Filling the Court-Created Gap in the Protection of Concerted Activities

The Need for Striker Replacement Legislation in the Promotion of Constructive Collective Bargaining

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Since the eighties, it has been insane to go on strike. Every strike ends in disaster. The members go out, roaring mad, like in the old days. Then they watch the "crossovers" add up, day by day, watch until they reach the magic number, tip the balance, and the company can start up, nonunion, and bust the strike.

Our guys stand there, disbelieving, with picket signs on their shoulders, like batters looking at called third strikes. They stand there with their little buttons that say, in capital letters, "SCAB HUNTER," under the barrel of a gun. But the buttons do not scare anyone. People breeze right over the line. In America, people scab on everyone: Americans even scabbed on the pros, their darlings, in the pro-football strike.

THOMAS GEOGHEGAN, WHICH SIDE ARE YOU ON 4-5 (1991).1

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1. A succinct academic summary of the problem posed by Mr. Geoghegan, a union-side labor lawyer, is found in the following statement of Professor Gillespie:

Three decades of stare decisis have invested the Mackay doctrine with the dignity of hornbook truth, but subsequent developments in labor law have left Mackay a stranded anomaly. From the first, the "permanent replacement" doctrine clashed with standard interpretations of the National Labor Relations Act. The economic strike is intended to impose economic hardship on the employer and strengthen the union's negotiating position by stopping production. The Mackay doctrine, however, undercuts the purpose of the strike by allowing the employer to continue production with the help of permanent replacements. In addition, permanent replacement of workers executes industrial relation's "capital punishment" — termination of the striker's employment contract. After severance of the working arrangement between employer and employee, the statutory right to engage in concerted activities is of little value.

Rarely has a court decision been so flawed in its initiation and its articulation as the one rendered more than a half century ago by the United States Supreme Court in NLRB v. Mackay Radio & Telegraph Co.³

It is one of the great ironies of our time that the Mackay doctrine emanated from a case in the Supreme Court won by the Board for the union! The historically significant part of the decision was not even on a point on which the Supreme Court had taken the case in the first place. The so-called right to hire permanent strike replacements was not an issue in the case. It was a point never really briefed or argued by the parties. It was not relevant to the facts in the case — pure dictum, as lawyers say. The Court in its opinion never sought to justify the rule in terms of the language of the statute or its overall policies. Yet, that dictum was to dictate the fundamentals of collective bargaining in the United States for the decades that were to follow. It was to shape the battle that will surely take place in the Congress in the period ahead. It would be the major issue that would vitally affect collective bargaining in the United States in the eighties and in the nineties.

I. THE MACKAY DECISION

Mackay was a simple and obvious case without complexity under the National Labor Relations Act ("Act"). That it would even reach the Supreme Court for determination was attributable only to its timing. It arose right after the passage of the Act when nothing had yet been determined in litigation.4 The statute clearly banned discrim-
ination against employees for engaging in protected concerted activities, of which the strike was the most obvious form.

In Mackay an agreement had been reached between the employer and the union following a strike, but the company refused to take back "five strikers who were prominent in the activities of the union." The employer's refusal to do so was the only unfair labor practice litigated. Nothing in the Board's complaint touched upon the question of the employer's right to hire permanent replacements for economic strikers, nor was this issue litigated. The discrimination against the strike leaders was a flagrant, direct violation of Section 8(a)(3) and affirmance of the Board's order of reinstatement was routine. However, the opinion of the Court went further, adding:

Nor was it an unfair labor practice to replace the striking employees [sic] with others in an effort to carry on the business. Although § 13 provides, "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike," it does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them. The assurance by respondent to those who accepted employment during the strike that if they so desired their places might be permanent was not an unfair labor practice nor was it such to reinstate only so many of the strikers as there were vacant places to be filled.\(^5\)

5. Id. at 339.
6. 304 U.S. 333, 345-46 (1938). This language was irrelevant to the facts in Mackay where the five strike leaders were clearly unfair labor practice strikers who were entitled to reinstatement. What has become known as the "Mackay doctrine," which arises from the language just quoted above, is applicable only to economic strikes. "By contrast, strike activity that is caused or prolonged by an employer's unfair labor practice is known as an unfair labor practice strike. Unfair labor practice strikers have the right to request and secure reinstatement, and may not be permanently replaced." H.R. REP. NO. 57, 102d Cong., 1st Sess., Pt. 3, at 11 n.1 (1991).

