RETHINKING THE TWENTY-FIRST CENTURY WORKPLACE: UNIONS AND WORKPLACE DEMOCRACY

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Throughout the world, workplaces remain "contested terrain" nearly twenty years after economist Richard Edwards wrote an influential book by that name.¹ In 1979, Edwards used the concept of "contested terrain" to describe the dynamic of workplace struggles over the control of the labor process in the twentieth century.² Edwards argued that the struggle's foundation in capitalist production would continue to determine how work and the relations between workers and employers would be organized.³ "Workers are treated fairly within the rules," he wrote, "but they have no say in establishing the rules."⁴ Struggles over the material conditions of employment, upon which Edwards focused, continue, but the boundaries of

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¹ RICHARD EDWARDS, CONTESTED TERRAIN: THE TRANSFORMATION OF THE WORKPLACE IN THE TWENTIETH CENTURY 22 (1979). Many of the ideas in this essay and case study were developed during the authors' preparation of an extended case study of efforts by a union and a succession of plant managers to develop a union-management partnership. We presented the case study, "Revisiting Contested Terrain: Discerning the Meanings of Labor-Management Partnerships, or, What Do You Do Every Day?" at the 1997 annual convention of the National Communication Association. The conference presentation led to the publication of Nina Gregg & Doug Gamble, Can Labor and Management Work as Partners?, AT WORK, July-Aug. 1998, at 13, in which some of the material in this essay and case first appeared.
² See Edwards, supra note 1, at 22.
³ See id.
⁴ Id.
the contested terrain have expanded. Today, more than was the case when Edwards wrote, workplace struggles over wages, hours, working conditions, and terms of employment take place in an environment marked by contests over the meaning of concepts like empowerment, employee involvement, and partnership. The outcomes of these struggles, and the involvement of trade unions in them, will determine the nature of workplaces in the twenty-first century, including the extent to which workplaces become democratic organizations.

In the United States, the frameworks of labor law and corporate law shape the inevitable struggles over the control of workplaces by establishing various rights, obligations, and responsibilities for employers, employees, trade unions, worker organizations, corporate boards of directors, pension fund managers, shareholders, and other interested parties. Because most labor statutes were adopted in a political and economic climate that was quite different from today’s, some rethinking is appropriate. This challenge is particularly important for those who encourage and support democratic workplaces.

In this essay, we describe the climate in which trade unionists have addressed issues of workplace democracy and the legal framework within which those efforts take place. Part I comments on some of the discourses


7. See John R. Stepp & Thomas J. Schneider, Union-Management Partnerships, Persp. on Work, Aug. 1997, at 54, for a brief review of the definitions of partnership, including those documented in dictionaries of law, finance, and psychology. Stepp and Schneider also offer their own model of union-management partnership and the quid pro quos they identify as fundamental features of a union-management partnership. See id.

8. The meanings of “workplace democracy” and “democratic workplace” are themselves contested. Some commentators use these terms to describe work sites where individual workers have some control over the tasks they perform while others use the terms only to describe situations in which workers as a group must have some role in making decisions about the governance and structure of the workplace.

on employee empowerment and involvement from the perspectives of both employers and employees. Part II reflects our experiences through a case study of the six-year history of an intermittent labor-management partnership in a unionized manufacturing plant. Part II also illustrates the efforts of workers and managers to propose, develop, and sustain new relationships within the constraints of current law. Part III describes the climate required both to encourage and to sustain labor-management partnerships. Finally, Part IV specifically addresses the roles and responsibilities of trade unions in forming nontraditional relationships with employers.

I. NEW DISCOURSES AROUND LABOR-MANAGEMENT RELATIONSHIPS

For most of the 1990s, consultants and management theorists have bombarded employers with exhortations to "empower" and "involve" their employees as a means to achieving a competitive edge in a global economy. As a result, workers often are invited, encouraged, and occasionally required to form partnerships with their employers, contributing shop-floor and skill-based knowledge and exerting peer pressure on other workers, in an effort to attract and keep customers in crowded markets.

In fact, in 1998 the air is thick with talk of partnerships. For example, Starbucks, the chain that seeks to become every neighborhood's local coffee shop, recently extended a newly-bargained wage increase to all of its Canadian employees, after having previously resisted giving the increase to 116 workers who were members of the Canadian Auto Workers Union in British Columbia. As the Starbucks spokesperson explained, "[t]his is a matter of being fair and equitable to all of our partners."9 Describing a recent contract settlement, BellSouth Vice-President Dick Sibbernse said that his company's success depends on "employees being willing to work in new ways and CWA [the Communication Workers of America] being willing to partner with the company."10

Moreover, organizational theorists advocate various techniques for enlisting workers' input to improve quality and productivity. In the publication that marked the fiftieth anniversary of the Industrial Relations Research Association, Robert McKersie, who co-authored A Behavioral Theory of Labor Negotiations11 with Richard Walton in 1965, referred to

labor-management partnerships as the current frontier.\textsuperscript{12} Finally, thousands of managers and workers attend conferences and workshops to hear other managers and workers describe how "empowered" workers have created "lean" and effective work sites and new working relationships.

Generally, the rhetoric of empowerment used by consultants and managers deals with employees as individuals and work sites as discrete locations. Most advocates of "new" workplaces do not distinguish between those where workers are represented by a union and those where they are not.\textsuperscript{13} This tendency to focus on individual employees disregards the potential contribution of unions to the quest for increased employee involvement. As a result, trade unionists are on the defensive and discouraged from thinking that overtures from management might offer important opportunities to advance trade unions' own institutional interests.

For trade unionists, the discourses of total quality, worker involvement, empowerment, and partnership compete with traditional trade union ideas. Historically, the essence of trade unionism has been collective identity in opposition to the interests of employers. In contrast, the corporate discourse addresses employees (often called "associates" or "partners") as individuals whose interests are the same, or should be the same, as those of their employers. The competition between these discourses, especially the contests over what each means for relations of power in the workplace, challenges trade unionists' historic understandings regarding unions' representation of workers.\textsuperscript{14}

The new discourses on the workplace, such as empowerment and partnership, reconfigure the terrain open for negotiation between unions

\textsuperscript{12} See Robert McKersie, \textit{Negotiations: From Theory to Practice}, \textsc{Persp. on Work}, Aug. 1997, at 10, 13.

\textsuperscript{13} Political and social theorists have been more likely than organizational consultants to understand that worker involvement, in the words of sociologist Carmen Sirianni, "has always been implicated in the conflicts of the workplace, the politics of skill and union organization, and very often in the distribution of political power in the larger social system." Sirianni, \textit{supra} note 6, at 3.

