

Relations industrielles Industrial Relations



Nonunion Employee Representation: History, Contemporary Practice, and Policy edited by Bruce E. KAUFMAN and Daphne Gottlieb TARAS, Armonk, N.Y.: M.E. Sharpe, 2000, 576 pp., ISBN 0-76560494-9.

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Volume 56, numéro 4, automne 2001

URI : <https://id.erudit.org/iderudit/000113ar>

DOI : <https://doi.org/10.7202/000113ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer ce compte rendu

Debicki, C. (2001). Compte rendu de [*Nonunion Employee Representation: History, Contemporary Practice, and Policy* edited by Bruce E. KAUFMAN and Daphne Gottlieb TARAS, Armonk, N.Y.: M.E. Sharpe, 2000, 576 pp., ISBN 0-76560494-9.] *Relations industrielles / Industrial Relations*, 56(4), 816–819.
<https://doi.org/10.7202/000113ar>

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Nonunion Employee Representation: History, Contemporary Practice, and Policy

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While good ad hoc employee representation in a workplace can occur independently of any formalized procedure, the health of an employment relationship is usually contingent on the existence of effective channels through which workers and employers can communicate and negotiate. Although the decline of union participation in the North American private sector has led many to perceive a “representation gap” approaching chasmic proportions, a converse trend inside corporate environments promotes alternative forms of employee representation. Such employer-promoted channels of employee voice, and the legislative policies that affect the implementation thereof, are the subjects of *Nonunion Employee Representation*, a collection of essays by academics and practitioners in both the United States and Canada.

Bruce Kaufman and Daphne Taras, authors and co-authors of several chapters in the book, fare better than most as editors of that most awkward of creatures, the conference by-product. *Nonunion Employee Representation*, published in 2000 (although the conference for which the chapters were initially generated occurred in 1997), remains relevant both for its historical insights and its investigation of themes that remain at the forefront of industrial relations discourse.

The book’s 31 chapters are divided into three sections. The first is dedicated to the history of nonunion employee

representation (NER) in North America in the early stages of the 20th century. This is followed by a shorter and less inspiring theory section, which includes an economic analysis of employee representation, an organizational behaviour perspective, as well as a lacklustre legal/policy examination of NER. The third and longest section of the book focused on contemporary practice, and provides not only further academic assessments of NER, but colourful contributions from employers, employees, lawyers, union leaders, and civil servants.

Kaufman and Taras use the term representation “to mean that employees have the ability and venue to make their collective needs and opinions known to management.” The editors assert that employee representation occurs in two forms, union and nonunion. But two distinct categories they do not easily make; union representation has not infrequently sprung from an ailing industrial committee or company union scheme. Moreover, NER’s very existence in many workplaces seems to be closely linked to the threat of, or competition with, union representation. Indeed, Seymour Lipset and Noah Meltz, in a chapter (10) dedicated to the demographics of NER, find that there is a higher incidence of NER in sectors with high union density. Lipset and Meltz also find a striking similarity in the extent of NER in the U.S. and Canada, despite the dissimilar union densities. From this, they conclude that the divergence of

union density in the two countries has more to do with the “supply” of opportunities for workers to join unions than it does with demand for union representation.

The link between NER and union representation is also an historical one. Historical contributions in the book, including excellent chapters (4 and 5) on the rise of company unionism in the U.S. and Canada, by Sanford Jacoby and Laurel MacDowell respectively, suggest that modern NER schemes emerged as a response to the labour movement and were largely instituted by employers seeking to create and control outlets for employee voice. Company unions and committee-based systems such as industrial councils were at the heart of efforts to quell employee cries for more autonomous forums.