Making a striker's reinstatement dependent upon the ultimate determination by the Board and the courts that the employee was in fact an unfair labor practice striker means that no matter how grievous was the employer's provocative conduct, still as a practical matter the employee can never know upfront whether he will ultimately be found to have any entitlement to his job.
Many legal scholars have condemned *Mackay*, yet it instantly became hornbook law. It has not thereafter been questioned by the NLRB nor by the courts. This new employer "right," nowhere enunciated in the Act nor elsewhere except by this *dictum* of the Court, is now fully enshrined. The Board has found a company's right to replace economic strikers to be unlimited, not being confined even by what objectively are that employer's legitimate economic needs. The Board has said:

[A]n employer may replace economic strikers [regardless of whether] it is shown that he acted to preserve efficient operation of his business. The Supreme Court's decision in [*Mackay*] and the cases thereafter . . . state that an employer has a legal right to replace economic strikers at will. We construe these cases as holding that the motive for such replacements is immaterial, absent evidence of an independent unlawful purpose.  

Meanwhile, the Supreme Court has not directly retreated from the harsh realities of *Mackay*, declining to consider its effect on the protected Section 7 right to strike. Recently, it said:

[T]he employer's right to hire permanent replacements in order to continue operations will inevitably . . . have the effect of

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dividing striking employees between those who, fearful of permanently losing their jobs, return to work and those who remain stalwart in the strike.

That the prospect of a reduction in available positions may divide employees and create incentives among them to remain at work or abandon a strike before its conclusion is fairly within the arsenal of economic weapons available to employers during a [strike].

A counsel for the AFL-CIO has bluntly stated what Mackay represents to the American labor movement:

*Mackay* serves not only as a vivid illustration to workers of our legal system's willingness cynically to promise workers rights while, in practice, rendering those "rights" illusory, but also as a fundamental impediment to the development of stable and productive collective bargaining relationships in our society. *Mackay* thus stands as an unfortunate reminder that our legal system's endorsement of collective bargaining is a very equivocal one and that ultimately workers must trust not in the promises of our legal system, but in their own solidarity to attain a more just workplace.

### II. Employer Conduct

An employer who extended the logic of the Court in *Mackay* by providing super-seniority as an extra incentive to induce strike replacements to come to work during the dispute was held by the Board and the Court to have violated the Act. The Court held that the employer went too far in *NLRB v. Erie Resistor Corp.* in offering twenty years' additional seniority to replacements and to strikers who returned to work. The difference the Court saw in *Erie Resistor* was "the inherently discriminatory or destructive nature of the conduct

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12. *Id.* The employer limited its bountiful seniority offer only to the use of seniority for credit against future layoffs. The Company was quite willing that the extra seniority be utilized to guarantee that employee a job as against one of its regular employees, but wanted it clear that the strike replacement was not entitled to use it toward improved vacation benefits at the employer's expense! *Id.* at 223.
itself.'" 13 "The employer in such cases must be held to intend the very consequences which foreseeably and inescapably flow from his actions," the Court said. 14

While "the employer may counter by claiming that his actions were taken in the pursuit of legitimate business ends and that his dominant purpose was not to discriminate or to invade union rights," the Court in Erie Resistor reasoned, nevertheless "his conduct does speak for itself — it is discriminatory and it does discourage union membership . . . ." 15

In Great Dane Trailers v. NLRB, 16 the employer offered vacation benefits to workers who crossed the picket line but not to strikers during an economic strike. The Court, in overturning a Circuit Court ruling that had hypothesized sufficient business justification in the absence of any company showing of such, held that the employer's discriminatory conduct in granting vacation benefits only to crossovers was "inherently destructive" of important employee rights and that anti-union motivation need not be demonstrated in order to make out a discrimination violation. 17 If an employer's actions infringe upon an employee's Section 7 rights "to some extent," the burden of proof is on the employer to come forward with a legitimate business justification for its discriminatory action 18 — an obligation the Court has been unwilling to put on the employer in the typical Mackay strike replacement situation.

