Reconciling Employee Involvement Programs with National Labor Law: Some Tentative Guidelines

C. Ray Gullett
University of Texas at Tyler
Tyler, Texas

Employee Involvement Programs (EIPs) are becoming an increasingly important force in American industry's struggle to increase employee productivity and commitment. These participation plans take many forms (Ketchum & Trist 1992). A recently published research review of employee involvement has exhaustively examined and cataloged the differing designs (Cotton 1993). They include quality of work life programs, quality circles, Scanlon and other gainsharing plans, representative participation such as membership on the board of directors, job enrichment, self-directed work teams, and employee ownership (Cotton 1993). The study notes also that the term "Employee Involvement Plan" is imprecise in that it may be used to refer to any one of the above approaches or to some combination of them.

Accordingly, this paper examines quality circles and self-managed work teams since they have the most potential to clash with our nation's predominant labor law, the National Labor Relations (Wagner) Act of 1935 as amended by the Labor-Management Relations (Taft-Hartley) Act of 1947. The use of the term, Employee Involvement Plan (EIP), will be used here to refer to these two forms of participation.

While measurable results of EIPs are mixed, they are quite popular. Although estimates vary, a survey by the General Accounting Office found that 70% of 476 large firms in this country have installed quality circles (*Business Week* 1989). While 7% of the work force of responding Fortune 1000 firms was reported to be organized into self-directed work teams, over half of the companies questioned stated their intention to use them more in coming years (Schilder 1992). Currently, several hundred offices and factories are conservatively estimated to be using self-managed teams (Denton 1992). The "reengineering" concept of work processes should further stimulate teamwork and cooperative action (Hammer & Champy 1993).

To be effective, such teams must, however, be designed within the strategic context of an organization (Cole, Bacdayan & White 1993). EIPs provide firms with the opportunity to draw more fully on the knowledge of employees in dealing with quality and other productivity challenges. But these employee teams must understand the customer, the environment, and the way in which the organization is positioning itself to respond to these challenges (*Business Week/Reinventing America* 1992).

With group activity integrated into the organization's strategy, teams have the potential to provide significant additional value to products and services. They can also play a significant part in creating and maintaining a "learning organization" which adapts and repositions itself to meet new challenges and explore emerging opportunities (Katzenbach & Smith 1993) (Perry 1991).

Participation and Labor Law

The recent Electromation (309 NLRB, No. 163 (1992)) ruling by the National Labor Relations Board has created much concern among employers that these EIPs are in danger of elimination unless non-union firms are willing to couple them with union recognition and joint management of the plans.

Despite the publicity surrounding the case, Electromation did not involve such a ruling. But it did provide tentative guidance regarding how EIPs may be designed to avoid violation of our nation's labor laws. Two more recent decisions, Research Federal Credit Union (310 NLRB, No. 13 (1993)) and E.I. du Pont de Nemours & Co. (311 NLRB, No. 163 (1992)) have also addressed the issue, but Electromation remains the definitive case at this time.

To better understand the meaning of Electromation it is helpful to look at the development of early forms of company sponsored employee committees and the labor legislation which followed. These plans and the legislative response to them provide the framework around which permissible involvement programs can be established today.

Employee Representation Plans

Employee Representation Plans (ERPs), sometimes described as plans of industrial democracy or company unions, were for the most part a phenomenon of the period between the two World Wars. They were seen by some as practical idealism and an awakening of the new spirit of cooperation between the employer and employees (Seger 1992). Others viewed them simply as devices to circumvent unionization of the work force and as a disguised paternalism (Green 1925).

Initiated by the employer, the plans involved some form of formalized management-worker dialogue, usually implemented through shop committees composed of representatives of management and workers. Common problems, suggestions for changes in work methods, and grievances and requests of workers were typical issues of discussion in such meetings. Representatives of both sides voted to determine their resolution.

