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A CONTRASTING VIEW OF THE EFFECT OF FOREIGN COMPETITION ON LABOR UNIONISM IN THE UNITED STATES

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I. INTRODUCTION

In their article, Lynd and Lynd argue that unions are increasingly unable to protect the jobs and fringe benefits of active and retired workers. This reduction in bargaining power is said to result from overseas competition. The authors then assert that current federal law has not provided adequate protection to workers who have suffered a reduction or termination of benefits. To ameliorate these effects, several recommendations are made. Two recommendations are of a policy nature: national health insurance and publicly funded retirement income guarantees. A third involves a suggestion that the union movement should be rebuilt (from below) through grass-roots activity. The authors finally recommend that the concerns of retired employees be given greater priority in negotiations.

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While we agree with Lynd and Lynd on the unfortunate human costs of the problems they describe, we sharply differ on the fundamental causes which challenge the security of benefits and, therefore, with the remedies proposed.

II. Benefit and Employment Security

There have been abuses of benefit programs and many workers have been unfairly deprived of pensions and health care. Such abuses are the very reason why protective legislation was passed. To conclude, as do the authors, that this legislation has "dramatically failed" is unwarranted and is, in part, belied by the very stories the authors tell. For example, the authors first recount the story of LTV retirees. At the time LTV filed for Chapter 11 protection, there was nothing in the Bankruptcy Code to prohibit LTV from directing its insurance company to stop paying benefits. The mere fact that the retirees had to apply political and legal pressure to effect a change in the Code and insure the preservation of their benefits is certainly no indication that the system has failed. Furthermore, to draw the conclusion (from the LTV episode) that the answer is national health insurance is, at best, mysterious. The law now insures that retirees' medical benefits may not be terminated by a company declaring Chapter 11. In the face of such protective legislation, it is difficult to understand the point of the proposed remedy.

Little additional support for their conclusions is afforded by the case of "GF". GF was a furniture manufacturer which declared Chapter 11. Contrary to the terms of section 1114 of the Bankruptcy Code, the company terminated its insurance programs. Initially, the Bankruptcy Court entered an order which required the debtor to pay retiree's benefits in a timely manner. When a creditors' committee sought to convert the case to a Chapter 7 (thus rendering inapplicable the protections of section 1114), the parties negotiated a compromise which partially provided for the payment of claims. As the authors must admit, it is premature to draw any lasting conclusions from the GF case as the issues therein are currently on appeal. The case simply offers no final evidence from which we can determine the alleged failure of the current legislation. At most, the episode may reflect the fact that laws are not always self-executing and that a vigorous prosecution of one's case is often required to achieve compliance.

Notwithstanding the foregoing comments, the authors correctly point to a root cause of the problems facing troubled firms in paying medical benefits. Presently, benefits are paid by a firm out of current income even though the obligation to pay accrued years before. If a firm experiences financial difficulties, there is no safety net (governmental or otherwise).

In response to this problem, the Financial Accounting Standards Board (FASB) has recently issued a new ruling which is instructive.[1] Statement 106 (to be effective in fiscal years beginning 12-15-92) would require employers to use an accrual method of accounting for post-retirement benefits. In effect, the FASB has implicitly recognized the importance of accounting currently for obligations which will only be due subsequently. In all fairness, however, the ultimate effect of the FASB Statement is unclear. On the one hand, it would cause companies to better appreciate and plan for obligations to retirees. Conversely, it has been suggested that the new accounting standard may well incline firms to discontinue some benefits altogether.

In any event, it is undeniable that some companies have failed to plan for the future with respect to health benefits (thus putting in jeopardy retirees' benefits). When a firm declares Chapter 7 and elects to "throw in the towel," little protection is provided by the Bankruptcy Code. It may be appropriate for Congress to enact a safety net for retirees' health benefits using a scheme similar to the one found in the Pension Benefits Guaranty Corporation (PBGC). However, to suggest that the experiences of a minority of workers in a depressed economy leads directly and unequivocally to the conclusion that we need a national health insurance plan is not logical.