In NLRB v. Fleetwood Trailer, 19 the Court held that an employer's hiring of new employees while there were outstanding applications for reinstatement from permanently replaced workers constituted an unfair labor practice absent a showing by the employer of a substantial and legitimate business necessity for its actions. The Board's decision in Laidlaw grants permanently replaced workers preferential hiring rights for job vacancies that arise after their application for reinstatement. 20

13. Id. at 228.
14. Id.
15. Id.
17. Id. at 332-34.
18. Id. at 333-34.
20. Laidlaw Corp., 171 N.L.R.B. No. 175 (1968), enforced, Laidlaw Corp. v. NLRB, 414 F.2d 99 (7th Cir. 1969). The worth of these rights in the contemporary scene has been questioned. Note the comment of Leonard Page:

In an era of declining employment, the right to be on a preferential hiring
It is ironic that the Court prohibits an employer from offering superseniority to strike breakers, or special post-strike vacations to crossovers, at the same time that it permits that employer to give the jobs of its employees to anyone willing to cross the picket line. It is as though the law permits killing but not wounding, as one treatise comments.\textsuperscript{21}

\section*{III. Legislative History of Striker Protections}

The “right” of an employer to permanently replace strikers was derived by the Court from a statute that contained several references to strikes. Legislators’ concern for the protection of strikers is pervasive throughout the statute.

Section 7 of the Act, described by the chief sponsor of the bill, Senator Robert Wagner (D.-N.Y.), as an “omnibus guaranty of freedom” for American workers states:

Employees shall have the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.\textsuperscript{22}

Furthermore, a publication issued by the Board, in discussing Section 7, says:

Strikes are included among the concerted activities protected for employees by this section.\textsuperscript{23}

These rights are protected and reinforced by Section 8 of the Act. Section 8(a)(1) makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees” in the exercise of the rights guaranteed in Section 7, while section 8(a)(3) specifically prohibits employers, “by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization.”\textsuperscript{24}


\textsuperscript{23} \textit{I Legislative History of the National Labor Relations Act of 1935} 1419 (1949) (statement of Senator Wagner).


\textsuperscript{24} 29 U.S.C. §§ 158(a)(1) and (3) (1988).
The right of employees to strike is further protected by Sections 2(3) and 13 of the Act. Section 2(3) provides that employees do not lose their status as employees when their "work has ceased as a consequences of, or in connection with, any current labor dispute." Section 13 declares that "[n]othing in [the NLRA] shall be construed so as either to interfere with or impede or diminish in any way the right to strike . . . ."

From even a casual perusal of these provisions, it is readily apparent that Congress endowed the right to strike with special protection under the Act. The Court, without demonstrating any statutory or logical bases, managed to sacrifice that right in an unfortunate dictum. It is long overdue for Congress to restore to the statute a meaningful protected quality of the right to strike.

IV. THE ANOMALY OF PERMANENT REPLACEMENT

The "off-hand" statement in Mackay "created a very troubling anomaly in federal labor relations law: employees cannot be disciplined or discharged for engaging in a strike, but they can be permanently replaced." Congressman Brennan of Maine, the lead-off witness in the Congressional Hearings on the striker replacement legislation that would reverse the Mackay doctrine, commented that he had not "been able to figure out the difference between permanent replacement and being fired — as soon as they go on strike . . . ."

The Congressman is not alone in failing to discern any meaningful difference between an employee being permanently replaced and being fired. Professor Paul Weiler of the Harvard Law School had these comments about the distinction:

For the last several decades, labor law classes around the country have annually broken out in laughter at the thought that lawyers and judges would draw such a spurious distinction between discharging and permanently replacing an employee in his job. But to ordinary workers, this legal distinction is

28. Id. at 3.
29. Professor William B. Gould of the Stanford Law School has had the same experience in his labor law classes. He said:

Every year when I teach my students about the rules relating to the strike weapon in Labor Law I, I always explain the practical significance of engaging in protected activity. I point out to them that the practical
no joke at all. The employee may have spent twenty to thirty years with a firm, investing his whole working life building up a stake of experience and security in this enterprise that cannot possibly be duplicated somewhere else. Then, if the employee chooses to go out on strike, pursuing the course our labor law says is the only way open to try to improve (or even maintain) terms and conditions of employment, the firm's management is free to hire replacements who with less than twenty to thirty minutes on the job get a permanent claim to the position as against the striker.30

Professor Schatzki has observed that the distinction between permanent replacement and discharge "can hardly mean anything to the displaced employee." However, to the employer, as a practical matter, "in almost all cases, the Mackay doctrine — despite its articulated distinction — is an invitation to the employer, if he is able, to rid himself of union adherents and the union."31

A so-called "protected right to strike" that does not entitle the striker to resume his job after the labor dispute has been settled is to the worker incomprehensible and meaningless. It is a "right" that is about as useful as the insurance policy that Groucho Marx was selling in one of his movies under the terms of which if the policyholder lost a leg, the insurance company would help him look for it!

