

III. A VIEW FROM THE AFL-CIO

ROBERT J. PLEASURE*

I am delighted and honored to be here with you to speak on behalf of the men and women of the AFL-CIO and their unions. John Sweeney extends his sincere regrets for not being here and would be here except for unanticipated scheduling difficulties. Tony has asked us to focus on how times are changing, the impact of multinational corporations, free trade agreements, new technology, the mobility of capital, who will decide where the work and wages will go, the future role of unions, the prospect for developing other forms of organization, and whether cooperation or confrontation will rule the day. So I have successfully listed the agenda and I am tempted to take the coward's way out and say, "Yes, they are changing, the changes are huge, they've been very damaging, it's omnipresent, it moves all around, and the work and wages follow it. We'll survive unless other forms do indeed develop, and we're going to fight like hell to cooperate." Instead, I am going to share with you some of the ideas and problems that we are learning from American workers as we travel around the country in a series of town hall meetings we are hosting this month and next. At meeting after meeting we are hearing the same thing from workers who make about \$40,000 a year, as well as from workers who make \$12,000 a year: "I'm working harder and harder and I'm making less and less; while productivity, profits, and the stock market keep going up, working family incomes in our country keep going down." Over the past 20 years, 97 percent of the income increase in the United States went to the top 20 percent of wage earners. The gap between the rich and the rest of us continues to widen. The top 10 percent now control 68 percent of the wealth. During the same period, productivity increased 24 percent and American workers should have been able to enjoy a substantial increase in purchasing power. Instead, that productivity was converted into increases in corporate profits, which went up 64 percent between 1989 and 1995, and into executive compensation, which is up 400 percent since 1980.

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For the past five years, our economy supposedly has been recovering, but workers labor harder and longer just to keep even, and more and more family members are required to work two or three jobs in order to maintain living standards. Working families have little money to spend, they are loaded with debt, and they have no time to spend with their children or their families. Today, by the way, is Stand for Children Day in Washington, D.C., and most of my brothers and sisters are on the mall dealing with much broader concerns than the issue of wages. Our members are threatened by restructuring, downsizing, pension rates, privatizing, outsourcing schemes, and run away plants, and they are angry. Working Americans are disgusted with business and with government, and their disillusionment is straining the fabric of our society. You do not have to be a doctor or an economist to know that this is a prescription for social and economic disaster. I share our luncheon speaker's view that what is at stake is far more than our system of collective bargaining. Some of you may have seen the television commercials that the AFL-CIO ran last year. In one of them Father Julio Perez, a priest in Miami, sums it all up for us when he says, "I came to America in 1954. What a country we had then. What happened to America?"

I want to focus on the arbitration process, the challenges the arbitration process faces, and the solutions that lie even within our own system. It seems to me that the newly energized American labor movement presents two important challenges to the arbitration community. The first challenge lies in the law of arbitration, the legal models and principles that arbitrators draw on when they interpret and apply collective bargaining agreements. This field must keep pace with the transformation of the workplace and the evolving needs of workers. At the same time, the second challenge is in making the arbitration process itself more accessible. On the surface, these tasks may seem at odds. How can we demand increasing sophistication from the arbitration process even while reversing our dependence on lawyers? I may be optimistic, but I see these as simply different aspects of the same problem, and I am convinced that we can accomplish both goals. Part of the solution lies in focusing on arbitration not only as a process of interpreting the collective bargaining agreement, but also as a means of providing a system of government for the workplace—more or less like a constitution. In those terms, the responsibilities of the arbitrator, it seems to us, are far broader than viewing the arbitration and collective bargaining process as a system in which the union and

workers demand change and the employer reluctantly gives up bits and pieces of authority as if it were all accumulated in the employer's hands in the first place. If you approach a system of governance in that way, then what we have in the agreement is simply what is extracted in literal terms. The kinds of decisions that we are going to get are decisions in which lawyers can narrowly construe the agreement and workers will see results; decisions that are so narrow in concept that they will not provide alternative dispute resolution (ADR). When we say ADR, we must ask "alternative to what?" Obviously, ADR is a good alternative to a beastly system of litigation in the United States and perhaps Canada as well. And virtually anything would be an improvement on the litigation system. But what is the actual alternative in the context of labor-management relations? The only alternative is truly self-help and we in this system of labor-management relations must be constantly aware of the legitimacy of the processes, as our luncheon speaker said. And if the decisions are obscure, if the decisions are narrow in scope, and if they do not provide a system of justice and governance, then the system itself will not be seen as effective, or as useful, or even as legitimate. And it will not provide ADR, and, in fact, self-help will be the only alternative. I am quite hopeful given this extraordinary history of arbitration that we have had in the United States. I have been a hopeful participant in the process since my first job out of the army when I went to work for Arvid Anderson in 1968 and thought about a career in dispute resolution, and instead I ended up perhaps with a career causing disputes. I remain hopeful of the capacity of arbitration to serve the process of collective bargaining by continuing to take an expansive view of its responsibilities as work evolves in North America. I saw Andy Anderson at lunch—I had seen him only once in the last I think 30 some years—and we shared experiences, and certainly our lives went off in very, very different directions. I have nothing but respect and admiration for the arbitration community and the capacity of this system to provide a system of justice. I agree with both prior speakers that the pace of change is extraordinarily challenging, and it requires breadth in decisionmaking, some sense of justice, and some sense that this is not simply an extension of the collective bargaining process. It is, in fact, the system of justice that we have developed in the United States as an ADR procedure. That is saying a good deal more than simply an extension of the collective bargaining process, and it is really a call for a kind of activism that we have seen from time to time in this field.

