U.S. employment relations

Employment Relations in the United States: Law, Policy, and Practice. By Raymond Hogler. Thousand Oaks, CA, Sage Publications, 2004. 312 pp., $84.95/hardcover; $42.95/paperback.

Much of the history of employment relations in the United States has been one of conflicts between workers and their employers in the manufacturing, mining, and railroad industries. Workers have been by and large represented by unions, seeking to enforce their demands for higher wages and shorter hours by strikes and slowdowns when negotiations failed. Employers resisted those demands by lockouts, firings, or with the aid of court injunctions (in the 1920s alone, as many as 2,130 injunctions were issued—a reason for passage of the Norris-LaGuardia Act in 1932). The abiding need of workers for being represented and acting collectively was evidenced, however, by numerous strikes for union recognition in the late 19th and early 20th centuries—and by the vast numbers of them joining unions when the National Labor Relations (Wagner) Act of 1935 recognized their right to organize and bargain collectively. (The Railway Labor Act, 1926, the first Federal law that recognized collective bargaining, was of much narrower scope.) The author of this book terms the half century that ended with the inception of President Roosevelt's New Deal, "The Era of Management."

That era was marked by great—at times, dramatic and violent—strikes, a few of which Hogler singles out for more detailed analysis of what they tell of the relations, often deeply hostile, between employers and workers. He looks at the causes and outcomes of the Homestead steelworkers strike (1892); the Pullman strike involving railway workers (1894); and the U.S. Steel strike (1919). All these strikes were defeated. The result of the strike against U.S. Steel was not only the continuation of 12-hour workdays and wages below a minimum comfort level for most blue-collar workers, it also "signaled the beginning of an employer offensive against unions that significantly reduced their strength for the remainder of the 1920s."

There appear always to have been two tendencies asserting themselves during the modern history of American labor, their strength fluctuating over time: the one, with workers and their leadership organizing on an industry-wide basis, with no distinction made in membership selection between the skilled and unskilled. The other—represented by the American Federation of Labor (AFL), under the leadership of Samuel Gompers and his successors—allowed only persons in the skilled trades to become members. It was not until the mid-1930s when John L. Lewis, the mineworkers' leader, formed with other union leaders the Congress of Industrial Organizations (CIO). (The AFL and CIO merged in 1955.)

The outstanding early example of an industrial union was the Knights of Labor, which at its peak in the late 1880s counted some 730,000 members. Internal political conflicts and the perhaps overly cautious leadership of Terrence Powderly contributed to its eventual demise in the 1890s. Hogler believes that the Knights "was an impressive organization…(T)he preoccupations of the Knights regarding workers and their role in industrial capitalism are far from resolved, as is the relationship between labor and the U.S. political system. The Knights' insistence on citizenship as a moral ideal…and on democracy as a counterweight to capitalist power remains worthy of consideration."

In contrast to the orientation of the Knights, the AFL (that is, Gompers) strove for an accommodation with the corporations, believing that employers would tolerate unionism if it was limited to the skilled trades, would reject militancy, and be reasonable in its demands. Whatever the results of this reasoning, it did not shield AFL unions against continued hostile judicial interpretations of, for example, antitrust legislation such as the Clayton Act (1914), which stipulated that "the labor of a human being is not a commodity or an article or commerce." Other sections of the Act were not construed by the courts in harmony with that dictum.

Notwithstanding the defeats of labor outlined, and management's resistance to recognizing or negotiating with the unions, their membership grew from slightly more than half a million to just less than 4.4 million between 1897 and 1921, covering more than 17 percent of nonagricultural employees in the latter year. By the end of the 1920s, however, that percentage had shrunk to only about 4 percent.

"Labor law played a central role in the development of employment relations during the late 19th and early 20th centuries," Hogler writes. The index to his book lists more than 40 court cases cited or discussed by him.

Among the more important rules, presumably based on common law, and sanctioned by the courts in a number of decisions, was "employment at will." The Supreme Court of Tennessee, for example, held that an employer could fire a worker for any cause or even without cause; the worker could likewise quit his job freely. Dissenting judges, however, argued that corporations—"large aggregations of capital"—did not stand on a footing of equality, and that the power to dismiss "should be restrained within legitimate boundaries." Yet, the employment-at-will doctrine remained, according to one legal historian quoted by Hogler, the "ultimate guarantor of the capitalist's authority over the worker." The unions were fought by business in large measure because they would erect, or attempt to erect, boundaries to such authority. To the extent they could curb dismissals without good cause or safeguard job security by such devices as seniority rights, they were successful. However, the prerogatives or rights of

management continue to reflect an imbalance of power: such power includes the right "to discipline and discharge the worker, set work standards, assign work, determine the size of the workforce, and control methods of operation." A collective bargaining contract may to an extent modify these management rights, but this would depend on management's willingness to accede.

