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Discussion

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Discussion After the Speeches of Richard M. Lyon and Professor Donald D. Carter

COMMENT, Professor King: Thank you very much. I wanted to make sure that we had our question period, because that's an opportunity for you to get off your chest, as participants, the questions that you have.

QUESTION, Mr. Gray: I was most delighted with your comments and your address this morning. I think you and I have both been around long enough that we are aware of the old abuses that sometimes took place, and prompted people to get interested in the labor movement. I liked your solution, that these abuses aren't going to continue if we get the right modifications in our labor law, or if there is a recourse available through the courts or through an administrative agency. Is this your personal call or have you observed other movements in the bar association; the American Bar or any of the state bars?

ANSWER, Mr. Lyon: I have not run across very many people who would be interested in tackling labor law reform. I'm on a committee at the NAM and this is discussed and it usually leads people to the conclusion to leave it alone. It is going all right, don't touch it.

Steve Schlossberg, the former general counsel for the United Auto Workers, now Deputy Secretary of Labor, started on a project under Bill Brock studying the effect of our labor laws on labor management cooperation. The very first thing in his second report is, please don't misconstrue this as any kind of an attempt to change our present labor laws. Anyone who is really interested in consensus wouldn't touch it, and I think that is very typical.

Someone somewhere has to re-examine labor law reform because the problem is not going to go away by looking the other way. I am totally convinced that you don't have, for example, to take an extreme position. I don't think that you have free collective bargaining in Canada when an employer is required to put a union shop clause into his contract; when an employer, after negotiating to what we in the United States call an impasse, the government steps in and writes a contract for the parties.

I suspect that my opinions came, at least in part, from my interest in Japanese labor law. The point will come where there will be so much government support that the unions, themselves, will no longer have the power or the desire or the inclination to achieve these things on their own. Let me give you a brief example.

When MacArthur was studying the problem of labor law for the Japanese, he gave them the Wagner Act and he said, our President likes unions and he wants you to have this Act, and with that he dumped the

labor act on the Japanese people. To this day, when you look at Japanese law you find they have very much the same unfair labor practice provisions that we do. Where our labor board would, however, interpret these unfair labor practices as prohibiting cooperative programs, in Japan the only time there is an unfair labor practice charge filed before their city or prefecture labor relations commissions is when the employer ceases to support the unions. Professor Harnomi, who teaches at Sophia University Law School, raised the question of whether unions need any powers of their own or can they rely totally on the government to supply them. I think Canada is going in that direction.

Somewhere along the line we will have to re-examine some aspects of all of this, because we know where the first 50 years of the Wagner Act have gotten us, and that was in a small protected market which is no longer with us. I do not see much movement towards labor law reform, except some specific items relating to construction law provisions.

QUESTION, Professor King: One follow-up on that. Does the question of whether the Japanese invasion in terms of U.S. manufacturing plants have any discernible effect that you see?

ANSWER, Mr. Lyon: Let me tell you about the organization chart at Mitsubishi Diamond Star in Bloomington, Illinois, which their industrial relations VP gave me on a napkin in Tokyo. There are only two jobs that are Japanese; the head of human resources is Japanese and the training person is Japanese. Everything else is given to the Americans. I think maybe that is the answer.

QUESTION, Mr. Drotning: To Professor Carter, just one observation. You note that the rate of organization in Canada is 40% versus our 20%. I would think that on the public sector laws in the United States are probably far more productive towards organizing than the private sector laws. The employers just don't assist with organizing. What I don't quite understand is that given the pro-union tenor of Canadian provincial labor laws—

COMMENT, Mr. Carter: And federal too.

QUESTION, Mr. Drotning: —and federal; and if we separate out the percent of organization by the public sector, why isn't the private sector more heavily organized than even 40%? I would expect that with that kind of legislation you would have 70 or 80% as in Australia, or I think it is more than simple disillusionment with unions, so my question is why are you low in the private sector, with such positive labor statutes?

ANSWER, Mr. Carter: Where unions can't seem to organize is in the service part of the private sector. They haven't been able to penetrate banks or financial institutions and most of the retail trade is unorganized outside of large supermarkets. It may have something to do with the attitude of workers. It may have something to do with the size of the bargaining unit. It may have something to do with the fact that there are

more females employed in those particular enterprises and women are less inclined to organize or to be militant. There are a number of factors operating, but you are quite right. Even with such things as first-agreement arbitration or with quick certification procedures, unions are not having success in certain areas and it's in the private sector and it is in that service part of the private sector. I think that even the union leaders are scratching their heads. The big test was the banks in Canada and they were not able to organize the banks, even though it looked as if the banks were not good employers. Many of them were twenty years behind in their employment practices. The banks looked like a very easy target, and yet the unions were not successful in their attempts to organize the banks.

