



The Case for the Company Union

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There is a small number of terms in the lexicon of labor history that are indelibly marked with opprobrium: among them are “blacklist,” “open shop,” and “yellow dog contract.” Also most certainly included is “company union,” a term redeemed by few if any virtues in the eyes of most scholars. In recent years, however, a modest amount of revisionist thinking has surfaced about the company union experience in the pre-Wagner Act period. This scholarship acknowledges the many shortcomings and ambiguous legacy of the company union movement, but nevertheless finds positive features as well, particularly among the leading corporate practitioners of employee representation in the 1920s. Historian Daniel Nelson tells us (389) that “company unions like FCA, the Leeds & Northrup Cooperative Association, and the Goodyear Industrial Assembly were formidable organizations that served the interests of employers and employees.” And economist David Fairris concludes, “the establishment of company unions in the 1920s marked a definite improvement for the worker as well as the firm.”¹

This stirring of revisionism notwithstanding, the conventional wisdom among scholars who write on labor history and industrial relations is that company unions were by and large sham organizations erected ostensibly to promote industrial democracy but whose real mission was to keep out unions and strengthen management’s control. Illustrative of this view is labor historian Howard Gitelman’s statements that “with perfect hindsight, we can see that they [company unions] were a misadventure, the false step of an earlier generation,” [and] “a lower risk escape route from unionization ... [that] perpetuated management’s unilateral control of industrial relations.”²

Contrary to assertions such as Gitelman’s, I believe that after a careful weighing and sifting of the evidence from both historical and contemporary sources company unions were, on net, a positive development in employee relations in the pre-Wagner Act years and benefited not only employer interests but also the interests of workers and the broader society. I conclude, therefore, that a policy mistake was made in 1935 when language was inserted in the National Labor Relations Act (“NLRA” or “Wagner” Act) that effectively banned company unions.

¹Daniel Nelson, “Employee Representation in Historical Perspective,” in Bruce Kaufman and Morris Kleiner, eds., *Employee Representation: Alternatives and Future Directions* (Madison: IRRRA, 1993), 371–390; David Fairris, “From Exit to Voice in Shopfloor Governance: The Case of Company Unions,” *Business History Review*, 15 (1995), 493–529.

²Howard Gitelman, *Legacy of the Ludlow Massacre* (Philadelphia: University of Pennsylvania Press, 1988), xii, 336.

The Conventional Wisdom

Employee representation had a relatively short and turbulent history in the United States. Although several examples of nonunion employee representation plans (NERPs) can be found in earlier years, it was in 1915 with the establishment of the Rockefeller plan at the Colorado Fuel and Iron Company that employee representation got its start as a “movement.”³ Over the next 20 years employee representation gradually grew, eventually enrolling two million or more employees. The movement came to an abrupt halt with the passage of the Wagner Act in 1935 with its Section 8(a)(2) prohibition against employer-dominated labor organizations.⁴

Labor historians do not, of course, speak with one voice on the company union experience. But if one reads the most often cited works of contemporary labor historians, some generalizations can nonetheless be made. What I would describe as the “conventional wisdom” on company unions entails four propositions. They are:

- The most important motives leading companies to create and maintain NERPs in the pre-Wagner Act years were union avoidance and strengthened control over labor. Other stated motives of a more constructive nature, such as promoting cooperation and mutual understanding and fostering increased productivity through employee participation, were distinctly secondary and seldom implemented in a substantively meaningful way.
- NERPs were largely “sham” organizations. They were clothed by their management sponsors in the rhetoric of industrial democracy, collective bargaining, and participative management but were in fact unilaterally established, structured, and operated by management. NERPs bestowed few new, meaningful rights to workers and gave them little real power in the employment relationship.
- NERPs were ineffective in promoting and protecting employee interests, particularly in the area of winning improved wages, hours, and other terms and conditions of employment. On the other hand, they frequently proved a valuable device to employers in their efforts to win wage reductions, lay-offs, and increased effort.
- NERPs were a significant barrier to the growth and expansion of trade unionism. Employers successfully used them to forestall union organization, partly as instruments of “union suppression” and partly as a vehicle for “union substitution.”⁵

³Daniel Nelson, “The Company Union Movement, 1900–1937: A Reexamination,” *Business History Review*, 8 (1982), 335–357; Raymond Hogler and Guillermo Grenier, *Employee Participation and Labor Law in the American Workplace* (Westport, CT: Quorem, 1992); Bruce E. Kaufman, “Accomplishments and Shortcomings of Nonunion Employee Representation in the Pre-Wagner Act Years: A Reassessment,” in Bruce E. Kaufman and Daphne G. Taras, eds., *Nonunion Employee Representation: History, Contemporary Practice, and Policy* (Armonk: M.E. Sharpe, 2000), 21–60.

⁴Section 8(a) (2) of the NLRA declares it to be 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....” Section 2(5) of the Act defines a labor organization quite broadly as “any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

⁵Union suppression involves unethical and/or illegal tactics and negative emotions of fear and intimidation to prevent unionization; union substitution is a positive approach that endeavors to prevent unionization by removing the sources of dissatisfaction, such as low wages and unfair treatment, that drive workers to seek outside representation. This distinction is made in Thomas Kochan and Harry Katz, *Collective Bargaining and Industrial Relations*, 2nd ed. (Homewood, IL: Irwin, 1988), 190–194.

Illustrative of the overall negative assessment of employee representation, are the following quotations from well-regarded scholars:⁶

The long term significance of the company-union movement lay not in what was achieved in the twenties—actually little was gained—but in the door it opened to education in industrial democracy. [Irving Bernstein]

[Labor law] swept out alternative forms of workplace representation [NERPs] because no compelling case was made for them ... In its heyday before the Wagner Act, the works council was never conceived to be of any serious relevance to better plant operations. [David Brody]

Yet even had the New Deal not wrecked it, even had the AFL charges—that independent meetings of labor representatives were banned; that companies influenced elections, prohibited expert assistance, and intimidated representatives; that the representatives lacked the power to bargain as equals; and that committees diverted attention from major questions to minor ones—even had all these charges been false, and had the committees not been used to support wage cuts, even then, it is unlikely that the businessmen could have achieved their goals with their representation organizations and won the worker to their side. Because the organizations were theirs, not his. [Stuart Brandes]

[E]mployee representation remained an inadequate method for collective bargaining. Managements continued to set the rules of the game and refused to let liberalization go very far. Arbitration clauses existed but were almost never invoked. Wages were discussed but only after the company had already announced what it was going to do. Because workers still feared reprisal from supervisors, grievances tended to be limited to issues like safety and other physical working conditions. [Sanford Jacoby]

... employee representation was little more than a facade. Employers only wanted the illusion of democratic decision making. By the mid-1920s, workers knew it was hardly worth bringing grievances to their representatives. [Lizabeth Cohen]

Each of the four propositions cited above, as well as the negative conclusions contained in the quotations just given, have an element of truth—sometimes a substantial element—depending on the precise time period and company considered. And, further, one must recognize that short quotations such as these cannot always do justice to the qualifications and nuance woven into the larger works from which they are drawn. Given these caveats, I nonetheless claim the standard historiography of company unions provides a skewed, one-sided interpretation of employee representation that unduly accents its shortcomings and slights its accomplishments. In order to balance the record, I reexamine the history of employee representation and identify five areas that require reinterpretation or elaboration. It is to each of these I now proceed.

⁶Irving Bernstein, *The Lean Years* (Boston: Houghton Mifflin, 1960), 173; David Brody, "Section 8(a) (2) and the Origins of the Wagner Act," in Ronald Seeber, Sheldon Friedman, and Joseph Uehlein, eds., *Restoring the Promise of American Labor Law* (Ithaca: ILR Press, 1994), 43,44; Stuart Brandes, *American Welfare Capitalism, 1880–1940* (Chicago: University of Chicago Press, 1995), 134; Sanford Jacoby, *Employing Bureaucracy: Managers, Unions, and the Transformation of Work in American Industry, 1900–1945* (New York: Columbia University Press, 1985), 228; Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919–1939* (New York: Columbia University Press, 1990), 190.

Welfare Capitalism: Union Avoidance or Mutual Gain?

Most historical accounts of employee representation recognize that its development post-World War I was part of Welfare Capitalism. The standard interpretation is that Welfare Capitalism was on the whole a substantially flawed project owing to the small number of employees covered, its overriding purpose of union avoidance, the maintenance of a monopoly of power in the hands of employers, and its ethos of paternalism.⁷ The historical verdict on employee representation changes substantially, however, if Welfare Capitalism is viewed from a different perspective, as the beginning step in the evolutionary development of what is today called the “high-involvement” or “high-performance” model of human resource practices. In this model the employee representation plans of the 1920s were a key component of this model put in place for the purpose of promoting greater two-way communication, employee participation, and organizational justice.⁸ The starting place for this alternative view is the emergence of the field of personnel/human resource management (HRM) in the mid-1910s—the event antecedent to the emergence of the Welfare Capitalism model in the 1920s.

The Employers’ Solution to Labor Problems

One of the first systematic reviews of the origins and development of the field of personnel management is a bulletin published in January, 1920 by the Federal Board for Vocational Education under the title *Employment Management: Its Rise and Scope*, which opens with this statement:

A great deal of thought is now being given by American business men to the subject of employment management. At one time the labor problem seemed to be solely a matter of the policies of organized labor and the methods of industrial warfare. It now shows itself to be chiefly a question of the intelligent handling of the human relations which result from the normal course of business day by day. It has to do with a study of the requirements of each occupation, the careful selection of men for their work, their adequate training, the fixing of just wages, the maintenance of proper working conditions, and the protection of men against undue fatigue, accidents, disease, and the demoralizing influences of a narrow and inadequate life, and the opening of a channel through which employees may reach the ear of the management for the expression of any dissatisfaction with its labor policies.⁹

⁷Also, more positive accounts of employee representation are reached by Brody in “The Rise and Decline of Welfare Capitalism,” in John Braeman *et al.*, eds., *Change and Continuity in 20th Century America: the 1920s* (Columbus: Ohio State University Press, 1968), 147–178, and Jacoby in “Reckoning With Company Unions: the Case of Thompson Products, 1934–1964,” *Industrial and Labor Relations Review*, 43 (1989), 19–40. Also see Howard Gitelman, “Welfare Capitalism Reconsidered,” *Labor History*, 32 (1992), 5–31. Samford Jacoby in *Modern Manors: Welfare Capitalism Since the New Deal* (Princeton: Princeton University Press, 1997) reaches more positive conclusions but none the less portrays Welfare Capitalism as primarily an employer defense against “laborism and statism” (4).

