105th Congress Addresses Working Conditions

The rapid pace of technological change has created a workplace that looks little like that of our ancestors early this century. Moreover, the workplace of tomorrow will be tied less to a single physical location; the remote electronic workplace will be commonplace. The wide range of labor legislation being debated in the 105th Congress reflects the expansion of labor issues beyond the narrow bounds of the factory floor.

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Broadly defined, compensation and working conditions are two aspects of the employment relationship about which employers and employees may negotiate or debate. These items are typically the subject of collective bargaining and are also topics for legislative action. This article explores working conditions: What is meant by this broad category and what actions are being considered in the 105th Congress?

In U.S. labor law, working conditions are recognized as an appropriate subject for collective bargaining. Under the titles Norris-La Guardia, Wagner, and Taft-Hartley, named after those who championed these laws in the 1930s and 1940s, these labor laws established the principle of collective bargaining for wages, hours, and other terms and conditions of employment. (See box for details of these laws.) Perhaps not envisioned by such leaders as New York's Senator Robert Wagner in the 1930s, "other terms and conditions of employment" now extend to such topics as ergonomic equipment designed to limit the risk of carpal-tunnel syndrome, drug testing, and use of polygraph tests. Proposed legislation in the 105th Congress addresses a wide variety of working conditions.

Union-management activities

The National Labor Relations Act, the Labor-Management Relations Act, and subsequent labor law establish the right of employees to elect representation and to bargain collectively. These rights are frequently the subjects of legislation, often designed to modify or clarify existing procedures. The protections provided in these laws are available to nearly all workers, not just members of labor unions who now make up about 15 percent of the labor force, down from a post-World War II high of about 25 percent. (See table 1.)

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Table 1. Union membership, selected years, 1930-96

Year	Union members (thousands)	Percent of labor force
1930	3,401	6.8
1935	3,584	6.7
1940	8,717	15.5
1945	14,322	21.9
1950	14,267	22.3
1955	16,802	24.7
1960	17,049	23.6
1965	17,299	22.4
1970	21,248	24.7
1975	22,361	23.6
1980	22,377	20.5
1985	16,996	18.0
1990	16,740	16.1
1995	16,360	14.9
1996	16,269	14.5

NOTE: Beginning with 1970 data, union member data include individuals in public employee associations and professional organizations, such as the National Education Association. Prior to 1970 data, such individuals were not included. Beginning with 1985 data, the labor force includes all employed wage and salary workers.

Several proposals before Congress would require more disclosure by unions of their activities and finances. The Union Members' Right to Know Act would require greater financial disclosure of spending for political purposes. Proponents of this measure argue that union members are often unaware of the use of their dues. They further argue that use of union funds for "education" and "issue advocacy" may in fact be for political purposes.[1] The measure would require the disclosure of funds used for political activities, political candidates and organizations, and affiliated political action committees and the candidates these committees assist.

Another means of getting at similar issues is the Membership Dues Disclosure and Deductibility Act, which would require unions to abide by the same disclosure rules as other tax-exempt organizations. Unions would generally have to disclose to their members how much of their collected dues are directed to political and lobbying activities. In addition, the bill would allow union members to deduct the non-political portion of their dues from their income for tax purposes. Under current law, union dues must be combined with other "miscellaneous expenses" in determining deductibility, and only total amounts of miscellaneous expenses above 2 percent of adjusted gross income may be deducted.[2]

An alternative legislative proposal would prohibit the use of automatic paycheck deductions to collect any funds used for activities other than collective bargaining, contract administration, and/or grievance procedures on behalf of employees. Union dues "check-off"[3] is the system of allowing union members to pay union dues through payroll deductions that are withheld by employers and paid to the union.

Concern arises when labor unions use dues to finance political activities without the notification or consent of those from whom the money is collected. A 1988 Supreme Court ruling prohibits unions from assessing fees "beyond those necessary to finance collective bargaining activities." The ruling stems from Taft-Hartley language that authorizes the deduction of only those fees and dues necessary to "perform the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues."[4]

Employee rights stemming from this case, known as Beck rights after the name of the party in the case, allow employees to request that dues to be used for political purposes not be deducted from their pay. However, proponents of this legislation have cited anecdotal evidence of abuse, such as the story of a North Carolina man.[5] A worker was harassed when he objected to the use of his union dues for political purposes. The union posted notices discouraging workers from objecting to the political use of their union dues and also posted the name of the worker. He was subject to threats and intimidation by fellow union members. The proposed legislation would require unions to notify workers of how dues are being spent and of their Beck rights.

