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**Nonunion Employee Representation in North America:  
Diversity, Controversy, and Uncertain Future**

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# Nonunion Employee Representation in North America: Diversity, Controversy, and Uncertain Future

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## ABSTRACT

*The diverse conceptual perspectives and practical experiences with nonunion employee representation (NER) in the United States and Canada are reviewed. We first propose a 6-dimensional descriptive schema to categorize observed NER practices. Dimensions of diversity include (1) form, (2) function, (3) subjects, (4) representation characteristics, (5) extent of power, and (6) degree of permanence. We then turn to the NER controversy, which is a tangled skein consisting of many different threads of values and prescriptions. To unbundle the controversy, we develop four “faces” of NER – (1) evolutionary voice, (2) unity of interest; (3) union avoidance, and (4) complementary voice -- so that future research can more consciously test the validity of competing perspectives with hard data. Generalizing about NER is problematic because of these many dimensions of diversity, and because NER is viewed through different ideological and conceptual lenses. We conclude that NER’s future trajectory is uncertain due to conflicting trends but in the short-run is most likely to remain a modest-sized phenomenon.*

## INTRODUCTION

In the last decade the topic of collective employee representation in nonunion firms has broken the surface in North American<sup>1</sup> industrial relations (IR). For half a century, it was almost completely ignored in Canada and relegated to a modest number of critical studies in American labour history. The situation reflected a widespread consensus in the IR academic communities of both countries (e.g., Bernstein, 1960; Gitelman, 1988) that nonunion employee representation plans (aka, “company unions”) were largely employer-promulgated shams operated for socially retrograde purposes of union avoidance and worker cooptation.

Beginning largely in the mid-1990s, we and several other scholars (e.g., Nelson 1993;

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<sup>1</sup> Apologies to Mexico. In this article North America is meant to describe only the US and Canada.

Fairris, 1997) decided to take a fresh look at the performance of nonunion employee representation (NER) in North America in both its historical and contemporary settings. On our part, this effort was spurred by two major developments. The first was the long-term decline in the traditional form of employee voice brought on by the substantial erosion of private sector union density, particularly in the United States (from 35 percent in 1950 to 8 percent in 2005). The second was the concomitant emergence and growth of a substantial “participation/representation gap” in the workforce (Freeman and Rogers, 1999). We thought these trends suggested the need for alternative forms of employee voice and one candidate worthy of exploration was collective representation in nonunion settings.

It is fair to say that our initial foray into NER was greeted by many of our fellow IR academics with reactions ranging from skepticism to hostility.<sup>2</sup> Had we crossed over to the dark side? The answer is No, at least if one has an open mind, and a decade later there has emerged a discernible mellowing of attitudes and a groundswell of interest in NER. Yet, at the same time, few subjects in North American industrial relations remain as controversial, divisive, murky, and freighted with passion. Why is this?

In this article we explore these matters and attempt to offer some reconciliation, or at least greater understanding. In particular, our thesis has three parts. First, we maintain that NER is a far more diverse and complex institution than the stereotypical “company union.” In particular, we argue in Section II that NER varies along six distinct dimensions: form, function,

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<sup>2</sup> In 1996, a major US scholar turned his back on Taras after learning only that her research topic involved collective representation for nonunion workers. He said, “If I were your PhD supervisor, I would not have allowed you to study such a topic.” At about that time, US arbitrators who accepted NER (“employer promulgated arbitration”) cases were labeled “rats, leaving a sinking ship” by union supporters at a National Academy of Arbitrators conference. At an Industrial Relations Research Association (IRRA) conference the NER agenda (Taras 1998) was attacked: “It is an unseemly and dangerous topic,” said a scholar, “You shouldn’t go there.” At an IRRA panel session organized by Kaufman featuring a presentation by Delta Air Lines managers and employees on the company’s NER system, a member of the AFL-CIO surreptitiously taped the session and some audience members took a hostile attitude toward the event. The officers of the University and College Labor Education Association in the US withdrew the group’s sponsorship of the Second Innovative Teaching in Human Resources and Industrial Relations conference (1988), organized by Kaufman, because of his advocacy of a more liberal legal treatment of NER.