These company-created plans had given a semblance of collective representation to employees, but were in fact controlled by management in their design and administration. They were typically intended to combat the threat of unionization and in some cases to serve as a vehicle for the "welfare capitalism" of the era (Lauck 1920), (Rayback 1966) and (Tead & Metcalf 1920). Additionally, they did provide a communication channel from workers to higher levels of management and appeared to encourage team spirit and closer identification with the firm (Burton 1926). Emphasis was placed upon issues related to wages, hours and working conditions. Developing improved work methods, a major focus of most current-day involvement programs, was not a central issue in these early plans.

Evidence of their popularity among employers is found in their growth. In 1919 there were 196 plans with over 400,000 members. By 1928, the number had increased to 869, claiming a membership of 1,500,000. The National Industrial Recovery Act of

1933 (NIRA) further stimulated the growth so that between 1933 and 1935 approximately 400 new plans were established (Mills & Montgomery 1945) and (Taft 1964).

Throughout their existence the ERPs were bitterly opposed by labor unions. They saw this form of representation as a sham designed to manipulate employees and to keep out real unions. In the 1930's, labor organizations played an active part in seeking legislation and court rulings which would eliminate employee representation plans.

Labor Law Passage

After the Supreme Court overturned the NIRA in 1935, Senator Wagner reintroduced and strengthened the former law's labor provisions as The National Labor Relations Act (NLRA). With the Act's passage in 1935 and its subsequent affirmation by the Supreme Court in 1937 (NLRB v. Jones & Laughlin Steel Corporation, (301 U.S. 1 (1937)), ERPs were identified as company-dominated labor organizations and were specifically prohibited. Early in the legislative debate, Senator Wagner cited the need for this prohibition:

> Genuine collective bargaining is the only way to attain equality of bargaining power....The greatest obstacles to collective bargaining are employer-dominated unions, which have multiplied with amazing rapidity since the enactment of [the National Industrial Recovery Act]. Such a union makes a sham of equal bargaining power....The very first step toward genuine collective bargaining is the abolition of the employer dominated union as an agency for dealing with grievances, labor disputes, wages, rates, or hours of employment [(309 NLRB, No. 163 (1992) at note 10)].

Section 8(2) [later Section 8(a)(2) of the revised Taft-Hartley statute of 1947] made the creation and support of such organizations an "Employer Unfair" labor practice.

In turn, labor organizations were broadly defined in Section 2(5) as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work" (49 Stat. 449 (1935)).

Using these provisions of the law as its authority, the newly-created National Labor Relations Board ordered disestablishment of company-sponsored representation plans (3 NLRB, No. 10 (1938)). Based on its affirmation of the Act, the Supreme Court upheld the Board's right to take this action (303 U.S. 54 (1938)).

Although most such plans disappeared from the industrial scene by the early 1940's, the issue of their right to exist has never been fully resolved. Cases have continued to be heard by the Board and the courts during the last 50 years centering on the legality of non-union employee committees.

In essence, argument has continued over the two essential questions regarding a violation. First, what is a labor organization as defined by the law? And second, where such an organization is ruled to exist, what constitutes employer domination or interference?

The answer to both of these questions bears directly upon the legal status of EIPs. Legality has remained uncertain, with unions generally opposing the plans when unilaterally initiated and administered by management. Pressure from both company and union representatives has been mounting for clarification of their legal status.

The recent attention given the Electromation case (309 NLRB, No. 163 (1992)) reflects this continuing concern. To untangle the issues it is first necessary to briefly review the position of the Board and the courts in past cases involving charges of company-dominated labor organizations.

The Board and Employee Committees

It must first be noted that virtually all of the cases charging company-sponsored unionism brought before the Board have not involved current-day EIPs. They have instead been concerned with variants of the ERPs of the 1920s and '30s. Examining a sample of these cases can nevertheless provide insight regarding the standards used by the Board to determine coverage and violation.