\textsuperscript{14} Several recently published books address the challenges to trade unionists of these initiatives; each also contains a useful bibliography. See, e.g., \textit{Lean Work: Empowerment and Exploitation in the Global Auto Industry} (Steve Babson ed., 1995); \textit{North American Auto Unions in Crisis: Lean Production as Contested Terrain} (William C. Green and Ernest J. Yanarella eds., 1996); \textit{Unions and Workplace Reorganization} (Bruce Nissen ed., 1997).


See Howard Botwinick, \textit{Labor Must Shed Its Win/Win Illusions: It's Time to Organize and Fight}, \textsc{New Lab. F.}, Spring 1998, at 92, for a reminder that trade unions should not accept profit maximization and competition as their goals.
and employers. The boundaries between management and labor—between "management's rights" and what may be bargained over collectively—are enshrined in the National Labor Relations Act ("NLRA") and have shaped union-management relations in the United States for nearly fifty years. However, these boundaries have been made porous by virtue of management inviting employees to pursue a different kind of relationship and by union responses to the overtures.

These initiatives are complicated and present a variety of opportunities for new relationships. Some employers pursue profits by advocating employee involvement while others close plants and lay off workers. Still others pursue both strategies simultaneously. Some unions try to represent their members by resisting all management initiatives regarding nontraditional subjects of bargaining while others agree to essentially whatever management says will save jobs. Still others employ both tactics simultaneously. Trade unionists and managers are both navigating unfamiliar territory, and neither has a consistent or common agenda.

II. CASE STUDY: THE LABOR-MANAGEMENT PARTNERSHIP AT TRANSPARTS

The labor-management relationship forged over six years at TransParts, a nearly thirty-year-old manufacturing plant, illustrates the complex challenges to changing traditional workplaces. Simultaneously, the TransParts case study contributes to the small but growing collection of resource materials that provide examples of the necessity of daily vigilance, on terrains both old and new, to people engaging in the formation of new kinds of labor-management relationships.

A. Laying the Foundation for a Labor-Management Partnership

The Amalgamated Clothing and Textile Workers Union ("ACTWU") had represented employees at the TransParts plant since the early 1970s. Over two decades, TransParts shrank from a manufacturing and assembly facility employing over 2000 workers to a component manufacturing plant with a workforce of about 250. The defining event during this period was the union's refusal to accept a mid-contract demand for major wage concessions in 1982. As a consequence, the company moved the plant's assembly work first to a non-union plant in the United States and then to Mexico. After this move, labor relations were oppositional and

15. TransParts is a pseudonym for a unionized manufacturing plant in a city in the southeastern United States. Until the fall of 1997, TransParts was wholly owned by a "Fortune 100" multinational corporation. A smaller but rapidly growing company in the same industry now owns it.
contentious, and the union remained highly distrustful of the absentee parent corporation that had sought the concessions and moved the jobs.

Early in 1991, the plant manager at TransParts contacted the union’s international representative regarding upcoming contract negotiations. He asked whether the union would be willing to draft contract language that would enable the parties to develop more of a partnership and to move beyond the old “us versus them” relationship. As a result of this invitation, the 1991-1996 Collective Bargaining Agreement between TransParts and ACTWU contained language under a section entitled “Continuous Improvement and Employee Involvement” in which both parties “recognize[d] the value of encouraging and rewarding employee participation, and of developing a relationship where the Company, employees and the Union participate as partners.” The specific language in the agreement was not especially well designed or much discussed during the bargaining period. Three factors encouraged this oversight: 1) the union had no reason to think the parent corporation was serious about developing a more cooperative relationship; 2) neither the union nor the local company had much experience bargaining over these kinds of issues; and 3) the union was distracted by more familiar issues like a complicated proposal for a new department and the incorporation of an entirely new venture that would manufacture a different product for the same market.

The contract had many elements, the most complex of which was the management of the new venture by a corporation that was a joint venture between TransParts and another company. TransParts insisted—and the union eventually agreed—that the new production employees would be paid less than those in TransParts, that they would work in teams, and that the new department would have only one job classification rather than the multiple classifications that had evolved in the older plant.

In the aftermath of these negotiations that combined the potential for new partnerships and the familiar struggle over wages, benefits, and working conditions, ACTWU and local TransParts management set about forging a new relationship. This endeavor was shaped, at least initially, by the directive of the TransParts parent corporation to implement a specific Total Quality Management (“TQM”) program throughout its worldwide operations. Recognizing the opportunity to make real improvements, the local plant manager wanted both ACTWU and the plant’s management group to ensure that the TQM initiative would be effective.

To this end, the parties requested assistance from two external organizational change consultants recommended by the union. Almost

immediately, conflict arose over the direction and details of the new relationship. TransParts management pressed for implementation of the corporation’s TQM program without any consideration of the role of the union. However, the new partnership language in the collective bargaining agreement had raised the union’s expectations regarding how it could legitimately engage management. The union now insisted that the TQM program be developed as part of the locally-designed partnership initiative. Despite the directive of the collective bargaining agreement to form a partnership, the training and implementation schedule embedded in the corporation’s TQM program slowly encroached on time and other resources (including commitment) necessary for joint work with the consultants to design and implement a new labor management relationship.

During this period, the union and management from both the TransParts plant and the new joint venture worked as one Labor Management Steering Committee (“LMSC”) under the guidance of the external consultants. The new venture had few hourly employees, and its manager was its only representative on the LMSC. He attended infrequently and was seldom involved in the LMSC’s deliberations. His absence revealed a fundamental tension between the management groups of TransParts and the joint venture, a tension that still exists six years later.

One early LMSC project was the development of a Labor/Management Vision Statement, with a point of disagreement being whether to mention the union by name. Another more innovative task was to develop an understanding of the levels of union involvement in various operational decisions such as training, equipment layout, product development, and capital expenditures. The LMSC agreed to specific levels of involvement for different kinds of decisions, following the consultants’ five-part model of levels of partnership, in which a party: 1) may simply be informed, 2) may be consulted, 3) may develop a business plan, 4) may have input in decision making, or 5) at the highest level, may be fully involved in the final decision.

After these initial steps, the union and management jointly developed a process for involving task-chartered, problem-solving teams throughout the factory. For much of the next year, the union and management struggled to make the partnership work, often arguing over the process and over the relative importance of the parent corporation’s goals in relation to the tasks of the partnership initiative.

The disagreements became increasingly serious when the TransParts plant manager suddenly resigned in 1993. A manager who had little experience with labor relations replaced him. The new plant manager’s inadequate understanding of the local partnership became clear when he referred to the partnership as a single entity with the power and authority to take action, rather than as a relationship between two parties. This
confusion became a recurring theme in nearly every aspect of the partnership, especially as turnover in plant managers occurred roughly every two years. Indeed, this distinction—seeing the partnership as a relationship between two independent organizations trying to work together, rather than as one organization with one mission—was the central issue in an ongoing dialogue about the relationship between the goals of the local partnership and the business objectives of the parent corporation.