Business opposed the Wagner Act from its inception; between 1937 and 1947 more than 200 bills dealing with labor law were introduced in Congress. While union membership grew rapidly during World War II, unions embarked upon a series of big and partly crippling strikes after the War ended, changing political attitudes toward them. In 1947, the Labor-Management Relations (Taft-Hartley) Act was passed by Congress (over President Truman's veto), its provisions being clearly "antiunion in nature." The Act made the closed shop illegal (it had been a condition of union membership and of hiring a worker by an organized firm); it did permit union security agreements between an employer and a union, but this was not to be effective until 30 days after an employee had begun work. States were permitted to forbid union security arrangements; as of 2004, 22 States featured "right-to-work" laws where employees could decline membership in a union. The provision placed great obstacles in organized labor's expansion into industries in the South and Southwest, where most of the "right-to-work" laws were adopted. Taft-Hartley represented a severe political defeat for the American labor movement. Yet, over the three decades following its passage, labor scored significant gains in real wages and such fringe benefits as health insurance, pensions, paid vacations, and sick leave. Fogler, following various other observers, terms the era one of "Labor Accord," during which union-management relations experienced "maturation." But it was hardly a period of industrial peace. As the labor historian Nelson Lichtenstein points out in his *State of the Union*, during the 1950s there occurred on average 352 big work stoppages annually, and 285 a year throughout the 1960s and 1970s. During the 1980s, a time when the "Accord" was fraying, the annual average dropped to 83, and less during the 1990s.

Over the last mentioned two decades and after, adverse developments progressively weakened the labor movement in an environment increasingly hostile to them. Hogler writes that "One of the most obvious features of the new environment was the rapid growth of employer antiunion strategies. A number of studies argue that the single most important factor in union decline in the 1980s was employer hostility to the unions." Among other factors weakening labor were the deregulation of trucking, airlines, and railroads in the late 1970s, which resulted in a one-third union membership loss; intensifying global competition, which reduced union membership in the textile industry; a severe recession in the early 1980s causing unemployment not experienced since the Great Depression and spelling heightened competition for jobs, further undermining unions' bargaining power; and high inflation rates, compelling employers to cut costs, thus favoring nonunion labor and outsourcing. By the early 21st century, union density had shrunk to about 13 percent of the nonfarm workforce.

Even as the economic and political weight of unions diminished, important individual rights legislation supervened, embodying the concept of protected classes against whom discrimination in employment was in principle unlawful. The concept derived from characteristics unique to given persons, such as race, gender, age, or disability. Among antidiscrimination laws discussed by Hogler are the Equal Pay Act (1963), which requires equal pay for women performing the same work as men; certain sections of the Civil Rights Act (1964), prohibiting employment discrimination because of race, color, religion, sex, or national origin; and laws against discrimination on account of age and disabilities.

A thoroughly analytical and critical discussion of workplace rights and benefits complements that of laws dealing with antidiscrimination. Among the more prominent workplace rights addressed by Hogler are the Occupational Health and Safety Act (1970); the Employee Retirement and Income Security Act (1976); and coverage of continued health insurance benefits, which, however, is not mandated. Hogler points out that the cost of premiums has been increasingly shifted to employees.

Enforcement of the Occupational Health and Safety Act declined gravely by 1986 as "Deregulation" and the notion to "get the government off the backs of employers and workers" became a norm of Government policy. Business groups and conservative politicians had opposed the legislation from its beginnings. With the decline in enforcement, the "financial incentive for employers to invest in safety and health" likewise waned. Among controversies which standards set by the administrators aroused was one concerning ergonomics, in this case a rule about repetitive motion disorders. The Clinton Administration adopted the recommended standards, but the rule was rescinded by Congress in March 2001. The preferred approach was to focus "on education, information, and cooperation rather than enforcement."

As is his wont with other major topics he covers, Hogler gives a thorough account of the provisions of the Employee Retirement and Income Security Act, as well as a sketch of the history of private pensions. Unions during and immediately after World War II bargained for pensions; employers had an interest in retaining valuable workers by means of pension plans. Under some circumstances, however, for example bankruptcies, workers might lose their pension entitlements. The Act, by which the Pen-

sion Benefit Guaranty Corporation was established, insured against loss of benefits. By 2003, owing to economic distress, the Corporation ran deepening deficits.

The Act covers defined benefit types of pensions; the Corporation insures only these types. Participation in such pensions has declined, while that in defined contribution plans has strongly increased. The risk borne by participants in these plans exposes them to stock market losses. Employers may contribute to the plans that are generally low cost and relatively simple to administer. Yet, considering the risks, the plans may result in "a potential disaster in our retirement system…(T)he issue of adequate pension coverage presents an ongoing social and political problem."