Another proposal in the 105th Congress regarding union activities is a bill to limit the use of official time by Federal employee unions. Official time is paid time during which union officials are allowed to perform union functions, such as explaining contract provisions or working with an employee on a grievance. There has been concern raised about the use of official time by Federal employees for lobbying purposes, including lobbying Congress. Such a practice results in Federal employees being paid Federal funds to lobby Congress. The bill would outlaw this practice.

Among other legislation, the Public Safety Employer-Employee Cooperation Act would grant firefighters and law enforcement officers fundamental collective bargaining rights. At present, certain collective bargaining rights are not available to these workers due to the nature of their work. This Act would provide only certain collective bargaining rights, and would preserve the restriction against strikes.

TEAM Act

The Teamwork for Employees and Managers (TEAM) Act would allow companies to use employee-management teams to address a broad range of workplace issues, such as productivity, flexible work schedules, worker safety, employee benefits, and more. The National Labor Relations Board has ruled that such teams, under current law, may be considered an unfair labor practice.[6] Such teams have been construed by the NLRB as employer support for organizations that represent workers regarding wages, benefits, and working conditions, an activity that is the exclusive purview of labor organizations. The TEAM Act would amend the National Labor Relations Act to permit employers

Table 2. Rate of occupational injury and illness per 100 full-time workers,[1] private sector, 1973-95

Year	Total cases	Lost workday cases
1973	11.0	-
1974	10.4	-
1975	9.1	3.3
1976	9.2	3.5
1977	9.3	3.8
1978	9.4	4.1
1979	9.5	4.3
1980	8.7	4.0
1981	8.3	3.8
1982	7.7	3.5
1983	7.6	3.4
1984	8.0	3.7
1985	7.9	3.6
1986	7.9	3.6
1987	8.3	3.8
1988	8.6	4.0
1989	8.6	4.0
1990	8.8	4.1
1991	8.4	3.9
1992	8.9	3.9
1993	8.5	3.8
1994	8.4	3.8
1995	8.1	3.6

[1] The incidence rate represents the number of injuries and illnesses or lost workdays per 100 full-time workers. It is calculated by multiplying the number of injuries and illnesses (or lost workdays) times the total hours worked by all employees during the calendar year. That product is divided by 200,000 (the base for 100 full-time equivalent workers working 40 hours per week, 50 weeks per year).
- Data not available.

"to establish, assist, maintain or participate in" organizations for employees. An identical bill was passed by the 104th Congress, but was vetoed by President Clinton.

Proponents, typically employer groups, argue that the change in the law is necessary to promote employee participation in the workplace, which can go a long way toward fostering cooperation and improving productivity. They also argue that labor-management partnerships have been known to work well. There are much-publicized examples of employee-management teams that have reassessed the work process and instituted improvements.

Opponents, including organized labor, claim that the bill would encourage employers to interfere with an employee's right to choose their own representation. The contention is that employers would be able to create and disband committees at will, hand-pick members, dictate the agenda, and pre-determine the outcome. Because the teams would be determining working conditions, a legitimate subject of collective bargaining by the elected representatives of the employees, in essence the workers' right to choose their own representative would be ignored.[7]

The proposed legislation is generally applicable to nonunion employers. In a unionized environment, establishing workplace teams is not an unfair labor practice, as long as participation on the teams is determined in conjunction with the union. In such a case, the union is the sole and duly elected representative of the employees, and as such is the only organization that can determine employee representation on a team. In the case of a nonunion company, or a unionized company where team members are not chosen in conjunction with the union, teams violate the workers' rights to choose their representatives. The legislation would legalize these teams.

Safety and health

Safety and health issues are an important part of working conditions. In 1970, Congress passed and President Nixon signed into law the Occupational Safety and Health Act. This act established standards for safe working environments, compliance requirements, penalties for noncompliance, and reporting requirements to track the extent of occupational illness and injury. The Act promises every American worker the right to a safe job. Data from the Bureau of Labor Statistics on the prevalence of workplace injuries, illnesses, and deaths have been collected since the mid-1970s, in part to comply with reporting requirements in the law. These data indicate an overall reduction in the prevalence of workplace injuries and illnesses in the past 2 decades. (See table 2.)