⁸The high-performance workplace model is described in Commission on the Future of Worker–Management Relations, *Fact Finding Report* (Washington, DC: Government Printing Office, 1994), Chapt. 2; David Naidler and Marc Gerstein, “Designing High-Performance Work Systems: Organization, People, Work, Technology, and Information,” in David Naidler, Marc Gerstein, and Robert Shaw, eds., *Organizational Architecture* (San Francisco: Jossey-Bass, 1992), 110–132; Bruce E. Kaufman, “The Growth and Development of a Nonunion Sector in the Southern Paper Industry,” in Robert Zieger, ed., *Southern Labor in Transition, 1940–1995* (Knoxville: University of Tennessee Press), 295–329.

⁹The terms “employment management,” “labor management,” and “industrial relations management” were also frequently used terms in the 1910s–1920s. In recent years personnel management is more often called human resource management.

Several points about this statement are relevant. First, it highlights the concept of “the labor problem,” the anchoring idea around which all discussions of labor and employment issues revolved in the years up to the Great Depression. As initially conceived, the labor problem was a unitary construct and connoted the generalized struggle between labor and capital, and the conflict arising therefrom, over control of the twin processes of wealth creation and distribution. After the turn of the century, the concept broadened into a plural form of “labor problems” in the recognition that labor problems take many distinct forms, such as high employee turnover, low work effort, poverty-level pay, strikes, and unsafe working conditions, and that these problems adversely affect both employers and employees.¹⁰

The next point concerns the progression of academic and practitioner thinking on the possible means to ameliorate or solve labor problems. By the late 1920s, it was widely agreed that there were three conceptually distinct solutions to labor problems: first, the *workers’ solution*—trade unionism and collective bargaining; second, the *employers’ solution*—personnel management and associated practices; and third, the *community’s solution*—protective labor legislation and social insurance.¹¹ As indicated in the above-cited statement, the first of these proposed solutions to be extensively focused on was the workers’ solution of trade unionism and collective bargaining. This line of research was begun in earnest in the 1880s with the publication of Richard T. Ely’s *The Labor Movement in America* and was carried on by a large number of scholars after the turn of the century, the most influential of these writers being John R. Commons and colleagues of the “Wisconsin School.”¹²

Next in order of development was the community’s solution of protective labor legislation and social insurance. This second solution to labor problems was again pioneered by Ely and Commons, as illustrated by their role as founders and officers of a research and lobbying group created in 1906 called the American Association for Labor Legislation (AALL).¹³ The AALL was widely recognized for the next three decades as the most influential voice in America for protective labor legislation, such as laws for minimum wages, maximum hours, child labor, and industrial safety, and for social insurance programs, such as workers’ compensation, unemployment insurance, national health insurance, and old age insurance (social security). Commons’ leading role in this movement is also illustrated by his nationally recognized text on labor law, co-authored with fellow Wisconsinite John B. Andrews, *Principles of Labor Legislation*.¹⁴

The third solution to labor problems—the employers’ solution of personnel management—was the last to be developed, and did not begin to take form until the early-mid-1910s. One of the principal precursors of personnel management—scientific management—had much earlier roots, however, in the writings of Frederick Taylor. It is instructive to note that Taylor’s first published paper on scientific management was

¹⁰William Leiserson, “Contributions of Personnel Management to Improved Labor Relations,” in *Wertheim Lectures on Industrial Relations* (Cambridge, MA: Harvard University Press, 1929); Bruce E. Kaufman, *Origins and Evolution of the Field of Industrial Relations in the United States* (Ithaca: ILR Press, 1993).

¹¹Gordon Watkins, *An Introduction to the Study of Labor Problems* (New York: Thomas Crowell, 1922); J.A. Estey, *The Labor Problem* (New York: McGraw-Hill, 1928).

¹²Richard Ely, *The Labor Movement in America* (New York: Thomas Crowell, 1886).

¹³David Moss, *Socializing Security: Progressive-Era Economists and the Origins of American Social Policy*, (Cambridge, MA: Harvard University Press, 1996); Bruce Kaufman, “Labor Markets and Employment Regulation: The View of the ‘Old’ Institutionalists,” in Bruce E. Kaufman, *Government Regulation of the Employment Relationship* (Madison, WI: Industrial Relations Research Association, 1997), 11–55.

¹⁴John R. Commons and John Andrews, *Principles of Labor Legislation* (New York: Harper, 1916).

entitled (emphasis added), “A Piece Rate System, Being a Partial *Solution to the Labor Problem*.” As is well known, Taylor sought to solve the labor problem by promoting cooperation between labor and capital and a win-win outcome of greater efficiency and higher profits and wages by discovering and implementing through scientific research the “one best way” to industrial management and organization design.¹⁵

The verdict of academic and practitioner writers after the mid-1910s was that Taylor’s system had neglected the role of the “human factor” in the practice of management.¹⁶ As a result, a new approach to people management emerged in the mid-1910s under the rubric of “personnel management,” which became one of the cornerstones of the new employment model put in place by progressive nonunion employers in the 1920s. And, interestingly, just as Commons and colleagues at Wisconsin played a leading role in the development of research and practice on the other two solutions to labor problems, so too did they play a leading role in the development of the employers’ solution, as ultimately expressed in the “high-performance” personnel/HRM model of Welfare Capitalism.¹⁷

The Welfare Capitalism HRM Model

Writing in 1919, management consultant and practitioner Dudley Kennedy observed:

Only a few years ago, some of the more progressive large concerns began to consider the labor question as a problem. They began to sense the fact that they had been largely busied with the mechanical and financial sides of the business, allowing the human side to drift where it would. This drifting policy was not conscious, but rather one of uninformed indifference and a lack of appreciation of the growing complexity of the relations breeding ... industrial unrest and general distrust ... I have myself been almost dumbfounded to find how few large employers of workers have any definite constructive labor policy ... ninety-nine times out of a hundred, ... he [the employer] will admit that he has only a negative policy or a policy of expediency.¹⁸

Why would employers take such a lackadaisical approach to labor management? Kennedy attributes it to “uninformed indifference”; labor economist Sumner Slichter, a student of Commons and highly respected observer of labor matters, provides a different explanation: employer neglect of labor was a largely rational, strategic human resource management policy taken in light of prevailing economic conditions, legal constraints, social morays, and production methods. According to Slichter, “To the abundance of cheap immigrant labor are primarily attributable the two outstanding features of American labor policy before the war [World War I (WWI)]—the tendency to adapt jobs to men rather than men to jobs, and the policy of obtaining output by driving the workers rather than developing their good will and cooperation.” He goes

¹⁵Daniel Nelson, *Frederick W. Taylor and the Rise of Scientific Management* (Madison, WI: University of Wisconsin Press, 1980).

¹⁶Robert Valentine, “The Progressive Relationship Between Efficiency and Consent,” *Bulletin of the Taylor Society* (Nov. 1915), 3–7; John R. Commons, *Industrial Goodwill* (New York: McGraw-Hill, 1919).

¹⁷Bruce Kaufman, “John R. Commons: His Contributions to the Founding and Early Development of the Field of Personnel/HRM,” *Proceedings of the Fiftieth Annual Winter Meeting*, Industrial Relations Research Association (Madison, WI: IRRA, 1997), 328–341.

¹⁸Dudley Kennedy, “Employment Management and Industrial Relations,” *Industrial Management*, No. 5 (1919), 354–355.

on to say, "With labor policies so crude and simple, industrial relations were not believed to require the attention of highly paid experts. The handling of men was largely left to the department foremen, who were free to hire, 'fire,' and promote as they saw fit, who set piece rates, and who often possessed considerable discretion in fixing hourly rates of pay."¹⁹

Whether employers' "crude and simple" labor practices prior to WWI were the product of indifference or strategy is of secondary importance for this discussion. What is important is that both Kennedy and Slichter are in agreement that employers invested little attention and resources in labor management, reflected in a largely informal, unscientific, and often haphazard and capricious set of personnel practices.

As is well known, the World War I years ushered in a fundamental, almost revolutionary change in leading-edge management thinking and practice with respect to labor. And as is often the case with paradigm shifts, this fundamental change was the product of both events and new ideas. In particular, the production demands of the war created a labor shortage in 1917–1918. The labor that had been so cheap and abundant was now scarce and dear. The drive system of motivation that had effectively coaxed work effort out of a workforce fearful for their jobs now resulted in a wave of strikes, loafing on the job, and sky-high rates of labor turnover.²⁰ Dealing with these problems along with an emergent social movement during the war among all major classes of Americans for greater "industrial democracy" led most employers to fundamentally rethink their labor policy.

Employers were immediately led to consider alternative models of personnel/HRM, but at the start of the war only two alternatives existed. One was the traditional system of labor management that was now ineffective and socially suspect, while the other was some form of Taylor's scientific management with its emphasis on an engineering approach to discovering the "one best way" to managing employees. The employers' intellectual cupboard was thus noticeably bare of new ideas with the potential to solve their many labor problems.

Into these lacunae stepped a number of progressive thinkers on management practice, including nonacademic such as Robert Valentine, Louis Brandeis, Daniel and Meyer Bloomfield, Ordway Tead, and Mary Parker Follett, and several academics, such as Joseph Willits and Paul Douglas. The person who commanded the most credibility and national name recognition, however, was John R. Commons. From 1913 to 1915 Commons served as one of the seven members of the Commission on Industrial Relations, a presidential-appointed body charged with investigating the causes of industrial unrest. From this experience Commons developed an interest in the management of labor. The first product of major importance was his book *Industrial Goodwill* (1919),²¹ followed by a second book, *Industrial Government* (1921)²² and a series of articles on subjects such as profit-sharing, training, and unemployment insurance. The outcome was that by the early 1920s Commons was widely regarded by many as the leading academic expert on the new field of personnel/

¹⁹Sumner Slichter, "The Current Labor Policies of American Industries," *Quarterly Journal of Economics* (May 1929), 393–435.

²⁰See Jacoby, *Employing Bureaucracy*.

²¹John R. Commons, *Industrial Goodwill* (New York: McGraw-Hill, 1919).

²²*Industrial Government* (New York: MacMillan, 1921).

human resource management.²³ Evidence of this fact is that no academic person was quoted and cited more often in the personnel literature of 1915–1925 than Commons.²⁴

In his book *Industrial Goodwill*, lauded in the *Bulletin of the Taylor Society* as in “a class of its own” with respect to insight on the management of industrial relations, Commons develops four themes that form not only the foundation of the Welfare Capitalism model but also today’s model of human resource management.²⁵ These themes are: the role of employees as organizational assets or “human resources,” alternative strategic approaches to labor management, the essential role of employment security to successful operation of a “cooperative” or “high-performance” strategy, and the equally essential role of providing an organizational channel for employee voice and participation in the operation of the enterprise. Further, Commons describes in *Industrial Goodwill* five alternative models or paradigms of employment management. The first two—the “commodity” model and “machine” model—correspond to the traditional and scientific management approaches previously discussed; the latter three—the “public utility,” “goodwill,” and “citizenship” models—represent new strategic conceptualizations of personnel/HRM. The public utility model views workers as human resources—a term used by Commons—to be conserved through government regulation of employment conditions; the goodwill model emphasizes the importance of eliciting employee cooperation and work effort through policies of fair treatment and mutual gain; and the citizenship model views the firm as a form of industrial government where workers are given a voice in the determination of the terms and conditions of employment and protection from arbitrary and capricious treatment.