Past rulings exhibit a high degree of Board consistency. Despite changing membership and variation in statutory interpretation concerning many parts of the law, the NLRB has remained remarkably uniform in its approach to these cases. When a party charges that a company-dominated labor organization exists, the first question which must be answered is whether a "labor organization" is actually present. If the entity is not a "labor organization" as defined by the Taft-Hartley Act [in Section 2 (5)], the complaint must be dismissed.

As noted earlier, this section of the law is written in broad language to allow inclusion of many types of collective relationships. The Board has typically used this language to include most forms of employee committees.

Reinforced by the Supreme Court's 1959 Cabot Carbon decision (284 NLRB, No. 99 (1987)), the NLRB has ruled that "dealing" under Section 2[5] includes more than formal collective bargaining. Thus, the test for coverage as a labor organization is met if employees are involved, if they serve on committees or in similar groups for the purpose of making proposals concerning employment conditions to the employer, and, when a formal employment representation plan exists, the committee speaks for other employees [(309 NLRB, No. 163 (1992) at note 8)].

In order to be covered it has not been necessary for an organization to have by-laws or a constitution, dues, formal membership, or group meetings between employee representatives and other employees [(309 NLRB, No. 163 (1992) at note 8)]. Thus a lack of formal structure has not by itself provided exemption from the legal definition of a labor organization.

Nor do all issues typically discussed in collective bargaining need to be a part of the agenda. For example, a committee designed to negotiate employee grievances is sufficient for inclusion under the law (132 NLRB, No. 138 (1961)).

Board exceptions to coverage have been limited. The most significant have been those which interpreted the role of employees as engaged in the performance of managerial functions.

In Mercy-Memorial Hospital (231 NLRB, No. 182 (1977)) the employer placed employees on a committee which heard employee complaints and recommended disposition of each case. "Dealing" was said not to have occurred since the committee was the third step of a multi-stage grievance procedure and could only make recommendations to higher management. In Sears (274 NLRB, No. 230 (1985)) the company established a suggestion system designed to improve organizational communication. Employees were encouraged to use suggestion boxes to submit ideas to management. Here again, this process did not meet the definition of a labor organization.

Perhaps the best known Board exemption from coverage is General Foods (231 NLRB, No. 122 (1977)) in which the company created self-managed work teams in one of its plants. These teams were allowed to perform such functions as task assignments for members, performance evaluations, applicant interviewing, and training. Labeling the teams as "administrative subdivisions" of the employer, they were exempted because no evidence of "dealing" was presented.

It should be noted that General Foods is the only form of current-day employee involvement program on which a ruling has been made. While such self-managed teams are growing in popularity, they are small in number when compared to the more prevalent "quality circle" designs found throughout industry today. The General Foods ruling did not address the status of quality circles as labor organizations since they were not the basis for the complaint.

Once an employee plan has been classified as a labor organization as defined by law, a number of factors are then examined to determine unlawful employer involvement. These include employer-initiated suggestions that a representation committee be formed, employer involvement in the design of the representation plan, the payment of employees while they are involved in plan activities, the use of company premises for meetings, the furnishing of supplies and other materials to the committee, and company preparation of agendas and minutes of meetings (306 NLRB, No. 156 (1992)).

Where a formal representation plan exists, additional considerations are the lack of a formal constitution or by-laws, no membership dues, lack of an independent treasury, absence of a written agreement with management, and no independent means of dispute settlement such as arbitration (Taylor & Witney 1987).

It should be noted that no single characteristic is necessarily controlling; the totality of the circumstances determines the ruling. The Board's decisions have, however, leaned strongly in the direction of finding a violation once the plan or committee has met the test of a "labor organization." The common employer defense that its plan is merely a means of communicating and/or cooperating with employees is rarely successful.

A key to understanding this tendency to find a violation lies in the way employer domination was interpreted. The Board's reasoning process appears to have been based on the belief that an employer's participation in the formation, design, and maintenance of a committee constitutes a per se violation.