Among the current issues regarding workplace safety and health is the amount of regulation to impose on small businesses. For example, the Occupational Safety and Health Administration (OSHA), the agency of the Department of Labor established to perform the regulatory functions of the law, recently proposed a rule restricting the use of methylene chloride (used to strip paint and clean metal parts, among other things). This action is said to cut the risk of cancer among construction workers, but it is controversial. In the view of opponents of the rule, studies have yielded inconsistent results. OSHA has recommended use of a less-toxic substitute, although industry officials indicate such substitution will be costly and may result in worker exposure to other hazards.[8]

The proposed rule largely affects construction and related industries, which are dominated by small employers. (In 1995, two-thirds of all construction firms employed fewer than 5 workers, and 92 percent employed fewer than 20.[9]) This has led to concern in Congress about the amount of regulation imposed upon small employers. In 1996, Congress enacted the Small Business Regulatory Fairness Act, requiring Congress to review certain new regulations affecting small businesses prior to adoption.[10] OSHA must comply with this requirement before it can issue a final rule. Furthermore, legislation has been introduced in Congress to prevent final implementation of the rule.

Conditions for awarding Federal contracts

The Clinton Administration has proposed changes to contracting procedures to encourage Federal agencies to select contractors based on prior labor relations and employment practices. The changes would:

- Require that contractors have a satisfactory record in labor relations and employment practices before they can bid on Government contracts;

- Prohibit the Federal Government, as part of any contract, from paying expenses associated with violations of labor laws; and

- Require that all Federal agencies consider "project labor agreements" for Federal construction projects.

A project labor agreement (PLA) is a required set of labor standards imposed on contractors for the life of a project. PLA's generally cover wages and working conditions, mandate that all employees join a union and pay dues, designate the union as the sole representative of the employees, and require payment into union benefit funds. Included in the agreement is the guarantee that projects will be built without strikes, lockouts, or similar disruptions.

Many Federal, State, and local construction projects have used PLA's. Several States have executive orders authorizing the use of PLA's for State-funded projects when they promote the efficient, timely, and safe completion of a project.

PLA's do not exclude any contractor from bidding on a project, even if they have never been a signatory to a collective bargaining agreement. Also, every qualified worker is eligible to be employed on a PLA project, regardless of whether he or she has ever been a union member. However, according to PLA opponents, in nonunion settings PLA's require firms "to organize work around the rigid and ... archaic lines that define each union's jurisdiction,"[11] such as specific trades or specialties. This often requires such employers to hire more workers than they might otherwise hire for a project of similar size. Consequently, nonunion firms do not often bid on such work.[12]

Even in unionized situations, opponents argue that the requirements of the PLA may make it necessary to hire additional workers and to alter wages, benefits, or other working conditions. Such agreements can also lead to the situation where an employee works under one set of compensation and working conditions while doing work under the PLA and under different rules while employed on other jobs.[13]

Recently, the administration agreed not to issue an executive order. Instead, a "presidential memorandum," encouraging Federal agencies to follow these rules in establishing contracts, is expected. This will have the same effect as the executive order, except that the memorandum will lapse when President Clinton leaves office, while an executive order would have remained in effect unless specifically rescinded by a future President. At the same time, there is also legislation pending in Congress to overturn the actions of the President.

Job training

In May 1997, the House of Representatives passed the Education, Training and Literacy Enhancement Act. This bill consolidates 50 Federal employment, job training, and literacy programs into 3 block grants to the States. The bill is similar to a bill in the 104th Congress that got sidetracked over concerns that the Federal Government might take too large a role in vocational education. This year's bill does not include the disputed vocational education provisions.

The intent of the bill is to coordinate existing independent training programs. It creates a one-stop career center, centralizes many local job training and employment search services in one location, and allows States to target funds based on their local needs. The bill establishes 3 block grant programs:

- Disadvantaged Youth Employment and Training Opportunities—for at-risk, low-income teens and young adults;

- Adult Employment and Training Opportunities—for disadvantaged adults and dislocated workers; and

- Adult Education and Literacy—for low-income people to obtain job skills, geared especially for transition from welfare to work.