QUESTION, Mr. Feltham: Mr. Carter, I wonder if you see my fragmentation in the position taken by the unions on the free-trade initiative? How do you see the Union position shaping up? Auxiliary to that, what is the direction that needs to be taken and what can be done by those who are favorably disposed to the initiative to turn the fragmentation around, to improve the political base in Canada for a deal with the U.S.?

ANSWER, Mr. Carter: I think the fragmentation is there, but it is clearly exposed. I think the element of the trade union movement that supports free trade is the construction unions, and they have already broken away and formed the Canadian Federation of Labor. I think there is a very united front within the CLC though. That includes public sector unions. It includes the auto workers and the steel workers.

Maybe there is some split among the food workers. I think that is one reason why the fishery workers split off. I think in that union there was a bit of split and there were certainly some elements that were not opposed to free trade. You have got to remember, though, that both Canadian and American trade unions share this in common; they are very conservative organizations and their normal role is to oppose change, or at least slow it down. I think the one thing that they are very firm about—at least the CLC is very firm about—is opposition to free trade.

They say, we are opposed to bilateral free trade, but we are not opposed to trade liberalization through GATT and on a multilateral basis. That seems to be the approach that they are taking, but [we] are very concerned about getting into bed with the Americans on this.

QUESTION, Mr. Feltham: If I could just repeat the second part of my question; speaking from a point of bias, if you like, what do you see is, or what kind of an approach would likely improve, the political environment? What would reach these groups? Can they be reached? Do they just have to be overpowered politically, if that is possible, as we move towards the approval of an assumed agreement, one that we assume we are going to get?

ANSWER, Mr. Carter: That's a good question. I think what might satisfy them to some extent, because I think there still would be some opposition, is for safeguards for workers who are going to loose jobs. Now, as I recall, when the Autopact was negotiated there were those kinds of provisions and I think that's what the unions are looking for. I think that they would be less opposed if they knew there were safeguards that were negotiated, or if they knew at least part of the package was safeguards for workers who are going to be dislocated—and we know they are. I think we will have greater dislocation in Canada than in the United States and they are obviously concerned about that.

QUESTION, Mr. Keith: I want to ask Professor Carter, what do you see as a result of the current drive for pay equity and what do you think is likely to impact on that of our competitive position?

ANSWER, Mr. Carter: In the short run it is going to drive up our wage bill. No question about that. I think its practical effect is going to be to reduce the size of organizations and I think you will have a lot of contracting out to avoid pay equity provisions. This might not be bad for us. You can argue that maybe smaller units are more efficient, but I think it is going to make it more difficult for larger employers, because they are going to have to make those internal comparisons. It may be, for example, employers will start contracting out all their office workers, so they don't have to compare the office workers to the maintenance workers.

I see that happening. In the short term, it will cost more money—there's no question about it—but so does collective bargaining. I think one of the interesting things is that collective bargaining has been partially responsible for the wage gap in Canada, because collective bargaining in the past has been male-dominated and collective bargaining males have increased the gap in earnings between male and female workers.

QUESTION, Professor King: I wanted to ask Dick Lyon whether he had any comment on this contracting out, which I have observed in the U.S. economy?

ANSWER, Mr. Lyon: I would just comment on it very briefly. Obviously three things are happening. Companies are establishing smaller plants, are dispersing their plants, getting away from the normal urban concentrations where they have worked. It's not, strictly speaking, subcontracting, but it is one way of getting out from under the old system. Another is actual subcontracting and the third one is a lot of work simply goes overseas. All you need to do is look at your typical American car and you will have the answer to it.

I would just like to make a very brief comment on this. Referring to Japan, I think one thing that you will see when these Japanese companies come over here, particularly the auto manufacturers, is that their suppliers are coming with them and will establish plants here. Many of them

have already done so, in Ohio, Michigan, and, to some extent, Illinois. I always wondered, why would anyone do that?