Thus, the creation of a labor organization which exists only because of the encouragement and involvement of the employer and which would not exist without this continued support is assumed to be illegally controlled.

No finding that employees feel dominated is necessary for any violation to occur. Equally, the employer's intention in establishing a representation plan is not determinative. While violations (such as threatening employees with job loss if an outside union is voted in) may add additional weight to the charge of company domination, they are not necessary.

The Courts and Employee Committees

Unlike the Board, the appeals courts have been more uneven in their treatment of these types of cases. In a number of instances they have reversed Board rulings using standards rejected at the administrative (NLRB) level.

Differences with the Board concerning what constitutes a labor organization have, however, been rare. The best known exception is that of Scott & Fetzer heard by the 6th Circuit. In this case the court held that the employer-sponsored plan was not a labor organization because the employees did not perceive it to be one, that there was no evidence of employer hostility towards unionism, and that there was continuous rotation of committee members who spoke for themselves and not for others (691 F 2d 288 (6th Cir. 1982)). In almost all other instances the courts and the NLRB have agreed on the criteria for the existence of a labor organization.

Agreement on employer domination is another matter. When reversing, several circuits (but most notably, the 6th) have interpreted many of the above-described actions of the employer not as domination, but as cooperative behavior and as sincere attempts to improve communication with employees (68 LRRM 2332 (6th Cir. 1968); 221 F 2d 165 (7th Cir. 1955)).

Varying arguments have been used to justify the legality of these arrangements. Among them is the state of mind of the employees. If no evidence is presented that they feel their representation plan is controlled by the employer, no violation may be established. If employees are believed to feel free to reject their current plan and choose an outside representative, an absence of domination may be found (379 F 2d 201 (6th Cir. 1967)).

Another justification is a distinction between the ability of the employer to dominate a representation arrangement and actual proof that domination has occurred. Employer involvement in plan design and maintenance may be discounted as "friendly cooperation" and as a desire to increase communications with the employees (221 F 2d 165 (7th Cir. 1955)). The absence of other labor law violations may add weight to these arguments (221 F 2d 165 (7th Cir. 1955)).

In short, the appeals courts have frequently reversed findings of domination by interpreting the meaning of the term in ways the Board has consistently rejected. While the Board has typically used rather cut-and-dried rules to determine if domination has occurred, the appeals courts have often used a more subjective approach by looking for underlying motives, perceptions, and intentions of both the employer and employ-

ees. So far, no case addressing modern-day employee involvement programs in the form of quality circles or self-managing work teams has reached the courts.

Electromation and Employee Participation

While the NLRB has typically rejected non-union forms of collective representation, it has, as noted above, ruled on only one case of employee involvement, that of General Foods. In this instance, self-managing work teams were exempted from coverage as labor organizations and were thus not subjected to further analysis concerning employer domination. No case before the Board has, however, addressed the legality of employee quality circles or similar arrangements.

Electromation has been widely publicized as bringing this issue forward for a ruling (*The Wall Street Journal* 1991; Novak 1992). Surprisingly, the facts in this case contradict this expectation (309 NLRB, No. 163 (1992)). The company, in response to perceived employee dissatisfaction concerning several issues of employment conditions, established ad hoc "Action Committees" composed of management and employee volunteers. These committees were to discuss specific topics such as absenteeism, pay progression, and attendance bonuses. Similar committees had been used by the company in the recent past.

Shortly after the Action Committees were formed, a union formally demanded recognition from the company. Given notice of a representation question, the Company withdrew from the committees, but told employees that they could continue to meet if they so chose. After losing the representation election, the union charged that the company had interfered with the election process and was in violation of 8(a)(2) of the Act through the formation and domination of an employer-sponsored labor organization.

The NLRB's Administrative Law Judge found no anti-union motive on the part of the employer. Using common Board analysis procedures, he did, however, rule that the Action Committees were labor organizations under the law and were illegally dominated by the employer (309 NLRB, No. 163 (1992)). Nowhere in the ruling was the issue of EIP legality addressed.

