

## **A SILVER ANNIVERSARY NOT WORTH CELEBRATING: THE IMPASSE OVER AMERICAN LABOR AND EMPLOYMENT POLICIES**

Thomas A. Kochan<sup>†</sup>

There is another silver anniversary that just passed worth noting, but perhaps not celebrating. Since the labor law reform bill of 1978 failed to get the one additional vote needed to make it through the Congress, the United States has been locked in an impasse over national labor and employment policy. For the past quarter century, neither labor nor business has been able to enact reforms of labor or other employment laws either believes are needed. Yet both groups are powerful enough to block most of the initiatives of the other. The deep ideological divide between these two powerful political adversaries has discouraged a succession of Republican and Democratic Presidents and Congressional majorities from challenging this divide.

As a result, collective bargaining and the larger employment system in America have been in steady decline since the 1980s. Each year that passes, our policies and institutions become less well attuned to the needs of the workforce, working families, and the economy. Some of the more visible signs of the growing gap between existing policies and institutions and contemporary needs include:

1. Declining union membership, increased polarization of union and management views in collective bargaining, high levels of conflict and discharges of workers during union organizing drives, and failure of many of the promising labor management partnerships initiated in the 1980s to be sustained.
2. Increased income inequality, even throughout the booming 1990s.

---

<sup>†</sup> Co-Director MIT Workplace Center and MIT Institute for Work and Employment Relations. This essay is drawn from THOMAS A. KOCHAN, *RESTORING THE AMERICAN DREAM: A WORKING FAMILIES AGENDA* (forthcoming 2005, MIT Press).

3. Stagnant or declining real wages for the majority of workers; exploding salary growth for chief executive officers of major corporations.
4. Longer working hours for families.
5. Stalemate over how to update wage and hour laws to reflect the need for more flexibility in working time.
6. Failure to enact a paid leave policy to support the increased number of working parents in America's households.
7. The politicization of appointments to key labor policy positions in both Republican and Democratic Administrations.
8. Under-investment in the ongoing education and training needed to translate the rhetoric regarding the need for lifelong learning into a reality.
9. Economic recoveries that take longer and longer to begin producing jobs.
10. Failure to address the health care crisis in the face of 45 million uninsured Americans, rising costs that eat up attention and available dollars in collective bargaining and in compensation budgets of non-union employers and employees.
11. A shift in retirement systems that has resulted in an estimated 14% loss in retirement savings and a failure to address the crisis in social security that looms ahead.
12. The demise of nearly all forums of labor-management dialogue at the national level.

The list could go on. The point is clear. America needs a comprehensive and fundamental updating of its work and employment policies. There is little debate among American scholars; policy analysts; or leaders of business, labor, or women and family groups about this. But, there is also little agreement among these different groups over what changes are needed, and there is no identifiable path or process for breaking the policy stalemate.

A new approach is needed both to the process and the substantive agenda for change. This essay lays out an approach and a policy agenda that I believe would update work and employment policies to meet the needs of the contemporary working families and the economy. The central feature tying the substantive agenda together with a strategy to break the gridlock is a reframing of thinking about labor and employment as a separate policy domain, largely the province of organized business and labor. Instead, given

the nature of the workforce and the needs of the economy, today I believe we need to see education, work, and family as a single policy domain. And we need to bring new voices into the policy debates that more fully reflect the range of constituencies that have a stake in these interrelated issues.

The substantive agenda laid out here rests on three key premises:

1. If it now takes two working parents to make ends meet or improve living standards for the majority of families and if society expects even single parents to contribute to the paid labor force, then we need to revise policies and practices in ways that allow workers to meet their dual responsibilities at work and at home.
2. If we are entering a knowledge-based economy in which education and skills are truly national and firm assets, then we need to find ways to promote lifelong education and learning.
3. Working families can no longer depend on business, the market, the federal government, or even the labor movement to solve these problems. Instead, working families need to demand they be given the tools needed to regain control over their destinies in the same way the New Deal labor policies provided employees the ability to go beyond the minimum standards embodied in the New Deal labor policies by joining a union and engaging in collective bargaining. This combination of minimum standards and employee voice allowed millions of immigrants, semi-skilled industrial workers, and others to move into the middle class and to help their children achieve the education they needed to continue to realize the American dream of improving their standards of living. Once again, America needs a new set of work and employment policies that provide employees the modern tools they need to improve their working conditions and living standards for themselves, their families, and future generations.