Despite these obstacles, the new TransParts plant manager, his management team, and the local union leadership struggled to develop a shared understanding of the partnership agreement and its implications for daily interactions on the shop floor. By the fall of 1993, a new textile department at TransParts, which had been negotiated into the 1991-1996 Collective Bargaining Agreement, was up and running. In addition, the new venture had begun hiring workers and was moving towards production. The new venture had also fired its first plant manager and replaced him with a TransParts department manager who had been part of the partnership work there.

The union’s continued vigilance in challenging management’s unilateral actions within the framework of the emergent partnership relationship, along with the outcomes of those challenges, called into question the likelihood of a mutually respectful association. Then, in November 1993, the LMSC, the new venture’s plant manager, and one of the new production workers held a two-day, off-site meeting to assess their progress and revisit their agreements about the union’s involvement in decision making. It was a tense and poorly managed event that ended with various commitments and action plans.

Despite these agreements, the new year began with little shared confidence in the partnership. TransParts management did not have an effective champion of the partnership and declined to retain the external consultants who had facilitated the first two years of the partnership relationship and the off-site meeting. Meanwhile, the new venture was overwhelmed by start-up production demands. Still, the LMSC continued to meet and tried to realize some of the potential of earlier discussions. That potential suffered a serious setback, however, when the premise of mutual respect underlying the partnership was shattered in one of the more familiar arenas of labor-management relations—a union organizing campaign.

B. Which Side Are You On?

In the spring of 1994, organizers for ACTWU began a campaign to organize hourly employees at two TransParts-related facilities in a nearby
Among the union organizers was the vice-president of the local union at the plant where the partnership language had been negotiated. This twenty-year TransParts production employee had recently become a full-time TQM trainer with the title of Union Developer, an hourly position that was created as a result of the early developmental work with the external consultants. ACTWU's international representative to the TransParts local union was also involved in the organizing campaign, and both the union local's vice-president and international representative were active participants in the partnership development process. The company's managers conducted an antiunion campaign at the targeted plants, without the involvement of management at the older TransParts plant. Written communication from the management of the targeted plants to their employees about the union organizing campaign contained several inflammatory statements, including: "[t]his ACTWU union will say just about anything in order to get you to sign one of their cards. It doesn't matter to the union whether it's the truth or a lie. Whatever sounds good. Whatever the union thinks you want to hear," and "[w]e sincerely believe that this union would be a very bad thing for all of us. This union's record speaks for itself. It creates a negative work environment and thrives on dissension and conflict between employees and management as well as conflict among co-workers."  

17. TransParts wholly owned one of these plants; the other was a joint venture with another company. Both plants were customers of the TransParts plant. The opening of these plants had provoked a major dispute between the union and the parent company in the late 1980s when the union lost an effort to have the National Labor Relations Board ("NLRB") certify the new plants as part of the existing bargaining unit. During this dispute, no one believed or even claimed that the union and the company were partners.  

18. One element of the negotiated commitment to develop a partnership was to engage external consultants, chosen by union and management, to aid in the crafting of processes and structures to facilitate the formation of new relationships and govern conversation on subjects formerly relegated to management (such as work process and capital expenditure decisions). Among these new structures was the creation of the full-time hourly position of Union Developer. The responsibilities of the position included participating in the development of new relationships, working as a plant-wide trainer, and acting as a communication link between the LMSC and the entire workforce of the plant. The name given to this position is significant—the title of Union Developer represented the objective of building the union through the partnership process. Two years later, the position was referred to in conversation, as well as in written documents, as Team Development Specialist, a title common in the management literature on developing team-based work systems. The explicit acknowledgement of the union's institutional objectives was lost; both the hourly and salaried employees doing this job had the same title. In late 1995, the title of Union Developer was restored in writing only, in the Governance Diagram approved by the LMSC.  


20. Letter from TransParts Managers to Fellow Employees 1 (June 2, 1994) (on file with the University of Pennsylvania Journal of Labor and Employment Law).
While the use of antiunion rhetoric was not surprising, it reminded the workers engaged in the partnership at TransParts that the parent corporation did not share their commitment. The corporation's antiunion behavior also evoked TransParts workers' historical mistrust of management. Local union leadership, long familiar with the distinction between management and the particular managers with whom they were building relationships, recognized the impossibility of building a partnership in one part of the system while accusations of untrustworthiness were circulating literally down the road.

The union tried to enlist the help of the president of the relevant division of the parent corporation, requesting "a meeting with appropriate and responsible company representatives... before company activities permanently damage our relationship." In his reply, the president refused to intervene, defended the corporation's actions, and acknowledged the "positive relationship" with the union in the older facility, stating that he "look[ed] forward to developing an effective partnership... in our employee involvement initiatives."

A more civil line of antiunion argument from the management of one of the targeted plants pointed out that the union organizers had not shown how the union could contribute to the viability of the company. In a letter to "Fellow Employees and Families," one plant manager wrote, "I have not seen any literature published by this union that portrays a concern for our customers or our performance. No concern for keeping our plant healthy and in business!" Indeed, the union's organizing approach focused almost entirely on the traditional terrain of wages, hours, and working conditions, missing an opportunity to take advantage of the active engagement of ACTWU union members in the partnership process at TransParts.

Besides capturing the tension between the old and new discourses of workplace relations, the president's letter posed a dilemma for the union. Should its serious commitment to workplace democracy in one enterprise—the TransParts plant where workers were actively forging a partnership—be sacrificed to the same union's desire to organize and represent additional employees of the same company in other locations? The temptation was strong for the union to abandon its efforts to develop a working partnership in the face of the company's antiunion behavior but doing so would have served neither the organizing campaign nor the

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21. Letter from Doug Gamble to TransParts Division President 2 (June 3, 1994) (on file with the University of Pennsylvania Journal of Labor and Employment Law).
22. Letter from TransParts Division President to Doug Gamble 1 (June 9, 1994) (on file with the University of Pennsylvania Journal of Labor and Employment Law).
23. Letter from Plant Manager to Fellow Employees 2 (June 15, 1994) (on file with the University of Pennsylvania Journal of Labor and Employment Law).
Though angry and suspicious, the local union leadership decided to continue with the work of the partnership, leaving the organizing process to run its own, thus far unsuccessful, course. Shortly after the union made this decision, a second corporate initiative renewed tensions. Once again, the local union and the local managers had to work together to determine the meaning of a partnership within an environment that they could neither predict nor control.