Nevertheless, when the company appealed the ruling to the Board, the case drew the attention of numerous interest groups. Amicus briefs were filed by organizations both supporting and challenging the status of employee involvement programs as exempt from coverage as labor organizations and thus free from employer domination as defined by law.

Oral arguments were heard on September 5, 1991. A ruling was issued on December 16, 1992. In the decision there was little that could be called surprising. The ruling reviewed the history of the relevant portions of the National Labor Relations Act, concluding that the committees were "labor organizations" under the Act and that they were company designed and dominated. Thus the Administrative Law Judge's finding was upheld, and the company was ordered to dissolve the committees and to post appropriate notices informing employees of the violations (309 NLRB, No. 163 (1992)). The company has stated that it will appeal the decision.

In a footnote, the ruling specifically stated that no decision was being made regarding quality circle programs since they were not present in this case. Additionally, note was made that self-managed work teams were not at issue here, but that they maintained the status given them in General Foods.

In short, the Electromation ruling did not resolve the legality of quality circles. It was instead seen as a rather "garden variety" company union case (309 NLRB, No. 163 (1992)). Chairman Stephens had commented informally before the decision was issued that expectations for the outcome were greater than what would probably result (personal conversation with Chairman Stephens, Southwestern Legal Foundation). His prediction was correct.

Three of the four sitting Board members did, however, issue dicta (additional comments) regarding their views of EIP's. The most instructive part of the case lies with these comments and provides clues concerning the future legal status of involvement programs.

Member Comments

The three concurring opinions reiterated the unanimous ruling that Electromation's Action Committees constituted a labor organization as defined in Section 2(5) of the Act and that the company had violated Section 8(a)(2) by dominating them. They also agreed that an EIP was not present in this firm. However, each felt compelled to comment on the legality of EIPs in anticipation of future cases. Each sought to explore how and why such participation plans would be free of violation. Contained in these comments are tentative guidelines for establishing and operating involvement programs which are unlikely to run afoul of the law. Nevertheless, there was some divergence of opinion regarding legal EIP's.

Two of the three members who commented emphasized the importance of a plan to avoid the designation as a "labor organization" under Section 2(5) of the law. As long as an involvement program does not meet the Board's test as a labor organization, employer domination cannot be successfully charged under Section 8(a)(2).

Member Devaney read Section 2(5) rather narrowly, seeing only two configurations which would qualify as labor organizations: independent unions and the traditional ERPs designed by employers as a substitute for unions.

He noted that "normal relationships and innocent communications are not banned" (309 NLRB, No. 163 (1992)). Three cases, Mercy Memorial Hospital, General Foods, and Sears, were cited as Board-approved examples of this position.

Following this line of thought, he further noted that while the law does not speak of employee input on such issues as efficiency and productivity, it does not condemn them either. If, on occasion, a mandatory topic of bargaining (i.e., an issue directly related to wages, hours, or working conditions) is discussed in an EIP relationship, no violation is likely to occur since this is not the primary purpose of the plan (309 NLRB, No. 163 (1992)). As long as the employees' rights to free choice of an employee bargaining representative are preserved, EIP's are not in violation.

Member Oviatt generally agreed, but based his analysis on an even stricter definition of a labor organization under Section 2(5) of the law. To be exempt from violation, EIP's must be designed so that they focus on such issues as joint solving of operating problems and the enhancement of communication flows. They must, however, avoid involvement in any form of "dealing," (i.e., discussing mandatory subjects of bargaining). If wages, hours, or other conditions of employment are even occasionally discussed, the joint relationship is seen as a labor organization and is assumed to be dominated by the employer. Thus, protection from violation is based on never crossing the line into mandatory bargaining topic areas (309 NLRB, No. 163 (1992)). This position was affirmed in the 1993 du Pont ruling (311 NLRB, No. 88 (1993)).