## I. A WORKING FAMILIES AGENDA

### A. *Work-Family Integration*

The starting point for this approach is to reframe work and employment policy and private institutions around the concept of a “dual agenda,” i.e., the need to meet both responsibilities at work and

in one's personal, family, and community lives. This will require coordinated efforts of business, labor, and community groups to provide all workers, not just those in the upper half of the income and occupational status distribution, with the flexibility and income supports needed to meet these dual objectives. America and Australia stand alone as the only two advanced industrial economies without a paid family leave policy. For some, this is not a problem. Many leading firms already offer flexible hours and income supports to those managers and professionals who work on salaried rather than an hourly basis. However, most other middle to lower income workers lack this flexibility. And even where these formal policies are in place, the evidence suggests that many fear using them will signal a lack of commitment that will hurt their careers or put their jobs at risk.

Thus, a national paid leave policy is needed that dovetails and complements those benefits already afforded some workers by leading firms. How to do this is not exactly clear. Alternative models for funding and administering a paid family leave policy have been suggested. California has implemented the nation's first paid family leave program. It is financed by employees through a payroll deduction. Perhaps the way to move forward on this issue is to encourage other states to experiment with alternative approaches and then build a national plan from the evidence of what works best at the state level.

### *B. Education and Lifelong Learning*

Everyone recognizes education is growing in importance but nobody is really doing much about it. I will not deal with the challenges of adequately funding and delivering a high quality basic early childhood, elementary, high school, and college education to all children. It goes without saying that this is an essential, necessary base to a sound education policy.

But this is no longer enough. Today, institutions and policies need to support working adults in keeping their general skills current if and/or when they need to reenter the external labor market. We have two big problems. First, no employer is willing to train people who will leave and go work for their competitors. Second, a classic solution to this market failure problem is for government to step in and provide the resources from general revenues that will benefit the general economy and workforce. But, given that federal deficits will be with us as far as the eye can see, new sources of funding and

delivery for lifelong learning will be needed. This is the one arena that best illustrates the need to rebuild unions and professional associations. They could very easily be the instruments for coordinating the funding and delivery of lifelong learning. Government can help by providing incentives for workers to save pre-tax dollars for this purpose, and for unions and companies to negotiate joint training programs like those found in the aerospace, telecommunications, health care, and automotive industries.

### *C. Knowledge Based Organizations*

Much has been written about the value of workplace practices that link investment in training to flexible team-based work systems, cooperative labor management relations, and other features of what has come to be known as knowledge based or high performance work systems. The problem is that these are not spreading across industry, but remain limited to about one-third of American workplaces. The reason is that this model of competing and structuring work competes with a more top down, cost minimization strategy that is the legacy of the industrial era. Policies to promote the treatment of employees as assets need to be encouraged. One way to do this is to provide employees with rights to information on how their human capital is being used in the same way that investors have rights to transparency and information on the status and future prospects of their financial investments. This, I believe, is a simple principle that needs to find its way into work and corporate governance in America. European work councils provide a benchmark model that could be adapted to the American context to serve this purpose.

### *D. Portability of Benefits*

Today no single firm can ensure long-term jobs or employment security. Thus we need to wean our dependence on individual firms for delivery of a wide array of labor market and financial security measures, including health insurance, pensions, and, as mentioned earlier, on-going education and training. The debates over reforms of the American health delivery system need to include a voice for working families. This is the one area where there still remains some potential for business and labor to find common ground. Health care is the dominant stumbling block in labor management negotiations and in compensation planning in non-union firms. There is growing recognition among business and labor leaders of the need to reduce dependence on firm-specific financing of health insurance. Given

their common concerns, policy makers could call business and labor together with other key stakeholders and knowledgeable experts to explore options and build broad-based support for reform of our health insurance system.