I did not provide you with the details of our perspective on the present situation for workers in the United States. Brother Hargrove very effectively and ably presented that situation in Canada, and we are encountering similar difficulties, similar problems. Let me just end with this one last point. There's an extraordinarily fine book written by a professor at the University of Toronto, Michael Trebilcock, *The Limits of Freedom of Contract*.¹ In that book he discusses the problems associated with notions of freedom of contract stemming from coercion that may exist, stemming from asymmetrical imperfections in information—where both parties do not know what is going to happen when they enter into the contract and they both make serious mistakes. So what occurs is that we either have windfalls or wipeouts as a result of entering into the agreement. Generally, the law provides answers for some of these imperfections, often rescission of the contract or rescission of part of the contract, as this particular book points out. These are imperfections in the contracting process. However, what do we do with serious imperfections in the market as a whole? What do we do when, as a society, we face a situation where there is a possibility that the employer may simply go offshore without entailing serious transaction costs? Certainly, bipartite, or two-party, negotiations in a collective bargaining agreement in a very small labor market may not provide us with solutions for situations where the kind of unequal bargaining power or monopolistic control one party has can so seriously erode the bargaining process that it really does not exist. You have a coercive situation on a marketwide basis. That is the challenge, the challenge for not only the parties to the collective bargaining process but for neutrals who are trying to provide industrial justice in that process. Can we deal with something more than bargaining imperfections—real major market imperfections? Well, the collective bargaining process on a national scale was intended to provide that. We do not have a system of enterprise unionism either in the United States or Canada. We have the Canadian Auto Workers (CAW) in Canada, we do not have Chrysler Motor workers. We must be able to organize on a national basis, where appropriate, or on an international basis, where appropriate, and that should be supported in the law. That is, it seems to me, the only way that we can deal with these very, very serious—I should not call them imperfections—failures of the market in providing just outcomes as a result of collective

¹Trebilcock, *The Limits of Freedom of Contract* (Harvard University Press 1994).

bargaining. This is why it is vital that the American labor movement reorganize and restructure itself on a national and a local basis—reinvigorate itself. That is what it is attempting to do right now.

IV. MANAGEMENT PERSPECTIVE

ROY L. HEENAN*

Well, thank you very much for inviting me to be here today. It is a great pleasure to see so many old friends, and may I say how pleased I am to join Buzz on this program.

Buzz and I first met in the Suzuki negotiations, which were very interesting in the sense that they involved pre-negotiation. There was no strike, so we were able to discuss at length. The story Buzz tells is accurate, and it does reflect one of the problems in a rapidly changing world.

The times they are a-changing, and, unfortunately, as much as many of us would love to go back to the times of 20 years ago, it is not possible. Even worse, the labour law systems in effect right now are more than 40 or 50 years old. They are simply out of date. So I would like to take a conceptual look at what we are doing.

Let me begin with something that Buzz will probably agree with—decisionmaking in companies. I am not referring to the unionized level. I remember being invited to sit down with Alvin Toffler and Pierre Trudeau. Alvin had come into town and wanted to discuss decisionmaking with Pierre Trudeau. He very kindly invited me to come along. Well, I sat there and listened to an interesting discussion all about decisionmaking in high government circles. However, toward the end, I, being very shy and not having said a thing, added, "You know, what worries me is decisionmaking in the corporation. I think you should take a look at that."

Ten years ago, most companies were still hierarchically based. Decisions were made by tossing everything up a chain. The people with the most knowledge would make the recommendation down here, and they would pass it to their boss up there, and their boss would then pass it on to the next level. By the time it reached the top, there were all sorts of extraneous factors that had been tossed into the process, and the ultimate decision would actually be made

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by the people with the least amount of knowledge. This hierarchical model is now absolutely fatal, and companies that still operate on that basis are facing many problems in terms of decisionmaking. You simply cannot make intelligent decisions based on facts being related third and fourth hand. In crisis decisionmaking, there is no substitute for involving everyone from the top to the bottom of the organization, presenting the same facts and variables to the team that must make the decision. Decisionmaking is thus more informed, with the added advantage of avoiding second guessing.