C. Whose Tree Is It, Anyway?

Until the fall of 1994, both the union and management of TransParts referred to the partnership's governing body as the Labor Management Steering Committee ("LMSC"). That fall, however, TransParts hired a full-time and salaried Total Quality Coordinator ("TQC") who renamed the body as the "Total Quality Steering Committee" ("TQ Steering Committee"). The union's efforts to challenge this name change as symbolic of an unwanted shift in focus failed. Nevertheless, the group, composed of essentially equal numbers of union and management representatives, met regularly to try to manage the ongoing work of various departmental oversight committees and problem-solving teams. The group also had to decide how to manage the corporation's latest training initiative, "TQII," that broadened the TQM program to help achieve the corporation's desired business results through customer satisfaction, continuous improvement, and employee involvement.

Corporate headquarters then forced upon the TQ Steering Committee a project that became the framework for negotiating both locally-generated and corporation-driven issues. The mandate required each plant in the division to develop for presentation to division leadership an "Integrated Goal/Action Tree," the outline of which the division provided. The TransParts plant manager, who had not been party to the early stages of the partnership and who did not fully understand how the company's response to the organizing campaign had fueled the union's suspicion of management motives, wanted "the partnership" to develop the Goal/Action Tree. The TQ Steering Committee agreed and immediately set to the task for which the Division had allotted one month. The assigned task was to use the Goal/Action Tree to outline how the facility was to become a premier plant.

The Goal/Action Tree, as described in the materials provided by the corporation, had three branches: customers, business results, and employees. The union was notably absent. The union concluded that the limited time provided to complete the project along with the predetermined tree design reflected the facts that no other union represented workers in
the division and that the corporation did not intend for anyone other than top managers to be involved in the Goal/Action Tree completion. Thus, the corporation did not expect any resistance to the design. Because of the recent negative experience with corporate mandates, the company’s response to the organizing campaign, and indications that the new plant manager was not sympathetic to the local union’s daily contract administration needs, the local union leadership decided to challenge the mandated design by insisting on the addition of a new branch on the Goal/Action Tree, called “Partnership of Union and Management Organizations.”

The Goal/Action Tree project involved the local union’s entire eight-person elected Executive Board, the international representative assigned to the local union, and an equivalent number of top managers in the plant (including the plant manager, comptroller, and department heads). This group’s collective history, coupled with their previous rhetorical and material commitments to a partnership relationship, made the addition of the new branch less difficult than the union anticipated. The union accomplished its goal despite the fact that the plant manager initially did not understand why the “Employees” branch did not adequately represent the union’s organizational needs, or why the union insisted on inclusion of the word “organizations” in the branch name. In addition, the union and management had no difficulty reaching agreements to “develop a high performance relationship” as the overall objective of the partnership and to “maintain Labor/Management Steering Committee” along with its requisite tasks (determine shared responsibilities, set high standards of conduct, share business information, and so on).

The ease of these agreements contrasted with the company’s initially negative response to the union’s insistence on formalizing, in the partnership branch of the Goal/Action Tree, a commitment to “[a]chieve and maintain mutual respect and understanding of each organization’s needs.” Equally contentious had been the debate over whether to allocate company resources for developing the union’s capacity to engage in the partnership. The union won the inclusion of both these items in the Goal/Action Tree only because it made them pivotal issues.

The union and management completed the arduous and time-consuming process of developing the Goal/Action Tree in December 1994. The union learned informally that their Goal/Action Tree was the only one in the division into which hourly employees had input and was the only one

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24. Partnership of Union and Management Organizations (TransParts Integrated Goal/Action Tree) (on file with the University of Pennsylvania Journal of Labor and Employment Law).
25. Id.
26. Id.
with a new main branch. Corporate headquarters issued no formal report on how the steering committee's efforts were received.

As a prolonged exercise in language use and interpretation, the Goal/Action Tree drew upon the participants' experiences with contract negotiation, grievances, and arbitration. At the same time, the lengthy discussions about word choice, placement on the Goal/Action Tree, and implications for future practice mapped out new terrain for both the union and management in the plant. However, until the understandings that developed through this process were embodied in the collective bargaining agreement negotiated in 1996, they were unenforceable through the grievance and arbitration procedures.

Most of the local union leadership, as well as a few managers, expected that the plant would be unable to accomplish many of the goals outlined in the Goal/Action Tree. Over the next few months little happened to prove them wrong. Despite the collaboration in the fall, labor relations worsened. Pressure from the parent corporation to meet business goals intensified. In response, TransParts management, acting contrary to the process for participatory decision making that was developed under the partnership agreement, unilaterally changed work assignments. These changes, also contrary to past practice, signaled the unreliability of local management's commitment to empowerment and joint problem solving.

In May 1995, the local union leadership wrote to the plant manager, demanding a "meeting of the Total Quality Steering Committee... to discuss the removal from the... Integrated Goal/Action Tree the following items which have become blatantly obvious as having absolutely no support from the management persons of both [TransParts] and others in positions of authority over those persons."27 The items at issue included thirty-six specific commitments from the Goal/Action Tree and the entire "partnership of union and management organizations" section. The requested meeting did not take place. Upon hearing informally that the plant manager was on his way out, the union inferred that its concerns would not soon be addressed. In fact, the plant manager was fired within a month, presumably for failing to achieve the business goals listed in the Goal/Action Tree.

D. What Does a Labor-Management Partnership Look Like (and Who Decides)?

The new plant manager, the third in as many years, formerly worked in another corporation in another industry. He took several months to

27. Memorandum from Local Union President to TransParts Vice-President 1 (May 4, 1995) (on file with the University of Pennsylvania Journal of Labor and Employment Law).
decide what to do with the plant’s operation and how to engage the partnership process. For guidance, he chose to rely heavily on his Human Resources Manager ("HR Manager"), whom he had inherited from his predecessor. The HR Manager was more skilled in labor and human relations and more experienced in organizational development than any other manager at TransParts in at least a decade. Given the opportunity by the new plant manager, he launched an ambitious resurrection of the partnership relationship and related activities. A discussion of the details of that effort offers another example of the daily contests over the meaning of the union-management partnership.

In August 1995, the HR Manager presented to union leaders a graphic, computer-generated organizational chart for the plant. This diagram, intended to achieve "[the company's] vision through integration and guiding principles," represented management's effort to integrate into the actual manufacturing process numerous corporate initiatives (total quality management, activity based management, operational excellence, lean manufacturing, and QS-9000) and operational functions (accounting, engineering, and human resources). The HR Manager sought to redesign the organization with a governing structure and reporting relationships that would encourage decision making about plant operations closer to or at the point of production.

The company unilaterally decided to move in this direction and in this manner. In addition, the company alone selected the items listed on the diagram as the plant’s vision and as its guiding principles. Because union leaders believed they could work with the new plant manager and the HR Manager to revise the content of the diagram, they decided simply to state their objection to the company’s unilateral actions and turn their attention to the governance structure. Over the next several months, the TQ Steering Committee met often and discussed various revisions to the governance structure. Between meetings, the union’s international representative and the company’s HR Manager faxed drafts to each other. By October, the Committee agreed on a version and developed charters, roles, and responsibilities for the plant’s new Leadership Committee that would replace the TQ Steering Committee and for the new Business Improvement Teams that would manage production.