In general, the training provided through these programs is offered outside the work setting. Often, this training is part of a job-search process, such as that provided through State employment security agencies. Employers also provide training to their employees, although the availability and type of this training can vary widely. A 1993 Bureau of Labor Statistics survey of employer-provided training among private sector employers indicated that 71 percent of establishments offered training to their employees.[14] Larger establishments almost universally provided training while it was less prevalent among smaller establishments. The most frequently offered type of training was job-skills training, to provide skills needed to perform a particular task. Other prevalent types of training covered orientation, safety, and health. Fewer than half of all employers provided job skills training, however, suggesting the need for additional training outside the work setting. (See table 3.)

Sweatshops

In April 1997, President Clinton announced the formation of an Apparel Industry Partnership intended to reassure consumers that exploited workers do not make clothes and shoes. Included in the partnership are garment manufacturers, unions, human rights organiza-

Table 3. Percent of private sector establishments providing formal training, 1993

Characteristic	Total	Fewer than 50 workers	50 - 249 workers	250 workers or more
Provide training	70.9	68.9	97.9	99.3
Orientation[1]	31.8	28.5	74.9	92.5
Safety and health[2]	32.4	29.5	70.2	88.3
Apprenticeship[3]	18.9	17.5	35.6	51.1
Basic skills[4]	2.2	1.7	7.2	19.3
Workplace skills[5]	36.1	33.0	77.3	89.6
Job skills[6]	48.6	45.8	85.8	95.9
Other	4.1	3.6	10.5	17.1

[1] Orientation training provides information on personnel and workplace practices and overall company policies.

[2] Safety and health training provides information on safety procedures and regulations and health warnings and hazards.

[3] Apprenticeship training is a structured process by which individuals become skilled workers through a combination of classroom instruction and on-the-job training.

[4] Basic skills training provides instruction in reading, writing, arithmetic, and English language skills.

[5] Workplace skills training gives information on policies and practices that affect employee relations or the work environment.

[6] Job skills training upgrades employee skills and qualifies workers for a job.

NOTE: Sum of individual items may be greater than the total because employers may offer more than one type of training.

tions, and others. Manufacturers who participate in the partnership are allowed to place "no sweatshop" labels in their products, place signs in stores, or otherwise advertise their compliance. At the same time, a Child Labor Free Consumer Information Act has been introduced in Congress. This bill would establish a "seal of approval" or logo that manufacturers could display if they meet child labor standards.

Members of President Clinton's Partnership are prohibited from using prison or other forced labor, prohibited from employing children under age 15, required to pay minimum or prevailing wages, required to limit hours worked in a week to 60, and required to provide at least 1 day off per week. Companies that join the Partnership must also ensure that their contractors and suppliers comply with these requirements. The agreement calls for internal monitoring by manufacturers plus independent external monitoring.

Some manufacturing groups argue that the Partnership advocates standards that already exist; human rights groups argue that the standards do not go far enough to help exploited workers. Other concerns are that counterfeit "no sweatshop" labels will begin to appear and that employers will find ways to circumvent the prohibitions.

Other labor issues

Other labor-related topics in the 105th Congress include the Employment Non-Discrimination Act, which prohibits employers from making decisions about hiring, firing, promoting, or compensating an employee based on sexual orientation; the Workplace Fairness Act, which prohibits employment discrimination on any basis (an individual must be judged solely on their merit); and the Volunteer Firefighter and Rescue Squad Worker Protection Act and other related proposals, which allow such workers to volunteer their services without running afoul of wage and hour laws.

The rapid pace of technological change has created a workplace that looks little like the workplace of the 1930s and the 1940s, when many of our labor laws were first established. Moreover, the workplace of tomorrow will be tied less to a single physical location; the remote electronic workplace may be commonplace. The wide range of labor legislation being debated in the 105th Congress reflects the expansion of labor issues beyond the narrow bounds of the factory floor. Changes in working conditions in the future will necessitate the constant review of these laws.

Details of Labor Law in the United States

The foundations of American labor law were largely established in the 1930s and 1940s, beginning with the Norris-La Guardia Act in 1932. (Prior to that date, certain anti-trust laws had some effect on labor-management relations in this country and a few industry-specific labor laws, most notably the Railway Labor Act of 1926, were in place.) Norris-La Guardia came about during a period of high unemployment at the height of the Great Depression. The main purpose of the Act was to limit the authority of courts to issue injunctions against certain labor activities. The Act limited the power of the courts to stop workers and labor organizations from engaging in several activities, including peaceful picketing, peaceable assembly, organizational picketing, and payment of strike benefits. In essence, the Act recognized the rights of workers to associate, organize, and choose representation. However, there were no restrictions placed on employer efforts to stop labor activities.