We are now in a knowledge-based economy, and this is a huge change from what we once knew. Employees no longer do just routine tasks; most jobs are now knowledge-based. As a result, knowledge is being processed at every level of the organization. So, then, how do you channel that?

In the case of hierarchical companies, certainly the ones I advise, I say to them, "Get rid of these hierarchies! Work on team building. Work on crisis-type management where everybody, from the top to the bottom, gets involved in the decision. Gather all the facts together and then make a consensus decision." By "consensus," I do not mean the type of consensus we were talking about that takes forever. My own view is that if you put the same facts to everybody who is involved in the decision, you will come up, 9 times out of 10, with the right decision.

Companies are changing. I think that is recognized. Those that are not—and there are still some of those around—are doomed to failure, and we will see them fail. The hierarchical structure is also doomed. In that structure, the union was at the bottom of the hierarchy. This is evident from the structure itself and from the collective agreements that reflect a tremendous insecurity. Look at the typical jurisdiction clauses for instance: "This is my work. Only I do this work, and nobody from outside the bargaining unit may do it. This is my job, and, by the way, I will not do any other job." Does that make much sense to you? If you were designing a system, is that the way you would design your workplace? I do not think so. I do not think that the vast number of employees who are entering the workplace now, most of them with a great deal of education, would put up with this stifling situation either. You simply cannot pigeonhole people anymore.

In labour relations, consider the silly games we go through even in our negotiation systems. A strike vote is often taken months ahead of time when there is nothing to vote on. Why? Because the employees are told, "We want to put pressure on the employer."

That is, "we are not going to strike, but we are going to take the vote now so we can put maximum pressure on the employer." Then, of course, when it comes to the time to strike, the story is different. "We already have a strike vote. We do not need another one. We are not going to put the offer to the members because we do not think it is good enough." These are silly games we keep playing, and this is but one example. The employees are being treated, this time by the union, as less than intelligent. For the modern workforce, it is insulting, and it is born from the adversarialism on which the old systems are based. Yet, if we continue in this vein, then I can tell you this: we are simply not going to be capable of meeting the challenges of the next century.

Canada knows that. Yet Canada has fared dismally in industrial relations on account of its adversarial nature. We have the worst strike record in the western world. The ILO measured working days lost per thousand employees, and we were tied with Italy—the worst in the 1970s. Some people say Italy was slightly ahead, but not significantly; we were right up there with them. In the 1980s, we beat everybody, even Italy, hands down. We were much worse than the United Kingdom, 3 times worse than the United States, 7 times worse than France, 20 times worse than Germany, and 70 times worse than Japan. In 8 out of the 10 years surveyed by the ILO, we were either the worst or second worst in the world. So, I mean, we know strikes in Canada, and we can strike. I do not know what that proves other than that we have not learned from the past.

The *U.K. Employment Gazette* publishes summaries of the ILO statistics. In December 1994, for the first time, *The Employment Gazette* canvassed the service sector. You will be interested to know who recorded the greatest number of strikes between 1989 and 1993. Canada was at the top with 240. The United Kingdom had 120, the United States had 10, France had 10, and Germany had 20, in that year. Clearly, our system is just not working.

I am indebted to Tom Kochan for his reflections on this matter. Tom came to Canada five years ago, just at the time that the NDP, basically the labour party, had taken power here in Ontario. Kochan thought that this was a great opportunity for change, for transformation of labour relations. Here is what he wrote, at Queen's University at the time, which I thought was extremely well measured:

If changes in labour laws are to be made, it is critical that these be changes that *transform* not simply *reform* current legal doctrines and practices. They must not simply reinforce or better enforce a balance

of power between adversarial forces but create a legal environment that fosters human resource innovation, strategic alliances and high trust at the workplace.¹

He then continued as follows:

In short, mere tinkering with the traditional instruments of labour law will only serve to recreate the prior status quo adversarialism that no longer well serves the Canadian economy or its workforce. Instead, a transformative labour policy is needed that takes as its guiding objective the creation of national level incentives and supports for diffusing innovations in human resource practices through strategic alliances of labour and management.²

The labour party stayed in power for five years in Ontario. In amending Ontario's labour laws, they did exactly what Tom Kochan said they should not do, which was to merely tinker with existing laws in order to strengthen the role of unions everywhere. There was not even an attempt to avoid adversarialism and seek consensus. Tom had predicted the following consequences:

While labour is currently in a position of potential influence and leadership, with this new found status and influence comes a responsibility to which it will be held accountable. If it fails to articulate a clear vision for the future and pursue a transformative set of policies and strategies and instead seeks to implement a more limited political agenda of regaining lost ground by promoting traditional legislative and bargaining agendas, its influence is likely to be short-lived and end in another backlash by conservative forces.³

It seems to me that Tom knew what he was talking about then. We missed a great opportunity to create and adopt a more cooperative mechanism. There is little sign that what we are doing is anything other than entrenching ourselves in the old adversarial system. We can go that route if we have to, but I do not think that is where we should be going.