The United States and Canada share a common patron of company unionism. Having already served as Canada’s first deputy minister of labour, when William Lyon Mackenzie King was hired as industrial relations adviser to John D. Rockefeller in 1915, he took on an industrial relations nightmare. Rockefeller bore much public criticism and blame for the conflict between his coal and steel company, Colorado Fuel and Iron Co., and miners seeking to join the United Mine Workers. The conflict, which claimed the lives of some seventy-four people, culminated in the Ludlow Massacre of 1914. Twenty people, half of whom were children, died when militia opened fire on—and subsequently torched—the striking miners’ tent community.

Mackenzie King’s solution was a plan that provided for employee representation through a system of industrial councils, an official grievance procedure, a set of core employee “rights,” but no United Mine Workers representation. Though union suppression was a constant underlying theme in the Rockefeller Plan, the chief aim was harmony in the mines.

The Plan’s success in quelling overt industrial conflict (and in staving off the UMWA) led to its adoption by many U.S. corporations and was exported to Canadian branch plants. Soon after, and bolstered by generous Rockefeller contributions, Mackenzie King began his first of two long turns at the reins as Prime Minister. In terms of labour policy, King’s reign was largely characterized by delay (nearly twenty-five years lapsed between Mackenzie King’s first government in 1920, and the creation of federal collective bargaining legislation in 1944).

Convinced that collective bargaining was both an economic and social good, the more proactive U.S. Senator Wagner viewed the successes of the Rockefeller formula and of company unionism generally in channelling employee representation into less autonomous fora as undesirable outcomes. This prompted Senator Wagner to create legislative impediments to nonunion representation in the National Labor Relations Act.

Paradoxically, though Canadian labour regimes adopted highly permissive attitudes towards company unions and other union-like internal committees, actual unionization has nevertheless been consistently more successful (or less unsuccessful) than in the United States, where legislation still reflects a policy prohibiting employer-initiated schemes of employee representation. Thus, s. 8(a)(2) of the NLRA provides that it is an unfair labour practice for an employer to dominate, interfere with or support “any labor organization.” A “labor organization,” defined in section 2(5), includes any kind of employee representation scheme in which employees are “dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Consequently, “dealing with” has become a term of art (and obfuscation). The NLRB has interpreted “dealing with” as invoking a bilateral process, which involves proposals from

an employee group concerning terms and conditions of work and the apparent consideration of these proposals by management. While a practice in which an employee grievance committee makes recommendations to the employer with respect to the dismissal of an employee offends the prohibition in s. 8(a)(2), quality circles, and employee committees exercising delegated managerial functions do not.

Two chapters, 12 and 13, complement pre-existing academic and practitioner criticisms of the NLRA restrictions on NER with case studies and survey data. Bruce Kaufman, David Lewin, and John Fossum find in their case studies that only a minority of the firms that practice NER remain within the legal parameters of s. 8(a)(2). Using broader survey data, Michael LeRoy, in the following chapter, bolsters this view, and suggests that many firms that practice NER are, at best, in "fuzzy compliance." LeRoy argues that this legislative policy both hinders healthy employee-employer interaction and at the same time undermines the relevance of the NLRA generally.

With the exception of the dissenting voices of Jonathan Hiatt and Lawrence Gold, General Counsel and Assistant-General Counsel to the AFL-CIO, in their "union perspective" chapter (28) on NER, a consensus emerges amongst the other American contributors (none of whom appear to be union representatives) that the NLRA needs revision to foster the growth of NER in the American workplace. However, the NLRB has in fact been fairly passive in disestablishing company-nurtured representation schemes. Between 1973 and 1998, the NLRB ordered fewer than two employee committees to be disbanded per year. Nevertheless, were s. 8(a)(2) reflected in Canadian legislative policy, there is little doubt that some of the more extensive NER architecture, such as that at Imperial Oil, would not have endured.