Professors Getman and Goldberg studied over thirty-five private sector organizing campaigns. They confirmed what employer and union leaders have long known — that Mackay means, in practice, that employees who exercise their Section 7 rights can lose their jobs.

significance is that the employee is immunized from employer self-help instituted against [workers] in the form of discipline or discharge for engaging in the conduct [in] question. But then I tell them that despite the fact that workers cannot be discharged or disciplined for engaging in a strike, they can be permanently replaced. Either this produces nervous laughter or expressions of puzzlement — and well it should!


30. H.R. Rep. No. 57, supra note 27, at 13. The rights of strike replacements are not confined to those who may have "twenty to thirty minutes on the job." The Board has accorded Mackay rights to an employee who had never worked on the job and in fact, at the point the strike ended, had never even taken certain tests that were a prerequisite to being employed on the job. Solar Turbines, Inc., 302 NLRB No. 3 (1991).

31. Schatzki, supra note 7, at 383.
The chilling effect of this on an employee’s willingness to support a union in an NLRB election campaign was demonstrated over and over again by the study. Professor Getman summarized the result in this way:

In virtually every campaign, the employer announced it would bargain tough so that employees would have to strike to gain substantial benefits. The employees were also told that, in the event of a strike, they would be vulnerable to permanent replacement, an option that the employer would not hesitate to exercise. Such campaigning can be done within the law. The obvious intent (confirmed in interviews with company officials) was to convey the message that if employees chose to unionize they would thereby endanger their jobs. The prevalence of this message in legal employee campaigns may well explain why we found that the employee perception that the employer had threatened reprisal was as great in legal as it was in unlawful campaigns. . . . When the process is infused with fear based on the threat of job loss, to speak of the organizing process as an exercise of free choice is to engage in double speak.32

The national labor policy favors collective bargaining as the preferred method for the settlement of industrial disputes.33 The assumption of the statutory system is that labor and management will sit down at the bargaining table, and each will, in good faith seek to reach a mutually satisfactory resolution of the issues in dispute. The theory has been that the parties are each anxious to resolve the dispute — the employer because of its interest in uninterrupted production, the employees because of the consequences they suffer from the strike in terms of income loss. The system worked surprisingly well for many years, even though on the periphery there were a limited number of situations, usually involving fringe industries, in which the employers manifested an interest not to reach agreement with the union but to destroy it. Due to a change in the psychology of management and the national and international economy, all of this has changed.

The incidence of major strikes has been in a steady decline in the United States for the past two decades; a 1990 study by the General Accounting Office indicated that the threat to hire permanent replace-


ments occurred in about thirty percent of strikes in 1989.34 Well-paying jobs with fringe benefits have been increasingly in short supply, and a large pool of job-hungry applicants are available to be enticed through the picket lines like scavengers to a jungle kill.

From a national point of view, the real vice of the Mackay doctrine is that in a country dedicated to the policy of the settlement of industrial disputes by collective bargaining, it throws into contention an additional issue between the parties that makes the dispute, for all practical purposes, impossible to resolve. The employer, having encouraged strike replacements to come through the picket line, feels bound for various reasons to protect them; at the same time there is no way the union’s members will ever agree that their jobs can go to crossovers. Thus, no matter how skilled the negotiators, how able the conciliator, the issues at the table are no longer solvable. What had been a difficult dispute now becomes virtually a hopeless one. A new element has now been introduced that poisoned the well.

Each negotiation can become not just a dispute over the terms of a new agreement, but one in which the employer is encouraged to negotiate in such a way as to force a strike so that he can eliminate union supporters or even the union itself.35 This is the anomaly of Mackay, even though it purports to interpret a statute designed to promote collective bargaining and the settlement of labor disputes in the United States.

Once the employer has gone the route of recruiting and hiring permanent replacements, it becomes very difficult to turn back. If he sticks with the crossovers while continuing to deal with the union, the move spells much trouble for all concerned. The employer has an incentive to convert what may have been an emergency course to keep his business in operation into a campaign to rid himself of the union entirely. Thus in today’s job market collective bargaining is replaced by posturing and baiting, and the statutory policy favoring constructive collective bargaining is increasingly subverted.

