certain contexts, collective bargaining organizations. While our focus was on managerial workers, other scholars have applied many of these same ideas to other occupational groups, such as service workers (Cobble 1991), professional workers (Hurd and Bunge 2003), or any workers trying to survive in the more mobile and contingent labor markets of the contemporary era (Heckscher 2001; Osterman et al. 2001). In this regard, my Rutgers colleague, Janice Fine, has been studying community unionism and worker centers, which tend to be oriented around the needs of low wage and immigrant workers (see Fine 2006). Though, in my view, there are notable problems and shortcomings in noncollective bargaining forms of unions—for example, underinstitutionalization—there is also considerable appeal of these newer forms to workers themselves. Further, these are not isolated phenomena; there are substantial numbers of workers participating in all these different forms. An important question in this regard is whether these nontraditional forms of worker representation are interested in

and can ally themselves with the more traditional labor movement, perhaps especially to create political power.

Mitchell: There have been nonunion methods of obtaining employee input into decision making for a very long time, ranging from the simple suggestion box to the elaborate worker representation and “company union” plans developed during and after World War I; the quality circles of the 1980s also fall into this category. Although there was much fuss during the 1990s about the Wagner Act’s limitation on company unions as a broader constraint on worker participation, the Wagner framework is basically “don’t ask; don’t tell.” That is, there are undoubtedly many nonunion representation arrangements that likely would run afoul of National Labor Relations Board (NLRB) scrutiny if complaints were made, but which don’t actually do so because no one complains. Further, nonunion firms often have grievance arrangements ranging from informal “open door” policies to more formal voice-type systems. The public sector in particular has long had formal grievance systems as part of the larger civil service apparatus.

Outside of these particular microlevel arrangements, the legal system has provided another avenue for employee voice. In particular, the courts have evolved exceptions to the employment-at-will doctrine and, in some cases, provided avenues for “wrongful discharge” claims. In still other cases, clever attorneys are able to rework what might otherwise be considered employee grievances to fit into complaint mechanisms for programs such as Equal Employment Opportunity (EEO) and workers’ compensation.

Some scholars have argued that, apart from the arrangements outlined above, there is a large, pent-up demand among American workers for something like European-style works councils. Freeman and Rogers’s (1999) survey evidence in particular is often taken as proof of such latent demand. But the problem with this argument is that while workers undoubtedly will say that *at no cost* they would like more influence on decision making, the depth of such sentiment can only be gauged when there is an explicit, specified cost—in question form, “Would you be willing to have your pay cut by 10% in order to have a works council?” It is most unlikely that such cost-posing questions would produce evidence of strong latent worker demand for works councils or the like. To emphasize this point, consider that there are over 400 congressional districts in the United States, yet not one candidate that I am aware of has run for office on a platform of establishing works councils!

It is true that, absent employer resistance, the unionization rate in the United States would be substantially higher than it actually is. The

gap between the public sector, in which almost 4 in 10 workers are union-represented, and the private sector, in which 1 in 10 workers are union-represented, is evidence for this proposition. Public employers are less resistant to unionization than private employers because public employers are subject to political constraints, are not exposed to pressures to maximize profits, and tend to operate in areas where market competition is not (much of) a factor. Consequently, public employers resist unions considerably less than do private employers.

The history of unionization in the United States is that key external events, such as the Great Depression, have been a major influence on unionization and on public policies related to employment more broadly; perhaps there will be such great events in the future. In particular, large-scale terrorist attacks, a world financial crisis if Asian central banks dump their dollar reserves, or the failure of pensions, health care, and Social Security to carry the safety net load for the retiring baby boom generation could trigger new forms of employee voice. My guess, however, is that whatever employee voice is triggered by such events will be expressed largely through the political channel.

Voos: If employees cannot use unions to express their distinctive interests and resolve the problems that they experience at the workplace, then I predict that they will attempt to improve their situation through other means. In democratic nations, it is likely that there will be added pressure for governmental solutions to common employee problems. These might include labor organizations that emphasize political rather than collective bargaining strategies or independent movements pressing for legislation in alliance with labor organizations. Recent examples in the United States include the numerous local movements for city and statewide living wages, legislative efforts (such as in California) to require employers to provide health insurance or (such as in Maryland) to contribute a certain proportion of compensation to health insurance, and interest groups (such as in New Jersey) lobbying for prevailing wage provisions for government subcontracted service employees.