As part of the chapter on worker rights and benefits, Hogler discusses the judicial modification, even the "shredding" of the employment-at-will rule by the end of the 1990s. Until the 1980s, management's prerogative in this regard had been rarely disputed by the courts. He devotes a section to Montana's Wrongful Discharge Act, which in effect, overturns that prerogative, restricting a job-related dismissal to "good cause." More generally, however, wrongful discharge litigation may be very expensive and time consuming for litigants; Hogler suggests other, nonjudicial methods dealing with job security, such as arbitration.

It is a legitimate concern, but it barely touches on the far broader issue of job insecurity, treated with acuity by Hogler elsewhere in his book. "Global competition in labor markets has brought issues of job security to the forefront in the U.S. workplace, and lack of security is one of the hallmarks of the new employment relations described by contemporary analysts," he writes. Past practices of companies that ensured a measure of job security in downturns to white-collar employees can no longer be relied on. A degree of job security may be obtained by means of collective bargaining agreements, but in this era of "the twilight" of collective bargaining, a union may have to make concessions that qualify obligations concerning job security.

Mr. Hogler, a professor of labor relations and human resource management at Colorado State University, presents a superbly written, lucidly argued work. It deserves a wide audience of students as well as experts with a deep interest in today's "labor question."

—Horst Brand

formerly with the
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Workers' compensation essays

Workplace Injuries and Diseases: Prevention and Compensation. By Karen Roberts, John F. Burton, Jr., and Matthew Bodah, eds. Kalamazoo, MI, W.E. Upjohn Institute, 2005, 301 pp., $20/paperback.

This book is a collection of 11 essays dedicated to the memory of Terry Thomason, a prolific workers' compensation scholar. The essays were presented at a conference at the University of Rhode Island in March 2004 where Terry was director of the Labor Research Center from 1999 until his untimely death at the young age of 51.

Overall, the essays are well-written and reflect Thomason's effort to improve the practical operation of workers' compensation. The essays also reflect his varied life experience: In addition to his tenure at the University of Rhode Island, Thomason taught at McGill University in Toronto and was supervisor of personnel at the Newport News Shipbuilding and Dry Dock Company.

The opening essay, a reprinted article by Thomason on the economic incentives of workers compensation, sets the tone for the book that economic incentives matter for both firms and workers. Four essays follow on the adequacy of benefits, the appeals system, and performance measurement for workers' compensation. An essay discussing workers' compensation from the perspective of the insurance industry underscores the strength of this volume—while most books in the field tend to be written for the specialist, this volume successfully presents workers' compensation through multiple lenses in easily accessible language.

An essay on Canadian workers' compensation provides an interesting contrast with the American system. Would federalization of workers' compensation be more efficacious than the current State-run programs? An essay on the Federal Black Lung Program suggests potential pitfalls in federalization. The book ends with an optimistic account of Rhode Island's new workers' compensation program based on trust and cooperative decisionmaking. But it is unclear how much of this success is due to the grand vision of a few individuals and whether this success could be duplicated.

A strength of this book is its panoramic survey of the literature. Taken together, the essays present a comprehensive assessment of workers' compensation. Scholars will find fruitful suggestions for research, and practitioners will benefit from an abundant discussion of everyday issues.

The authors are refreshingly candid in discussing the limits of our knowledge of workers' compensation, while at the same time, suggesting how to fill the gap. One example is the widely held assumption that premiums provide an incentive for the firm to improve safety does not stand up to empirical testing. As Karen Roberts notes, "the extent to which improved safety can be attributed to employers responding to the economic incentives from prices has not been established." More research, primarily through direct survey, is needed to understand how (and if) the firm responds to incentives.

Given the current emphasis on cost reduction rather than increasing benefits, the role of labor unions in workers' compensation should have been discussed at greater length. Do labor unions facilitate an individual's filing of an initial claim? If so, should this be a public policy concern given the decline in unionization?

Overall, this book contributes to the literature and will become a useful reference for scholars wishing to improve workers' compensation within its existing framework. At the same time, the book fails to look beyond this framework, largely intact from almost a century ago, to question its efficacy in the light of the changing nature of work; the longer gestation of injuries; and the changing definition of disability itself. Douglas Hyatt, in his essay, acknowledges that "workers' compensation legislation and policy have lagged behind the evolution of work and work-related injuries. To a large extent, the statutory language and legal doctrines . . . are remnants of the early 20th century." This important point, however, should have been central to this volume rather than proffered as an ancillary observation.

Perhaps a future conference could address this issue and, in addition, document the progress made on this volume's myriad research suggestions…a most fitting tribute to the long-term legacy of Terry Thomason.

—Jack Reardon
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