When Buzz and I first met in the Suzuki negotiations, what we were talking about was employee training, team work, blurring the distinction between management and the bargaining unit employee, reduction of rigid classifications to skill levels, real employee involvement in decisionmaking, quality of the product, and efficiency of the operation. Is this not a better model

¹Kochan, *Transforming Canadian Industrial Relations: Strategies for Diffusion of Innovations*, The W. Donald Wood Lecture (Industrial Relations Centre, Queen's University, Nov. 14, 1992), 11.

²*Id.*

³*Id.* at 3.

and one that truly respects the employees' changed role in the organization?

Permit me to talk about globalization and NAFTA briefly. Let us look at globalization. We cannot change globalization, it is here. The European community is going through an interesting metamorphosis at the present time too, but globalization is there. There are a few myths that are attached to that. The first is Ross Perot's myth—unfortunately shared in large part by the labour movement—that is, the myth of a giant sucking sound of jobs all going to the lowest wages. Yet, that is just not true. If it were so, Bangladesh and Zaire would be your motors of the world at the present time. Greece and Portugal would be the manufacturing motors of Europe. This is far too simplistic a view that does not stand up to reality. It is not true that wages are a determinant factor. Indeed, Buzz would have to admit that Canada benefits largely from a lower wage with a 73¢ dollar, which gives us a substantial advantage. But we cannot just keep reducing the dollar; it does not work that way. This low wage analysis does not hold water. Think about it for a minute. If you were considering building a plant, would you look only at wages, or would you consider other factors? The 1,000 largest companies in Canada were asked that same question. Wages came in ninth out of 14 considerations, just slightly above climatic conditions, believe it or not. In order of importance, the factors listed were: (1) level of taxation, (2) availability of skilled employees, (3) value of the Canadian dollar, (4) communication facilities, (5) transportation facilities, (6) market proximity, (7) proximity of high-quality educational facilities, (8) interest rates, (9) labour costs and wages, (10) export financing, and (11) cost of commercial real estate. Now, I think that gives us a better perspective on the real importance of wages in the decision as to where to locate.

Like Buzz, I happen to agree that our own infrastructure is one of the most important advantages in Canada. The Medicare system and the fact that we have developed social programs does assist us. However, that does not mean that we can close our eyes to what is happening elsewhere or that we need to engage in this constant adversarialism.

We must change. I am distressed by some of Buzz's comments. Just fighting General Motors, Kenwoods, or some other company does not do anything for the economy. Take Kenwoods as an example. After an eight-month strike over pension issues (the second eight-month strike in 10 years), the company decided to

close down in Canada. The union claims this is due to NAFTA! Surely it has something to do with the unsettled labour situation here—particularly since the move will be to a Seattle plant. We cannot escape the consequences of our own irresponsible labour systems. If that is the path we will continue to tread, Canada is not going to be a very interesting place to invest. If we are recreating the form of adversarialism that Canada has unfortunately promoted, I think we are heading in the wrong direction. In my view, there are two ways you can look at this. Unions can seek short-term gain but suffer long-term pain. Or you can take a broader look at the future and recognize that our systems are just not cutting it. We must have a new method of cooperating. I am much more interested, for instance, in the works council method of involving employees in decisionmaking—even if it is a different method, and even if it does not fit the traditional union methods here. We can surely find mechanisms for union involvement. But one thing is sure. If we simply recycle the mechanisms of the 1930s and 1940s as we enter the next millennium, this country will suffer serious economic hardship. I look forward to the question period. I am sorry that I do not have more time.

V. DISCUSSION

Anthony V. Sinicropi: Thank you, gentlemen. Roy Heenan indicated that we don't need to tinker with the systems, we need a complete overhaul. He indicated that unions, if they expect to reap the rewards, must become more flexible—flexible not only in their philosophies, but also in terms of their relations with the employer in the workplace. That flexibility would allow for greater opportunities for both the company to benefit and the workers to benefit. Let me pose a question to both Buzz and Bob. Do you think unions need to be more flexible, are they becoming more flexible, and should they become more flexible?