Such restrictions were put into place in 1935 by the National Labor Relations Act, or the Wagner Act. This Act specifically banned a set of management actions that constituted unfair labor practices. These now-prohibited unfair practices included:

- Restraining, coercing, or interfering with employees in their right to organize;
- Dominating or interfering with the formation or administration of labor unions;
- Discriminating in hiring, tenure, or working conditions to encourage or discourage union membership or activities;
- Discriminating against employees who had filed unfair labor practices, as designated by the Act; and
- Refusing to bargain collectively with the duly chosen representatives of the employees.

The Wagner Act was modified in 1947 by the Labor-Management Relations Act, commonly referred to as the Taft-Hartley Act. This law largely left unchanged the unfair employer practices of the Wagner Act, but introduced additional unfair labor practices applicable to employers and unions. The prohibited union practices included restraining or coercing employees regarding certain collective bargaining rights; causing an employer to discriminate against an employee to encourage or discourage union membership; refusing to bargain in good faith; and related activities. Taft-Hartley also specifically included language recognizing employees as individuals, including an individual's right to present grievances directly to the employer, without the intervention of a union.

More recent labor law is largely concerned with reporting and disclosure requirements for both employers and labor unions. Today, the rights of employers and employees are still largely governed by the provisions of the Wagner and Taft-Hartley Acts.

—*ENDNOTES*—

[1] "Christensen Bill Seeks More Union Spending Disclosure," *Congress Daily*, The National Journal, April 14, 1996, pp. 2-3.

[2] Under current Federal tax law, individuals who itemize deductions may include union dues as part of their miscellaneous deductions. Other such deductions include unreimbursed job-related expenses (such as unreimbursed job-related travel), tax preparation fees, and certain investment expenses. Only expenses in this category in excess of 2 percent of adjusted gross income (total income minus certain items such as contributions to individual retirement accounts and alimony payments) may be included in an individual's total itemized deductions.

[3] Check-off is the procedure of employers withholding union dues from employee pay and remitting those dues to the union. This practice was specifically addressed in the Taft-Hartley Act of 1947. At that time, "automatic" check-off, without the consent of employees, was prohibited. The law required unions to obtain the written consent of employees to have union dues withheld from their pay.

[4] The Supreme Court ruling considers several reasons why fees for non-collective-bargaining activities violate worker rights. It also makes distinctions between union members and non-members who nonetheless must pay dues. See *Communications Workers v Beck*, 487 US 735 (1988).

[5] Congressman Harris W. Fawell, 13th District of Illinois described this story, in a letter to colleagues on April 23, 1997.

[6] Since 1992, the National Labor Relations Board has ruled in approximately 20 cases that worker-management teams were in violation of the National Labor Relations Act prohibition against company-dominated unions. Many worker-management teams do exist, although only a few have been challenged. Typically, teams are challenged when they are considered an interference to worker attempts to organize and vote for union representation.

[7] Under current labor law, employees have the sole right to choose their representatives to bargain for "terms and conditions of employment." Because the duly elected representatives of all employees do not select team members, the teams violate the employee's right to choose their own representatives.

[8] *NAM Briefing*, National Association of Manufacturers, April 21, 1997, p. 6.

[9] *Employment and Wages Annual Averages, 1995*, Bureau of Labor Statistics, Bulletin 2483, December 1996.

[10] The Small Business Regulatory Fairness Act of 1996 requires Federal agencies to consider the special needs and concerns of small entities, such as small businesses, small local governments, and farmers, when regulations are drafted. Agencies must prepare an analysis of the effect of new regulation on small businesses and must consult with small businesses prior to issuing proposed rules.

[11] "Open Shop and Union Contractors Jointly Oppose President's Plan for Executive Order on Project Labor Agreements," Open Letter from the Associated General Contractors of America, April 15, 1997.

[12] *Ibid.*

[13] *Ibid.*

[14] For more information, see Harley J. Frazis, Diane E. Herz, and Michael W. Horrigan, "Employer-provided training: results from a new survey," *Monthly Labor Review*, May 1995, pp. 3-17.