Imperial Oil's Joint Industrial Council (JIC) system, writes Taras in an insightful chapter dedicated to the subject, originated on the Mackenzie King/Rockefeller anvil. Several decades earlier, Rockefeller's Standard Oil had swallowed up the fledgling Canadian-owned (and thereafter ironically-named) Imperial. Once the JIC plan proved to be a labour stabilizer in the wake of the Colorado Fuel and Iron Company's disastrous dispute, it was pumped through the corporate pipeline throughout the Rockefeller empire. Though the parent company's JICs succumbed to the death knell of Wagner's opus, Imperial and other voices of Canadian business vociferously (and successfully) argued for preserving the legality of JICs during the consultative 1943 National War Labour Board hearings that preceded Canada's first federal labour legislation, Canadian War Order P.C. 1003.

The NER scheme at Imperial is described and promoted from within as a successful example of contemporary practice in Chapter 21, written by David Boone, Manager of Production Operations at Imperial, and, less guardedly, in a later chapter (24) written by Rod Chiesa and Ken Ryhason, employee representatives in the Imperial NER system. Though these contributions are placed in the section dedicated to contemporary practice, the JIC system is not a particularly novel managerial strategy. Briefly, the JIC system involves two levels of councils, one at a local level and a second set of district councils that bring together elected employee representatives and delegated members of management for full-day conferences (six to eight times per year) in which new policies are introduced and subjected to employee reaction. Employee delegates are also free to make requests, protest and advise. However, policies such as wages and benefits are developed at the corporate level and the executive is not bound by any worker-initiated resolutions (not unpredictable in an industry

that goes to great collective lengths to protect itself from collective bargaining). Because labour occupies a very small proportion of production costs, and because of the importance of continuous production to the industry, oil companies have been willing and able to provide sufficiently attractive wages and benefits to (usually) keep their non-negotiability a non-issue. One of the reasons behind the JIC's durability appears to be the system's ability to create an appearance of collective bargaining. However, the JIC system at Imperial has experienced considerable stress in the last decade. With the erosion of the belief in "cradle to grave" protection amidst cutbacks and layoffs (during periods of corporate profit), employees have grown increasingly dissatisfied. Three Imperial workplaces unionized in the 1990s, including the flagship Norman Wells Refinery, despite the fact that certification resulted in banishment from JIC participation.

The existence of union-like internal structures has in many cases facilitated subsequent unionization by having already established the administrative infrastructure that would otherwise need to be created. Reg Basken, in a highly readable chapter (27) tucked away near the end of the book, recounts the strategies used by the Communication, Energy and Paperworkers Union to incorporate company ("donkey") unions into the real fold of organized labour. According to Basken, over one third of the energy locals within the CEP come from employee groups who were formally members of company unions or independent local unions that grew out of company unions. Commenting on the NLRA s. 8(a)(2) debate, Basken sympathizes with American organized labour in their resistance to the pressure for amendment, but suggests that relaxation of the prohibition on company unionism could ultimately prove to be a windfall for real unions. When an NER scheme

partially empowers a group of employees, but falls short of providing a sufficiently independent outlet for worker expression and negotiation, employer efforts at staving off unionization may backfire.

All this focus on the NLRA s. 8(a)(2) issue, however, makes for contingent currency: were the U.S. Congress to amend the NLRA to expand the permissible parameters of employer-influenced employee representation (previous attempts passed both houses, but were vetoed by the Clinton administration), the book will be stripped of much relevance.

Still altogether topical, *Nonunion Employee Representation* is a welcome addition to a sparsely populated literary field. The merger of academic and professional perspectives provides for a provoking examination of the means by which nonunionized employees find (or are given) voice in the workplace. Unfortunately, this multidisciplinary approach created a work that is probably too voluminous (weighing in at a hefty 576 pages) and definitely too repetitive (i.e., the background NLRA s. 8(a)(2) problem gets relentlessly re-introduced): more trenchant editing could have rendered the work far more accessible.

Finally, a first-level distinction between union and nonunion representation as discrete subject matters for study somewhat detracts from the most essential element—the representation of workers. Perhaps a better overarching taxonomy would be to distinguish representation schemes by their ability to empower, their ability to foster candid and forthcoming participation, and their overall effectiveness in promoting both the interests of employees and shared gains generally.

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