Alternatively, employees may seek redress of their work-related frustrations through increased litigation and the courts. Some of this litigation involves individual employment discrimination cases, while other litigation involves collective or class action cases. A notable example is the recent successful effort to ensure that grocery delivery workers in New York City, many of whom are undocumented immigrants, are not misclassified as independent contractors but, instead, are paid employees subject to the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).

Finally, in nondemocratic nations, lack of access to either independent union representation or legitimate political means of expressing discontent is likely to be associated with social unrest; China is a notable case in point.¹ While it is hard to know how much of the recent rash of protests in China are responses to employment problems as opposed to environmental concerns, land seizures, provision of health care, and other issues, the lack of both independent unions and democratic political parties in that nation seems clearly to be associated with manifest social unrest.

Kochan: Given the widespread desire for a voice at work, the void left by the decline of traditional unions will be filled in some way or another. Indeed, there is already a variety of "alternative" forms of voice and representation emerging among different groups. My own view is that these will evolve into a mixture of alternative forms, including but perhaps not limited to:

- Unions that develop new models and strategies for organizing and representing workers. Already we see unions like the Service Employees International Union (SEIU) and others that are organizing target groups, largely low-wage workers, through means that get around the election procedures of the NLRB through some mixture of corporate campaigns, community coalitions, neutrality agreements, and, in some cases, such as at Kaiser Permanente, partnership processes. Various combinations of these efforts will continue to be a source of new union members.
- Professional organizations that represent members without formal collective bargaining rights are playing key roles in many occupations. Physical therapists have been active in setting certification standards and providing continuing education, joining more traditional professional groups like doctors, lawyers, architects, and other health care personnel in providing such services. These forms of representation need to be counted in any estimate of percentage of the "represented" workforce in today's economy.
- Community groups, coalitions, and emerging institutions, such as the various worker centers, and ethnic groups, such as the Korean Immigrant Workers in Los Angeles at the low end and Indian and Chinese engineers and computer specialists at the high end.
- Nongovernmental organizations (NGOs) that put pressure on corporations to meet and monitor labor standards in their supply chains.

These forms are not mutually exclusive. Instead, there may be a mix of these models, such as community and ethnic group coalitions that work with unions to gain representation. Given this diversity of approaches, we need to stop equating "representation" with the number of workers covered under traditional forms of collective bargaining if we want to accurately measure, much less understand, the state of worker representation today and in the future. Finally, the wild card in predicting the future of worker representation involves the American public. If and when the American public wakes up to the fact that basic rights of representation are unfairly suppressed and the effects of this suppression hit home to them, they may demand more responsible behavior on the part of employers and government. This is what it will take for these and other forms of worker representation to grow to a large scale.

Lewin: How can the growth of both high-performance work systems (HPWS) and alternative dispute resolution (ADR) systems best be explained?

Mitchell: The question presumes that there is a substantial growth of both types of systems and that both are part of the same package. It's not clear to me that HPWS are in fact experiencing dramatic growth; usually the issue is posed as "low road" versus "high road." There is no theory that says that a particular industry might not feature dual equilibriums, that is to say that, low-road firms that compete mainly on low labor costs might co-exist with high road firms with better pay, benefits, and conditions. The issue turns on whether productivity gains that might come from high-road practices can offset low labor costs.

Demonstration projects involving low-skill manufacturing, such as the Sweat-X experiment in Los Angeles, do not provide evidence that in such sectors there is a high road payoff. On the other hand, firms that employ a substantial number of highly skilled professionals generally need to be concerned that their human assets don't walk out the door. Long-term labor force projections indicate slow growth in the share of managerial and professional workers, so one might expect high road practices to grow slowly, too. The key point is that this is a sectoral issue. What matters most are the production technology and the degree of reliance on highly skilled workers who are costly to replace.

Alternative dispute resolution is a separate issue. What is the process an alternative to? In the union sector, strike frequency appears to have fallen, particularly in the early 1980s, when the most dramatic losses of union membership occurred. It is not clear, however, that the decline in strike propensity reflects increased usage of traditional alternatives, such

as mediation and/or interest arbitration. Within the union sector, we really have no reliable information as to whether such approaches as "med-arb" are in fact replacing traditional grievance and arbitration systems in rights disputes.