topics, representational mode, extent of power, and degree of permanence. Second, we also maintain that whether one reaches a favourable or negative verdict on NER depends crucially on the interpretive “frame of reference” used to evaluate NER. To develop this argument, in Section III we advance a “four faces” typology that individually and collectively represent the various purposes and effects of NER. Third, and finally, in Section IV we also suggest that the future of NER is uncertain and its incidence is likely to remain modest-scale – at least in its full-blown enterprise form – due to a welter of conflicting and offsetting benefits and costs. All of these points are developed through a review of historical and contemporary NER studies, limited largely to the experience of Canada and the US but, hopefully, with insight and relevance for NER in Europe and Australasia

## **NER IN NORTH AMERICA**

*Definition:* NER may be generically defined as: one or more employees who act in an agency function for other employees in dealings with management over issues of mutual concern, including the terms and conditions under which people work. Selected workers’ representatives meet with managers, usually in committee-type structures in which communication and exchange of thoughts is fostered. Representatives usually are internal to the company and serve leadership roles for limited terms. NER is based on a *quid pro quo* between managers and workers. In setting up such plans, management expects that the plans will encourage cooperative, advisory, and consultative modes of interaction so that friction points between management and employees can be lessened or eliminated. In taking on a representational function, workers expect that NER will provide a meaningful forum for employee voice, a capacity to influence managerial decision-making, and recognition by managers that workers have a right to respectful treatment.

Pateman’s (1970) distinction between direct and indirect forms of employee participation

draws a useful line between forms of employee engagement that we consider to be NER versus those outside our ambit. Direct participation is one-on-one, face-to-face interaction between employees and their management counterparts; indirect participation is where the views and concerns of a body of employees are communicated to management by one or more employees selected to represent or act in an agency function for the larger group. Direct forms of participation tend to be small-scale and decentralized, such as quality circles and self-managed work teams. Exceptions occur, however, as with company-wide “town hall” meetings. In either case, they lack a representational function and thus are not a form of NER. Indirect forms of participation, of which NER is the typical form, can also be small-scale and decentralized, such as a safety committee or peer review panel, but can also be company-wide or even industry-wide. Examples of the latter include plant-wide joint councils, employee professional associations, and trade unions.

*Institutional Context:* NER was historically, and continues to be today, an important element in North American industrial relations. Unlike the pre-World War II era, however, systematic information on the prevalence and form of NER is largely absent. In the 1920s and 1930s NER covered several million workers and in some years had nearly the same density as trade unions. For this reason the Canadian and American governments, along with groups such as the National Industrial Conference Board, were intensely interested in NER and gathered extensive data on it.<sup>3</sup> These data, supplemented with case study evidence, have over the past half-century provided the basis for numerous excellent scholarly studies on the early performance of NER in Canadian and American industry (Ozanne 1967; Jacoby 1997; Nelson 1988; Gitelman 1988; Brody 1960; Gray and Gullett 1973; Grenier 1988, Cohen 1990; Chase

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<sup>3</sup> The Canadian Department of Labour reviewed “joint councils” in 1921, and published in-depth examinations of various company plans in *Labour Gazette*. Authoritative American studies were undertaken by the National Industrial Conference Board in 1919, 1922 and 1933. The US Department of Labor commissioned a review of “company unions”, sending out 43,000 questionnaires and employing staff to visit 125 firms (US BLS 1937).

1947).