The fundamental issue for the union during this period was its location and representation on the diagram. In the first version distributed by the HR Manager, the union as an organization was absent though individuals representing the union were included by name as members of various


29. See infra note 34 for a description of QS-9000.
committees and teams. From the union's perspective, for the diagram to be an accurate representation of the partnership, it would show two organizations—the union and the company—rather than individuals representing each organization.

Four months later, the various components of the union's organization were included on the diagram: the international union, the local members, the local's executive board, the partnership team (a subset of the Executive Board), Business Improvement Team representatives, and Union Team Developers. These components were not represented as members of the partnership, but independent of it, as were various corporate staff groups. The parts of the diagram representing areas in which the union-management partnership was, or would be engaged, were the Leadership Committee, the Business Improvement Teams, and the "Natural Work Teams," which the company wanted to develop in the future.

A second union concern was the inclusion of the international representative of the Union of Needletrades, Industrial and Textile Employees ("UNITE") as an ex officio member of the plant's Leadership Committee. The local union leaders were uneasy venturing into the new and risky role of joint management without assurances that union staff could participate whenever the local wished. The company's representatives did not strenuously object to the local union's need for organizational representation in the governance structure, but the organizational chart was modified to meet this need only because the local union insisted that the diagram match the company's verbal assurances.

The TQ Steering Committee next worked to develop the charter, roles, and responsibilities of the newly designated Leadership Committee. The TQ Steering Committee agreed that the Leadership Committee's primary role would be "to provide the strategic direction for the organization and to integrate the efforts of the Business Improvement Teams to assure goal attainment." To fulfill this role, the Leadership Committee, now a key element of the partnership, would be responsible for the following: "long-term planning and budgeting; coordinating with Strategic Business Unit and Corporate stakeholders; managing the functional policies/procedures that span the operation to include multifunctional project teams; seek out, support, and manage needed change in the organization and processes." Shared decision making about the charter, roles, and responsibilities of the new Leadership Committee was outside of not only the traditional terrain of labor-management relations but also the scope of the legally mandated

30. In June of 1995, the ACTWU merged with the International Ladies' Garment Workers' Union ("ILGWU") to form UNITE. UNITE Press Release, June 29, 1995, at 1.
31. Leadership Committee Roles and Responsibilities (on file with the University of Pennsylvania Journal of Labor and Employment Law).
32. Id.
subjects of collective bargaining.

The Leadership Committee was also responsible for the following:

1) continually strive to grow the business

2) drive the development of the partnership between the company and the union

3) both create and capitalize upon opportunities to expand the partnership to broader application within the operation

4) drive the successful integration of multiple initiatives through the business

5) apply accurate logic in solving problems

6) utilize fact based problem solving tools and consensus decision making methods.\(^3\)

These commitments formalized additional new terrain open to contest between the union and management. Furthermore, the Leadership Committee mandate confirmed, without specific acknowledgement, many of the implied commitments from the TransParts Integrated Goal/Action Tree, most of which were never acted upon, as well as many of the agreements reached three years earlier before the corporate TQM directive crowded them out of active consideration.

The considerable achievement of defining the work of the Leadership Committee was the first success in the latest attempt to develop a functional partnership mechanism for running the plant. With much fanfare, the plant manager, the local union president, and the UNITE international representative presented the new plan to the entire TransParts workforce. Pyramidal desk ornaments symbolizing the joint commitment to the goals, governance, and operational mechanisms were distributed to key participants. Over three years and without explicit discussion, the parties had moved from a focus on joint problem solving to a vision of joint governance of the plant.

With this momentum and under public scrutiny, the newly chartered Leadership Committee plunged into creating the Business Improvement Teams, pausing briefly to argue over the roles to be played by the union’s appointed representatives to the Teams. The union challenged the company’s effort to substitute the Team representatives for the union’s shop stewards who had contract administration responsibilities. The Leadership Committee set schedules for training everyone who was to have a role in the new governance structure, covering subjects from accounting to interpersonal skills. For a time, it seemed as if all the years of

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33. Id.
negotiating about the meanings and forms of the partnership were going to produce a radically new way to run the plant. The Governance Diagram and supporting materials became guiding tools for this work.

However, three developments initiated by the parent corporation disrupted the momentum of these efforts. First, in December 1995, the parent corporation requested early contract negotiations (the contract was due to expire six months later), diverting both the union's and management's attention for several months. The following spring, the HR Manager was promoted to a position of greater responsibility for the entire Division. He was replaced by a younger man with strong political connections in the corporation and without any skills for managing a partnership with a labor union or for supporting the plant manager's desire to run the plant in a participatory manner. With the departure of the more experienced manager, it became apparent that he had been both the visionary and the facilitator of the management group's contributions to the partnership efforts. When his day-to-day involvement in the plant ended, the person with the authority and desire to develop management's role in the partnership was lost.

Second, the company's sudden inability (embodied in the new and inexperienced HR Manager) to interact respectfully with union elected leadership and to observe the collective bargaining agreement doomed the promising efforts of the preceding months. Instead of engaging each other on the new terrain embodied in the Governance Diagram, all parties reverted to familiar shop-floor contests over wages, hours, and working conditions.

Third, simultaneous with the change in leadership at TransParts, the company mobilized to prepare the plant for QS-9000 certification. Like the corporate TQM initiative that had consumed company and union attention soon after the first efforts to actualize the partnership in 1992, the QS-9000 project required significant time and effort. The union's leadership was largely preoccupied with the necessity of vigilantly monitoring the company's actions. For example, the company's sudden concern about the literacy of the workforce (to ensure compliance with written QS-9000 procedures) was a potential threat to the jobs of many older workers. The certification process became a vehicle for the company to try to change unilaterally long-established work assignments and performance standards.

34. QS-9000 is an international quality standard developed by the major American automobile companies who require their suppliers, including TransParts, to be certified in order to bid on business. Certification requires the standardization of essentially all procedures as well as extensive training and documentation. For a union perspective on the issues QS-9000 raises, see Maureen Sheahtn ET AL., LESSONS IN LABOR-MANAGEMENT PARTNERSHIP FOR SUCCESSFUL ISO/QS-9000 IMPLEMENTATION (1996).
E. The Current Scenario

Contract negotiations in early 1996 were arduous in large part because of the union's commitment to close the wage gap between TransParts workers and those in the new joint venture facility. The new venture was too new and too heavily capitalized to make money. Therefore, the various corporate components of its complex decision making structure resisted the union's demands until the end. In addition, the union had difficulty mobilizing support among its members for larger raises for the newer workers until it secured from management a commitment to improve substantially workers' pension benefits, a concern of many senior TransParts workers. By offering at least some gain to most employees, a time-honored strategy, the negotiators managed to present for ratification a contract accepted by most workers.