Employers of that era did not, of course, read Commons’ *Industrial Goodwill* and then go back to the factory and create a new Welfare Capitalism labor policy. But his ideas—and those of other progressive thinkers on the practice of management—did discernibly seep into the management practitioner literature and helped frame the debate and discussion on personnel/HRM practice over the decade of the 1920s, and as such provided an intellectual and ideological rationale for a new personnel/HRM paradigm. But ideas are only one blade of the metaphorical scissors that determines the direction of management policy and practice, the other is the pressures and incentives of real world events.

Reminiscent of today’s management and industrial relations literature, writers in the 1920s started out justifying the need for a new approach to managing labor by noting the intensified pressures of competition in the marketplace, the concomitant need for greater efficiency and innovation, and the essential role therein of increased cooperation and team work between management and labor.²⁶ Faced with increased competitive pressure in product markets, one option for employers was to go back to pre-war labor practices through intensified drive methods, production speed-ups, and a minimalist

²³Kaufman, “John R. Commons: His Contributions to the Founding and Early Development of the Field of Personnel/HRM.”

²⁴In a massive 365-page bibliography of the literature of personnel management published in 1925 [W. Rossi and D. Rossi, *Personnel Administration: A Bibliography* (Baltimore: Williams and Wilkins, 1925)], Commons’ work receives more citations than any other writer and twice as many as the second-most cited person (Ordway Tead).

²⁵These themes are elaborated upon in Bruce E. Kaufman, “The Theory and Practice of Strategic HRM and Participative Management: Antecedents in Early Industrial Relations,” *Human Resource Management Review* (forthcoming).

²⁶See for example W. Donald and E. Donald, “Trends in Personnel Management,” *Harvard Business Review*, No. 2 (1929), 143–155.

approach to pay, benefits, and working conditions. Particularly after the depression of 1920–21 ended the labor shortage spawned by the war and the threat of militant unionism, many employers did in fact revert back to some variation of the pre-war model.²⁷ One of the first actions taken by these firms was to abolish their newly formed personnel departments and lay off the personnel manager and staff. For these firms, then, their sudden conversion to progressive HRM during the war was much more of a stop-gap tactic than a new long-term strategy.

But other companies stuck with the new paradigm and strengthened and refined it over the decade. Slichter explains their rationale as follows:

Possibly the most important determinant of post-war labor policies, at least during the last four or five years, has been the growing realization by managers of the close relationship between industrial morale and efficiency. When the severe drop in prices and in sales during 1920 and 1921 causes managers to search meticulously for methods of cutting costs and of increasing sales, many ways were found in which the workers could help *if they wanted*.²⁸

A significant element of the employer community thus sought to gain competitive advantage through a long-run policy that sought to increase productivity and quality and reduce turnover and strike costs by emphasizing a combination of Commons' four non-commodity employment management models—application of scientific principles to organizational design and personnel practices, treating employees as valuable organizational assets, winning labor's good will, and giving workers rights of due process and an opportunity to exercise a voice in the governance of the firm. These theoretical precepts were operationalized in the following manner:²⁹

- Introduction of scientific principles into personnel/HRM management, such as employee selection tests, job evaluation methods, and creation of a specialized staff function to plan and operate personnel programs.
- Introduction of human relations practices, including supervisor training in interpersonal relations, adoption of non-punitive methods of discipline, and employee recognition awards.
- Extensive employee welfare or “service” benefits, such as health insurance, old age pensions, job security, and promotion from within.
- Creation of an organizational body, such as a works council, shop committee, or employee representation plan, to promote employee voice and participation, improved communication between management and labor, and a more equitable resolution of disputes.

This new HRM model was clearly seen at the time as an innovative and noteworthy development in management practice: Slichter stated, for example, “Modern personnel methods are one of the most ambitious social experiments of the age,”³⁰ and William Leiserson concluded his review of employer labor policy in the 1920s with the observation that, “... when the contributions of Personnel Management are recapitulated in some such fashion as we have attempted, the result is bound to be an impressive sum.”³¹

²⁷Jacoby, *Employing Bureaucracy*.

²⁸Slichter, “The Current Labor Policies of American Industries,” 401.

²⁹Milton Derber, *The American Idea of Industrial Democracy, 1865–1965* (Urbana: University of Illinois Press, 1970); Kaufman, *The Origins and Evolution of the Field of Industrial Relations in the United States*.

³⁰Slichter, “The Current Labor Policies of American Industries,” 432.

³¹Leiserson, “Contributions of Personnel Management to Improved Labor Relations,” 164.

But wasn't Welfare Capitalism essentially a facade which disguised and protected the employer's unilateral power over labor? Not so, says Slichter, who observed instead "the new policies have materially strengthened the bargaining position of labor," the reason being "because they have made the efficiency of labor depend more than ever before upon the willingness of men to do their best."³² Leiserson echoes this conclusion, when he observes of NERPs in the 1920s: "The power of the workers and their representatives in controlling work, pay, and discipline keeps increasing the longer the representation plans operate; and when some employers, frightened by all this inevitable trend, have tried to abolish the plans, strikes have occurred to prevent such action."³³

What about the charge that Welfare Capitalism was largely motivated by the desire to avoid unions, rather than to develop and sustain employee goodwill through what is today called a "mutual gains" strategy? I do not think any disinterested person at the time denied that one motive behind the development and spread of the Welfare Capitalism model was the desire to avoid trade unions and strikes. And, further, the catalytic impetus at a number of companies was less a strategic consideration of winning labor's goodwill than it was a short-run, reactive effort to remain nonunion or rid the company of the unions already there. Recognizing this reality, however, it is also true that, once the union threat receded after the depression of 1920–21, employers—and a growing number—maintained and strengthened the new Welfare Capitalism paradigm for strategic reasons that increasingly had less to do with union avoidance *per se* than it did with fostering goodwill, loyalty and productive efficiency.³⁴ Two pieces of evidence may be cited.

The first is Slichter's observation (emphasis in original): "*In short, every aspect of the post-war labor situation might be expected to cause employers to abandon their newly acquired interest in labor's good will and to revert to pre-war labor policies. And yet, this has not happened. On the contrary, the efforts to gain labor's good will have steadily grown.*" He goes on to say that "dread of labor troubles" remained an ever-present concern, but "possibly the most important determinant of post-war labor policies, at least during the last four or five years, has been the growing realization by managers of the close relationship between industrial morale and efficiency."³⁵

A second piece of evidence concerns the "high wage" policy developed by Welfare Capitalist employers during the 1920s and maintained for several years during the Depression. The traditional "commodity" approach to labor was to "drive a hard bargain" and pay as low a wage as the market permitted. In the 1920s, however, a new theory gained credence that it was actually in the employer's interest to pay high (above

³²Slichter, "The Current Labor Policies of American Industries," 421; Leiserson, "Contribution of Personnel Management to Improved Labor Relationships," 155.

³³In a similar vein, Ernest Burton concludes (254, emphasis in original), "few facts about employee representation are more significant than those which indicate how it has contributed to the development of power for employees and management jointly. Power in the sense of *capacity for accomplishment developed through common undertakings* is a most notable achievement of employee representation." See "Contributions of Employee Representation to Managerial Objectives," in Henry Metcalf, ed., *Business Management as a Profession* (Easton: Hive Publishing, 1927), 249–273.

³⁴Mary Parker Follett states in this regard (178), "I think, therefore, we may say that, though the employee representation movement began partly as a concession, partly to make things go more smoothly, partly to counter trade unions, today it is considered by many men as an asset, as an essential part of sound organization." See "The Influence of Employee Representation in a Remolding of the Accepted Type of Business Manager," in L. Urwick and H. Metcalf, eds., *Dynamic Administration: The Collected Papers of Mary Parker Follett* (New York: Harper and Brothers, 1940), 167–182.

³⁵Slichter, "The Current Labor Policies of American Industries," 396–397, 401.

market) wages, since this augmented the purchasing power of employees who, in turn, then have the financial wherewithal to purchase the products of industry. Had union avoidance been the primary motivation behind paying high wages, one would reasonably expect that with the decline in the union threat over the decade that employers would have seized the opportunity to cut wages, particularly since prices were falling and a surplus of labor was available. But the large Welfare Capitalist employers did not, and indeed desperately sought to maintain wages during the first years of the Depression even when sales and production had plummeted (in 1931 the steel industry was operating at 15% of capacity). Only in the fall of 1931 did these companies finally succumb to the pressure of deflation and cut wages. The millions of dollars spent by Welfare Capitalist employers on protecting wage rates, as well as avoiding layoffs through work sharing, is tangible evidence of the strategic investment they were willing to make in employee good will.³⁶

That this investment later turned sour is less an indication that Welfare Capitalism or its implementation was inherently defective than it is a testament to the power of John R. Commons' insight a decade earlier that unemployment and job insecurity are the greatest menaces to a cooperative, mutual gains strategy.³⁷ Unfortunately, it took the most calamitous depression in the nation's history to prove him right.

Employee Representation in the Welfare Capitalist Model

Employee representation was seen by both advocates and critics as only one part, albeit the most far-reaching and consequential, of the Welfare Capitalist model of personnel/HRM. Like modern-day proponents of strategic human resource management, the progressive management theorists of the 1920s did not see employee involvement as a stand-alone activity.³⁸ Rather, it was envisioned as one part of a coordinated, synergistic strategy to transform an adversarial employer–employee relationship into a cooperative, mutual gain relationship. For this reason, John Leitch—an early evangelist for employee representation—counseled that a representation plan should also be accompanied by a profit-sharing plan.³⁹ Likewise, a number of firms that installed employee representation plans also established a personnel department and instituted supervisor training.⁴⁰

The central purpose of employee representation, and all the other accoutrements of Welfare Capitalism, was universally agreed to be the engenderment of *cooperation* and a *unity of interests* in the workplace.⁴¹ W. T. Holliday, President of the Standard Oil Company of Ohio, states, for example: “It [employee representation] originated as a

³⁶Henry Williams, “High Wages and Prosperity,” *Industrial Management*, No. 6 (1927), 325–327; Kaufman, “Why the Wagner Act?: Reestablishing Contact with its Original Purpose” in David Lewin *et al.*, eds., *Advances in Industrial and Labor Relations*, Vol. 7 (Greenwich, CT: JAI Press, 1996), 15–68; Brody, “The Rise and Decline of Welfare Capitalism.”

³⁷Commons, *Industrial Government*, 263–272.

³⁸See Mary Parker Follett, “The Psychology of Consent and Participation,” reprinted in H. Metcalf and L. Urwick, 210–229, and P. Wright and G. McMahan, “Theoretical Perspectives for Strategic Human Resource Management,” *Journal of Management*, 35 (1992), 295–320.