In the nonunion sector, because of the propensity to litigate and the erosion of at-will employment, use of such techniques as requiring employees to acknowledge at-will status, treating them as independent contractors, or requiring that employment disputes be settled through alternatives to courts is surely growing. Some of these responses are of questionable legality. That doesn't mean, however, that they are not being used and are not growing in usage.

Kochan: Union avoidance is part but not all of the explanation for the growth of HPWS and ADR. It is overly simplistic to see union avoidance as the *only* factor causing their growth. HPWS also have grown because they offer significant productivity and service quality benefits, and the majority of workers prefer them to more detailed and tightly constricted job designs. The problem is that they started first in nonunion settings and were used as union avoidance tactics. Therefore, union leaders were (and in some cases still are) slow to see their potential benefits for union members and union management relationships. Where unions have embraced and adapted these processes to union-management settings and are involved in overseeing their use, they can produce and have produced joint gains.

ADR is also a response to the growing costs of litigation. Here we have the same problem: unions have been slow to see how they could incorporate and champion ADR as a service to current and potential members. If unions took this more adaptive approach, ADR would not only spread more rapidly, but the due process standards that are needed for ADR to become a useful public policy tool would be more readily enforceable.

Eaton: I'm not convinced that the growth of HPWS that was well documented a decade ago has been sustained. I would go even further and speculate that there may be a decline in the overall use of these systems. As far as I know, there is no recent evidence for the prevalence of the practices commonly associated with HPWS. My sense of this is related in part to the steady decline in manufacturing in which, at least in the union sector (the sector with which I'm most familiar), many of these practices are quite well known if not common. Whereas 10 or 20 years ago management may have been interested in engaging the workforce and the union in reforming the production system, the pressures today

seem to be pushing management heavily toward the off-shoring option. At the same time, there has been some growth in labor-management partnerships and the attendant use of high performance work practices in parts of the health care industry and in the public sector. Whether these initiatives can be sustained given the pressures those sectors are also under remains unclear. Perhaps, as a field, we should be asking today about the impact on HPWS of the erosion of high-quality health care and retirement benefits. In general, the "low road," as exemplified by Wal-Mart, remains a compelling alternative for some if not many companies and industries, although that model, especially at Wal-Mart itself, is encountering considerable public pressure and questions about its performance.

I'm more sanguine about the continued growth of ADR practices, although here again I have not seen any recent data indicating that growth has continued. In their literature review, Bingham and Chachere (1999) listed the most common reasons employers gave for the adoption of ADR, which were to reduce the risk, cost, and slow speed of litigation; respond to a changing regulatory environment that encouraged ADR; more strongly focus on the disputants' underlying interests rather than the validity of their positions; improve productivity through reducing unwanted absenteeism and turnover and increased organizational commitment; achieve greater confidentiality; and avoid unionization. A cursory review of these motivations suggests that there has probably been little change in most of them. The shifting legal framework may have undermined some practices, particularly mandatory arbitration, but overall it continues to provide encouragement to ADR. Looser labor markets in some industries and for many occupational groups may have decreased worries about employee turnover for some employers, but for many others (for example, in health care) employee retention remains an important goal. And, while union density still appears to be in long-term decline, there is also sufficient organizing activity in some sectors to keep union avoidance on the radar screen for many employers. In short, absent any evidence to the contrary, I hypothesize that ADR systems will continue to grow.

Lipsky: For the past decade, Ron Seeber and I have been conducting research on the rise of ADR (Lipsky and Seeber 1998; Lipsky, Seeber, and Fincher 2003; Lipsky and Seeber 2004, 2006; Seeber and Lipsky 2005). Our research has been based on a survey of the Fortune 1000 companies, a survey of the members of the National Academy of Arbitrators, on-site interviews with managers and lawyers at about 60 major U.S. corporations, and other data sources. In our research, we find that virtually all major

U.S.-based corporations nowadays use arbitration, mediation, or other third-party techniques to resolve workplace disputes. These techniques may be used either on an ad hoc basis or as a matter of policy. More specifically, we estimate that about 40% of the Fortune 1000 companies use ADR techniques as a matter of policy (Lipsky, Seeber, and Fincher 2003).