I got the answer in Osaka a few months ago. A Japanese gentleman, who I was later told was born in the United States but went back to Japan with his parents before World War II and is now the retired chairman of a board of a very large Japanese company, gave a talk to a group of Americans on what he referred to as outmoded of management. It was a beautiful title. What he talked about had nothing to do with that at all. What he really was talking about is why Japanese companies like to work with their suppliers and why it is important for them to work with their traditional suppliers and he made some comments which I thought were enlightening.

Essentially he said there are two reasons for this. First, if you deal with other companies, meaning North American companies, all you get you must bargain for. In Japan, though, suppliers always throw in a little extra and expect to get a little extra from the companies they deal with. Second, if you look at North American agreements, you will not find force majeure clauses. We don't give excuses and we don't take excuses. North American suppliers say, we would have delivered but for the strike. The Japanese suppliers always deliver.

QUESTION, Mr. Wright: I would like to ask Don Carter a question. The Macdonald Commission, with labor representatives, and after four years of traveling across the country, recommended free trade for Canada. The Commission gave recognition to safeguards for displaced employees and yet the labor representative, in spite of what I thought were very compelling arguments supporting the conclusion, still was a dissenting voice.

Is this out of a sense of self preservation or have they got other objective reasons that more validly support the employees, the union members they represent?

ANSWER, Mr. Carter: I think if you look at it from the trade union point of view, politically there's no way that they can support a proposal that is going to result in permanent layoffs of a significant number of the unionized work force. That's the political reality of trade unions. Their mandate is to protect jobs and to make sure that those jobs are well paid. That's basically why people choose unions. There's no way they are going to come right out and say that in the long run it is going to be great for the Canadian worker, because there's going to be greater employment. They know that in the short run there are going to be tremendous dislocations. Union representatives would get blamed for it and, remember, they have to be elected. Unions are not economic organizations. They are political organizations, so there are good reasons why the labor member didn't go along with the Macdonald Commission recommendation. In fact, he's out around the country opposing free trade. I heard him six months ago. He's got a standard speech that says free trade is not the way to go.

QUESTION, Mr. Herman: I'll try and relate the labor situation to the trade area. There's a provision in U.S. law under the trade act that allows a group, including unions, that is representative of an industry to petition for safeguard relief. It doesn't have to be management that is asking the government or asking the ITC to look at the matter. The ITC can recommend safeguard action for that particular industry where the union itself brings the petition.

We don't have that kind of a remedy in Canada and Mr. Bertrand of the Import Tribunal mentioned the fact that safeguard action in Canada is rather closed shop. It is done through discretionary action on the part of the government. It seems to me that—and, by the way, the House Bill that is now going through the process, HR-3, has enhanced rights for safeguard action, including facilitating relief by union petition. It seems to me that in a free trade area, Canada would have to provide some kind of analogous sort of mechanism to deal with situations where the United States may be bringing safeguard-type action against third country importers.

Canada might have to provide a similar sort of relief mechanism by way of petition. I had always thought that this might be a way of buying some union support for the free trade deal in Canada. As part of a package, adjustment assistance could be granted through a petition process which would, to the benefit of the unions, open up the system in Canada. I don't know if any of the commentators have given any thought to that, but it seemed to me that might be a means of gathering some support.

ANSWER, Mr. Carter: I think that is certainly a possibility, although I don't think that we could ever expect the CLC to openly embrace free trade with the United States. Even if that was offered, they would still be opposed to it. Politically they have to be opposed to it, but they might not be as opposed to it as they are at the present time if they had some reassurances.

QUESTION, Mr. Brown: Professor Carter, at the close of your talk you did refer to the constitutional issues in Canada, with particular reference to labor legislation and the labor movement. There has been some apprehension expressed by union leaders about the constitutional issues in terms of individual rights on dues checkoffs, political action, internal organization of trade unions, and so on. Do you think that over a period of time the constitutional issue would have some weakening impact on the trade union movement?

ANSWER, Mr. Carter: I think it could. Clearly if the courts come down in favor of individual rights, that's bound to weaken trade unions because trade unions are collectives. If you look at our labor legislation, it emphasizes collective rights, the rights of the trade union, and trade unions are very worried about those rights. There is the potential for the courts to gut that legislation. If they do, it will obviously weaken the trade union. There's no question about it.

COMMENT, Professor King: Well, I thank you both for leading us into a very interesting, to me and I think to everybody else, avenue of inquiry. This has been a good session and I thank you both for it.