³⁹John Leitch, *Man to Man: The Story of Industrial Democracy* (New York: Forbes, 1919).

⁴⁰See Jacoby, *Employing Bureaucracy*, and Edmund Gray and C. Ray Gullett, “Employee Representation at Standard Oil Company of New Jersey: A Case Study,” Occasional Paper 11 (Baton Rouge: College of Business Administration, 1973).

⁴¹See National Industrial Conference Board, *Experience with Works Councils in the United States*, Research Report Number 22 (New York: National Industrial Conference Board, 1922); Clarence Hicks, *My Life in Industrial Relations* (New York: Harper, 1941).

part of the development of modern management, for the realization that mutual understanding and cooperation between management and the men were necessary for sound and efficient operation: that there could not be a proper and effective organization unless its men felt that they were being fairly and justly treated and had proper opportunity for their complaints and advice to be heard.”⁴² Similar sentiments are voiced by E.K. Hall (1928), Vice President of Personnel at AT&T.⁴³ He states that employee representation originated from “the theory that it ought to be possible to unite every element in the industry and tie it up tight for coordinated, effective action.” For him employee representation promotes a unity of interest, confidence between management and workers, provision of an outlet for orderly and equitable resolution of disputes and grievances, and replacement of the military-type hierarchial “command and control” model of the business organization with a new type that emphasizes delegation of responsibility and shared decision-making.

Critics of employee representation heavily discount management rhetoric on the subject, however, as hopelessly tainted by self-interest and wishful thinking. But, again, one finds considerable confirmation for the management position in the writings of Commons and colleagues. Commons states⁴⁴ in *Industrial Goodwill*, for example, that: “There is no conclusive reason why constitutional democracy may not start with the employer as with the employees. It depends on his good faith and good will”. Echoing the position of Hall, Commons states in *Industrial Government* that democracy in industry does *not* mean employee participation in the executive function of management or a significant sharing in the rewards and risks (profits and bankruptcy) of business. Indeed, Commons is adamant that management must have final authority to run the business for no organization can be run by consensus nor is the historical record encouraging that employees as a class possess either the skills or perspective to manage industry. But authority, he says, must be accountable and subject to the rules of law, which of course harks back to his “citizenship” model of labor management. Thus, while management must maintain control over the “executive” function of industrial government, Commons advocates employee participation in the “legislative” and “judicial” functions. Whatever the form of worker organization, its function is to allow employees to participate—not necessarily through a formal process of voting, but through discussion, problem-solving, and involvement in the making and implementing of all the rules and activities that directly affects their work lives, be it the determination of wage levels, the scheduling of vacation days, or the planning of the company picnic.

Seen in this light, employee representation was much more than a dressed-up union avoidance device. Instead, employee representation was a central component of a new personnel/HRM model that sought to enhance organizational performance and generate a win-win outcome for both employers and employees. This model today goes under the rubric of a “high-involvement” or “high-performance” workplace, but in the 1920s was most often referred to as a “goodwill” model of employer–employee relations—following on the influential writings of John R. Commons. The theory of employee representation thus rests on a highly credible foundation, both then and now. Of course, theory is one thing, and accomplishment another. It is to the latter I now turn attention.

⁴²W.T. Holliday, “Employee Representation,” *Personnel*, 10 (May 1934), 99–104.

⁴³E.K. Hall, “What is Employee Representation?,” *Personnel*, 4 (Feb. 1928), 77, 79–83.

⁴⁴Commons, *Industrial Goodwill*, 113.

Accomplishments of Employee Representation

The second area of the historical record that requires reexamination is the accomplishments of employee representation. The conventional wisdom among labor historians is that employee representation was largely a union avoidance device that contributed little to the advancement of workplace productivity or improved terms and conditions of employment for workers. The assessment one reaches on the accomplishments and shortcomings of employee representation depends critically on the time period examined, a point made previously by Daniel Nelson. He distinguishes three different phases of the company union movement: World War I and immediate aftermath; the Welfare Capitalism period of the 1920s; and the 1933–35 period of the New Deal.

During the first phase, the large majority of NERPs were imposed upon employers by edict of the National War Labor Board and the Shipbuilding Labor Adjustment Board, while in the latter phase the majority of NERPs were established as a hasty response to Section 7(a) of the National Industrial Recovery Act (NIRA). Since in both cases the decision of employers to establish and operate an NERP was made under government compulsion or clear-cut threat of unionization, it is not surprising that most of them rather quickly atrophied and accomplished little of social value. And this result was not surprising to anyone at the time, for management clearly stated from the very beginning that employee representation, to be successful, has to be a freely chosen decision by the firm and entered into with the right spirit—i.e. a genuine desire to cooperate with labor and seek its good will.⁴⁵ These conditions were not well satisfied during either the first or third phase of the employee representation movement.

If employee representation is to be judged on its own terms, the best period for doing so is the decade of the 1920s. Equally important, the 1920s was a relatively stable period and thus better typifies the type of economic and political environment that employee representation will normally operate within, at least when viewed over the long term.

And what was the record of employee representation in the 1920s? There exists a welter of conflicting perspectives and testimonies on the subject. On one hand, for example, employee representation is, to quote a memorable phrase from the 1919 AFL convention, “a delusion and a snare,” a view reinforced by scathingly critical case studies of company unions reported in trade union publications—e.g. *Labor Age*—and in books by union supporters, such as Robert Dunn.⁴⁶ But then there is the opposite end of the spectrum, where one can read in management publications about the miracles worked by employee representation. One author relates, for example, that “a real spirit of partnership seems to prevail among the workers. ‘Here go the profits,’ sang out one of the truckers as the big cases of finished cloth were being slid down onto the waiting scow, for overnight shipment.”⁴⁷

A credible verdict on the accomplishments and shortcomings of employee representation in the 1920s requires more knowledgeable and disinterested observers. Arguably the person most qualified to serve this role is William Leiserson, student of John R.

⁴⁵National Industrial Conference Board, *Experience with Works Councils in the United States*.

⁴⁶Robert Dunn, *American Company Unions* (Chicago: Trade Union Educational League, 1927). The articles in the labor press, such as *Labor Age*, tend to be polemical. Slichter in a letter to Leiserson in 1925 (Leiserson papers, Box 36) says of AFL president William Green, “Green apparently knows very little about these things [company unions].” He goes on to say of Leiserson, “I thought you had made more penetrating observations than anyone else.”

⁴⁷Alfred Myers, “A Successful Employee Partnership Plan,” *Industrial Management*, Nov. 1922, 295.

Commons, professor of economics at Antioch College, the nation's best-known labor arbitrator and mediator in the pre-Depression years, and frequent consultant to leading officials in the trade union movement *and* business executives in industry. Indeed, if either management or labor had reason to disqualify Leiserson as judge in this matter on grounds of partisanship, it would have been management for Leiserson was open and frank in his sympathy for the cause of trade unionism.

When Leiserson first surveyed the potentiality of NERPs in the late 1910s, he evinced considerable skepticism and doubt.⁴⁸ A decade later, however, his assessment was far more positive and optimistic. Primary evidence of Leiserson's views on employee representation comes from private correspondence contained in the Leiserson papers.

In a letter to liberal Taylorist Morris Cooke in late 1928, Leiserson makes clear his sympathies on the question of trade unions versus company unions.⁴⁹ He states, "I do not think that anyone who investigates the facts as they actually are can have the least doubt that trade unionism in this country is at a standstill, if not actually declining ...". He then goes on to say, "I certainly will agree with you or with anyone else that this ought not to be. I should like to see something else happen; but what we think ought to be and what actually is, are two very different things...." As scientists we must clearly point out what actually is happening." And then, for the next two pages of his letter to Cooke, Leiserson goes into some detail: "employers have discovered a method of making the open shop policy still more effective than it has been, by adding to it the device of employee representation." Rather than relying solely on "dictation and economic power" the employers "have conceded a measure of self-government and consultation with their employees, in order to get more efficiency and more cooperation." Not only did these employers liberalize the autocratic nature of the employment relationship, they "found it necessary at times to give the workers more money than they would have given under a straight open shop policy." Employers' interests were seen to be served by employee representation: "they [employers] have found that this [employee representation and higher wages] paid not only in reduced costs but actually in winning more good will and cooperation from their employees."

In a letter to fellow academic Leon Marshall of Johns Hopkins University, Leiserson says, "many people think that company unions are merely a subterfuge and little is to be expected of them. My experience had shown this to be a mistaken view."⁵⁰ And in a letter to Robert Bruere, associate editor of *The Survey*, Leiserson says, "I have studied a number of the plans and have tried to compare them and compare their decisions with the decisions that are made under collective bargaining agreements, and I have been rather surprised to find a general tendency to decide and settle cases under Company Unionism according to practically the same principles that are followed under trade union agreements." He goes on to opine: "Perhaps industrial government and industrial democracy will be established in American industry from the top down by the industrial monarchs instead of by revolt from below. Weren't many of our political democracies handed down from above?"⁵¹

These are general comments, but Leiserson also goes into more detail on the benefits employees of that period were getting from NERPs. Returning to the Cooke letter, for example, Leiserson notes that when employees "find they are getting more money

⁴⁸William Leiserson, "Organizing the Workforce," *Industrial Management*, (June 1919), 503b-503e.

⁴⁹Leiserson Papers, Box 9, dated Nov. 13, 1928.

⁵⁰Leiserson Papers, Box 26, dated Jan. 30, 1929.

⁵¹Leiserson Papers, Box 6, dated May 18, 1926.

under the representation plan, ... the appeal of the union organizer that the union will get more money for them naturally loses much of its effectiveness.” He goes on to explain: “But this of course is not the only reason why many workers prefer company unionism to trade unionism. A more important reason than wages is the archaic structure of the American trade unions,” and “On top of all this, I have tried to point out in my speeches and writing that the development of personnel and industrial relations departments in industrial plants has given the employers a set of people to handle their labor who, whatever may be said of their weaknesses, are on the whole superior in leadership and management ability to most of the labor leaders of the country.” Not mentioned in the Cooke letter, but discussed in his article in *Personnel*, is also this fact: “Look at the reports of grievances adjusted under employee representation plans; in most of them, especially at the beginning, you find two-thirds or seventy per cent of the cases are settled in favor of the employees.”

Perhaps the best summary statement of Leiserson’s judgement on the accomplishments and shortcomings of employee representation is contained in his *Personnel* article. He notes first that the experience with employee representation was quite varied and, “In a sense, then, almost anything that may be said about employee representation will be true.” But, given this caveat, he goes on to state: “I think, if you take it as a whole, the unskilled and semi-skilled working people of this country, in the last six years, have obtained more of the things ... out of employee representation plans than they have out of the organized labor movement ... the reason the employee representation movement has grown is because the trade unions have not succeeded in doing their jobs ... There is even evidence that these workers sometimes deliberately prefer company unions to the regular trade unions.”