Basil "Buzz" Hargrove: A question I love. An article that appeared on Thursday in one of Canada's business presses, *Financial Post*, talks about the Chrysler Ontario plant as the most efficient of the Big Three: "Canadian car plant shines despite old methods." What that simply means is that the push to eliminate our rights, or workers' rights, on the shop floor has been resisted in Canada. We've resisted the team concept, we've resisted giving up our seniority rights and the basic day-to-day rules that govern the rights of working people in the workplace. But this resistance hasn't

inhibited the growth of productivity or the improvement in quality. There are now three studies that have been published in the last three or four months, and there's another one coming out in Canada in the next two or three weeks from the federal government, that show that our plants are highly productive, high quality, and cost effective despite the fact that we've maintained some semblance of our historical rules in the workplace. So the rules are not necessarily in opposition to all of these things that are important to management. The question is whether or not we will accept the argument that we must have lazy management, that is, that management is unable to deal with people on a fair basis because production is too demanding, and all they can do is just order people around. We've insisted on respect in the workplace that goes so far as, to give you one example in the Chrysler Windsor operations, having a Sadie Hawkins' Day. Sadie Hawkins is an old dance system in Canada where everyone dances and changes partners on an ongoing basis. Once a year all of the jobs in the department are opened for bid and people have the right to change jobs based on seniority. Companies fought it and wanted to get rid of it. Ten years ago, a labor relations manager came in and said, "Well, the fight's been on now for 25 years, and they haven't changed it. Why don't I try to work with the union on it." And he has, and there's never been a complaint in the last 10 years. Yet the plant is one of the most productive, the highest quality plant in the system. So this argument that somehow workers must change is really just nonsense. The argument should be that archaic management, or management by dictatorship, is what must change if we really are serious about improving the workplace.

Robert Pleasure: Yes. I want to take the concept of flexibility in two different ways. First, flexibility in terms of union structure and organization, and second, flexibility in terms of collective bargaining positions and participation in strategic decisions of the firm. I think, given the information we have about the numbers of people who want to come into unions now, if they all joined now, we would triple in size provided that we had the structural capacity to take them in. Certainly we have to look at whether our structures are impeding people from getting in, coming into the organization. Whether we are structured to provide the kind of representation in a changing market structure and the changing employment relationships that workers experience. And I think the answer to that is that we are, that the affiliates of the AFL-CIO are busily analyzing their structures and changing them, relying in some cases on

historical precedence. For example, the building trades, unions that are structured to represent itinerant workforces—so-called contingent workforces—and have done so successfully for the last 100 years. Many other unions like the Service Employees' International Union are exploring those concepts. So, yes, I think we must be structurally flexible to meet the needs of workers.

In collective bargaining, I think that more and more unions want to participate actively in strategic decisions of the firm. They want to increase the amount of information they have to effectively participate. What's the source of the problem? Why can't they participate more actively in strategic decisions of the firm? Is it because *Electromation*¹ or section 8(a)(2) stands in the way? I don't think so. I think, quite frankly, I don't want to be harsh about it, I think that's something of a ruse. In fact, the Supreme Court, labor board practice, and employer practice have been to freeze them out at the strategic level decisions and deny them information. Those of us who are academics, know that if we want to participate in decisions about who comes into our departments, we're suddenly considered managerial, and we're stripped of our collective bargaining rights under *Yeshiva*.² The same thing has happened to nurses. If they have any responsibility in a managerial sense, they lose their right to engage in collective bargaining. Sharing information, participating in the decisions of the direction of the firm, improving productivity, improving the quality of the product—these are all goals consistent with the purposes of the labor movement. And again, as Brother Hargrove suggested, there's a lot of evidence, in not only the auto industry but in the steel industry and elsewhere, that unions are actively pursuing those roles and successfully increasing the "competitiveness" of the products that they're producing.

Anthony V. Sinicropi: Roy, I don't know if you want to respond on this point, but I was going to flip the question a little bit. The two union speakers have indicated that the figures tell us that management is making more money than ever before, that the people are making less money, that the jobs are leaving the country, and that the unions have been relatively docile. So if they cooperate, won't it be worse?

Roy L. Heenan: Well, let's just take a look at some of those assumptions. Everybody knows there's a tremendous shift in jobs

¹309 NLRB No. 163, 142 LRRM 1001 (1992).

²444 U.S. 672, 103 LRRM 2526 (1980).

to the knowledge-based industry, and, yes, in the process there are a lot of sunset industries. It doesn't take a psychic to know that. But if you look at the study from the OCED that was done about six months ago, the final version of which is out today, I believe, if not yesterday. What it says is the United States has been much more successful in creating jobs, much more successful over the last 10 years than has the European model with its inflexibility. If you look at the unemployment figures for Europe, you will find that the European models have stagnated because of the inflexibility in much of their government regulation. Yes, there are a great deal of people being displaced, and it's unfortunate. The world has not and will not stand still. The technology change that we are going through now is as revolutionary as any change we've seen in the history of the world and we're going to have to adapt to that. But we just can't say, "Well, because that's happening, let's go back to our old methods." I agree with Buzz and with Bob when they say that dictatorial supervision isn't the way it should go. I agree, that's the old hierarchical model. So then what do you do? You get people working together, you get people participating. Yet we find that most unions, as Buzz has said, resist that. "No, you mustn't cooperate, the boss is on one side, we're on the other." That's crazy, that is not going to help us survive this millennium. But, in fact, that's the language unions use. "We're going to strike, we're going to throw you ultimatums, we want to fight you all the way. And now we want to join in your decisionmaking." When was the last time you got hit in the face and then participated in a decision with the person who hit you in the face? It just doesn't work that way, and people have to make up their minds. If we want the old adversarialism, we can fight. Companies have been very successful in that, perhaps more successful than they should have been. But it's an old method; I've decried it for some time. If you want to join in real decisionmaking, then we must adopt new mechanisms that involve more flexibility and less adversarialism. You can't have them both. You can't sit there and yell at the boss, yell at the capitalist system, yell at the employer, and yell, "To the barricades, brothers," while saying, "Oh, and by the way, we now wish to join in your decisionmaking process." You will find a certain amount of resistance to that, and I'm afraid that's what's happened.