What accounts for the rise of ADR in the United States? Over a 30-year period, from 1963 to 1993, Congress passed at least two dozen major statutes regulating employment conditions. These statutes gave rise to new areas of litigation, ranging from sexual harassment and accommodation of the disabled to age discrimination and wrongful termination. More and more dimensions of the employment relationship were brought under the scrutiny of the judicial system and a multitude of regulatory agencies. Over time, litigants (especially employers) expressed increasing frustration with the legal system because of the long delays in resolving disputes, the costs associated with these delays, and the often unsatisfactory outcomes. Hence, they increasingly turned to ADR as a means of avoiding these costs and delays.

ADR is principally a phenomenon of the nonunion workplace. No informed observer of employment relations believes that the relative decline of unionism has been accompanied by a decline in workplace conflict. Nonunion employers realized that they had to devise a means of dealing with workplace disputes, and that relying on litigation clearly was not the answer. ADR had the great advantage over litigation of providing a faster, cheaper, and more efficient means of resolving employment disputes. Some employers, however, came to believe that using ADR was (also) an effective means of avoiding unionization. In the interviews we conducted with employers, a handful acknowledged that union avoidance was one of the main reasons why they turned to ADR.

Seeber and I also discovered, however, that there is a link between the growing use of HPWS and the rise of ADR. But to understand this link, one has to recognize that many U.S. corporations are moving beyond ADR toward the adoption of so-called integrated conflict management systems. Such a system does not simply feature the use of certain third-party dispute resolution techniques or even the adoption of a set of conflict resolution policies. Rather, an integrated conflict management system "introduces a systematic approach to preventing, managing, and resolving conflict that focuses on the causes of conflict within the organization" (Gosline et al. 2001, p. 8). In *Emerging Systems for Managing Workplace Conflict*, we wrote, "The reorganization of the workplace has had pronounced implications for conflict management in that a workplace conflict management system is the logical handmaiden

of a high-performance work system" (Lipsky, Seeber, and Fincher 2003:68). In our survey of Fortune 1000 companies and our fieldwork, we discovered that a company that had adopted advanced workplace practices, such as team-based production, was more likely to have a conflict management system. While the correlation between the use of a conflict management system and the use of advanced human resource practices is not perfect, a growing number of managers have come to realize that delegating the responsibility for controlling work to teams is consistent with delegating authority for preventing or resolving conflict among the members of those teams (Lipsky, Seeber, and Fincher 2003).

Voos: Both HPWS and ADR systems have been instituted by employers who are seeking to reduce cost and improve productivity. ADR systems have been initiated in order to control litigation costs arising when dissatisfied employees seeking redress in the courts for perceived violations of employment law. Further, they may also address violations of the employer's established personnel policies.

HPWS often include assurances that employees will be treated fairly and will not be punished for exercising voice, that is, for criticizing existing practices and suggesting improved ones. Where employees are not union represented and lack grievance arbitration systems to protect "just cause," having an ADR system in place should make such assurances more credible. Hence, there is a positive correlation between the two.

Lewin: Is human resource management (HRM) being "crowded out" by organizational behavior (OB) in similar fashion to the earlier crowding out of industrial relations (IR) by HRM?

Kochan: There are both practice and research/teaching dimensions of the current state of HRM that are relevant here, and they are interrelated. In my view, the bloom is off the rose of "strategic HRM." Only in a subset of the largest U.S. firms do HR executives have a significant, influential role in firm strategy formulation; finance still rules the day, with HR far behind. Moreover, many of the operational tasks formerly carried out within the HR function are now being dispersed to contract firms, off-shore data management operations, line managers who do their own HR decision making, and subcontractors, temporary help, and consulting firms that provide workers and/or help in recruitment, training, and compensation research. The sooner that HR educators recognize these realities, the more they will have an opportunity to adjust their teaching of HR to managers and/or HR majors to match the nature of the jobs managers and HR professionals actually do. Until then, they

are dedicated professionals who work hard not only on behalf of management and the company's shareholders, but also on behalf of the organization's employees. I do not know whether OB is crowding out HRM, but I do know that a first-class organization needs talented managers who are skilled at dealing with people. You can choose to call managers who specialize in dealing with employees "personnel managers," "employee relations managers," or "human resource managers," but at the end of the day someone has to perform this critical function in an organization. As the bard once wrote, "What's in a name? That which we call a rose . . . By any other name would smell as sweet."