The conclusion I reach from Leiserson’s writings on employee representation is that the experience with NERPs during the 1920s was indeed mixed but that on net they were a positive, constructive development that benefited both the employers who adopted them and the employees who worked in those companies. And Leiserson was not the only academic to hold this opinion. In his review of employers’ labor policies written in 1929, Slichter spoke favorably of employee representation and, in earlier correspondence to Leiserson, had noted that its success was because, “nowhere in the world, as in this country, are employers making such an intelligent and determined effort to keep labor satisfied.”⁵²

Another testament by an academic to the positive contributions of employee representation is provided by C. Canby Balderston, dean of the Wharton School at the University of Pennsylvania. In a book published in 1935, Balderston presents case studies of the 25 companies in the U.S. which he selected, based on extensive interviews and on-site visits, as exemplars of positive employer–employee relations. Of the 20 nonunion companies, 14 had some form of employee representation plan. The company selected as having the “soundest worker–management relations” was Leeds & Northrup. In explaining selection of Leeds & Northrup, Balderston states (emphasis added): “It is natural to expect that a program honored in this signal fashion would have the usual arrangements that one expects to find in a firm with advanced personnel policies, that is *employee representation*, retirement, annuities, group insurance, and systematic guidance of wage rates and promotions.”⁵³ As an example of the contribu-

⁵²Slichter, “Current Labor Policies of American Industry”; Leiserson Papers, Box 36, dated Jan. 19, 1925.

⁵³C. Canby Balderston, *Executive Guidance of Industrial Relations* (Philadelphia: University of Pennsylvania Press, 1935), 141.

tions made by the employee representation council, Balderston relates that in 1926 the employee delegates requested that a system of old age pensions be considered. He describes the outcome this way: "A joint committee, ... worked on it assiduously for many months, finally reporting a plan of old age retirement allowances which was approved and put into operation in 1927."⁵⁴

Numerous practitioners also wrote on the performance of employee representation plans. Not all were commendatory. The most critical was by W. Jett Lauck, a liberal labor economist and consultant to the United Mine Workers Union, who concludes that only a half-dozen plans met his "standards for industrial democracy."⁵⁵ Modestly more positive, but still with significant negative overtones, was the in-depth case study of the operation of the Rockefeller Plan at the Colorado Fuel and Iron Company by Ben Selekmán and Mary Van Kleek of the Russell Sage Foundation.⁵⁶ They found that the employee representation plan had made a noticeable contribution to improved living conditions and the settlement of grievances, but was nonetheless viewed with apathy and suspicion by most of the miners, particularly due to its lack of power on the wage issue.

More positive assessments are reached by Carroll French and Ernest Burton. French, for example, concludes that "the meetings of the joint committees have been remarkably successful ... the burden of the evidence and testimony as to the results of the shop committee agree that it has made for a better relations between management and men."⁵⁷ In his study, which included on-site visits and review of council minutes, Burton concludes regarding most of the trade union criticisms of employee representation (e.g. management manipulation of elections, denial of employee rights of free speech, intimidation of employee representatives) that: "We have found little evidence to substantiate ... these charges." He further concludes that employee representation, on net, leads to, "greater output, increased efficiency, and improved morale," but that its most significant impact is to bring about an upgrading in the quality and practice of management.⁵⁸

Among the most favorable—and credible—reports comes from Robert Bruere, associate editor of *The Survey*, a member of the Taylor Society, and card-carrying trade unionist. Although only rarely cited in the historiography of employee representation, his in-depth case studies of employee representation at General Electric, Leeds & Northrup, and Sperry Gyroscope provide revealing glimpses of both the strengths and

⁵⁴The Wagner Act forced Leeds & Northrup, and the other progressive companies cited in Balderston's study, to disband their employee representation committees. The Act continues to have the same effect in the 1990s. Two companies—Polaroid and the Donnelly Company—were named in a 1984 book [Robert Levering, Milton Moskowitz, and Michael Katz, *The 100 Best Companies to Work for in America* (1984)] as one of "the 100 best companies to work for in America"—in part because each had a formal system of nonunion employee representation that promoted employee participation, improved two-way communication, and mutual problem-solving. The NLRB nonetheless challenged both plans as violations of Section 8(a) (2) and the companies were forced to dismantle them.

⁵⁵W. Jett Lauck, *Political and Industrial Democracy* (New York: Funk and Wagnalls, 1926).

⁵⁶Ben Selekmán and Mary Van Kleek, *Employees' Representation in Coal Mining* (New York: Russell Sage Foundation, 1924).

⁵⁷Carroll French, *The Shop Committee in the United States* (Baltimore: Johns Hopkins University Press, 1923), 75–76.

⁵⁸Ernest Burton, *Employee Representation* (Baltimore: Williams & Wilkins, 1926), 239, 262.

weaknesses of NERPs.⁵⁹ That the former outweighed the latter is indicated in his summary statement of the plan at General Electric's West Lynn, MA plant:

By contrast with the Amalgamated Clothing Workers of America [cited by Bruere as the trade union doing the most to promote labor-management cooperation and increased efficiency in production], the organization of the General Electric employees under the Plan of Representation in West Lynn—without dues, without a treasury, without its own technical staff, without the essentials of free initiative except in matters of recreation and grievances—makes the impression of a bottle-fed and company cradled organization. And yet, as I have said, the scope of the activities which have been developed under the Plan is so much wider than the scope of the activities ordinarily developed under trade union collective agreements that it is worth much not only to the employees at West Lynn but to the labor movement in general that this particular infant should be bottle-fed. The General Electric is maintaining at West Lynn a “service test station” which may make as great a contribution to the technique of industrial relations as its physical research laboratories have made and are making to the technique and development of the electrical industry.

One other source of evidence on the contributions of company unions is available that deserves attention—the opinion of workers. When given a chance to vote by the pre-Wagner Act National Labor Board (NLB) and National Labor Relations Board (NLRB) in 1933–35, one in three employees chose to keep the company union form of representation.⁶⁰ These election results, it should be noted, represent a very skewed sample biased against employee representation since the intervention of the boards was typically predicated on the existence of a serious dispute over the issue of union recognition. In the six years after passage of the NLRA (1935–1941), company plans and newly formed independent labor unions (ILUs) had a victory rate of approximately 50% in NLRB supervised elections.⁶¹ At companies with particularly successful employee representation programs, such as DuPont and Standard Oil of New Jersey, AFL and CIO affiliated unions were unable to gain more than a toehold among the employees despite intensive organizing efforts and several rounds of NLRB-ordered representation elections.⁶²

⁵⁹Robert Bruere, “West Lynn,” *The Survey* (April 1, 1926), 27. See also “32,000 R.P.M.,” *The Survey* (Jan. 1, 1927); “A Quaker Employer Builds a Company Union,” *The Survey* (Sept. 1, 1928).

⁶⁰Leo Wolman, *Ebb and Flow of Trade Unionism* (New York: National Bureau of Economic Research, 1936).

⁶¹Sanford Jacoby, “A Road Not Taken: Independent Local Unions in the United States Since 1935,” in Bruce E. Kaufman and Daphne G. Taras, eds., *Nonunion Employee Representation: History, Contemporary Practice, and Policy* (Armonk, NY: M.E. Sharpe, 2000), 76–95.

⁶²As of 1947, only 3% of employees at Standard Oil of New Jersey opted for trade union representation. See Stuart Chase, *A Generation of Peace: Thirty Years of Labor Relations at Standard Oil Company (N7)* (New York: Standard Oil of New Jersey, 1947). Jacoby, in “Current Prospects for Employee Representation in the U.S.: Old Wine in New Bottles?” *Journal of Labor Research* (Summer 1995), 387–398, states that in 1946 85% of DuPont's production workers were represented by company unions—turned into-independent local unions.

Shortcomings of Organized Labor

A third area in the historiography of employee representation that requires reinterpretation is with respect to the shortcomings of the organized labor movement in the 1920s–1930s. Labor historians are prone to dwell at length on the shortcomings of company unions but only in rare cases give similar emphasis to the shortcomings of organized labor.⁶³ If one judges company unions relative to an idealized model of industrial democracy or the practices of only the most progressive trade unions of the 1920s, they inevitably fare poorly and invite criticism. But if the comparison is made between company unions and many of the AFL-affiliated trade unions of that era, the evaluation of the former rises considerably.

It is well known that during the 1920s the organized labor movement lost hundreds of thousands of members while workers covered by nonunion employee representation plans grew by a similar amount. Critics of company unions argue that employer union avoidance policies played a significant role in the decline of organized labor. Indicative is the statement of Senator Wagner that “the greatest obstacle to collective bargaining are employer-dominated unions.”⁶⁴ An alternative view, however, is that in normal times the majority of American workers had only a lukewarm interest in American trade unions, due in part to the shortcomings of the unions themselves. This is certainly the position of both Slichter and Leiserson.

According to Slichter, it is incorrect to blame Welfare Capitalism in general, and company unions in particular, for the stagnation of organized labor in the 1920s. He states in a letter written to Leiserson in 1925, for example, “I do not regard the company union as a very satisfactory explanation for the continuous decrease in the membership of the A.F. of L. during the last three years.”⁶⁵ Then, writing four years later, he makes the same point (emphasis in original) “But have not the new personnel policies at least prevented the spread of unionism and thus are they not *indirectly* responsible for the fall in union membership?” And he then answers “the effectiveness of the new labor policies in checking the spread of unionism has not been tested, because in few cases has a determined effort been made to organize plants in which the new policies are found.”⁶⁶

Leiserson also took the position that company unions had little to do with the decline of organized labor in the 1920s. He states in his previously cited letter to Morris Cooke:

Most of the workers in employee representation plans would have no place in a regular labor organization, and if a place were made for them, as sometimes happens, they would run into a lot of jurisdictional disputes ... the fact is that right now many of the semi-skilled, unskilled and clerical workers in industry have reason to feel that they are doing better with the companies' organizations than they could do with the national labor organizations ... we must not

⁶³The most notable exception to this statement is the voluminous commentary in the literature on the problems posed by the craft structure of most AFL unions. Some labor historians, such as Bernstein in *The Lean Years*, also detail problems of mediocre leadership, corruption, and internal autocracy in unions, but such accounts are in the distinct minority.

⁶⁴*Legislative History of the National Labor Relations Act*, vol. 1, 15.

⁶⁵Leiserson Papers, Box 36, dated Jan. 19, 1925.

⁶⁶Slichter, “Current Labor Policies of American Industry,” 427. Daniel Nelson also concludes that company unions and trade unions were largely noncompeting groups in terms of industry and type of employer in the 1920s. See his “The AFL and the Challenge of Company Unionism, 1915–1937,” in Bruce E. Kaufman and Daphne G. Taras, eds., *Nonunion Employee Representation: History, Contemporary Practice, and Policy* (Armonk, NY: M.E. Sharpe, 2000), 61–75.

forget our history. Most of the working people in the basic industries are immigrants and children of immigrants, or else green hands from the country, and there is an increasing number of women. The history of the handling of these masses of workers by the trade unions of this country is not something to impress on their minds the fact that the trade unions are particularly desirous of promoting their interests ... working people told me that they prefer company unions to the regular trade unions and I have tried to point out in my speeches and writings that the development of personnel and industrial relations departments in industrial plants has given the employers a set of people to handle their labor who, whatever may be said of their weaknesses, are on the whole superior in leadership and management ability to most of the labor leaders of the country.