Anthony V. Sinicropi: I think we're getting a response.

Basil "Buzz" Hargrove: First, it's different to say that we must have all of these changes. The changes that most managements want today is that workers give up their rights. That's the problem

with these changes. In terms of this question of job shift to a knowledge-based industry, we're not experiencing only a job shift, we're experiencing job loss or lack of job creation. We've had more jobs in Canada created in the last four months than we had all of last year. We have governments reducing their workforce incredibly through just discontinuance of services or privatization of those services. We have a real shift in profits, for example. Twenty years ago the manufacturing sector took about 38 percent of the profits out of the gross domestic product. Financial institutions took about 20 percent. Today that is completely reversed. The financial institutions, which make money by moving money around the world, take about 38 percent out, while manufacturing has about 22 percent. The question is not whether or not we're adversarial or nonadversarial. The question is, "Must workers give up all of their rights to manage the workplace in an effective manner?" I would argue that they don't. In terms of models, I've been around long enough now that I've been through the Swedish model, the German model, and the Japanese model. Now it looks as if some of the people in Roy's community are moving back to the German model. Nobody in Germany, believe me, is talking about the German model. They've had more strikes over there in the last three or four years; the consensus is falling apart. You have the public sector workers on strike today against privatization and for decent wage increases, and the metal workers strike periodically. So there's no perfect model, but if one thing is clear, it's that there are more than the two choices of the adversarial system and the Toyotism of Toyota Motor Company Union. Those aren't the only choices. There's an in between here that recognizes workers have rights and that does not mean that the companies can't be very successful and make a lot of money. Tom Cooney, who is here from John Deere, practices a much different form of labor relations than Caterpillar does in the United States and Canada, has a much more effective system of working with people, highly productive, making good profits. So there's no magic to beating the hell out of the union and the workers as the CEO of Deere told me, "We don't want to get into a situation where for every five workers, we have to have a security guard to watch people because people are so mad at the employer." But that employer (Caterpillar) made that decision to move in that direction.

We have an excellent relationship with 95 percent of the employers that we do business with. And it doesn't require that we concede our rights or that they concede theirs. It recognizes that we

represent the interest of workers, the shareholders, and the executives, that we must come together and work together to make improvements in the workplace. And it's adversarial, too. We end up in front of some of the very people sitting in this room because we aren't, at times, able to resolve our disputes ourselves. I think that's a healthy system. I've looked at them all. I've studied them all. I think it's about time that we in Canada and the United States started looking at our own system and developing it further. I think we'll all be better off.

Anthony V. Sinicropi: Let me change gears a little bit here. Arbitration is predicated upon an adversarial model that we've had for some time. If we look into the future and conclude that perhaps a more cooperative model is coming to the fore, how would you see the arbitration system working, or what kind of system would we have to solve disputes? Does anyone have a view on this?

Roy L. Heenan: Yes, let me take that on first because I listened with interest to what Bob said. The first time I was invited to address this Academy was in Quebec City, and I was talking about how arbitration worked. I said at the time that my own view was that arbitration was working very well when it was in its traditional mode. And by "traditional mode," I mean the role of the arbitrator in the famous *Steelworkers v. Enterprise Wheel*³ case. The parties make the rules, and the arbitrator applies the rules that the parties make. It keeps the collective bargaining system fair. That's where I think arbitration works well, when there are yardsticks that the parties give the arbitrators and the arbitrators apply those. Listen to Bob's comment. He seems to be saying, "Well, yeah, but go a little beyond that." I'd suggest to you that when you have gone beyond that, it has not been a total success. Look at the public service interest arbitrations in this country. One of the reasons the governments are cutting services is that they can't afford the services they offer. I'm not overly impressed, frankly, with interest arbitration and I think this is going to be the real challenge. It doesn't take a psychic to understand that the midpoint between 10 and 12 is 11. And if that's the role that arbitrators play when in interest arbitration, they're not doing us much of a service. The pressures on the system to arrive at a midpoint between two grounds, in my view, just belies the system. I don't think that's the way it should work. I'm much more interested in pay research bureaus, other mechanisms, and I think this is going to be the real challenge in arbitration. I think