Notwithstanding the foregoing, we maintain that, in the long-run, the adequacy of health care, security of pensions, and job se-

1. Statement of Financial Accounting Standards, number 106, Financial Accounting Standards Board, December 1990.

curity of U.S. workers cannot be guaranteed by collective bargaining or legislation. Instead, we argue that future jobs, pensions, and health care benefits depend on the economic vitality of employers which is determined, in part, by the regulatory environment in which companies operate and the productivity of their workers.

To the extent that U.S. workers lack the skills of their foreign counterparts, work with obsolete equipment, and are managed ineffectively, the products that their employers produce will not be competitively priced. Lynd and Lynd make a compelling case from examples in the steel industry about the need to protect employees from deprivation of earned pensions. However, the industry in which these events have taken place also provides a compelling example of how Lynd and Lynd's suggestions represent solutions better suited to the past than to the global economy of the present and future.

III. THE STEEL EXPERIENCE

Blame for the decline of the steel industry rests with several parties. Collectively, the interaction of management, unions, and governmental officials produced the conditions for its demise.[2] Several of the actions and policies of these parties are relevant to the present discussion. The industry was highly unionized and unions were able to obtain higher wages for workers because employers were not placed at a competitive disadvantage by higher wages. To a certain extent, wages were taken out of competition. As long as all steel producers tended to pay the same high wages, no one employer was at a disadvantage to other producers as a result of paying higher wages. Further, tariffs provided some protection against imported steel. Steel producers had a near-monopoly and passed on the cost of higher wages in the form of higher prices, termed by some economists as a condition of administered prices. Such pricing policies and resultant governmental restraints limited capital for investment in more productive plants and equipment.[3]

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2. PAUL A. TIFFANY, THE DECLINE OF AMERICAN STEEL: HOW MANAGEMENT, LABOR, AND GOVERNMENT WENT WRONG (1988).

3. *Id.*

Eventually, Steel companies found that the overall demand for steel was not price inelastic and strikes resulted as employers resisted wage demands and substitutes for steel were found. Patterns of negotiations and strikes produced higher costs from carrying excessive inventories as employers built up inventories of steel to draw from during strikes.[4] Eventually, a prolonged strike in 1959 provided foreign inroads into the U.S. steel market.[5] As Tiffany's analysis concluded:

> . . . changing economic conditions forced steel makers to accept a more competitive posture than had hitherto [before 1959] existed. Substitute materials, such as aluminum and prestressed concrete, were eroding traditional steel markets, and foreign competition was growing. As a result, higher costs could not be passed on blithely to consumers.[6]

Ultimately, foreign competitors gained even larger shares of the market with modern, more productive equipment that enabled them to produce steel at much lower prices. (We acknowledge that foreign producers may also have achieved advantages over U.S. producers through illegal and unfair pricing practices.[7])

Yet, because of a fundamental lack of price competitiveness of many U.S. steel producers, these companies could not generate revenues from steel operations to provide for the jobs, pensions, health care, and benefits at issue, regardless of the legal environment. There were several major causes of decline in the industry, such as the strong dollar, unfair foreign trade practices, poor investment decisions by management, and massive increases in the number of imported automobiles, which are made of steel.[8] High wages prob-

4. I. W. Abel, *Steel: Experiment in Bargaining*, THE AMERICAN FEDERATIONIST, Vol. 80, No. 7 (July, 1973), 1-6. Joseph P. Goldberg, *Bargaining and Productivity in the Private Sector*, in Gerald Somers, Arvid Anderson, Malcome Denise, Leonard Sayles, eds. *Collective Bargaining and Productivity*, Madison: Industrial Relations Research Association, 1975, 15-43. NATIONAL RESEARCH COUNCIL, THE COMPETITIVE STATUS OF THE U.S. STEEL INDUSTRY (1985).

5. I. W. Abel, *Steel: Experiment in Bargaining*, THE AMERICAN FEDERATIONIST, Vol. 80., No. 7 (July, 1973), 1-6. HENRY PELLING, AMERICAN LABOR (1960).