In addition to the more traditional benefit and wage agreements, the contract included language, proposed by the union, committing the parties to "a partnership in [TransParts] that includes, but is not limited to, the partnership diagram, roles and responsibilities and charters for a leadership committee and business improvement teams that have been established." The language also committed the joint venture to pursuing a partnership development process and required both union and management to agree to any changes in these structures and roles.

The union's objective was to make enforceable the agreements and understandings that claimed new terrain for union-management negotiation. It remains to be seen if this objective can be accomplished or if the union has the will and interest to test the language. As has been true for five years, personnel changes at TransParts and the joint venture and changes in corporate policies and strategies will have considerable bearing on the future.

In the fall of 1997, TransParts, and the entire division of which it was a part, was sold to a nonunion company that has pledged to accept the current collective bargaining agreement. The new company's understanding of and commitment to the labor-management partnership remains to be seen. The joint venture is also for sale.

III. RETHINKING THE TERRAIN OF LABOR-MANAGEMENT RELATIONSHIPS IN THE TWENTY-FIRST CENTURY

The TransParts case study demonstrates that democratic workplaces require two organizations—unions and companies—each of which has the

35. TransParts Agreement, supra note 16, at 76-77.
capacity and authority to represent its different constituencies. Such a requirement has several important implications: 1) for the laws governing workplace relationships, 2) for companies and trade unions, 3) for resources allocated by both unions and management for the development of their relationships, 4) for the communities in which people live and work, and 5) for the ways scholars and consultants can contribute to our understanding of contested terrain in the workplace.

A. The Economic Terrain

The environment in which these contests take place is quite different from that of a decade ago. This is especially true of the economic environment for manufacturing. Deregulation and the accompanying changes in trade rules, including the North American Free Trade Agreement ("NAFTA") and the General Agreement on Tariffs and Trade ("GATT"), have put domestic manufacturers and their employees in increasingly direct competition with low wage producers outside North America, particularly in locations where huge labor pools are available. Changes in technology, specifically in the areas of communications, design, and manufacturing, have challenged old assumptions that North American industries are the best in the world. Increased control of corporations by money managers with immediate goals and intense profit pressures has changed the ways in which invested capital is used. As a consequence, parochial scruples about manufacturing "at home" are out of fashion.

Capitalists have never been motivated by a patriotic respect for state and national boundaries. Today, they claim that honoring such boundaries will frustrate their legal responsibility to make money for shareholders. Consequently, corporations not only threaten to close plants and move work to countries where labor is cheap, but also frequently do so. The threat to close a plant and move the work to lower wage locations is real and constant. Real and constant too are the daily workplace pressures

36. Management invitations to form new relationships have the potential to displace worker interests and replace them with corporate interests. Unions provide a legally protected position from which workers and their representatives may negotiate the terms and conditions of employment, including partnerships and the practices sanctioned by them. Such protection also facilitates the exploration of shared interests, as the growing successes of interest-based bargaining have shown.

37. See Kate Bronfenbrenner, Organizing in the NAFTA Environment: How Companies Use "Free Trade" to Stop Unions, NEW LAB. F., Fall 1997, at 51, 51-60.

that management practices place upon workers and unions. Economist David Gordon has argued that as a result of the globalization of the economy corporations have become "fat and mean." Fearful of failure, employers have expanded the number of employees whose job it is to watch and direct other employees. These legions of bosses increasingly employ the stick, as distinguished from the carrot, as their management tool of choice.

B. The Legal Terrain

Paralleling the contested terrain of employer-employee power in the workplace, the legal terrain governing these relations is complex and much debated. After the 1992 ruling of the National Labor Relations Board ("NLRB") in In re Electromation, Inc., advocates of "employer flexibility" in and outside of Congress sought to amend the NLRA to permit greater employee participation in activities that were formerly the sole prerogatives of management. Section 8(a)(2) of the NLRA, which outlaws company unions, is at the heart of the discussion. This provision prohibits management from establishing or dominating any labor organization, defined as an "employee representation committee or plan, in which employees participate and which exists for the purpose of ... dealing with employees concerning ... conditions of work." A recent effort to modify section 8(a)(2) is the Teamwork for Employees and Managers Act ("TEAM Act"), first introduced in 1994. Unions have opposed the TEAM Act because it would allow management to select employees' representatives in employee involvement programs. The TEAM Act would legalize company unions and dramatically weaken independent trade unions and their ability to represent workers in the traditional areas of wages, hours, and working conditions. Allowing

40. See id.
42. For a good discussion of the legal issues involved in amending the NLRA, see William C. Green, The Transformation of the NLRA Paradigm: The Future of Labor Management Relations in Post-Fordist Auto Plants, in NORTH AMERICAN AUTO UNIONS IN CRISIS, supra note 14, at 161; see also James R. Rundle & Patricia A. Greenfield, Worker Representation Without Worker Consent, WORKINGUSA, July-Aug. 1997, at 62.
44. See id.
46. The TEAM Act would also undermine the current national labor policy of utilizing collective bargaining to secure industrial peace and avoid commercial disruption.
employers to dominate the discussion about working conditions would eliminate the existence of all but a few legitimately democratic workplaces. Unless workers have the independent and collective power and resources to speak the truth about a work site and to act without fear, few managers will permit workplace democracy—in the form of freedom of speech—to exist for long.

C. The Labor Movement's Terrain

The environment for these issues within the labor movement is changing. In 1995, the "New Voice" leadership team of John Sweeney, Richard Trumka, and Linda Chavez-Thompson ousted the long-entrenched and increasingly ineffective leaders of the AFL-CIO. The Sweeney team and a largely revamped staff have begun to lead efforts to reverse decades of unions' indifference to unions' organizing and to their relationships with corporations. A new AFL-CIO Department of Corporate Affairs oversees efforts to change corporate governance and to promote workplace democracy.

Similarly, many unions are devoting specific attention to considering their role in the control and nature of workplaces and corporations. For example, Bob Chase, president of the two million member National Education Association ("NEA"), is advocating a new partnership approach to the relationship between teachers and administrators. Additionally, Kris Rondeau, lead organizer of the Harvard University Clerical and Technical Workers Union, acknowledges that after negotiating joint

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47. For a brief and useful discussion of these changes in union roles, see Bruce Nissen, Unions and Workplace Reorganization, in Unions and Workplace Reorganization, supra note 14, at 9. See also Tom Juravich, Employee Involvement, Work Reorganization, and the New Labor Movement: Toward a Radical Integration, New Lab. F., Spring 1998, at 84, for a thoughtful plea for the integration of employee involvement efforts into the broader resurgence of unions in organizing and politics.

decision making in their first contract, under a new administration "we’ve been unsuccessful in finding partners in a decentralized university." 49

Perhaps the best evidence of change in the environment within the labor movement for new workplace relationships is the adoption of a statement of definitions and policies on workplace democracy by the Executive Council of the AFL-CIO in February 1997. The statement supports the work of the Committee on Workplace Democracy that helps "unions gain more power in the workplace for our members (both individually and collectively)—particularly in areas of decision-making which have traditionally and legally been management’s prerogative." 50

It is a hopeful sign that the AFL-CIO is thinking about these issues. Its Center for Workplace Democracy maintains several assumptions: 1) only with a strong union presence throughout a whole organization or system (from a plant to an entire corporation) can there be a democratic workplace; 2) a democratic workplace is a precondition for a viable "high performance" workplace; and 3) viable “high performance” workplaces are crucial to the future of organized labor in North America.