³363 U.S. 593, 46 LRRM 2423 (1960).

the traditional method will work fine, but when it comes to baseball arbitration, I'd ask you to look at that and see if, in your view, that has been a great success. I would suggest to you it hasn't been. I'm not sure that the mechanisms we're using, once outside the framework of the traditional collective agreement, are necessarily working well. It's not hard to find a midpoint between what somebody asks and what somebody else is offering. It's that's what the process is, you encourage some people to ask more and others to offer less to try and keep the yardsticks moving. We need to find a new mechanism where arbitrators will bring their own independent judgment into the process. However, one of the problems, of course, is that because most arbitrators are chosen by those two parties, there's tremendous pressure to please them both. We need to rethink that mechanism.

Robert Pleasure: I think that that comment misses the point of this entire discussion. We began the discussion with talking about the pace of workplace change. We're familiar with the system that negotiates collective agreements at usually maximum intervals of once every two years, more than likely, once every three years. That agreement incorporates the industrial jurisprudence of the firm for three years. Flexibility is demanded by change and is required during the term of the agreement. Workplace change requires a look-see at what the parties really intended in the face of a significant change, sometimes a revolutionary change, sometimes even a dissolution of the firm, because it's no longer in the owner's interest to maintain the operation. What then is the arbitrator's responsibility? Certainly arbitrators in the areas of just cause have always conceived of themselves as having broad responsibilities of offering industrial justice. In the face of what has been called truly revolutionary change, where workplace change takes place very rapidly, unions are being asked to restructure internally—and we are. Employers are saying we are restructuring actively and we demand flexibility and we are moving responsibility down the hierarchy right down to the shop floor, so decisions are being made at the level of the shop floor. To imagine that one can interpret—as was just proposed—the agreement in a narrow traditional way, by the letter, as if one were a real estate lawyer, as we always did way back when, is to defy everything that we've talked about until now, or alternatively, to suggest that the industrial jurisprudence process that you administer is irrelevant. I don't think it is, I don't think it's irrelevant. I think just as in just cause areas, or just as we interpret a constitution, or just as we have a responsibility to infer

what is intended by good-faith bargaining—in keeping with the times and the challenges that we are facing—I think the same is true for you as third parties in determining what will provide justice in a situation in which the parties enter into an agreement and somewhere down the road an employer decides “I don’t want to live with it anymore the way it is. I have to go through a revolutionary change. Find me a loophole so I don’t have to live with it the way we apparently intended. Give me the flexibility that I need.” At that point it seems to me that there is a question of justice and a question of breadth of responsibility for the third-party neutral. Otherwise, it seems to me, this is not ADR in that you don’t offer a way out for us, you don’t offer an alternative to self-help.

Anthony V. Sinicropi: I’d like to open it up for questions from the floor, if anyone has a question.

Jack Stieber: You have referred in a number of your statements to the restructuring that is occurring in the labor movement. I’m sure you and others, President Sweeney and the Executive Board, have been talking about this. I wonder if you’d let us in on some of the ideas for restructuring you’ve been tossing around.

Robert Pleasure: Well, much has happened even outside the AFL-CIO as a federation. As you all know, there are major mergers underway of national unions. Recently, “heavy metal,” as folks want to call it, was created out of the Machinists, the United Auto Workers (UAW), and the Steelworkers. The merger will occur over a period of several years, but there is obviously an intention to deal with market forces in a broader way, just as Buzz and I indicated. Operating with a works council in a single firm does not provide answers in a global market. Another example is, of course, the creation of UNITE through the merger of the Needle Trades, ACTWU, and the ILGWU. The United Food & Commercial Workers recently merged with the RWUDSU, etc. Within the AFL-CIO, there has been some important staff restructuring, and the style of leadership that President Sweeney has followed attempts to integrate very closely the responsibilities of people who deal with organizing and people who deal with service activity. As we approach let’s say the collective bargaining agreement, we have to simultaneously deal with issues of the extent of organization. And it’s no longer appropriate to balkanize departmentally or internally within a department in terms of exercising our responsibilities within the labor movement. For example, take the case of an organizer who has no service responsibility—that’s falling away. So in a very profound sense, there has been a shift in the way we view

our responsibilities as local union leaders, as staff, and as national officers.

Anthony V. Sinicropi: I have to exercise the prerogative of the chair. I'll entertain one more question because I promised a timely end to this session. If there are going to be more questions, I'll ask our panelists whether those who are able to stay can entertain those questions.

Joseph Krislov: Can I ask Mr. Heenan to spell out how he would have works councils work?