After World War II, however, NER largely faded from sight in both countries. The reason has to do with both the shift in legal treatment of NER in the United States and the widespread organization of industry by trade unions. As unionism swept across the mass production industries in the 1930s-to-1950s, NER was displaced and overshadowed by independent collective bargaining and scholars and government agencies lost interest in it. Regarding the law, the complexities of the two countries' legal treatment of NER are covered in considerable depth elsewhere (e.g., the introductory chapter in Kaufman and Taras 2000a; Kaufman 1999, LeRoy 1999, Maryott, 1997). Suffice it here to say that in the US the 1935 *Wagner Act* (*National Labor Relations Act - NLRA*) largely banned NER as a reaction against the real and alleged abuses and shortcomings of "company unions" during the early New Deal period. Although a decade later Canada also adopted most of the Wagner Act model, it did not follow the US and ban NER (Taras 1997a, 2006). A variety of reasons explain this discrepancy, but one worth noting is that at the time (the early 1940s) the Canadian prime minister was William Lyon Mackenzie King who in the late 1910s had played an instrumental role in promulgating NER plans in both countries (Kaufman, 2003a, Taras, 2000a).

How significant and widespread is NER today? The only data available come from an exploratory 1996 survey on the subject by Lipsetz and Meltz (2000). The survey asked 1,750 adults in the US and 1,495 in Canada a detailed and lengthy set of questions about their workplaces, including several about NER. They found that about twenty percent of nonunion employees in each country worked in an enterprise with some form of collective representation other than an independent union.<sup>4</sup> Fifteen percent of nonunion workers in the US and 14 percent in Canada reported they were covered by this NER system. Compared to union density

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<sup>4</sup> These data should be treated as suggestive estimates until replicated with another nationally representative survey using more extensive and refined questions on forms and incidence of NER.

in the US private sector of 8 percent, these data suggest that more American workers are employed in enterprises with NER than with collective bargaining. (This situation is not true in Canada, given a private sector union density rate of 18 percent.) More than half the American respondents who reported that their companies have NER plans also claim that these plans allow discussion of compensation and benefits issues – a surprising result since this type of interaction is prohibited under American labor law. The figure was only fractionally higher among Canadian respondents where the law permits such discussion.

### **DIVERSITY IN NONUNION EMPLOYEE REPRESENTATION**

North America has no legally prescribed institutional form or procedure for NER. By contrast, in the unionized sector a complex body of statutory rules, agency regulations, and court rulings provide extensive structure for union-management relations. For example, North American unions obtain exclusive bargaining rights once they can demonstrate they have the majority support of appropriate groups of workers. Union-management relations are presumed to be adversarial and as a result there are many rules governing good faith bargaining, specifying unfair labour practices, and regulating industrial disputes. Also providing contrast, the dominant form of NER in Europe, the works council, is likewise embedded in a detailed legal structure.

NER is an umbrella term for an unusually diverse set of forms and practices. There are different dimensions of NER -- forms, functions, topics, representation modes, extent of power, and degree of permanence -- and within each dimension there exists considerable variation.

Exhibit 1 captures the diversity of the NER realm.

<INSERT EXHIBIT 1>

(1) *Forms/Structures*: A glance down the first column of Exhibit 1 shows that there are many ways of providing NER at the workplace. The column starts from the small-scale forms of representation and works down to the more complex types. Some forms are *ad hoc* or informal,

while others are long-standing and quite complex. Most committees or advisory groups operate at the shopfloor or department level, such as a joint safety committee. However, other forms of NER, such as a plant committee or joint industrial council (JIC), cover all departments in a plant or company and often provide access to high-level executives or even the Board of Directors. Also distinctive, while employers most often create NER bodies, in some cases workers take the initiative and create and run these plans. Examples include identity-based groups for women, minorities, gay/lesbian workers (Helfgott, 2000) and employee professional associations (Verma, 2000).