Finally, Leiserson ends with this observation that remains as pertinent today as when he made it in 1928: "These are the facts, as I see them. If they are true, it does not do much good to point out that on general abstract principles, trade unionism is better for the workman, or even for industry as a whole, than company unionism. What is needed is to show the trade unions that this presents them with a new situation requiring the adoption of entirely new tactics, policies, and new forms of organization, if they are to meet the new strategy of employers."

Leiserson's mentor, John R. Commons, had enunciated one alternative strategy for organized labor at the beginning of the 1920s, but the trade unions—with certain exceptions, such as the Amalgamated Clothing Workers—declined to follow it. In his view, progress in industrial relations is achieved by a selective use of all three of the previously mentioned solutions to labor problems. The employer's solution of progressive personnel management charts the forward course, as it is the more innovative and is typically adopted in the most thorough-going way by the minority of "best practice" employers. Of this group he says: "From 10 percent to 25 percent of American employers may be said to be so far ahead of the game that trade unions cannot reach them. Conditions are better, wages are better, security is better, than unions can actually deliver to their members."⁶⁷ Although he did not state it, it is exactly this group of employers in the 1920s in which employee representation was concentrated, following as they were the Welfare Capitalist personnel/HRM paradigm.

But what about the remaining 75–90% of firms? Although the proponents of personnel management maintained that with sufficient time and education these companies too could be induced to adopt progressive industrial relations policies, Commons knew better. He stated his views on this matter to the personnel managers at the 1920 convention of the Industrial Relations Association of America. He says: "I have listened here to what seemed to me to be the most marvelous and keen discussion of what employers could do, of what foremen could do, and of what management could do, and I am firmly convinced that if these most informing discussions we have heard could be carried out ... the capitalist system could be saved, that there will be no need of unionism or of revolution. But we know that will not be done; we know that you are but a small number.... There is, therefore, a need for unionism to supplement management."⁶⁸

Commons' position is that the role of unions and legislation—the workers' and community's solution to labor problems—is to establish a floor of minimum labor

⁶⁷ Commons, *Industrial Government*, 263.

⁶⁸ John R. Commons, "Management and Unionism," in *Proceedings of the Industrial Relations Association of America* (Chicago: IRAA, 1920), 130.

standards at a point in time and then gradually raise this floor over time, while progressive employers (typically nonunion) establish the leading edge of labor standards.⁶⁹ What this means with respect to trade union organizing strategy is quite the opposite, however, of AFL strategy through the mid-1930s to organize the high paid, craft workers—"the aristocracy of labor"—and let the workers in the bottom end of the labor market and in the mass production industries fend for themselves. The strategy counseled by Commons, on the other hand, was to concentrate on organizing those workers who most needed the protection offered by collective bargaining, namely the unskilled, semi-skilled, women and minorities, and newly arrived immigrants.

The implication is that company unions had little to do with the decline of the organized labor movement in the 1920s. Company unions were predominantly found among those firms, such as Standard Oil of New Jersey, General Electric, and DuPont, that were leaders in employment practices. It is true that their employee representation plans, along with the plethora of other personnel practices used at these companies, substantially reduced the interest of the workers in trade union membership (a union substitution strategy), but surely this is hard to condemn as anti-social. Indeed, William Leiserson well captured this thought when he observes: "The weakening of trade unionism that has resulted is an undesirable consequence, but who will say then that we should go back to the days when management neglected its social responsibilities toward its employees, merely by fighting evil conditions which have been removed? The labor movement ... if it is weakened by the activities of personnel management ... needs to look to its larger program."⁷⁰

But labor did not look to its larger program in the 1920s. The AFL stuck doggedly to its craft form of organization and let nonunion companies pioneer a "vertical" (industrial) form of employee organization that appealed more to workers in mass production industries. Similarly, it was nonunion companies that took the lead in establishing permanent in-plant committees of worker representatives to deal with day-to-day shopfloor problems, in contrast to the trade unions that often maintained contact with the workers only through a business agent charged with overseeing conditions in a number of separate companies. And, further, it was also the progressive nonunion employers in the 1920s who pioneered new employee benefits, such as health insurance, pensions, and recreational facilities. While these new benefits covered only a small portion of the workforce, often suffered from inadequate pay-outs or restrictive eligibility requirements, and sometimes were not what workers would have freely chosen, they nonetheless were a notable advance in industrial relations practices. Finally, a trade union movement committed to a "new program" would have had to address widespread problems within its ranks regarding corruption, internal autocracy, and restrictive membership practices.

It would be unfair to lay all the responsibility for the stagnation of union membership in the 1920s at the door of organized labor. Certainly the unions were handicapped by weak labor laws, hostile courts, and unprincipled use of anti-union weapons by "Open Shop" employers, such as mass firings and picket line violence. And, furthermore, organized labor did make certain efforts at innovation, such as the labor-management

⁶⁹This strategy is also suggested by Henry Seager in "Company Unions vs. Trade Unions," *American Economic Review* (Mar. 1923), 3-13. He concludes that the company union is superior in promoting efficiency and cooperative labor-management relations but that its success depends on enlightened, forward-thinking management. The trade union, on the other hand, is recommended for the "grasping type of employer."

⁷⁰Leiserson, "Contributions of Personnel Management to Improved Labor Relations," 146-147.

cooperation program at the B&O railroad and the establishment of labor banks and unemployment insurance by the Amalgamated Clothing Workers.

But given these positive accomplishments, it is still the case that most American workers did not favorably view the organized labor movement in the 1920s and early 1930s. Indicative of this opinion are these comments by Thomas Elliot (1992), a professed “New Dealer” and assistant deputy to Frances Perkins in the Labor Department in the early years of the Roosevelt Administration who states in his autobiography⁷¹:

While I was all for upholding workers’ rights under Section 7(a), and highly critical of employers who denied them those rights, I was not automatically pro-union. Far from it. Frequently I wrote scornfully [to his family in 1933] about the leaders of some of the major A.F. of L. craft unions, especially in the building trades, calling them “a bunch of racketeers in league with a lot of the building contractors.” And again: “It’s hard to be enthusiastic about organized labor.” Those were early comments, but in 1934 I still felt the same way: “I’d like to see equality of bargaining power, but I doubt the efficacy of any program designed to increase the strength of the A.F. of L. as at presently constituted. There is a dearth of disinterested labor leaders. If some of the top men could be deported, and Sydney Hillman and Philip Murray and a few like that put in charge, then we’d have a worth-while labor movement.”

Seen in this light, company unions—despite their acknowledged shortcomings and abuses—were not as evidently inferior to trade unions as the critics of the former are wont to maintain. Indeed, a well-run company union was often preferred to an outside union, as secret ballot representation elections held during 1933–35 clearly indicate.

The NIRA Trap

Writing in 1929, William Leiserson extolled the accomplishments of personnel management and approvingly called employee representation the most significant part of the employer’s program for improved industrial relations. Yet, hardly more than five years later, Leiserson was testifying before Congress in support of Senator Robert Wagner’s proposed legislation and its prohibition of employer “dominated” labor organizations. Leiserson’s turn-around on the issue of company unionism mirrored a similar reversal of public and political support for employee representation in the national polity. Although the events leading up to the passage of the Wagner Act—and the reasons for its ban on company unions—have been treated in dozens of books and scholarly articles, this area of labor historiography still does not fully capture the underlying reasons for the demise of employee representation. When these omitted factors are included in the analysis, the verdict on employee representation changes substantially.

All accounts of labor history during the New Deal recognize that the passage in June 1933 of the National Industrial Recovery Act (NIRA) and its Section 7(a) guarantee of the right to organize set in motion the events leading to the demise of employee representation. Most of these accounts do not, however, give sufficient weight to the macroeconomic purpose of the NIRA and, later, the Wagner Act.⁷² This macroeco-

⁷¹Thomas Eliot, *Recollections of the New Deal: When the People Mattered* (Boston: Northwestern University Press, 1992).

⁷²But see Colin Gordon, *New Deals: Business, Labor, and Politics in America, 1920–1935* (New York: Cambridge University Press, 1994) and Daniel J.B. Mitchell, “Inflation, Unemployment, and the Wagner Act: A Critical Appraisal,” *Stanford University Law Review* (April 1986), 1065–1095.

conomic purpose is crucial to understanding the NLRA's ban on company unions and why this ban was at the time—and still remains today—counterproductive. To make my case, a brief overview of salient points is required.⁷³

- President Roosevelt and Senator Wagner both concluded the cause of the Depression was inadequate purchasing power and that the severity of the slump was exacerbated by a cascading series of wage and price cuts—an outcome they attributed to “destructive competition.” The NIRA was enacted to stop the downturn and start the process of economic recovery. To accomplish the former, the NIRA sought to end destructive competition by stabilizing prices and wages. Toward this end, the NIRA suspended portions of the antitrust laws so firms, operating through industry associations and “codes of fair competition,” could work out price and production stabilization agreements.⁷⁴ In order to stabilize wages, Section 7(a) of the NIRA mandated that every code of fair competition include minimum wage provisions and, in addition, sought to promote greater unionization and collective bargaining by guaranteeing labor's right to organize—on the presumption that union bargaining power would be more successful in stopping wage cuts at the firm-level and that industry-wide collective bargaining contracts could prevent wage cuts at the market-level. Greater unionization and collective bargaining was even more important to accomplishment of the NIRA's second goal—economic recovery. Roosevelt and Wagner believed that recovery depended on increasing purchasing power and aggregate demand in the economy. To accomplish this they sought to redistribute income from capital to labor through collective bargaining—on the presumption that increased wages would add to consumer purchasing power and thus augment spending and production.⁷⁴
- Although criticism of company unions had begun to surface during the hearings on the Norris-LaGuardia Act in 1931, neither industrial relations in general nor collective bargaining and employee representation in particular were the subject of much discussion or debate during the 1932 Presidential campaign and, indeed, the Democratic Party platform and candidate Roosevelt barely mentioned them. Little evidence exists, therefore, of any significant preexisting public or political opposition to employee representation prior to the passage of the NIRA.⁷⁵
- The NIRA was launched with great fanfare, including parades and patriotic speeches across the nation. The public was continually told that economic recovery hinged on employers and workers acting cooperatively together so that various economic imbalances could be eliminated. It was thus widely perceived that the Roosevelt administration favored trade unions and collective bargaining, that these were an important instrument of economic recovery, and that the NIRA encouraged or even mandated some form of collective bargaining.⁷⁶ In effect, American

⁷³This discussion is presented in more detail in Kaufman, “Why the Wagner Act?: Reestablishing Contact with Its Original Purpose.”