Voos: This question seems to be largely about the internal politics of business schools, and I am not the best person to weigh in on that matter. Business school HR professors need to remember Marx when they think about this issue: It's not a matter of ideas dueling it out in the "superstructure," it's a matter of what is going on in the economy, "the base."

The decline of the academic field of industrial relations in the United States has been due primarily to external factors. First, the integration of labor relations into "normal operating procedures" in unionized corporations meant that it was less interesting to academics—in the 1960s, for instance, labor relations were simply less of a pressing social problem than civil rights or other emerging social movements. Second, declining unionization took its toll. That is, industrial relations was not "pushed out" by HRM in any intellectual sense; rather, over time, there was a shift in academic jobs because of the need to train more HR professionals and fewer labor relations professionals, given declining unionization.

Currently, in some corporations, HR for lower-level employees is being outsourced, automated through online systems or call centers, and otherwise managed in ways to cut cost—as opposed to being used for strategic organizational purposes.² Insofar as there are fewer HR jobs, HR academics must be concerned. However, it seems to me that this contemporary tendency is inherently limited by the need for the HR function and by the fact that much of it cannot be satisfactorily outsourced for core employees. Of course, the key unanswered questions are "Who are the truly core employees in any corporation?" and "How many of them will be left as corporations restructure?"

Mitchell: HRM is a functional area of the firm. The area can be managed through an internal structure in the organization, and some aspects of it can be outsourced. But even in the outsourcing case, some-

one is performing the function. The U.S. Bureau of Labor Statistics (BLS) has estimated that in 2004 there were 820,000 "human resources, training, and labor relations managers and specialists." The BLS projects that this grouping will grow faster than average for the workforce as a whole through 2014. (The BLS's projections do not go beyond 2014, but that does not mean that the relative growth will stop as of that date.) Most of these workers are carrying out basic activities necessary for the functioning of their employers. While some of them have certainly been educated or trained in organizational behavior—or have at least been exposed to it—they are still carrying out the HRM function. And the job descriptions for these workers provided by the BLS do not suggest a substantial OB component.

As far as firms are concerned, therefore, the replacement of IR by HRM is not a precedent for the replacement of HRM by OB. IR was in practice linked to the union sector and to union-management relations. Therefore, IR declined as the union sector declined. There is no similar counterpart to this process when it comes to OB.

The answer is different when academia is the target of the question. OB can be viewed as a general management skill as opposed to HRM, which focuses on a particular function. The upper tier of MBA educational institutions, in particular, do not produce substantial numbers of graduates who plan to make their careers in HRM. Graduates of such programs are more likely to view themselves as management generalists. These tendencies suggest that within business schools, especially those in the upper tier of management education, HRM will in the future receive less emphasis and OB more.

Where, then, will the "human resources, training, and labor relations managers and specialists" come from, particularly since their ranks will be growing faster than average? Many will simply be college graduates or graduates of specialized master's programs that do focus on HRM. Others will receive their training on the job or through extension-type programs or at lower-tier institutions. A relatively small number will come from upper-tier business schools.

Lewin: What are the main benefits and limitations of government regulation of contemporary employment relationships?

Voos: U.S. industrial relations has a long tradition of emphasizing the limitations of government regulation—John Dunlop, for instance, often weighed in against the "one size fits all" nature of employment regulation, which inevitably is not appropriately sensitive to the tremendous variation in workplaces. More recently, Pfeffer (1994)

argued that collective bargaining is preferable to government regulation because of its flexibility for the employer. Moreover, the government enforcement function is often underresourced and unable to effectively regulate the large number of employers in the United States. Further, much employment regulation relies on the desires of decent employers to abide by the law.

By contrast, the main benefit of government regulation is that it may be the best game in town. This is because when it is difficult to unionize or when unions have not organized the relevant market, government regulation may become the primary way to improve standards of work. Regulation has the benefit of "taking wages out of competition" in the broadest sense. Laws that are universal protect high-standard employers from low-standard competitors—or at least from those located in the same legal jurisdiction. Efforts to enact and enforce global labor standards might be understood in parallel fashion. In addition, laws are able to address the employment problems in those layers of the workforce, such as white-collar employees in private corporations, managers, and contingent employees, for whom unionism and collective bargaining are difficult to achieve. All of this makes me think that labor problems are increasingly likely to evoke public policy—that is, regulatory solutions—in the near future.