### *E. Restoring Workers' Voice*

None of these innovations will happen in the absence of a renewed labor movement and reversal in the decline of worker voice and power. But a resurgence of unions in the mirror image of what they once were in the heyday of the industrial era will also not serve well the needs and interests of the modern workforce and economy. A new organizing model will be needed that does not rely on gaining majority status before adding one new union member. New structures are needed that consolidate union power while at the same time providing continuity of membership as workers move from job to job and/or in and out of the labor force as their family and personal responsibilities change over time. The unions of the future will need to draw on new sources of power by supplying well-trained, skilled workers using information in ways similar to how various non-governmental organizations have pressured transnational firms to enact and enforce codes of conduct throughout their supply chains, building coalitions with women and family, ethnic, immigrant, and other progressive groups, and not the least, using the threat of exit by reducing the costs of mobility across jobs. All these are potential sources of power that need to be harnessed by the labor movement of the future.

## II. HOW TO MAKE IT HAPPEN?

One of the central lessons I took away from serving on the Dunlop Commission in the 1990s was that there is no compromise deal to be found between business and labor over reforms of basic labor law. And this impasse blocks reforms in other policy areas. The best example is the inability of Congress to enact changes to wage and hour laws governing so-called "comp time." Business wants greater flexibility to substitute time off rather than pay overtime premiums after forty hours. Labor has been able to block these changes arguing that it would not only increase work hours and reduce workers' incomes, it would further reduce worker control and be subject to employer abuse. The unstated issue in this debate is who would control the decision over whether to use time off or overtime premiums in particular situations. If workers had effective institutions

that gave them an independent voice in these decisions, perhaps a compromise or even a more integrative solution to this policy debate would be possible. Indeed, if such institutions existed for all American workers, a more comprehensive updating of working hours policy and their enforcement that delivered the flexibility and income supports needed by working families and employers could be found.

Progress on this and other employment policy issues will only come if new voices are brought into the policy debates that break the bilateral business-labor monopoly that has controlled the employment policy agenda. A new coalition is needed that shares concern over these problems and cuts across traditional interest group lines. This coalition would consist of progressive forces in labor, women and family advocates, student and religious groups worried about social justice, and progressive business leaders who recognize they can't compete in a knowledge-based economy without modernizing employment policies. Mobilizing this coalition is a first necessary condition for giving life to the type of agenda laid out here.

A second necessary condition is to have elected leaders who have a vision for what needs to be done and the courage to pursue that vision even in the face of considerable initial opposition from their labor or business supporters. New ideas that break away from long held positions of these interest groups are needed if we are not to simply recreate the filibuster that blocked labor law reform for twenty-five years.

A third necessary condition is to have a coordinated and credible leadership of the agencies that administer America's work and employment policies. Much can be done to reform administrative procedures and to work with progressive business, labor, and work-family and community groups even in the absence of legislation.

Fourth, a period of experimentation and learning is needed, perhaps beginning at the state level to learn what policy, funding, and administrative reforms work best. A number of policy issues are suitable to this approach, such as paid family and medical leave, flexible hours and work schedules, self-enforcing safety and health regimes, and alternate dispute resolution systems for enforcing employment statutes. These could be valuable interim steps until we elect a President and a Congress that is ready and willing to take the actions needed to change national policies. This approach is consistent with the historical pattern of social policy innovation in America. States like Wisconsin, New York, Massachusetts, California, and others led the way in enacting unemployment insurance, workers compensation, wage and hour protections for

children and women, and most recently in California, paid family and medical leave.

Will this happen in the absence of a political or economic crisis that focuses attention on these issues? Scholars such as John R. Commons and his students and colleagues at the University of Wisconsin labored for more than three decades before the political and economic shocks of the Depression created the conditions for enactment of the New Deal employment and labor policy reforms. Like Commons and his students, our task is to continue to do work on these issues and to generate policy alternatives so that if and when the day comes that the political conditions are ripe for action, we have something constructive to bring to the table. We can only hope that it does not take as long as Commons and his students had to wait nor as deep an economic or social crisis as the Great Depression. Only time will tell.