⁷⁴*Ibid.*, and Daniel Fusfeld, *The Economic Thought of Franklin D. Roosevelt and the Origins of the New Deal* (New York: Columbia University Press, 1956); Charles Roos, *NIRA Economic Planning* (New York: Da Capo Press, 1989; originally published 1937); Ellis Hawley, *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence* (Princeton: Princeton University Press, 1966).

⁷⁵Grant Farr, *The Origins of Recent Labor Policy* (Boulder, Co: University of Colorado Press, 1959).

⁷⁶Labor economist Dale Yoder states in *Personnel and Labor Relations* (Englewood Cliffs, NJ: Prentice Hall, 1938), 477 that “The Act [NIRA] was widely described as having made collective bargaining compulsory ...”

industrial policy swung overnight from a largely *laissez-faire* approach to a corporatist or “collectivist” approach. And one pillar of corporatism is a broad-based organized labor movement. Unfortunately for the NIRA planners, America didn’t have a strong labor movement, so one had to be quickly put together with whatever materials were available—per Benjamin Stolberg’s most perceptively titled article in 1933, “A Government in Search of a Labor Movement.”⁷⁷

- Organized labor, and particularly the United Mine Workers Union, touted in speeches, placards, and car caravans that “the President wants you to join the union.” Although the NIRA was actually neutral on the issue—Section 7(a) protected the right to join a union, but also allowed workers to join a company-sponsored organization or no union at all, the message had a powerful effect and thousands of workers rushed to join unions. Without question, a portion of this demand for union representation was organic, much like the rush of workers during World War I to join unions, and arose from the deterioration of labor conditions during the Depression, a mounting sense of grievance and injustice, and disillusionment with the broken promises of Welfare Capitalism.⁷⁸ Equally clear, however, is that another portion arose from two quite different motives. The first was the belief that union joining was a patriotic duty needed to spur economic recovery, per Robert Zieger’s observation that in the paper industry, “Workers in every sector seized upon the NIRA promise, as a means of both bettering their individual lot and of revitalizing the economy. Patriotism fused with self-interest.”⁷⁹ The second was the conviction that union-joining was necessary if workers were to have their interests effectively represented in the political process surrounding the writing and enforcement of the industry codes of fair competition. Thus, in this vein, labor economist David McCabe observed in 1934, “the Recovery Act has to date given less impetus to organization for collective bargaining ... than to organization for political action.”⁸⁰
- Most employers did not anticipate the climactic effect that Section 7(a) would have upon labor relations, evidenced in part by the fact that little business lobbying had gone into deleting Section 7(a) from the NIRA bill.⁸¹ Given the belated perception of many employers that some form of joint dealing or bargaining was now heavily favored, if not mandated, and their palpable dread of being organized by AFL unions, hundreds of companies rushed to form employee representation plans, others resuscitated NERPs that had atrophied in years gone by, and those with functioning plans often modified them in ways that would hopefully pass muster as agencies of collective bargaining.
- Employers’ rush to set up company unions, coupled with widespread discrimi-

⁷⁷Benjamin Stolberg, “A Government in Search of a Labor Movement,” *Scribner’s Magazine* (Dec. 1933), 345–350.

⁷⁸Brody, “The Rise and Decline of Welfare Capitalism.”

⁷⁹Robert Zieger, *Rebuilding the Pulp and Paper Workers Union, 1933–41* (Knoxville: University of Tennessee Press, 1984), 71. In a similar vein, Slichter in “The Development of National Labor Policy,” in Wesley Mitchell, *et al.*, eds., *Studies in Economics and Industrial Relations* (Port Washington, NY: Kennikat Press, 1941), 141–160, says (141) “The depression increased the willingness of workers to join trade unions, partly because they did not believe that layoffs and work sharing had been managed fairly, and partly because they believed wage increases would restore prosperity by increasing consumer purchasing power.”

⁸⁰David McCabe, “The Effects of the Recovery Act upon Labor Organization,” *Quarterly Journal of Economics*, 42 (Nov. 1934), 52–78 (Nov. 1985; originally published, 1934).

⁸¹Farr, *The Origins of Recent Labor Policy*.

nation against union activists and refusals to bargain, led to a growing adverse public and political reaction. Part of this negative reaction was fueled by a sense that employers were engaged in rank hypocrisy when, on one hand, they supported the NIRA provisions that let companies collectively determine product prices and sales quotas and yet, on the other hand, so stoutly resisted in both principle and practice the ability of workers to combine in trade unions to set wages and other terms and conditions of employment. The public also had a difficult time squaring employers' adamant resistance to unions when these same companies had for more than a decade preached the virtue of high wages—a virtue that was now made a cornerstone of economic recovery.

- A final factor that swung public and political opinion against employers and their representation plans was the willful refusal of some employers to abide by the decisions of the National Labor Board, created by executive order in August 1933 to resolve disputes arising over Section 7(a) and chaired by Senator Wagner. This board, and its successor board, the National Labor Relations Board created in 1934, were empowered to mediate disputes and hold secret ballot elections to determine workers' choice of representational agent. But some companies, such as Weirton Steel and Bud Manufacturing, either refused to allow such elections or to abide by the outcome, frequently citing the presence of an employee representation plan as proof they were in compliance with the NIRA.⁸²

With this background, it is now possible to see in the Congressional testimony of Leiserson and Wagner on the proposed NLRA how the events described above came together to spell the demise of employee representation plans.

First, consider Leiserson. The initial point to note in Leiserson's testimony is that he frames the purpose of employee representation quite differently than he had in the late 1920s. Then employee representation was evaluated largely for its contribution to improved joint relations within the individual plant and the potential for a win-win outcome of higher profits and wages. But in his testimony on the proposed NLRA the focus now shifts to how the relative bargaining strength of capital and labor determine the split between profits and wages. For example, in discussing the role of labor organizations, he states, "what we want here is to make a contract [between labor and the firm], a commercial contract." And viewed from this perspective, he finds the company union fatally defective: "For a company to come in and say [to the workers], 'I want to be on the selling end of this through my personnel manager' ... is obviously to defeat the purpose of the contract." And what is the purpose of the contract? He states:

the whole purpose of the N.R.A., it seems to me, rests on the idea that what we need is collective organization of the people ... in industry, whether ... laborers, or [as] business men ... We have discovered that if we let each individual business man, doing business on his own ... then all sorts of unfair practices creep in. We find that if laborers compete alone, wages go down to \$4 a week.

Leiserson in his remarks thus made the case for collective organization of employers and employees in order to stabilize prices and wages and stop destructive competition. He then described the injustice and economic harm resulting from the employers'

⁸²Irving Bernstein, *The New Deal Collective Bargaining Policy* (Berkeley: University of California Press, 1950).

refusal to allow independent union representation, saying of the latter: “the whole recovery program can not operate with the employers given the monopoly right to combine to fix wages, without consulting the employees, without giving the employees the same right to parallel the employers’ organization.” And with regard to the former, he states the NIRA is “making it possible for the employers of the country to organize nationally into ... various organizations, to dictate collectively wages to individuals who must, of necessity, bargain against each other in a cut-throat way ... If you want anything more calculated to bring unrest, disorder, discontent, and failure of the whole program than that, I do not know how you can figure anything out better than that.”⁸³

Leiserson had come full circle in the space of five years from a relatively enthusiastic supporter of company-created employee representation plans to a critic who supported legislation to ban them. The irony is that had there been no Depression, or had it ended in 1931–32, there would have been no NIRA and most likely Welfare Capitalism and employee representation would have emerged with enhanced stature and employee approval—given the substantial efforts made to maintain wage rates, prevent layoffs, and other such ameliorative measures.⁸⁴ But the NIRA was enacted and, metaphorically speaking, the NIRA set a fatal trap for employee representation. The Act first induced hundreds of employers who had no genuine interest in employee representation to hastily set up NERPs for reasons that appeared both anti-social and inimical to economic recovery and then established criteria for judging the relative merits of alternative forms of labor organization—i.e. the ability to stabilize wages and redistribute income from capital to labor—that clearly favored trade unions over company unions. It is thus small wonder that Leiserson, and members of the polity in general, saw no inconsistency in an about-face on the issue of employee representation.

And, finally, there is the position of Senator Wagner on company unions. Wagner was never a friend of employee representation as Leiserson had once been, but he and Leiserson were alike in that in 1935 both thought it served the purpose of economic recovery to ban employer-created plans. Thus, he states in an article in *The New York Times*:

The company union ... runs antithetical to the very core of the New Deal philosophy. Business men are being allowed to pool their information and experience in vast trade associations in order to make a concerted drive against the evil features of modern industrialism ... If employees are denied similar privileges, they are not only unable to uphold their end of the wage bargain, in addition they cannot cope with any problems that transcend the boundaries of a single business. The company union has improved personal relations, group-welfare activities, discipline, and other matters which may be handled on a local basis. But it has failed dismally to standardize or improve wage levels, for the wage question is a general one whose sweep embraces entire industries, or States, or even the Nation. Without wider areas of cooperation among employees there can be no protection against the nibbling tactics of the unfair employer or of the worker who is willing to degrade standards by serving for a pittance.⁸⁵

It is important to note that Wagner admits company unions provide worthwhile

⁸³National Labor Relations Board, *Legislative History of the National Labor Relations Act*, vols. 1 & 2, 264, 269, 2260, 2267.

⁸⁴A similar conclusion is reached by Brody in “The Rise and Decline of Welfare Capitalism.”

⁸⁵Reprinted in National Labor Relations Board, *Legislative History*, vol. 1, 22–26.

benefits to employees, but he nevertheless advocates banning *all* of them. This inconsistency is readily explicable by keeping in mind the NLRA's central purpose of macroeconomic recovery. In Wagner's eyes, the first macroeconomic reason for banning employer committees is that the workers in a nonunion representation plan still bargain over wages on an individual basis with the employer and thus continue to suffer from an inequality of bargaining power, making it impossible for them to "uphold their end of the wage bargain." The second reason is that the company union "fails dismally" to take wages out of competition because its reach is limited to one employer in a market of many. Thus, even though the representation plans improve productivity and employee relations at the plant level, they nonetheless obstruct the more important macroeconomic goal of ending destructive competition and redistributing income from capital to labor through collective bargaining.

The sacrifice of employee representation for purposes of macroeconomic recovery is, in my opinion, suspect on two counts. First, few modern-day economists believe that NIRA-type legislation in general, and promotion of greater collective bargaining in particular, is an effective method to end a depression and restore full employment.⁸⁶ The contemporary view of the NIRA is that it had at best a small positive impact on aggregate demand—since higher wages and consumer spending is offset by lower profits and less business spending—and a larger negative impact on aggregate supply—since higher wages raises costs of production and increased strikes, and restrictive union work rules lower productivity. A better approach, in the modern view, would have been to keep nonunion employee representation plans—since they enhance productivity and aggregate supply—and promote increased aggregate demand through expansionary fiscal and monetary policy (e.g. tax cuts, expanded public works spending, lower interest rates).