The highest level and most formally structured type of NER, such as a modern-day JIC or 1920s-style employee representation plan, comes closest to mirroring a traditional labour union. These plans tended to be quite formal with elected worker representatives operating under a constitution that sets out the NER systems' forms, functions and procedures. Critics often label this form of NER a "company union," a term that now has clear-cut negative connotations. The origin of these NER plans was in the industrial democracy movement of the 1910s, most famously represented by the "industrial government" plan advocated by John Leitch and the "joint committee" plan pioneered by John D. Rockefeller Jr. and Mackenzie King (King 1918; Leitch, 1919; Rockefeller, 1924; Gitelman 1988; Kaufman, 2000b; MacDowell, 2000; Selekman and Van Kleeck 1924; La Dame 1930). In the 1920s there were nearly two million American workers covered by large-scale NER plans, particularly in Welfare Capitalist companies operating within the Rockefeller orbit. Passage of the *NLRA in 1935* forced most companies to disband their representation plans, or convert them into an independent local union (Jacoby, 2000; Estreicher, 2000). Because the Canadian federal and provincial laws did not incorporate such a ban, JIC-type plans continued to be practiced in Canada and exist today. Prominent Canadian examples are Imperial Oil's JIC and the Royal Canadian Mounted Police's Div-Rep system (Taras, 2000b; MacDougall, 2000). In the US this type of NER plan became

nearly extinct, with a few notable exceptions. One example is in the airline industry (not covered by the NLRA) where several nonunion companies have operated company-wide representation plans. The most publicized case is Delta Air Lines' Board Council and system of departmental forums and councils (Kaufman 2003c, Cone 2000). In the manufacturing sector (covered by the NLRA), the Polaroid Corporation and Donnelly Corporation operated large-scale representation plans into the 1990s until they were forced by rulings of the US National Labor Relations Board (NLRB) to disband them (Commission on the Future of Worker-Management Relations 1994; Leibowitz 1988; Kaufman 1999).

Another notable exception is the Crown Cork and Seal Corporation (National Labor Relations Board, 2001). Its NER system was recently challenged but the NLRB ruled it is legally permissible. The company successfully argued that the various forms of NER were an integral part of its "Socio-Tech" production system and thus bilateral dealings over terms and conditions of employment were incidental to the larger purpose of coordinating production. The employee production teams, for example, deal with a wide variety of workplace issues that involve terms and conditions of employment, such as scheduling training, attendance, safety, and discipline and discharge. A higher-level Organizational Review Board also monitors plant policies to ensure uniformity of application, and may suggest modifications to terms and conditions of employment. In other cases considered by the NLRB these examples of NER typically did not pass legal scrutiny.

The majority of NER forms in column 1 are "management dominated" in the sense that they are created and operated by the employer. As earlier noted, another aspect of diversity is that some forms of NER are initiated by employees. The most important example is the employees' professional/advocacy group. Engineers, doctors and other professionals have a long history of organization based on the collective interests of the occupational group. They gather resources, offer benefits, and provide important services to their members. (See

Verma's 2000 discussion of nonunion nurses). There is a growing use of the Internet to establish employment rights and safeguard employee interests (Diamond and Freeman 2002; Taras and Gesser 2002). The American organization "9 to 5" represents and lobbies on behalf of working women, sometimes at the level of the individual employer. There also are employee groups that represent workers who do not in some jurisdictions have the right to unionize under the law (e.g., lawyers and other professionals, managers, agricultural workers).

(2) *Functions:* Just as NER comes in many different shapes and sizes, so too does it seek to serve a variety of different functions, listed in column 2 of Exhibit 1. One of the most common reasons that firms run NER systems is to improve the communication flow between workers and managers and provide workers with various forms of voice (Dundon, Wilkinson, Marchington, and Ackers, 2004). NER facilitates a two-way flow of communication and information exchange between management and workers. Particularly in large companies NER can help bridge the huge gap that separates top executives from shopfloor workers, ensuring that communication is both more rapid and less filtered and distorted (Basken, 2000; Kaufman, 2003c). A downside of such "skip-level" reporting, however, is that it often causes discomfort for foremen and supervisors who feel left-out or caught in the squeeze. As a result, they often tacitly oppose or actively sabotage NER. Finally, NER also facilitates more personal contact between managers and workers, counteracting the deadening effect of bureaucracy. For these reasons NER is more often adopted in large-size firms (Kaufman and Levine 2000).

