THE FUTURE OF LABOR DISPUTE RESOLUTION IN THE US AND ELSEWHERE

Aka: If we can’t go back, how do we go forward?

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November 3, 2017
Overview: 4 Facts and 1 Big Question

1. Collective Bargaining and Union Grievance Arbitration have been America’s National labor policies for worker voice and dispute resolution for nearly a century.

2. Changes in the workplace and management and court pressure have forced their decline and threaten further weakening of the statutory protections they provide.

3. But, workers still want a voice at work and civil society requires fair treatment at work.

4. We can’t go back to the workplace and industrialized world of the 50s; We must confront our current world economy and adapt our American labor world in the light of the international scene.

So our Question/Challenge: How do we invent a better future for the American Workplace in the face of domestic pressures and what’s going on elsewhere in the world?
WHERE WE’VE COME FROM

• National Labor Policy
  • National policy to encourage collective bargaining

• Interest v. Rights Disputes

• Steelworkers’ Trilogy endorses Grievance Arbitration

• Spread of Unionization to Public Sector

• 1954: 34% of private sector unionized; 1980: 37% of public sector
  • Absence of strikes in US versus elsewhere

• Individual replacing Collective Employment Contracts
  • Gilmer/Class Action/ Supreme Court
  • 25,000,000 in Employer Provided Arbitration
Are we different from Elsewhere?

• US: minimal statutory protection; unions/CB negotiate benefits
  • Minimum strikes
  • Majoritarianism/Confrontation
  • Management hostility to unionization or to first CBA = No union at all
  • Declining unionization and contractual protection

• Other Industrialized Countries
  • Multiple Unions/Cooperation Works Councils /Industry Councils
  • Robust Statutory Protection/Labor Courts
  • Higher density unionization political role

• Developing Countries
  • Worker exploitation Government control Union suppression
But Here’s where we are today

- Current Union Profile: 6.4% private Sector, 34% Public Sector; 10% TOTAL
- Labor Law is at best “Ossified” may be broken beyond repair
  - Less than 10% organizing efforts get a first contract if management resists

- Supreme Court embracing Federal Arbitration Act
  - SEC 301 keep statutory rights cf Contracts to Surrender of Statutory Rights
  - Individual Contracts of Employment
  - Prohibition of Class Action, lose statutory protection, no representation, management selects and pays arbitrator

- Congress endorses individual consumer “arbitration”
  - No representation, no appeal, business selects/pays arbitrator
When employers discourage union organizing efforts through unfair labor practices, these odds are:

1 in 5

Workplaces that implement a collective bargaining agreement within a year after employees have voted for a union.

1 in 11

So what are realistic expectations to bring us workplace tranquility and justice?

• Increasing numbers want unions!
  • But not realistic to return to the 1935 model of collective bargaining

• Workers want multiple options but few are available or effective (yet?)
Historical Trends
Who Wants to Join a Union: 1977-2017

Percent non-union workers who would vote for a union

- 1977: 30%
- 1995: 32%
- 2017: 46%

55 million workers
Are workers satisfied with their use of voice options?

**SATISFACTION WITH THE RESULTS (MEAN; 1-5 SCALE)**

- **Grievance**: 2.68
- **Petition**: 2.72
- **Online Rating**: 2.74
- **Protest/Rally**: 2.75
- **Ombudsman**: 2.75
- **Joint Committee**: 2.88
- **Demographic Association**: 2.92
- **Strike**: 2.97
- **Occupation Association**: 2.97
- **People Like You**: 3.05
- **Union**: 3.07
- **Supervisor**: 3.08

The mean satisfaction scores range from 2.68 to 3.08, with the highest satisfaction noted in the 'Union' and 'Supervisor' categories.
Effectiveness of different type of voice options

(5 point scale: 1= not effective at all….5=Very Effective)

Effectiveness of Internal Voice Options

- Supervisor: 2.96
- People Like You: 2.81
- Grievance: 2.75
- Joint Committee: 2.71
- Ombudsman: 2.61

Effectiveness of External Voice Options

- Union: 2.52
- Occupation Association: 2.47
- Petition: 2.44
- Demographic Association: 2.40
- Online Rating: 2.39
- Protest/Rally: 2.23
- Strike: 2.20
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Where to from Here?

• Look to the European Model of Multiple Unions; End Right of Employer to Non Union Shop by 50%-1 or by refusing First Agreement

• Open up labor law to multiple options

• Encourage/learn from emerging models of worker advocacy
  • Fight for $15
  • OUR Walmart
  • Coworkers.org
  • Coalition of Immokalee Workers
  • Working America
  • Uber-IAM Guild (and Lobsterworkers Guild)
  • Freelancers Union
  • Others....yet to be invented

• And, restore confidence in negotiated arbitration, not cram down arbitration the Congress just endorsed