The second problematic aspect of Wagner's position regarding company unions is that it is not logically consistent with other positions he took regarding labor policy. For example, he championed the principle of free employee choice in workplace representation. In Congressional testimony, Wagner states: "Whatever the men want to do, within a plant, that is all right, only if it is the free choice of the men."⁸⁷ Given this philosophical principle, it seems incongruous for Wagner to then advocate a ban on employer-sponsored forms of representation, unless either the macroeconomic rationale for banning company unions overrides the principle of free choice or it is impossible to create conditions under which employees can exercise free choice. The latter position is untenable, however, for the NLRA established the secret ballot representation election process to insure workers free choice with regard to union representation and no obvious reason exists why the ballot could not be expanded to permit choice over three options: no representation, union representation, or company-sponsored representation. Wagner knew first-hand from his chairmanship of the two pre-NLRA labor boards that many workers, if permitted to vote, would choose company representation.

Canadian Experience with Company Unions

The fifth and final aspect of the historical record with respect to employee representation that has been slighted in the literature is with regard to the Canadian experience with company unions. In 1944 Canada enacted federal labor legislation modelled on

⁸⁶See Michael Weinstein, *Recovery and Redistribution under the NIRA* (1980) and Michael Bernstein, *The Great Depression: Delayed Recovery and Economic Change in America, 1929–1939* (1987).

⁸⁷Quoted in *Legislative History of the National Labor Relations Act*, vol. 1, 440.

the American NLRA.⁸⁸ This legislation included a provision similar to the NLRA's Section 8(a)(2) that prohibited employer domination of a labor organization, but it narrowed the NLRA's Section 2(5) definition of a labor organization to include only independent worker organizations established for the purpose of collective bargaining. As a result, employer-created representation plans are legal under Canadian law as long as employers do not seek to certify them as agents for collective bargaining or use them in ways that obstruct the right to organize. Unlike the United States, therefore, Canada never banned nonunion representation plans and dozens of them continue to exist to the present day.⁸⁹ An exemplar is the Joint Industrial Council at the Imperial Oil Company, Ltd.⁹⁰ The Council is a company-wide nonunion plan of employee representation, has been in continuous operation since 1922, and is the closest surviving descendant of the "Rockefeller Plan" established at the Colorado Fuel & Iron Company in 1915.

The Canadian experience has several implications with respect to the historiography of American nonunion employee representation.

- Since dozens of formal plans of nonunion representation exist in Canada today, it can be inferred that had the Wagner Act not banned them in 1935 many dozens of American companies would also have such plans. Thus, not only were "company unions" not a passing fad, some of the plans established in the 1920s and early 1930s would undoubtedly have survived and prospered up to the present time.
- Only a small proportion of Canadian nonunion companies choose to operate formal, company union-like representation plans, such as Imperial Oil's Joint Industrial Council. A much larger proportion, however, utilize smaller-scale, less formal employee teams and committees for purposes of employee involvement and participation.⁹¹ These committees routinely discuss terms and conditions of employment, a practice prohibited in the United States. The impact of the NLRA's ban on company-dominated labor organizations is thus likely to be relatively extensive among nonunion American companies.
- Company unions in Canada have not had an adverse impact on the tenor of industrial relations or the welfare of workers. In a recent review of collective bargaining developments in Canada, Professor Daphne Taras states that company unionism in Canada is "a nonissue."⁹² Furthermore, the final report recently issued by a task force appointed to review federal labor law in Canada makes no mention of any problems arising from nonunion forms of employee representation nor does it propose any policy change regarding such.⁹³ One can infer that if

⁸⁸Daphne Taras, "Collective Bargaining Regulation in Canada and the United States: Divergent Cultures, Divergent Outcomes," in Bruce E. Kaufman, ed., *Government Regulation of the Employment Relationship* (Madison, WI: Industrial Relations Research Association, 1998), 295–341.

⁸⁹Daphne G. Taras, "Portrait of Nonunion Employee Representation in Canada ...," in Bruce E. Kaufman and Daphne G. Taras, eds., *Nonunion Employee Representation: History, Contemporary Practice, and Policy* (Armonk, NY: M.E. Sharpe, 2000), 121–148.

⁹⁰Daphne G. Taras, "Contemporary Experience with the Rockefeller Plan: Imperial Oil's Joint Industrial Council," in Bruce E. Kaufman and Daphne G. Taras, 231–258.

⁹¹Anil Verma, "Employee Involvement and Representation in Nonunion Firms: What Canadian Employers Do and Why," in Bruce E. Kaufman and Daphne G. Taras, 307–327.

⁹²Taras, "Collective Bargaining Regulation in Canada and the United States," 317.

⁹³Andrew Sims, *Seeking a Balance: Canada Labour Code, Part I, Review* (Ottawa: Government of Canada, 1995).

America were to adopt the Canadian approach to labor law that the operation of nonunion representation committees would also fade into a “nonissue.”

- Lastly, little evidence exists that the presence of company unions in Canada has adversely impacted the Canadian trade union movement. Union density in Canada, for example is currently over twice as high as in the United States (34% versus 16%) despite the fact that the former permits nonunion plans of representation and the latter does not.⁹⁴ Indeed, nonunion representation plans are a fertile source of new members for some Canadian unions. A leader of the Canadian-based Communications, Energy, and Paper Union recently reported, for example, that one-third of the union’s new members have come from raids on nonunion councils and committees.⁹⁵ The implication is that relaxation of the NLRA’s ban on company unions—coupled with strengthened protections of the right to organize along Canadian lines—would not adversely impact the American labor movement.

* * * * *

The employee representation plans that emerged and proliferated in American industry in the 1920s were, on net, a constructive, positive development for improved industrial relations. Rather than being a “misadventure” as charged by certain critics, these employee representation plans were a signal step in the evolution of management thought and practice away from a “commodity” model of labor and toward a more humane, strategic, and participative model. Nor would these plans have died out as a passing fad if the Wagner Act had not uprooted them, for they are alive and well in Canada where labor law never banned them as in the United States. Without the meat-ax approach taken to company unions by the NLRA in 1935, it is very likely that companies such as Standard Oil of New Jersey, General Electric, AT&T, and DuPont would continue to have some form of nonunion employee representation.

While I believe that the conventional wisdom among labor historians regarding company unions is far too negative, I do not intend that this paper be an uncritical apologia for employee representation. My desire is to balance the record, not whitewash company unions. Without question, employee representation plans had a number of flaws and were in some cases little more than empty shells and covert union avoidance devices. But there is another side of the employee representation experience that is far more positive but, among labor historians, seldom acknowledged. As I have endeavored to show, employee representation was in part the leading edge of a new, more participative and humane model of employment management that came into vogue among the vanguard of progressive employers in the late 1910s and 1920s. Although the end-purpose of this new model of personnel/HRM practices was additional profit, the pursuit of pecuniary gain nevertheless induced these companies to install a plethora of new employment practices, such as job security, extensive employee benefits, supervisor training in human relations, and employee representation, that measurably improved the lives of shopfloor workers.

And so, what is the appropriate public policy approach to the company union question? Sumner Slichter, I think, gave the correct answer. In his testimony to

⁹⁴Cited in Taras, “Collective Bargaining Regulation in Canada and the United States.”

⁹⁵Reg Baskin, “My Experience with Unionization of Nonunion Employee Representation Plans in Canada,” in Bruce E. Kaufman and Daphne G. Taras, 487–497.

Congress on Wagner's Labor Disputes Act (the forerunner of the NLRA), Slichter states (emphasis added): "The problem which impresses me as overwhelmingly important is not the one of preventing the formation of the so-called "company union ... the problem is giving the independent labor organizations a *fair opportunity to compete with the employee committees and to provide a method by which, in an impartial manner, the wishes, the preferences of the employees can be ascertained.*"

A fundamental principle, as recognized early on by Commons, is that a business firm, if it is to be successful, must have "management" that gives orders to subordinates and wields power in decision-making. The challenge for public policy is to insure that management does not abuse these rights and powers. And how is this to be assured? According to Slichter, the key prerequisite is that management face effective *competition*, which is to say that management will use employee representation in the "right way" to the extent that it faces competition for its workers from other firms and for their loyalty from other forms of labor organization.⁹⁶ Seen in this light, the abuses and failings of company unions in the pre-Wagner Act years stem largely from the fact that management, or at least some managements, did not face sufficient competition either in the labor market for workers or in the "market" for employee representation.⁹⁷

Given these forms of competition, employers have considerable incentive to run employee representation plans in ways that generate mutual gains—surely the desired goal of public policy and what many of them accomplished, albeit imperfectly, in the 1920s. The solution to the company union problem in the 1930s, in turn, was not to ban them but to use fiscal and monetary policy to restore full employment (rather than the cartelization of markets approach of the NIRA) and to pass new labor law that truly protects the right of employees to join independent labor unions. As suggested by numerous writers in the 1920s–1930s, the best public policy is not "one or the other" with respect to company unions and trade unions, but rather one that makes both available in recognition of their different strengths and weaknesses and the existence of both progressive and reactionary employers.⁹⁸

The NLRA was a significant and much-needed step toward accomplishing part of this policy agenda (protecting the right to organize), but it seriously erred in banning employee representation. This robbed nonunion companies and their employees of a valuable personnel/HRM device to generate socially desirable win-win outcomes. The only apparent winner was organized labor, for its most fearsome foe was vanquished through legislation, an action justified, paradoxically, in the name of protecting employee free choice.⁹⁹

In the long run, however, I conjecture that even organized labor is likely a loser. This is partly because competition with employer-sponsored plans would have forced the labor movement to be more responsive to worker needs and innovative in its "larger program," and partly because some employers would handle their nonunion committees maladroitly and thus open the door for successful union organization. The latter consideration was certainly true in the steel industry in the 1930s, is true in Canadian

⁹⁶For a more detailed discussion, see Bruce E. Kaufman, "Does the NLRA Constrain Employee Involvement and Participation Programs in Nonunion Companies?: A Reassessment," *Yale Law and Policy Review*, 17 (1999), 729–811.

⁹⁷*Ibid.*

⁹⁸Paul Douglas, "Shop Committees: Substitutes for, or Supplements to, Trade Unions?," *Journal of Political Economy* (Feb. 1921), 89–107; Seager, "Company Unions vs. Trade Unions."

⁹⁹See Nelson, "The AFL and the Challenge of Company Unionism, 1915–1937."

industry today, and would certainly be true in the United States were it to join the rest of the industrial world and give its employees the option of nonunion representation. A corollary, of course, is that labor law has to also be on a par with that of other nations in the effectiveness with which it protects the right to organize. It is probably the case that the NLRA needs further strengthening in this regard and legalization of non-union committees should be contingent on it.