Lipsky: Although many people view government regulation as a partisan political issue, some reflection on the topic suggests that actually it is not. Similarly, some assume that Democrats favor government regulation and Republicans oppose it, but this generalization oversimplifies a complex issue. For example, many Democrats believe that corporations require more government regulation, while many Republicans disagree. At the same time, many Republicans believe that labor unions require more government regulation, while many Democrats disagree. When it comes to an interest group's view of government regulation, it depends on whose ox is being gored. It is worth remembering that the deregulation of American industry was begun by Jimmy Carter—a Democrat, of course—when my Cornell colleague, Alfred Kahn, then serving as chair of the Civil Aeronautics Board, persuaded the president that the deregulation of the airline industry was a good idea. (That deregulation very quickly resulted in decreased air service to and from Ithaca, New York, which made it much more difficult for all of us at Cornell—including Professor Kahn—to travel to Washington!)

My view of government regulation is substantially influenced by my training as an economist. Economists are generally skeptical of the utility of regulation and believe that markets are more effective than regulation

in governing the employment relationship. All regulations should be subjected to rigorous cost-benefit analyses, economists believe, and there should be careful accounting in those analyses of the unintended consequences—externalities—of the regulations. My view of this matter, however, has been tempered by hard reality and personal experience. In recent years, my colleagues and I have conducted evaluations of a number of workplace dispute resolution programs, and I have been forcefully struck by the extraordinary difficulty of measuring the costs and benefits of these programs. In one case, our good-faith effort to do an honest evaluation produced a negative appraisal that offended the stakeholders who had established and supported the program we evaluated. In my (possibly biased) view, political interests trumped rational analysis in this instance.

I find it difficult to believe that an increasingly complex society does not require some optimal level of government regulation. The labor market is rife with imperfections—more than most economists are willing to acknowledge—and arguably government regulation can help counterbalance those imperfections. Even if labor markets conformed to conventional economic theory and produced efficient outcomes, there is no guarantee that such outcomes would be equitable. This truism constitutes the conventional case for labor market regulation. What is often missing from the conventional case, I believe, is adequate regard for the influence of politics and power on labor market outcomes. Political power can lead to regulations that tip the scales in favor of one or another interest group, and the remedy for that imbalance is not deregulation but a change in the power equation.

Certainly government regulation can significantly influence workplace employment relationships, and often the benefits of that regulation far outweigh the costs. But government regulation can also be a blunt instrument, ill suited for many types of employment problems. Historically, I believe, the most powerful force affecting employment relationships in the United States and most Western nations has been unionism. Arguably, a free and democratic labor movement has had a more dramatic influence on working conditions than government regulation, though I acknowledge that there have been exceptions to this generalization. For example, only strong government intervention could have undercut the racial segregation of jobs—a historic task that unions were ill equipped, and possibly disinclined, to perform. But the belief that government regulation is an adequate substitute for unionism and collective bargaining is, in my view, clearly wrongheaded. Over the last 30 years, worker wages have stagnated, job insecurity has increased, the cost of health care has skyrocketed and the number of workers without coverage has mushroomed, and our pension system has weakened, possibly to the

point of collapse. Evidently, the relative decline in the union movement, the deregulation of American industry, and the contrasting growth of government regulation of the workplace over the last three decades has, on balance, turned out to be a bad deal for American workers.

Mitchell: It has traditionally been assumed by economists that “competitive” (i.e., nonunion) labor markets will provide an optimal matching of employer needs and employee preferences. In this view, only if information gaps exist—for example, workers don’t know of the dangers entailed in certain job tasks but employers do—is there a need for government. In other words, with full information there is no problem. Those workers who are willing to take risks will become roofers while those who especially value job safety will become clerks. Employers will compete for workers by offering the mix of wages and benefits needed to attract whatever types of workers they need. If this model is taken as the default, then unions or government regulations that raise pay, alter the mix of pay to benefits, or impose safety or other standards, are inherently distortionary.

This view was not always prevalent. The early 20th-century institutional school of economists viewed the nonunion labor market as monopsonistic, a view also expressed in the preamble to the Wagner Act of 1935, which refers to an “inequality of bargaining power” tilted against employees. Economists of later decades acknowledged monopsony but viewed it as an unusual circumstance typically involving employer collusion. Thus, the perennial nursing shortage spawned a literature suggesting that hospital associations held down nurses’ pay. Other examples include professional sports in which leagues restrained interteam competition, and isolated company towns dominated by single employers.