6. PAUL A. TIFFANY, THE DECLINE OF AMERICAN STEEL: HOW MANAGEMENT, LABOR AND GOVERNMENT WENT WRONG, 167 (1988).

7. NATIONAL RESEARCH COUNCIL, THE COMPETITIVE STATUS OF THE U.S. STEEL INDUSTRY (1985).

8. DONALD F. BARNETT & ROBERT W. CRANDALL, UP FROM THE ASHES: THE RISE OF THE STEEL MINIMILL IN THE UNITED STATES (1986). ALBERT REES, THE ECONOMICS OF TRADE UNIONS, (3rd ed.), (1989); NATIONAL RESEARCH COUNCIL, THE COMPETITIVE STATUS OF THE U.S. STEEL INDUSTRY (1985).

ably contributed to the decline in steel industry employment from over one million in 1975 to less than 500,000 in 1983.[9] The resultant loss of jobs and related impacts are the cause of the hardships described by Lynd and Lynd. Nonetheless, since the early to mid-1980's, steel companies have increased their productivity by closing less productive plants, cutting costs, and making capital improvements.[10] Although there are hardships associated with such remedies for the industry's ills, without these productivity enhancements even greater hardships would result.

IV. STEEL MINIMILL SUCCESSES

Not all steel producers have fared poorly under the same adverse circumstances; the minimills have been successful.[11] The case of Chaparral Steel provides an example of a productive environment that can provide for high worker compensation and job security in the current and future environment. Chaparral, in Midlothian, Texas, is reputed to be one of the world's lowest cost producers of steel. With fewer than 1,000 employees, state of the art production facilities, and effective management, the Chaparral minimill produces one and one-half million tons of steel per year from scrap.[12] This constitutes approximately one and one half percent of U.S. domestic steel production.[13] Chaparral's employees are highly paid, nonunion, cross-trained, and flexible in their work assignments. In fact, there are only two job classifications in production operations instead of the much larger number typically found.[14] Other minimills also have high productivity and have thrived despite a reduced demand for steel by adopting advanced technology, by maintaining flexibility in

9. ALBERT REES, THE ECONOMICS OF TRADE UNIONS (3rd ed.), (1989).

10. DANIEL J. MITCHELL, HUMAN RESOURCE MANAGEMENT: AN ECONOMIC APPROACH (1989). John Rutledge & Deborah Allen, RUST TO RICHES (1989).

11. DONALD F. BARNETT & ROBERT W. CRANDALL, UP FROM THE ASHES: THE RISE OF THE STEEL MINIMILL IN THE UNITED STATES (1986).

12. Forward, *Wide-open Management at Chaparral Steel*, 64 HARV. BUS. REV. 96-102 (May-June, 1986), Personal conversations between one of the authors and Chaparral officials.

13. United States steel production in 1988 was 99.9 million tons. UNITED STATES BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1990, 110th ed. (1990).

14. Forward, *Wide-open Management at Chaparral Steel*, 64 HARV. BUS. REV., 96-102 (May-June, 1986); Personal conversations between one of the authors and Chaparral officials.

management and work rules, and by operating without rigid union contracts.[15]

The fact that cheaper products of comparable or better quality are available from foreign producers and that U.S. consumers choose to buy them is not a result of an "assault from overseas." Instead, it is related in some instances to a lack of U.S. competitiveness. The minimills have succeeded under these conditions.

> Import restrictions have raised U.S. steel prices further reducing consumption of steel from its already depressed level. However, the restrictive import policies have not inhibited expansion of the minimill sector. In fact, the higher domestic prices of steel products have probably served to accelerate the entry of these newer entrepreneurial companies. In turn, this new entry and declining consumption growth have accelerated the rate at which the large integrated companies have had to close their noncompetitive facilities.[16]

V. Entitlement Philosophy

Lynd and Lynd's arguments lose their persuasiveness when they appear to go beyond the inequities of the loss of earned pensions and into an entitlement philosophy. Workers often view benefits as entitlements; that the employer "owes" its workers such benefits. U.S. workers are not more "entitled" to higher wages, more secure pensions, or better health care coverage than workers in other countries. However, like all workers, they are entitled to a standard of living consistent with their productivity. High productivity enables workers to achieve higher wages and employers to achieve higher earnings. These increased earnings, in turn, enable employers to provide better pension funding and health care coverage and help to keep capital from flowing overseas. Unfortunately, in some U.S. industries, the productivity advantages of the past — which produced superior wages and benefits — have disappeared.[17]