D. Theoretical and Practical Terrain

An increasing number of trade unionists are accepting the Center’s assumptions, but the same cannot be said for most managers and workplace theorists. In fact, management in North America has historically created and maintained workplaces that, contrary to the Center’s second assumption, are bureaucratic and autocratic, characteristics encouraged by law and tradition. Moreover, conventional measures of management performance reinforce old-style leadership and supervision. Thus, struggles in workplaces over familiar subjects such as wages, hours, and working conditions continue to occupy the time, energy, and attention of most managers and trade unionists. The forging of new relationships is also undermined by management turnover. Seldom is there enough continuity among managers for management to sustain new initiatives with employees and unions. Local unions, lacking the requisite authority, are rarely able to compensate for management’s limitations. Further, it is unusual for a local union to undertake independent strategic planning that

would enable it to create or sustain fundamental challenges to conventional management practices.\textsuperscript{51}

Under current laws, democratically-inspired challenges to traditional management authority within workplaces are generally ineffective, especially in the absence of the countervailing power of a union. In theory, a union contract protects individual employees who challenge mismanagement despite management's right to fire employees at will. In reality, however, the presence of a union within a workplace provides no legal means to contest management's rights. Even with a contract, neither employees nor unions can safely contest management's decisions on many fundamental issues that affect an enterprise's viability, including investments or technology. Without the consent or tolerance of management, employees cannot fully participate in the governance and management of a workplace, even when a union represents them.\textsuperscript{52}

Numerous thoughtful observers of trends in workplaces believe that participatory work sites are more efficient than autocratic ones and that they are the wave of the future.\textsuperscript{53} However, few have explained how the demise of workplace autocracy will occur. Some commentators imply that managers will abandon their authority because it is the right thing to do in a democratic country, while others seem to believe that an economic motive will drive the movement toward more workplace participation. Most trade unionists do not take either idea seriously because: 1) they believe from experience that the real functional motivator for many, if not most, managers is the maintenance of their power over others, including both workers and other managers; and 2) they know from experience that seldom is there adequate continuity of managers or corporate philosophy for management to lead effectively or maintain a fundamental

\textsuperscript{51} See Peter Lazes & Jane Savage, New Unionism and the Workplace of the Future, in Unions and Workplace Reorganization, supra note 14, at 181, for a plea for unions to engage in strategic planning on the subject of workplace reorganization.

\textsuperscript{52} For a brief and useful discussion of the absence in workplaces of the fundamental democratic rights needed for people to challenge autocracy, see Jim Grattan, Worker Democracy and Employee Involvement Plans, in Unions and Workplace Reorganization, supra note 14, at 78.

An important example of a vital area of workplace design over which unions have no power to bargain is the introduction of new technology. See, e.g., Charley Richardson, Avoiding the Tricks and Traps of Involvement: Developing a New Model for Powerful Bargaining in a Changing Workplace, New Lab. F., Spring 1998, at 104.

\textsuperscript{53} For instance, Denis Collins has written an interesting study of several specific gain-sharing programs and argues "in favor of the inevitability of participatory management on the basis of its coherence to the social-philosophical assumptions about human nature that, in the United States underlies the forms of political arrangements (democracy) and economic arrangements (mixed economy)." Denis Collins, Gainsharing and Power: Lessons from Six Scanlon Plans 234 (1998).
IV. THE ROLE OF UNIONS IN THE TWENTY-FIRST CENTURY WORKPLACE

In our view, strong unions are critical to the success of North American enterprises trying to survive in a global market. Yet many leaders in discussions about the future of work and workers either abhor unions or seriously underestimate how necessary they are to fundamental democratic workplace and social change. Our thinking is clearly against the political and intellectual mainstream. The “free trade” mania is built on the false notion that all economic entities have equal power and can compete internationally if free to do so. The “empowerment” mania similarly rests on the false assumption that individual workers can and will help improve the performance of their work sites if free to do so (“empowered”). In both cases, people with power benefit from this “freedom” of small enterprises and individual workers to rationalize trade and production systems in ways that benefit neither workers as a class nor society in general. With no mechanisms in place for representing collective, community, class, or social needs, corporations’ global rush to be continuously seeking the lowest cost of production.

Because a main goal of trade unions is to raise workers’ standards of living, we should expect trade unions to resist actions that accelerate the worldwide decline of living standards. For example, in the United States we have seen such efforts in cross-border solidarity, mobilization against free trade, anti-sweatshop campaigns, and strikes over outsourcing. To interpret such resistance on the part of trade unionists as indifference to efforts to improve workplaces overlooks an important resource in the movement for workplace efficiency. Such an interpretation also deprives the movement for workplace democracy of its only possible advocates with the potential power actually to effect change.

Even the World Bank, hardly known for its advocacy of trade unions,

54. See Nina Gregg & Doug Gamble, Can Labor and Management Work as Partners?, AT WORK, July-Aug. 1998, at 13, for a discussion about how management turnover was a significant factor in the TransParts case.

55. As Bachrach and Botwinick observe, “[w]orkers and their allies, including progressive political theorists, must come to see [workplace democracy]... as something worth fighting for in a new class struggle that is fully within the accepted tradition of American democracy.” Bachrach & Botwinick, supra note 8, at 18. For example, workplace teams, a popular form of management-driven employee involvement, are one example of new work systems that do not necessarily benefit workers. See James R. Barker, Tightening the Iron Cage: Concertive Control in Self-Managing Teams, 38 ADMIN. SCI. Q. 408 (1993) (providing a chilling ethnographic study of the coercive potential of workplace teams).
WORKPLACE DEMOCRACY

Concurs:

Free trade unions are a cornerstone of any effective system of industrial relations that seeks to balance the need for enterprises to remain competitive with the aspirations of workers for higher wages and better working conditions. Unions act as agents for labor, organizing large numbers of workers into a single entity whose collective bargaining power matches that of the employer. Trade unions . . . can help raise workplace productivity and reduce workplace discrimination.\(^\text{56}\)