As Chris Erickson and I (Mitchell and Erickson 2005) have shown, monopsony is a useful way of interpreting a much larger segment of the nonunion labor market than just nursing, sports, and company towns. A simple search model produces an upward sloping supply curve of labor to an employer, and an upward sloping supply curve is all you need for monopsony. One symptom of such monopsony is employer complaints of labor shortage. Such shortages became commonplace in the late 1980s and again in the 1990s, when much of the labor market was not only nonunion but also not confronted with a threat of unionization. Another symptom is a constant refrain that immigrants are needed because Americans won’t do the work. Yet, one might ask, “Who made the beds in hotels, washed the dishes in restaurants, and so on, in the 1950s, if not

Americans?" Or "If Americans won't do unpleasant jobs, who is mining coal nowadays in West Virginia?"

Monopsonistic labor markets will provide less-than-optimal working conditions, benefits, safety, and pay; thus, some form of regulation could improve efficiency. But all regulations are not justified by monopsony. There can be harmful regulations; the details matter. Moreover, as Erickson and I (2005) also show, there are some benefits to monopsony at the macro level. In essence, chronic labor shortages tend to moderate recessions because declining demand leads employers to "lay off" vacancies before terminating real employees. The puzzling stylized facts of the macroeconomy in the period beginning in the late 1980s can be explained by monopsony. These stylized facts include, among others, chronic labor shortages, shallow recessions, absorption of workers moved off welfare without a hike in unemployment, and growth in the relative share of company profits.

Kochan: We will definitely see a growing role for government regulation of employment relationships, continuing the trend that has been visible since the 1960s. The decline of unions and collective bargaining and the growing recognition that individual firms are not able or willing to protect worker rights or provide the benefits (health insurance, pensions, training, work-family leave, etc.) that workers expect and need will continue to put pressure on state and federal governments to respond.

The real question in my mind is whether we will develop more flexible enforcement tools to cope with increased regulations. These could include use of performance standards (i.e., holding firms accountable for meeting standards but leaving it to firms and their employees to decide how to meet them), some forms of ADR, and/or some forms of worker voice and representation in the design, monitoring, and enforcement processes. I continue to believe that we can develop a two-track enforcement strategy in which those firms that can demonstrate they have procedures and institutional arrangements in place to deliver and meet public policy standards are given the flexibility they want and need on how to meet them, while firms lacking these workplace institutions and procedures are regulated in more detailed, traditional ways. Incentives for moving from the latter to the former category would serve the economy, workforce, and society well.

Eaton: One of the chief limitations of government regulation is the globalization of the economy. As trade agreements begin to undermine national regulatory systems, not just of the labor market but of the environment, consumer-business relations, and so on, it is increasingly

important to look at the potential but also the weaknesses of international forms of regulation. These may include trade and other agreements and treaties between or among nations, but they increasingly involve “voluntary” codes of conduct, sometimes negotiated between private parties (i.e., corporations and NGOs). It’s interesting to note that at the same time that the United States is increasing its participation in what may be a nascent system of global regulation, many of the most interesting developments in government regulation of employment within the United States are taking place at the state level or on occasion at the local level, rather than at the national level. I’m thinking here of living wage ordinances or statutes, state minimum wage laws, state antidiscrimination laws that expand the list of protected classes or types of discrimination beyond those covered by federal law, and even attempts to push the boundaries of preemption in federal labor relations law.

Notes

¹ According to China’s public security minister, Zhou Yonghang, 3.76 million Chinese took part in such “mass incidents” in 2005; he states that they were protests over specific economic issues, not efforts to bring down the one-party political system (Cody 2005).

² My colleague Jeff Keefe (2006) points out, “In the late 1990s with the labor market at full employment, there was a substantial boom in HR employment as rapidly growing firms searched for qualified employees. Some analysts misread a temporary phenomenon as a structural change in the strategic importance of the HR function within the corporation. Once the economy went into recession, taking costs out of organizations became imperative. One method for reducing cost selected by some organizations has been to outsource a range of HR functions.”