The most controversial position was taken by Member Radabaugh. Unlike his colleagues, he stated that EIP's cannot avoid being classified as labor organizations under Section (2)(5) of the law since they meet the three standards it lists. Their legality can only be established by showing the absence of employer domination. And this can only be done by reinterpreting the Supreme Court's early (1939) Newport News decision which upheld the Board's traditional interpretation of domination under 8(a)(2) (309 NLRB, No. 163 (1992)).

His rationale for this change was based on the passage of the Labor Management Relations (Taft-Hartley) Act of 1947 and a movement away from the adversarial model of labor relations since the 1930's. Although Section 8(a)(2) was not amended by Taft-Hartley, employees' rights not to join a union were added to Section 7 of the law (309 NLRB, No. 163 (1992)). In addition, Section 203 created the Federal Mediation and Conciliation Service to help resolve labor disputes, further suggesting a more conciliatory approach to worker-management relations. The National Productivity and Quality of Worklife Act of 1975 and the Labor-Management Cooperation Act of 1978 were cited as further evidence of a more cooperative industrial relations climate.

Given this shift, Member Raudabaugh maintained that the Court would today reinterpret Newport News to exempt EIPs from 8(a)(2) violation. Accordingly, he established four tests for the legality of employee involvement plans:

1. The extent of employer control over the committee. Although the employer may establish the EIP and suggest policies and procedures of operation, employees must have the right to reject any or all parts of the plan. If the EIP is acceptable, employees must have the freedom to select their own representatives and to consider all issues related to the committee's purpose. Employer financial assistance would not be seen as a violation.
2. The purpose of the committee and the employees' perception of that purpose. The purpose must be to deal with the employer's entrepreneurial interests rather than as a substitute for true collective bargaining. Employees must also see the EIP as a productivity-enhancing device and not as a collective bargaining vehicle.
3. Whether the employer has assured the employees of their Section 7 rights to be represented in collective bargaining by a union.

4. The employer's motives in establishing the EIP. The plan cannot be used to discourage an ongoing union campaign.The purpose must be to pursue legitimate business goals such as increased efficiency (309 NLRB, No. 163 (1992)).

It is of interest that the majority ruling and the two other concurring opinions expressly rejected this series of tests as a rewriting of the law that is beyond the Board's delegated authority. It is also noteworthy that these criteria echo the reasoning of some appeals courts in earlier cases where the Board was reversed.

Two 1993 NLRB cases also focused on permissible participation activities by employee groups. In Research Federal Credit Union the Board found a situation quite similar to Electromation. In both firms, the employer initiated and established committees to discuss matters relating to wages, hours, and conditions of employment. Citing its previous ruling in Electromation, the Board reaffirmed its long-standing policy of finding a violation under these circumstances (310 NLRB, No. 13 (1993)).

In du Pont, the company's "safety conferences" were held not to be in violation since employees' ideas regarding safety were not treated as proposals to which the company responded. Topics such as improving communication to employees about safety were discussed using "brainstorming" to generate ideas. Matters which involved bilateral negotiations with the union were excluded from discussions. Six "joint safety committees" and one "joint fitness committee" were, however, judged to be employer-dominated labor organizations. These committees excluded the union from participation but bargained over such mandatory topics as safety incentive awards and recreational facilities (311 NLRB No. 88 (1993)).

Analysis and Conclusions

Electromation, unhappily, did not live up to its advertising claims. Clearly, the dispute was not about an EIP. Instead, it was a rather ordinary incident of a company-initiated labor organization bargaining over conditions of employment. Thus it did not formally decide the legal status of EIPs.

Although the precise boundaries of legal employee involvement have not been firmly established, some guidance has been provided by examining patterns of Board and court rulings through the years. Of special importance are the recent Electromation, Research Federal Credit Union, and du Pont cases.