Another function of NER is to provide greater workplace justice and more effective dispute resolution. The NER plans of the 1920s, for example, often acted as a grievance system, sometimes culminating in arbitration by a top-level executive. Modern NER plans continue this function, although they rarely utilize third-party arbitrators (McCabe, 1988). Most dispute resolution within NER plans occurs at lower levels of the firm and emphasizes consultation and mediation. Unresolved disputes are passed up the line in a multi-stage

grievance-like procedure, sometimes ending with a senior corporate executive (Ewing 1990) or a joint worker-manager committee (Kaufman, Lewin, and Fossum, 2000). Certain types of NER, such as a peer review panel, can be utilized as part of a nonunion “alternative dispute resolution” (ADR) system, but often the last step in such systems is some form of arbitration (Estreicher, 2004) and here NER often plays little or no role.

A more complex function, especially in the more highly-developed and formal NER systems, is to negotiate for better terms and conditions of work. Both historically and in contemporary practice examples can be found of NER plans that engage in some generic type of "collective bargaining," albeit not fully in the trade union manner. At Bethlehem Steel between 1918 and 1920, minutes of meetings indicated that of the issues raised, 31 percent involved wages, 28 percent involved working conditions, 12 percent involved production methods and 10 percent involved safety (Kaufman, 2000a). JICs, even in their most contemporary operations in 21<sup>st</sup> century Canada, typically have a written constitution and the councils' activities result in formal written contracts that closely resemble collective agreements. At Delta Air Lines, for an American example, flight attendant schedules (hours) are a big subject for the Attendant's Forum, and the Board Council talks to management about wages and benefits. Without the right to strike, however, the negotiations are confined to the NER's sophisticated use of discussion and persuasion (“collective lobbying”) rather than the overt and formal bargaining characteristic of union-management relations.

An interesting case of NER as a “half-way house” between individual bargaining and collective bargaining involves an employee groups recently formed by Wal-Mart workers in central Florida. As is well-known, the company strongly resists unionization. Unable to gain union representation, the workers formed the Wal-Mart Workers Association and use it to provide workplace-related advice and assistance. Although the association stresses it is not a labour union, the company has labeled it “a wolf in sheep's clothing.” (Associated Press, 2005).

As indicated in Table 1, NER also plays a number of other functions besides dealing with traditional terms and conditions of employment, such as improved production efficiency, morale-building, and union avoidance. These functions are discussed in more detail later in the paper, so we move on.

(3) *Topics/Subjects*: The third dimension of NER is the substantive content of decision-making. What are the sets of issues over which NER forums exercise influence? In addition to wages and conditions of work, a wide variety of other subjects are handled by forms of NER, listed in Column 3 of Exhibit 1. These subjects vary according to the type of NER. The decentralized, small-scale forms of NER typically target only one subject, while larger-scale NER may handle a variety. NER forums often discuss the social aspects of work, orientation of new employees, the interpretation of handbooks and manuals, and the rectification of various irritants at the workplace. Dental and extended health care plans are reviewed, pension plans are examined, and suggestions are made for improvements. At the Dofasco company in Canada, there is an employee group charged with joint oversight of the massive pension plans (Harshaw, 2000). Health and safety committees, often mandated by statute in both countries for large employers, are a common form of NER at the workplace.

A particular feature of the US landscape is that the NLRA does not permit discussion of the terms and conditions of employment in NER settings, thus seriously circumscribing the topics that can be considered. The most famous legal case in this regard is *Electromation, Inc.* (Devaney 1994; Raudabaugh 2000). The company had formed joint manager-employee “action” committees to recommend improvements in both production and employment conditions. The NLRB ruled, however, that by discussing terms and conditions of employment the committees had transitioned to “employer-dominated” labour organizations and thus were illegal and had to be disbanded. Critics of this ruling charged that it seriously restricted the ability of employers to foster employee involvement and participation and implement “high

performance” work practices, while proponents argued employers could still pursue these matters as long as they were focused on production and quality (Devaney, 1993; Rundle, 1994; LeRoy, 2000; Kaufman, Lewin, and Fossum, 2000). The case facts also revealed that, perhaps not coincidentally, the action committees appeared at about the same time as the organizers for the Teamsters Union.