Roy L. Heenan: I don't think it's a question of spelling out how works councils work. I'm glad you asked that question because the one thing about Buzz's comments that I wanted to respond to was this. I agree, Buzz, you can't introduce another system in its entirety. I remember Alan Gold—who was here today, and I'm delighted to see Alan here—used to say that the only trouble with introducing the Swedish model in Canada was that there were not enough Swedes in Canada. Many systems are integral to the countries. I don't think anybody in their right mind would suggest taking a system and introducing it "holus-bolus." I'm not necessarily suggesting that we implant the German works council *per se*, but what I find interesting is this. In the new workplace I think the involvement and the decisionmaking must come in large part from the employees in the firm. I was always amazed in the past that it depended very much on the location of the union. Of course, in Quebec we have two different types of unions. We had the Quebec Federation of Labour which was, basically, the international unions, and then the Confederation of National Trade Unions. It seemed to me that the document with which we were presented came from the same source every time, depending on who was certified. In other words, there's a "made in," used to be Pittsburgh, but then it was "made in Oshawa" or "made in Montreal," document that somehow settles all the problems in your shop floor, a formula agreement determined by the union's head office. I'm just suggesting to you that it doesn't work that way anymore. There may be some ideas that can come in that way, but I think there's a lot more problem solving that is necessary than these formulas can offer. The union determined what the demands were in terms of the basic clauses of a collective agreement. What I'm suggesting to you is that the white collar and the blue collar and the supervisors, the lower management, the middle management, and, eventually, the upper management have a lot more in common than what sets them apart. To separate them in the way that the collective

agreements do right now doesn't make much sense. I find that there is an awful lot of commonality of interest between the problems of the white collar workers and the blue collar workers, if we can still make those distinctions. I think we must bring together the real strength of the firm in the decisionmaking process. Now works councils is one way of doing that in the sense that all elements of the firm are involved in critical decisions that involve the firm and it's a way of communicating. As you know, the European Works Council directive of the European Union has come out and they seem to be spreading a mechanism through Europe involving employees in the communication process. I'm interested in that. I think there is something useful in that. So when I say works council, I don't have a formula right now that I've developed. What I am saying is that all elements of the firm are necessary in decisionmaking and in communication, and I'm looking for a formula that gets us away from "Anybody over supervisor is not organized" and "The unionized force is blue collar." I don't think that's the way the future firm is going to look. I think we're looking at different types of things, and I want the assistance of everybody. And this isn't a way of getting around the union. The unions can be in there as they are in Germany in works councils. This is not an anti-union mechanism, but a different mechanism, which I think is of great interest to us as we look to the future. How do you mobilize all the inputs from all parts of a firm? I think, in the future, that will be the key. The opposite position, which establishes units that seek to keep everybody else out and to fight everybody else, doesn't work anymore. That's my opinion.

Anthony V. Sinicropi: Do we have an exclamation point from any of the panelists at this point?

Robert Pleasure: Without a doubt, the American labor movement wants to participate fully in all the decisions that affect workers in the workplace, and they want to see American business and industry move aggressively and flexibly toward growth, toward greater job production. Unfortunately, there's a lot of rhetoric about the extent to which we've moved away from Taylorism in the firm. It is true that business schools are preaching actively that we should move decisionmaking down the hierarchy, but the strategic decisions are still being made at a very, very high level. And workers will be there at that level and will participate.

Anthony V. Sinicropi: Buzz, anything?

Basil "Buzz" Hargrove: It's just that the workplace relationships today are being so radically influenced by what's happening

outside in the legislative halls. In Ontario here we've had the Harris government, in less than a year we've had Bill Seven, which set our labor relations act back many, many years. More recently, we've had the announcement of the Employment Standards Act is now going to be up for bargaining and there's no such thing as minimum standards. It's going to depend on your strength to bargain. So there's a lot of things that are going to be beyond our control. It seems the harder we work to get to where Roy's talking about—to have a better labor-management relation that is more productive and satisfies the concerns of the workplace parties—the less control we have. For example, in the auto industry in 1993, we negotiated for the first time in our history a settlement in all three companies without a strike at one of the companies. Now because part of what was reached allows for restructuring and dealing with that through an income security program, General Motors now wants to take another major step. This is being influenced by the downsizing of government and the outsourcing their work to lower paid people. So it's not just a question, as Roy said, of the Ross Perots of the world that talked about the "big sucking sound." I don't subscribe to that ever. I never thought that the Canada-United States free trade agreement or the NAFTA which included Mexico would mean that low wages and low standards would necessarily mean a massive transfer of jobs. What I did argue—and I still argue today and I think we're seeing that more and more—is the pressure of the companies' ability to move. Companies continue to say to the union, "If you don't agree to lower standards in every area," and they say to government, "If you don't agree to lower standards—environmental standards, health and safety, employment standards, whatever—the work is going to move somewhere else." These are the forces that are radically changing the collective bargaining relationship, the union-management relationship, but also and more importantly the kind of society we have and what we should be striving for for the future.

Anthony V. Sinicropi: Thank you very much, gentlemen, I very much appreciate your contributions.