References

- Bingham, Lisa B., and Denise R. Chachere. 1999. “Dispute Resolution in Employment: The Need for Research,” in A.E. Eaton and J.H. Keefe, eds., *Employment Dispute Resolution and Worker Rights in the Changing Workplace*. Champaign, IL: Industrial Relations Research Association, pp. 95–136.
- Cody, Edward. 2005. “China Grows More Wary over Rash of Protests,” *Washington Post*, August 10, p. A11.
- Cobble, Dorothy Sue. 1991. “Organizing the Postindustrial Workforce: Lessons from the History of Waitress Unionism.” *Industrial and Labor Relations Review*, Vol. 44, no. 3 (April), pp. 419–36.
- Eaton, Adrienne E., and Paula B. Voos. 2004. “Managerial Unionism: Prospects and Forms.” *Labor Studies Journal*, Vol. 29, no. 4 (Fall), pp. 25–56.
- Fine, Janice. 2006. *Worker Centers: Organizing Communities at the Edge of the Dream*. Ithaca, NY: Cornell University Press.
- Freeman, Richard B., and Joel Rogers. 1999. *What Workers Want*. Ithaca, NY: Cornell University Press.

- Gosline, Ann, Lamont Stallworth, Myrna C. Adams, Notman Brand, Cynthia J. Hallberlin, Carole Schneider Houk, David B. Lipsky, Jennifer Lynch, Nancy E. Peace, Mary Rowe, and Anne Thomas. 2001. *Designing Integrated Conflict Management Systems: Guidelines for Practitioners and Decision Makers in Organizations*. Ithaca, NY: Cornell/PERC Institute on Conflict Resolution, Cornell University.
- Heckscher, Charles. 2001. "Living With Flexibility," in L. Turner, H.C. Katz, and R.W. Hurd, eds., *Rekindling the Labor Movement: Labor's Quest for Relevance in the 21st Century*. Ithaca, NY: Cornell University Press.
- Hurd, Richard W., and John Bunge. 2003. "Unionization of Professional and Technical Workers: The Labor Market and Institutional Transformation," in R. Freeman, J. Hersch, and L. Mishel, eds., *Labor Market Institutions for the 21st Century*. Chicago: University of Chicago Press.
- Keefe, Jeff. 2006. Personal communication, January 27.
- Lipsky, David B., and Ronald L. Seeber. 1998. *The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations*. Cornell/PERC Institute on Conflict Resolution, Cornell University.
- . 2003. "The Social Contract and Dispute Resolution: The Transformation of the Social Contract in the U.S. Workplace and the Emergence of New Strategies of Dispute Resolution." *International Employment Relations Review*, Vol. 9, no. 2 (June), pp. 87–109.
- . 2004. "Dispute Resolution in the Changing Workplace." *Proceedings of the Fifty-Sixth Annual Meeting* (Champaign, IL, Jan. 2004). Champaign, IL: Industrial Relations Research Association, pp. 30–40.
- . 2006. "Managing Organizational Conflicts," in John Oetzel and Stella Ting-Toomey, eds., *The Sage Handbook of Conflict Communication*. Thousand Oaks, CA: Sage Publications, pp. 359–90.
- Lipsky, David B., Ronald L. Seeber, and Richard D. Fincher. 2003. *Emerging Systems for Managing Workplace Conflict: Lessons from American Corporations for Managers and Dispute Resolution Professionals*. San Francisco, CA: Jossey-Bass.
- Mitchell, Daniel J.B., and Christopher L. Erickson. 2005. "De-Unionization and Macro-Performance: What Freeman and Medoff Didn't Do." *Journal of Labor Research*, Vol. 26, no. 2 (Spring), pp. 183–208.
- Osterman, Paul, Thomas A. Kochan, Richard M. Locke, and Michael Piore. 2001. *Working in America: A Blueprint for the New Labor Market*. Cambridge, MA: MIT Press.
- Pfeffer, Jeffrey. 1994. *Competitive Advantage through People: Unleashing the Power of the Work Force*. Boston: Harvard Business School Press.
- Seeber, Ronald L., and David B. Lipsky. 2005. "The Ascendancy of Employment Arbitrators in U.S. Employment Relations." Paper presented at a symposium on "New Actors in Industrial Relations," sponsored by the *British Journal of Industrial Relations*, London, UK, September.