In some highly developed plans, the NER forum may be given a broad mandate to consider any relevant workplace issue -- even to the point it conflicts with managers’ preferences or the shareholder’s financial interests. For example, to management’s consternation a JIC at Imperial Oil in the 1960s invited union organizers into the plant to discuss with members the advantages and disadvantages of unionization. Shortly afterward, the plant workers voted for union representation. At Delta Air Lines, the employee Board Council is exploring the option of hiring an independent legal team to represent the interests of the nonunion employees in the bankruptcy proceedings.

*(4) Representation Modes:* Worker representatives come to their jobs in a variety of ways, and the type of representation often is related to the formality and complexity of the NER plan. Exhibit 1, Column 4, identifies a variety of distinctions that can be used to describe the modes of representation. Often representatives are elected by their constituency group to serve a set term in office, usually two years. At the shopfloor level, the election may involve an informal show of hands; in large-size NER plans a secret ballot may be used. In other cases, elections are thought to unduly introduce a divisive political aspect and representatives are instead selected through an intensive interview process before a joint manager-employee committee. In other cases representatives are appointed by management, or chosen by management from nominations provided by employees. In this respect, the degree and form of democratic practice varies widely -- as it does among unions. Also paralleling the union case, not all workers are anxious to participate, to vote, or to become representatives. Apathy often is

a factor.

As most NER is enterprise-based, the representatives come from within the firm's workforce. Representatives often are employees engaged in similar work to the workers they represent. There also are circumstances in which representatives are external to the firm. For example, professional associations may provide agents or experts to help advance their members' interests in interactions with employers (e.g. in disciplinary hearings or in contract negotiations). External worker advocacy groups, often staffed by lawyers, may provide representational services to nonunion workers. Advocacy groups that deal with the injustices faced by immigrants also are active in the NER domain.

*Extent of Power.* The issue of power is one of the most controversial parts of NER. NER forms are designed to function largely in a consultative and advisory capacity. One of the employer's goals is to promote greater harmony and cooperation in the workplace. From this perspective, all forms of collective bargaining are anathema since they introduce an adversarial "we versus them" mentality into employee relations and emphasize "splitting the pie" instead of "growing the pie." For this reason, most forms of NER eschew formal bargaining, forbid selection of worker representatives from outside the enterprise, provide no independent financial resources or outside professional counsel, and forbid the right to strike.

Not unexpectedly, for these reasons critics view NER as fatally flawed because it can voice workers concerns but has no muscle to make the employer listen and act (Freeman and Medoff, 1984; Hiatt and Gold, 2000; Butler, 2004). Critics also allege that NER plans are used to co-opt, manipulate, and create "false consciousness" among the workers (Barenberg, 1993). A common charge, for example, is that NER either "wins" for the employees what the company had already decided to give, or is used to "sell" or "sugar-coat" give-backs to the company. Another line of thought is that companies would never create a NER plan in the first place if it did not in the end promote their interests, presumably at the expense of employees' interests.

Given these (alleged) defects, critics of NER often refer to it as a “sham,” a “toothless dog,” and a “donkey council” (Dunn, 1926; Basken, 2000). These epithets gain a measure of theoretical support from Freeman and Lazear (1995) who demonstrate in a formal model that an employer will deliberately restrict the power of a NER below the socially optimal level in order to prevent the workers from gaining a larger share of the rents from increased cooperation.

But another and more positive side to the story also exists. One of the most knowledgeable and unbiased observers of NER in the 1920s was economist William Leiserson. He (1928: 127) observed “The unskilled and semi-skilled working people of this country, in the last six years, have obtained more of the things.... out of employee representation plans than they have out of the organized labor movement.” He (1929: 160) also noted “An examination of the grievances adjusted under employee representation plans reveals that the vast majority of cases are settled in favor of the workers.” A more recent example concerns Delta Air Lines. Immediately after the 9/11 terrorist attack, the major unionized airlines unilaterally laid-off tens of thousands of workers; Delta on the other hand worked with the employee Board Council and designed a voluntary leave program that avoided layoffs (Kaufman, 2003c). Recent evidence from Britain supports these North American examples concerning the efficacy of nonunion voice (Bryson, 2004).