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15. Donald F. Barnett & Robert W. Crandall, Up from the Ashes: The Rise of the Steel Minimill in the United States, (1986).
16. Donald F. Barnett & Robert W. Crandall, Up from the Ashes: The Rise of the Steel Minimill in the United States, Washington, 114 (1986).
17. John Hoerr, *Sharpening Minds for a Competitive Edge*, Business Week, December 17, 1990 at 72-78.

VI. UNANTICIPATED CONSEQUENCES OF REGULATING BENEFITS

Some are eager to impose regulations on the benefits that employers offer or would require that employers offer expanded benefits. Benefits pose a problem for employers. With a greater proportion of compensation being paid out in the form of benefits, even larger amounts of the compensation dollar are going to an area which is unrelated to the individual's performance. That is, benefits are generally paid across the board, not varying in amount according to one's performance. For example, superior performers do not receive increased health care benefits relative to marginal performers. Thus benefits are insulated from performance levels as long as performance is adequate enough to avoid termination or lay-offs.

With greater regulation of pensions and health insurance, there may be potential for unanticipated consequences. Those who would increase the regulations under which employee relations are conducted sometimes appear to forget that employers are *not* required to provide pensions or health care benefits. In fact, one partial consequence of the Employee Retirement Insurance Act (ERISA) was the termination of over 13,000 pension plans within the first two years of the Act's passage.[18] (We acknowledge that some of these discontinued programs may have been unsound).

The impetus for the proliferation of benefits should also be understood in order to evaluate some of Lynd and Lynd's arguments. Some of the reasons why employers offer the extent of benefits which they do today may be unrelated to their inherent compensation value. Instead, there has been a proliferation, since World War II, of benefits because of their historical usage in circumventing wage controls.[19] They also have value to employees by shielding income from taxes. Benefits are attractive to unions because they enable negotiators to obtain employer "concessions" in the form of benefits which cannot be quantified in economic terms by the typical union member. Benefits also tend to favor more senior union mem-

18. GEORGE T. MILKOVICH & JERRY M. NEWMAN, COMPENSATION (3rd ed.) (1990).

19. VIDA SCARPELLO & JAMES LEDVINKA, PERSONNEL-HUMAN RESOURCE MANAGEMENT: ENVIRONMENT AND FUNCTIONS, Boston (1988).

bers, and are mandatory bargaining issues.[20] Alternatively, employers find them useful in that they value their effect in reducing turnover, and the economies of group purchasing power. Unfortunately, there is little empirical evidence that benefit programs are cost effective.[21] Compounding the problem is the magnitude of benefit costs. Benefits are not at the "fringe" of the costs of production. They commonly constitute substantial proportions of total labor costs averaging 27 percent of total compensation in 1988.[22]

Thus, the long run security of workers' jobs, pensions, and health care may not be served well by some of the reforms suggested by Lynd and Lynd, such as adjusting health care programs and pensions for the effects of inflation. Continuing to look at major employers as the sole supplier of benefits is short sighted. The proportion of U.S. employment accounted for by the *Fortune* 500 companies has actually declined from 18.9 percent in 1970 to 12.2 percent in 1986.[23] Many more workers will work for smaller employers in the future and such employers may not have the economies of scale to offer some benefits.

The Call for a Grass Roots Labor Movement

A grass roots or bottom up rejuvenated labor movement is not likely to be the solution to the lack of competitiveness of U.S. companies. Neither is increased regulation of employers who are struggling to compete with foreign producers. The success stories of the present involving unionized workers are often antithetical to the militancy that Lynd and Lynd appear to advocate. Militancy as opposed to cooperation has played a major role in the problems of the steel industry. Strohmeyer concluded the following:

> I am convinced that the biggest cause for the industry's distress is the internal strife that saps its strength from within. Accordingly, the greatest hope for its recovery rests not on what is happening on the outside but on whether steel

20. DANIEL J. MITCHELL, HUMAN RESOURCE MANAGEMENT: AN ECONOMIC APPROACH, (1989). GEORGE T. MILKOVICH & JERRY M. NEWMAN, COMPENSATION, (3rd ed.) (1990).