V. IMPLICATIONS OF RENEWED LEGISLATIVE PROTECTIONS

If Mackay is corrected by legislation, we need not fear that we will be at a competitive disadvantage internationally. "It is noteworthy

34. Page, supra note 20, at 7.
35. Cf. David Moberg, Labor’s Bad Boys, CHI. TRIB., March 19, 1993, § 5, at 1 ("It may seem odd that an employer, not labor union members, would want a strike. Yet, during the past decade many companies have seen a strike as their opportunity to permanently replace longtime workers with non-union strikebreakers.")
that in countries such as Japan, Germany, France, and Sweden, in which labor management cooperation has become the dominant approach, employers may neither dismiss nor permanently replace striking workers.\textsuperscript{36} "It can be seen even more clearly from the example of Canada, which has similar labor laws and a structured economy similar to our own, but where the hiring of permanent replacements during a strike is illegal and employers may operate only with temporary replacements."\textsuperscript{37} Employers would remain free to resist the demands of the union with resort to the same panoply of weapons they have, for all practical purposes, been using for years — the hiring of temporary replacements, utilizing supervisors and other non-unit or retired workers or crossovers to do production work, subcontracting, lockouts or shutdowns. The House Committee on Education and Labor, in favorably reporting out House Resolution 5, the proposed federal striker replacement legislation "to prevent discrimination based on participation in labor disputes,"\textsuperscript{38} said:

Given these alternative economic options, the contention that permanent replacements are necessary to stay in business is unfounded. Indeed, employers win many strikes today (and have for decades) in which no permanent replacements are hired or threatened. Just as the absence of permanent replacements does not assure union success in a strike, the enactment of H.R. 5 would likewise not assure either side success. Rather it would help ensure that a stable and productive relationship between employers and employee survives at the conclusion of a strike.\textsuperscript{39}

From all of this Professor Weiler of Harvard concludes that the promise of permanent job replacements for crossovers, as is afforded by \textit{Mackay}, "is simply not needed to recruit people who are out of work and without a regular paycheck."\textsuperscript{40} To this Weiler adds:

Even if this added inducement might be useful in a handful of situations, the benefit gained is hardly "substantial" enough to justify the doctrine's stark impact on the right to strike.\textsuperscript{41}

\textsuperscript{36} \textit{Hearings on S. 2112, supra} note 32, at 9.
\textsuperscript{37} Kamiat, \textit{supra} note 10, at 49.
\textsuperscript{38} H.R. Rep. No. 57, \textit{supra} note 27, at 1.
\textsuperscript{39} \textit{Id.} at 28.
\textsuperscript{40} Weiler, \textit{supra} note 7, at 392 n.128.
\textsuperscript{41} Weiler, \textit{supra} note 7, at 392 n.128. That unions may have "needed" secondary boycotts to prevail in some labor disputes with employers did not deter Congress from curtailing their use.
Unions have felt that they have taken a great deal of punishment over the past in terms of America's failing international image, the difficulties we have had competing in the world market. It started out that everybody blamed the American worker, the abused, inefficient American worker. Now take a look at the productivity of the American worker as seen from England recently by one of the world's most respected and distinguished economics journals:

Americans fret about falling behind the other big economies. But contrary to popular perception, the average American worker is still far more productive than his foreign counterpart. ... For the business sector as a whole, French and German productivity is about 15% below America's, Britain's is 27% lower, and Japan's is a staggering 42% lower. Even in manufacturing, Japanese productivity is 20% less than America's.

Research by Edward Mace, an economist at New York University, confirms that America tops the productivity league in most manufacturing industries.42

Moreover, the productivity gain of American workers is accelerating. The U.S. Department of Labor recently reported that American workers posted their biggest productivity gain in two decades in 1992.43

No wonder that the scholars, the writers and the thinkers are now attributing the great difficulty America has had competing in the world to the inadequacy of the management of American companies, corporate management. Over and over again the critics are pointing to the fact that American management, compared to Japanese management, is paid many times over what Japanese management is paid. As the Wall Street Journal had occasion to comment, in terms of level of compensation of chief executives, "Americans are a breed apart."44 The Journal cites a survey by a New York firm that are international consultants on compensation. The survey showed "that

42. America the Super-Fit, THE ECONOMIST, Feb. 13, 1993 at 67. A practical confirmation of the article about relative worker efficiency in manufacturing is found in an announcement of the German automaker, Mercedes Benz, that it will build its next plant in the United States. The corporation, in announcing its decision, cited superior American productivity — American workers can put together a vehicle in about twenty-five hours, compared with thirty hours for German workers. Illinois Woos Mercedes Benz, Chi. Trib., Apr. 10, 1993, § 2, at 1.
it's primarily U.S. Chief executive pay that's out of whack.' And Japanese management has proven so much abler in terms of production and quality and all the other things that go into successful management.