Perhaps the clearest message that Electromation sent was the Board's desire to find ways to exempt EIPs from violation of the statute. Although divergence of reasoning among the membership was obvious, all who commented agreed that involvement programs were not targeted for elimination by existing labor law. Indeed, such plans were virtually non-existent when the law was enacted. More importantly, the commentators recognize that the spirit of the law and the changes in work place dynamics argue for EIP exemption. The majority opinion also reiterated its support for its earlier General Foods ruling exempting self-managed teams from inclusion as a labor organization. Federal Research Credit Union and du Pont reinforced the Electromation comments.

These decisions, coupled with the tendency of appeals courts to look more favorably on company-initiated representation plans, provide the following tentative guidelines for lawful EIP formation and operation:

1. Self-managed work teams which are designed to perform typical managerial functions such as hiring and task assignments of members are likely to remain free of the labor organization designation. These work-group designs have not been seen by the Board as engaging in "dealing."
2. Although a definitive ruling on quality circles and related forms of involvement has not yet been made, it is likely that they can obtain exemption by limiting their discussions to topics such as productivity improvement, cost reduction, and other operating issues. Mandatory bargaining topics should be avoided. If these topics do arise as by-products of the discussions, they should be separated from group deliberation and considered by management independently (or jointly with the union if one is present) and not in tandem with conclusions or suggestions made by the EIP.
3. Regardless of the type of EIP instituted by the employer, it should be accompanied by a clear statement that the plan is not intended for collective bargaining purposes or other forms of employee representation.
4. Consistent with the previous point, employees should not be designated as spokespersons for other workers.
5. The plan should be voluntary. No employee should be forced to participate if he or she chooses not to do so.
6. Timing may have some effect on the legality of a plan. It is unwise to initiate an EIP concurrent with a union organizing drive or while unfair labor practice charges are pending against the employer.

While a number of interesting proposals have been made for amending the Taft-Hartley Act to strengthen support for EIPs, (Heckscher 1988) and (Hogler 1993), no substantial effort to do so is currently under way in the Congress. Employers should, therefore, design and operate their plans on the basis of current legislation and its interpretation.

In mid-1993 the Board's membership is changing with two terms expiring and one seat of the five-member body vacant. As Presidential appointments are made, new members are likely to reflect somewhat differing views than those of their predecessors.

Given the new administration's backing of the employee teamwork concept (*The Wall Street Journal* 1993), there is, however, strong reason to believe that involvement programs will be supported by the new Board. Definitive answers to the finer points of legality and illegality will require the processing of additional cases by both the NLRB and, ultimately, the Supreme Court.

But employee involvement should not and cannot be eliminated in the meantime. As organizations face an increasingly fragmented, rapidly changing, and globally-

competitive environment, their need for strategic, flexible response increases (*Business Week/Reinventing America* 1992). Flatter organizational structures with decentralized knowledge-based decision centers call for cooperative cultures with group-based knowledge sharing.

By following the guidelines for EIP formation and operation provided above, firms are quite likely to stay within the permissable limits of labor law. How well they use the resulting EIPs may well be a key to organizational survival and success in the challenging years ahead.

References

3 NLRB 10 (1938).

49 Stat. 449 (1935).

Burton, Ernest Richmond. 1926. Employee Representation. Baltimore: Wilkins & Wilkins. 231.

Chicago Rawhide Mfg. Co. v. NLRB. 221 F 2d 165 (7th Cir. 1955).

Cole, Robert E., Paul Bacdayan, and B. Joseph White. 1993. "Quality, Participation, and Competitiveness." California Management Review (Spring): 68-81.

Cotton, John L. 1933. Employee Involvement. Newbury Park, Calif.: Sage Publications, Inc.

Denton, D. Keith. 1992. "Multi-Skilled Teams Replace Old Work Systems." *HR Magazine*: (Sept.): 48-56.

E. I. du Pont de Nemours. 311 NLRB, No. 88 (1993).

Electromation. 309 NLRB, No. 163 (1992).

"Employee Participation Drives Production." 1992. *Personnel Journal* (December): 37.