21. GEORGE T. MILKOVICH & JERRY M. NEWMAN, COMPENSATION (3rd ed.) (1990).

22. DANIEL J. MITCHELL, HUMAN RESOURCE MANAGEMENT: AN ECONOMIC APPROACH (1989).

23. Belous, *How Human Resource Systems Adjust to the Shift Toward Contingent Workers*, 112 MONTHLY LAB. REV., 7-12 (March 1989).

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management and labor can recognize — and recognize soon — that they have to stop killing each other.[24]

An example of the opposite is provided by the workers at Corning Inc's plant in Blacksburg, Virginia. Corning, Inc. concluded that it could keep production facilities in the U.S. and pay U.S. level wages only if its workers were more productive than foreign workers as a result of having greater skills and flexibility in job assignment. The workers' mastery of expanded skills, high participation in decision making, thin managerial ranks, and the union's willingness to go along with reductions in the number of job classifications from 47 to 4 have provided the flexibility needed to make the plant highly productive.[25]

VII. HEALTH CARE

Until the costs of medical care can be contained, it makes little sense to shift the costs to the government.[26] Lynd and Lynd argue that retired workers are being unfairly deprived from access to group insurance programs. The real implication of their argument is that younger workers would be called upon to subsidize older workers' health care by paying the higher rates that would be associated with their inclusion. There is nothing wrong with such a suggestion but the decision should rest on the real issue, not an "exclusionary" argument. There is simply no free lunch on this issue, there would be redistributional effects with the inclusion of retirees in group plans.

Obviously, health care for retired workers has become a critical issue because of the tremendous increase in costs. One of the major reasons for such increases is that the technology of health care has advanced. In essence, health care benefits have been enhanced by expensive new technology. One view is that perhaps retirees should bear part of the costs of such enhancements unless they are content with the quality of medical care envisioned when they earned medical benefits.

24. John Strohmeyer, CRISIS IN BETHLEHEM: BIG STEEL'S STRUGGLE TO SURVIVE, 216.

25. John Hoerr, *Sharpening Minds for a Competitive Edge*, Business Week, December 17, 1990 at 72-78.

26. JERRY JASINOWSKI & SHARON CANNER, MEETING THE HEALTH CARE CRISIS (1989).

VIII. Other Equity Issues

Lynd and Lynd raise some other issues concerning inequities for retired workers. They observe that collectively-bargained pensions are generally not adjusted for inflation and argue that this provides further evidence of retiree mistreatment and need for reform of the union movement. Lynd and Lynd neglect the fact that inflation does not affect everyone equally. For example, the costs faced by retirees are often dissimilar from those faced by younger workers. If inflation occurs, retired workers are less affected by increasing costs of housing because they often own homes while younger workers face inflated housing markets as potential buyers. While there are redistribution effects of inflation that often adversely affect individuals on fixed incomes, they are not all negative such as in the base of inflated values of the houses owned by retired workers. Likewise, they do not face transportation costs of going to work. Lynd and Lynd also argue that retired workers are not treated equally in the distribution of bankrupt firms' assets. Unfortunately, their arguments neglect the interests of other stakeholders, many of whom are also retirees. For example, the creditors of companies under bankruptcy proceedings may include stockholders such as the pension funds of other workers.

IX. Conclusion

As can be quickly ascertained from the foregoing, the essential distinction between the approach of Lynd and Lynd and the authors hereof lies in the differing view of the appropriate role of government in the affairs of citizens. Lynd and Lynd are committed to the notion that government bears the responsibility of providing those benefits which cannot be offered by an individual's employer. Our approach certainly recognizes the legitimacy of some statutory protection to prevent the more flagrant abuses. In the final analysis, however, only a thriving private sector can ensure any meaningful and affordable level of benefits.