VI. CONSTRUCTIVE COLLECTIVE BARGAINING FOR THE 90s

Restoration of a protected right to the job after the strike is settled is essential to the preservation and the flowering of the collective bargaining system in the United States. The former chairman of the FDIC made a study recently of companies that had maintained their competitive edge in the world. He found that virtually all of them had implemented substantial labor management ways of empowering workers, giving them an increasing sense of power and participation.46

A commendable example of what the 90's may hold in store is found in General Motors and the United Automobile Workers ("UAW"). When General Motors decided to go into the Saturn program, it resolved in the very beginning to work intimately and closely with the UAW. The company set up a committee that included UAW representatives. GM decided that every aspect of the Saturn would be approved jointly by the committee, including plant location, plant construction, machinery in the plant, the processes of production, and it even included, believe it or not, pricing and marketing of the Saturn.

In other words, General Motors invited the UAW to participate in every aspect of creating the Saturn. It will come as no surprise to those of you who read the newspapers that one of the few glowing successes in the domestic auto industry — and GM's brightest achievement today — is the Saturn program. It is a program in which workers participated wholeheartedly, gave their hearts and souls, and the best of their experience, minds and abilities to market a car that would be successful in competing with foreign imports, and that would be the best car that GM could make.47

45. Id.
47. An attempt by dissidents to defeat Mike Bennett, the president of the UAW Saturn local at Spring Hill, Tennessee, in his local union reelection bid on April 2, 1993 was soundly rejected by the membership of the Local. Bennett led the successful
Contrast this with the rancor and bitterness in the labor-management relationship that is the inevitable result of the hiring of permanent strike replacements. The direct and the subtle costs to management are enormous. In terms of quality production, there is no substitute for a workforce with high standards and a desire to do everything it can to produce a perfect product. "You can buy a dog, but you can't buy the wag of its tail," an old saying goes. An employer whose work force simply performs the work as assigned by the supervisor is missing out on the extraordinary efforts that motivated workers can produce to enhance product quality and quantity.

"By 'working to rule,' workers denied employers the ingenuity, effort and knowledge that their bosses, often quite unknowingly, took for granted," observed a writer for the Chicago Tribune recently. "Productivity and quality improve because workers are constantly involved in trying to prevent defects." The Mackay doctrine works at cross purposes to establishing the stable and enduring labor-

48. The UAW's associate general counsel, Leonard Page, had these comments on the return of UAW strikers at Caterpillar:

I understand that some observers see the UAW's suspension of the strike last April as a surrender or retreat. My answer is, to quote General Oliver Smith . . . reflecting on [his Marine Division's] famous 1950 march from the Chosin Reservoir in North Korea in back to the eastern seacoast:

"Retreat, Hell! We're just attacking in another direction."

Page, supra note 20, at 16.

49. Moberg, supra note 35, at 1. To the same effect, see Bill Casstevens, UAW vs. Caterpillar—The Battle Continues, WALL ST. J., Apr. 22, 1993, at A15 (Mr. Casstevens is the Secretary-Treasurer of the UAW, head of its Agricultural Implement Department and Chief Negotiator for the UAW in the Caterpillar dispute. Casstevens stated, "[inside Caterpillar plants, our "work-to-rule" strategy is denying the company the extra effort and ingenuity that only a well-motivated workforce can provide. . . .") Id.

50. Roy Marshall, Employee Rights in a Changing Economy 126 (——).
management relationships that are essential if we are to remain competitive."51

CONCLUSION

There was a time when labor and management in the U.S. were characteristically at each other's throat. For a number of years now there has been increasing recognition of the wisdom of old Benjamin Franklin — that if you don’t hang together, you will hang separately.

Our management is improving but the working people in the American scene are doing their share too, and unions want to do their share to help. Unions have come to a recognition that it is very important that they get increasingly involved in the process of helping America compete in the world. Workers have to be recognized by management and they have to have an independent source of strength. Unions can be vital in organizing a plan to have independent worker cooperation, so workers get fully involved in cooperating with management in order to have a more efficient productive process.

If a union is totally captive of a company, there will be nobody sitting there holding management accountable. There has to be somebody in that plant who is not dependent on local management. And that’s not only from the point of view of the workers, that’s also from the point of view of producing an efficient and excellent product for that company.

In terms of the ’90’s that is where it is. Job protection for workers who go on strike is going to be at the very top of the political agenda for unions, and participation, meaningfully and constructively and fully, of unions and union members with management to try to make American industry more competitive and more able is the way of the future.