F. M. Transport Inc. 306 NLRB, No. 156 (1992).

Federal-Mogul Corp. v. NLRB. 68 LRRM 2332 (6th Cir. 1968).

"Firms Need Prodding to Improve Workplaces, Labor Secretary Reich Says," 1993. *The Wall Street Journal* (July 6): 1A.

General Foods Corporation. 231 NLRB, No. 122 (1977).

Green, William. 1925. "The Challenge of the Union." *American Federationist* (March): 161-164.

Hammer, Michael and James Champy. 1993. Reengineering the Corporation. New York: Harper Business. Chapter 4.

Heckscher, Charles C. 1988. The New Unionism. New York: Basic Books, Inc.

Hogler, Raymond L. 1993. "Employee Involvement and Electromation, Inc.: An Analysis and a Proposal for Statutory Change." *Labor Law Journal* (May): 261-274.

Hertzka & Knowles v. NLRB. 503 F 2d 625 (9th Cir. 1974).

Katzenbach, Jon R. and Douglas K. Smith. 1993. "The Discipline of Teams." *Harvard Business Review* (March-April): 111-120.

Ketchum, Lyman D. and Eric Trist. 1992. All Teams Are Not Created Equal. Newbury Park, Calf.: Sage Publications Inc.

"Labor Letter." 1991. *The Wall Street Journal* (Oct. 15): 1A.

"Labor-Management Teams Pop Up in Most Areas of the Workplace." 1993. *The Wall Street Journal* (Jan. 19): 1A.

Lauck, W. Jett. "Labor and Production." 1920. Annals of the Academy of Political Science (July): 91-92.

Memphis Truck & Trailer. 1987. 284 NLRB, No. 99.

Mercy Memorial Hospital. 1977. 231 NLRB, No. 182.

Mills, Harry A. & Royal Montgomery. 1945. Organized Labor. New York: McGraw-Hill: 835.

Modern Plastics Corp. v. NLRB. 379 F 2d 201 (6th Cir. 1967).

NLRB v. Cabot Carbon Co. 360 U.S. 203 (1959).

NLRB v. Jones & Laughlin Steel Corporation. 301 U.S. 1 (1937).

NLRB v. Scott & Fetzer Co. 691 F 2d 288 (6th Cir. 1982).

Newport News Shipbuilding and Dry Dock Company. 1938. 303 U.S. 54.

Novak, Janet. 1992. "Make Them All Form Unions." *Forbes* (May 11): 174.

"Paradigms for Postmodern Managers" 1992. *Business Week/Reinventing America*: 62-63.

Perry, Nancy J. 1991. "The Workers of the Future." *Fortune/The New American Century.* 68-71.

Personal conversation with Chairman Stephens at the 39th Annual Institute on Labor Law. Southwestern Legal Foundation, Dallas, Texas, October 15, 1992.

Rayback, Joseph G. 1966. A History of American Labor. New York: The Free Press. 304-305.

Research Federal Credit Union. 310 NLRB, No. 13 (1993).

Schilder, Jana. 1992. "Work Teams Boost Productivity." *Personnel Journal* (February): 67.

Sears Roebuck & Co. 274 NLRB, No. 230 (1985).

Seger, C. B. 1992. "Employee Representation and Personnel Work in a Large Scale Organization With Many Plants." *Proceedings of the Academy of Political Science* (January): 545.

Taft, Phillip. 1964. Organized Labor in American History. New York: Harper & Row. 454.

Taylor, Benjamin J. & Fred Witney. 1987. Labor Relations (5th edition). Englewood Cliffs, N.J.: Prentice-Hall. 174.

Tead, Ordway and Henry Metcalf. 1920. Personnel Administration. New York: McGraw-Hill. 421.

"The Payoff From Teamwork." 1989. *Business Week* (July 10): 58.

Wahlgren Magnetics. 132 NLRB, No. 138 (1961).