Without the strike threat or independent resources, how can NER nonetheless exert power on the employer? The answer is: through several indirect and sometimes subtle channels. First, when a company creates NER it raises the expectations of employees that they will be consulted and have influence. This expectation creates a form of leverage for workers, since if the company reneges then morale plummets and the risk of unionization rises. Relatedly, forming a NER body is an invitation to employees to offer their opinions and requests. Having asked for employee voice, the company then has to consider that repeatedly saying “No” carries its own cost in terms of undercutting the viability of the employee forum and

scuttling employee good will. Another consideration is that NER is created to foster cooperation and mutual gain and “mutual gain” must mean exactly that if the system is to have longevity and effectiveness. NER also exerts indirect bargaining power on employers in the sense that they deliberately pay high wages and benefits in order to take distributive issues “off the table” so the NER can focus on win-win issues. And, finally, attention should again be highlighted on the power NER gains from employers’ desire to avoid unionization. Having said all of this, the fact remains that most forms of NER exist at the discretion of employers and have influence only to the extent employers see that NER serves their long-term interests.

(6) *Degree of Permanence.* Finally, in the last column of Exhibit 1, are the temporal attributes of NER from the most temporary to the most permanent. At the top of the chart are short-term, ad-hoc types that usually involve consultation about specific topics.

Joint committees often are at the intermediate stage along this dimension. They may be established and continue to operate until a defined problem is fixed or a target is reached. There also are committees that are given a time target at their inception, e.g. one year to draft a joint approach to anti-harassment policies.

Permanent NER structures exist within companies as well-integrated features of a larger human resource management philosophy of involving workers. Outside the workplace, the permanent NER forums usually represent professionals or are advocacy and lobby groups. The noteworthy exception is that government policy mandates (in certain industries, provinces or states) the existence and continuation of health and safety committees.

## **THE FOUR FACES OF NER**

Nonunion employee representation is one of the most controversial topics in industrial relations research and policy. Part of the reason is that NER is a tangled skein consisting of many different threads of values and perspectives. In this regard, Freeman and Medoff (1984)

famously noted that trade unions have two different “faces” and the conclusions one reaches about unions hinge critically on which face is examined. We advance the same proposition about NER, but posit that NER has four faces. The purpose of these “four faces” is to systematize and distinguish some of the diverse perspectives previously noted, particularly regarding the purpose and effects of NER.

These four faces of NER are summarized in Exhibit 2. They represent different dimensions or “realities” of NER. For each face we (1) describe its premises, (2) recount a snippet of North American history that undergirds it, and (3) provide an evaluation of the arguments for and against. Although these four faces are presented here as separate entities, in real life they frequently commingle.

<INSERT EXHIBIT 2 HERE>

*1. Evolutionary Voice Face.*

Premise: One perspective on NER is that it provides a waystation or “mid-point” in the development of employee voice and industrial democracy (Bernstein, 1960; Ozanne, 1967; Brody, 1994). In this view, the industrial relations landscape is conceptualized as a continuum. At the starting point is a regime of individual bargaining, employer unilateralism, and absence of any mechanism for employee voice and representation. This is the traditional workplace that characterized early 20th century capitalism.

Then, as society evolves, employees and the public demand a more humanized and democratic form of workforce governance. One vehicle for voice and industrial democracy is collective bargaining and independent trade unionism, but the dominant political and business elites strenuously oppose it. Needing to find some compromise and safety valve for employee aspirations and discontent, employers and governments search for an alternative voice mechanism that placates workers yet preserves the profits and control of capital. One of the alternatives they innovate is employer-created NER.

