

Towards a New Model of Labor Relations: A Neutral Perspective

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First, I would like to thank Chris Webb, David Skivens, and the ESD for convening this group and providing an opportunity to work together. We are in a crisis of unusual proportions that will require unconventional thinking and substantial collaboration between groups and institutions that are assembled here as well as others.

I want to grab your attention right away. My comments come from our own observations and other neutrals in our firm who have been privileged to work in labor management relations for over three decade, covering the period which includes the Reagan recession, the prosperous nineties, and the current unprecedented global recession. In this brief paper I will offer a few thoughts about where labor management relations are now, and where we need to be if we are going to be able to both survive and reinvent ourselves.

Let me start by saying that the past couple of years have not been much fun. Even in work settings and industries that historically have enjoyed great labor management relationships, employment opportunities are flat, profits are minimal, volume of activity is greatly reduced, and negotiators are pre-occupied with preserving the benefits and jobs that they have. The top two issues that dominate almost every negotiation are health care cost sharing and retirement/pension changes.

In the last several months as the American auto industry has been in the spotlight, a great deal of critical attention has been focused on the mistakes that have been made, the lost opportunities, allegedly incompetent senior executives and evil, greedy unions who only know how to ask for more. What's worse, no one wants to remember that some of the things that benefit everyone, whether they are represented by a union or not- -safety and health protection in the workplace, pension protection, health care benefits---are the direct result of the hard work of labor organizations. Do we need to modify some of these things in light of the current economic malaise---perhaps, but they have provided incredible value to millions of Americans nonetheless.

It is neither constructive in any way to spend much time and energy in pointing fingers and laying blame. Whether we are talking about the UAW and the big three, or any other labor union and its employers, it is a relationship with shared responsibility and accountability. The mistakes have been made, the opportunities have been lost. We now need to confront our problems and address them.

What are the problems that are currently facing labor unions and their employers?

1. **The need to switch our focus from rights to interests:**

Labor and management have created a mindset of focusing on the rights laid out in a collective bargaining agreement: what rights labor has negotiated from management as a result of decades of bargaining, and what rights explicitly or implicitly belong to management that they have lost focus on what may be in the best interests, as well as the interests of their ultimate customer.

2. **The need for flexibility:** Many of the issues of abuse and misuse of employees in the workplace that gave rise to the need for specific classifications, jurisdictions, and work rules need to be reexamined against criteria of competitiveness, safety, and quality.

3. **The Entitlement Mentality:** Society in general, and labor as one aspect, has enjoyed so many benefits as a result of the growth and prosperity of the United States, especially in the post World War 2 period. We have become so accustomed to these benefits, that they frequently assume the status of sacred cows that we steadfastly avoid having to address. Just as the Government will have to tackle both Medicare and Social Security if they have any real hope of substantially reducing the deficit in the next 10 years, labor is going to have to tackle sacred cows including double and triple time for certain kinds of overtime work, streamlining overtime rules and procedures, defined benefit pension plans, and work rules in general.

4. **Rethinking Contract Negotiation:** Since the great majority of the decisions made in a collective bargaining relationship are made during the period of negotiating the agreement between the parties, the following changes need to be rethought:

A. Timing and Length: We cannot wait for expiration dates in order to make critical changes. While many labor organizations have responded responsibly to an employer's call for re-opening to address crises or changes in the market, we need to systematically rethink a structured approach to flexibility that will benefit both parties. Evergreen contracts, contracts which feature regular discussions to adjust contract terms were once considered the exclusive feature of only the most advanced and state of the art relationships. In the new model of labor relations, they may become a standard requirement for adjusting to the marketplace and surviving.

B. Bargaining Process: The threat of the strike or lockout is antiquated and counter-productive. Parties need to reconsider the use of traditional, adversarial approaches to negotiation and reflect on the use of interest-based approaches to assure:

1. Better outcomes
2. Less pressure driven decisions
3. More data driven decisions
4. Stronger agreements
5. Greater employer competitiveness
6. Enhanced job security

The interest based approaches can and should be applied to contract negotiation, grievance resolution, and strategic problem-solving.

Commitment to a Joint Data Process: Parties to a bargaining relationship devote far too many resources to both collecting information that benefits their positions but also to spending time and energy fighting over the legitimacy of data while undermining the credibility of information brought forward by the other side. There is a huge opportunity for labor organizations and employers to create a shared joint data process which could be organized by industries, sectors, geographic regions to provide a single set of data for parties to use in any aspect of contract negotiations. Parties might disagree over how they are going to allocate resources based on the data but not on the basic data itself.