In contrast, a recent study published in a leading journal of industrial and labor relations is based on the assumptions that reform efforts utilizing employee involvement are intended to encourage individual workers to achieve employer-defined goals, and that "high performance" workplaces can be developed and maintained without addressing issues of power and autocracy in the workplace.\(^\text{57}\)

In theory, unions may have some power relative to management with which they can bargain for more democratic workplaces. Whether they can or will use this power remains unclear. Although no consensus exists on why the American labor movement represents a historically small percentage of workers, few doubt that employer hostility and opposition to unions and to organizing efforts are key factors. Employers' aggressive, and often illegal, opposition to organizing rightfully commands the attention of advocates of legal reforms that would make it easier for unions to win recognition and achieve desirable contracts. However, these reforms may be insufficient to overcome antiunion corporate strategies. As Paul Weiler explains:

A large majority of American businesses do make it a basic aim of their corporate strategy to remain (or to become) as union-free as possible in their domestic (if not their foreign) operations. This strategy influences the firms' patterns of investment, their location decisions, the design of their compensation packages,


\(^{57}\) See Peter Cappelli & Nikolai Rogovsky, Employee Involvement and Organizational Citizenship: Implications for Labor Law Reform and "Lean Production", 51 INDUS. & LAB. REL. REV. 633 (1998). The authors distinguish employee involvement in issues of work organization from those involving the terms and conditions of employment and measure the effectiveness of each kind of involvement in developing "organizational citizenship behavior," Id. at 648. The authors then assert that "involvement aimed at work organization issues is the important factor that drives employee outcomes, especially where that involvement can effect the redesign of job characteristics associated with individual tasks." Id. Cappelli and Rogovsky conclude "[a]rrangements . . . that make the reform of job characteristics easier are therefore more likely to have an impact on performance than are arrangements at a higher level in the organization, like joint labor-management committees and other representative systems." Id.
and the type of employees they interview and hire. The success of all employers in union avoidance is greatly enhanced by the illegal activities of the "bare knuckles" minority.58

Under current United States labor law, organizing workers into unions is essentially impossible when an employer is determined not to be challenged by an organization that could represent workers as a group. Laws that make organizing difficult thwart not only unions but also workplace democracy and increased efficiency. The weakness of trade unions in the United States should concern those who value democracy or the viability of American businesses. Strengthening the economic performance of a workplace very often requires encroaching on management's ability to choose control over efficiency or short-term economic performance over sustainable achievement.59 However, enabling trade unions to organize and represent more workers will permit neither unions nor individual employees to challenge management's control of work sites because few legal mechanisms currently exist to mount such a challenge.

Unions must also give increased attention to the representation issue as employers proffer variations on partnerships and similar alliances. What does it mean to represent workers in the new terrain of partnerships and other relationships? American labor law holds trade unions to specific obligations in the representation of their members. In doing so, the law affirms a model of collective representation that owes its design as much to the opponents of trade unionism as to unionists' themselves. How else


A new study by Lisa M. Lynch of Tufts University and Sandra E. Black of the Federal Reserve Bank of New York "found that unionized shops dominate the ranks of [the United States'] most productive workplaces," that "most of the union shops had adopted so-called formal quality programs, in which up to half the workers meet regularly to discuss workplace issues" and that "production workers at these establishments shared in the firms' profits, and more than a quarter did their jobs in self-managed teams." Update, KNOXVILLE NEWS-SENTIMEL, Aug. 10, 1998, at B4; see also Sandra E. Black & Lisa M. Lynch, How to Compete: The Impact of Workplace Practices and Information Technology on Productivity, NBER Working Paper Series (Nat'l Bureau of Econ. Research, Washington, D.C.), Aug. 1997, at i.
might unions represent their members? Creative answers to this question are critical to formulating informed responses to invitations like the one the TransParts plant manager extended to the union in 1991.\textsuperscript{60}

Whether unions choose new or old forms of representation, contests over the meaning of the labor-management relationship require diligence, competence, and confidence. Without the resources to enable union leaders to engage as equals in rhetorical and ideological struggles and without access to the means of communication, unions are often defeated before the contest has begun. Furthermore, the parties working together to forge a partnership are regularly engaged in contentious grievance hearings. For union leaders, the combination can be especially trying, as the statutory obligation to defend vigorously members' contractual rights occurs within the new terrain of partnership. The same managers populate both sites. Even with diligence, competence, and confidence, two conditions constrain workers' ability to prevail over their employers: 1) market conditions and government policies that neither workers nor individual employers control; and 2) the reality of unequal power relations.

V. CONCLUSION

In most workplaces, including unionized ones, opportunities for workers to challenge mismanagement are rare. As Jim Grattan succinctly writes:

Any worker rights within the NLRA framework are a result of the dynamics of private contract negotiations between employers and labor organizations.... Under the NLRA, worker empowerment is, at best, obtained indirectly by negotiating highly detailed shop-floor rules that constrain unilateral management actions, and is probably more accurately characterized as worker protection, not worker empowerment.\textsuperscript{61}

Laws that restrict unions' ability to contest management for control of workplaces thwart not only increased workplace efficiency and democracy, but also unions' ability to organize. Surveys clearly show that nonunion workers want more influence in their workplaces but generally do not see unions as a useful means to achieve that goal.\textsuperscript{62}

\textsuperscript{60} See supra Part II.A.

\textsuperscript{61} Grattan, supra note 52, at 81. See Robert J. Pleasure & Patricia A. Greenfield, From Servants to Workers: A Modern Law of Work in the United States, in \textit{Industrial Relations Research Association Series: Proceedings of the Forty-Seventh Annual Meeting} 180 (Paula B. Voos ed., 1995), for an intriguing proposal to create a "law of work" that is broader and more relevant to an economy of instability than the more narrow law of labor-management relations.

\textsuperscript{62} See Richard Freeman & Joel Rogers, Worker Representation and Participation
Similarly, limiting workers' contributions to the collective bargaining arena, as law currently defines it, is inadequate. Workers and their unions must have the ability and the right to influence decisions in those arenas traditionally reserved for management, like investments, accounting and measurement, economic development, product design, staffing, and quality. Commentators argue that changes in laws regarding corporate governance should accompany changes in the legal structure of collective bargaining if the commitment to democratizing workplaces is sincere. \(^6\) Anyone rethinking law in the twenty-first century workplace must consider these issues.


However, there remain complex issues to be resolved. For instance, unless the laws relating to the fiduciary responsibilities of union representatives on corporate boards of directors are changed, it appears unlikely that the interests of workers as employees, distinguished from workers as owners, can be advanced in corporate boardrooms. See Larry W. Hunter, Can Strategic Participation be Institutionalized?: Union Representation on American Corporate Boards, 51 Indus. Lab. Rel. Rev. 557, 557-58 (1998).