5. **Recognition that the enemy is not sitting across the table:** This opportunity exists equally for both labor and management. We have to find new ways of obliterating the adversarial approach to labor management relations. At a minimum, this will involve a:
 - A. Recognition that our destinies are intertwined and that we need each other, more than ever before
 - B. Awareness that a skilled, well-trained, safety conscious workforce is the key to competitive, profitable work in any setting.
 - C. Agreement that employers need to earn reasonable return on investment and employees need to be sufficiently compensated to recruit and retain the best employees.

6. **Rethinking Contract Administration:** In the late 1950's, the wildcat strikes and walkouts led labor and management to agree to insert final and binding arbitration in contracts. This was, and remains, an excellent way, to assure peaceful resolution and closure to disputes involving the interpretation and application of contract language. But in far too many contracts, and in some industries, the parties have adopted a mindset of prematurely stopping their efforts to resolve their differences in favor of having a third party neutral arbitrator make the decisions for them. Over time, not only has this process proved to be costly and divisive, but it has amounted to a regular abdication of their responsibility for their own issues, their own contract, and their own relationship. Even though NCDS conducts thousands of arbitrations each year, we believe that some parties need to rethink their use of arbitration as follows:
 - A. As a last resort instead of a casual step in the process
 - B. By redoubling their own internal efforts at solving disputes earlier in the grievance procedure.
 - C. By institutionalizing the use of grievance mediation, in which a neutral helps the parties resolve grievances themselves, thereby retaining control over the outcome of their disputes.
 - D. By seeking to better understand each other's interests before engaging in filing grievances or disciplining employees.

7. Creation of Ongoing Forums for Sharing Information and Proactively Addressing Problems

In an age where individuals are increasingly connected, the need for increased, regular, non-crisis driven communication between parties is greater than ever before. We need *to go back to the future*, that is, to revisit the once popular activity of creating joint problem-solving groups or labor management committees. More than ever before, these groups need to:

1. Meet on a regular basis
2. Share data and information
3. Create meaningful agendas that focus on their most serious problems
4. Monitor their own track record at resolving issues and concerns
5. Be as strategic and pro-active as possible

These are just a few ideas for getting from where we are now to A New Model of Labor Relations, or, where we need to be. It will involve hard work, huge commitment, and incredible determination from labor leadership and their employer counterparts. Changing the minds, attitudes, and behaviors of the stakeholders and the rank and file will be a time-consuming, challenging, and incredibly difficult process with many speed bumps and setbacks along the way.

But we can do it. It is altogether fitting and proper that this effort should be led by Michigan, home to some of the nation's brightest and most visionary labor leadership. In order to inspire you, let me read to you a quick excerpt from Thomas Friedman's [The World is Flat](#). This summary explains how Ireland went from the brink of national disaster in the late 1980's to becoming, after Luxembourg, the richest country in Europe at present:

“Yes, the country that for hundreds of years was best known for emigration, tragic poets, famines, civil wars, and leprechauns today has a per capita GDP higher than that of Germany, France, and Great Britain. How Ireland went from the sick man of Europe to the rich man in less than a generation is an amazing story.

Ireland did not have the competitive products to sell to the rest of the European Community because of the legacy of years of protectionism and fiscal mismanagement. The country was going broke, and most college grads were emigrating.

Deputy Prime Minister Mary Harney stated, “We went on a borrowing, spending, and taxing spree and that nearly drove us under. It was because we nearly went under that we got the courage to change.”

And change Ireland did. In a quite unusual development, the main trade unions, farmers, and industrialists came together and agreed on a program of fiscal austerity, slashing corporate taxes to 12.5% (far below the rest of Europe), moderating wages and prices, and aggressively courting foreign investment. In 1996, Ireland made college education basically free, creating an even more educated workforce.

The results have been striking. Today, nine of the top ten pharmaceutical companies have operations in Ireland, as do sixteen of the top twenty medical device companies and seven of the top ten software firms. In 2004, Ireland got more foreign direct investment from America than China got from America. And overall government tax receipts have risen steadily.” (1)

We just finished celebrating St. Patrick’s Day, but we do not need a leprechaun. We need unions, employers, government and industry to recognize that we have far more in common than we differ on. Our very future, and the future of our children and grandchildren will depend on what we do.

FOOTNOTE

1. Thomas Friedman, The World is Flat, pp.406-407