Although perhaps marginally effective, NER does not, in this view, alter the basic imbalance in power and control exercised by capital over labour. Hence, workers grow dissatisfied with NER and come to see it as a largely empty promise. But NER has provided one important benefit – it has given workers important experience in collective action and whetted their desire for genuine voice (Bernstein, 1960; Derber, 1970). As a result, workers seek to move further along the continuum of voice, in this case from the NER mid-point to the end point of independent trade unionism and collective bargaining (not revolution, as prophesized by Lenin). As they do so, NER is displaced and its phony form of industrial democracy is supplanted by genuine industrial democracy (Gitelman, 1988).

History: To many observers, the trajectory of North American industrial relations from 1900 to the 1970s traced-out this face of NER. The early part of the 20<sup>th</sup> century was the era of employer autocracy. Then Canada and the US moved into the Welfare Capitalism and NER phase of the 1910s and 1920s, representing a partial movement along the voice and industrial democracy continuum. But these forms of industrial relations, it is argued, were inherently unbalanced and ineffective and collapsed under the weight of the Great Depression and worker rebellion (Gilson, 1940; Bernstein, 1960; Cohen, 1990). Born in the 1930s was industrial unionism on a mass scale, leading to the near-disappearance of NER. As trade unionism spread and consolidated in the 1950s-1970s, it appeared that Canada and the US were arriving at the end point on the continuum of industrial democracy. To the consternation of proponents of the evolutionary voice face, however, the visible erosion of union density in the last two decades of the century represented an unwelcome and unexpected retrogression toward unilateral employer control and empty forms of employee voice. They point the finger of blame at hostile employers, union-busting consultants, weak labour laws, lax regulatory enforcement, and the ill effects of globalization and de-industrialization (Freidman, Hurd, Oswald, and Seeber, 1994; Logan, 2002).

Evaluation: The basic proposition behind the evolutionary voice face is that NER is an unstable form of voice and ultimately serves as a springboard to unionism. Evidence both pro and con exists on this point.

Both historical and contemporary evidence suggests that NER can be a waystation (or “launching pad”) to unionism. The literature for Canada is reviewed in Taras and Copping (1997: 27) and Timur (2004) presents three detailed case studies showing how unions successfully used NER plans to gain collective bargaining rights. In the US, NER plans in the steel, energy, and telecommunications sectors were “captured” by union militants in the 1930s and used to usher in collective bargaining (Brody 1960; Bernstein, 1960; Ozanne, 1967; Schacht, 1975; Hogler and Grenier 1992). The same experience is reported in Canada. According to Basken (2000), one-third of the energy sector members in the Canadian-based Communication, Energy, and Paperworkers Union were recruited from NER plans.

Other evidence is less supportive. The American Federation of Labor (AFL) initially supported the US government’s mandate that major corporations establish shop committees during World War I on the presumption that they would quickly transition to independent trade unions. The AFL soon concluded, however, that shop committees were more formidable voice mechanisms than anticipated, leading it to reverse course and condemn shop committees as a “a delusion and snare” (AFL, 1919: 303; Nelson, 2000). Likewise, the “company unions” created by leading American and Canadian employers in the 1920s received quite favorable reviews from outside observers (Leiserson, 1929; Nelson, 2000; Kaufman, 2000b) and showed little sign of implosion. In the view of NER proponents, the triumph of independent unionism over NER in the 1930s and 1940s was less the product of an inevitable transition to “genuine” industrial democracy and more the result of the calamity of the Great Depression, the desperate need of the governments for labour peace during World War II, the pro-union labour policies of the American New Deal, and the opportunistic political maneuverings of the organized labour

movement (Hicks, 1941). Finally, the fact that union density has steadily declined in recent decades suggests, in this view, that many workers do not regard unions as the ideal form of industrial democracy and, indeed, often prefer some type of NER. This latter supposition is supported by the research of Freeman and Rogers (1999) that finds a majority of American workers prefer a cooperative joint committee form of voice over a more powerful but adversarial independent union.

## *2. Unity of Interest*

Premise: It is employers that most often create NER and from their perspective it has a second face. Employers look at NER as a component of their human resource management (HRM) system and utilize it to the extent it, like other HRM practices, adds to profit and competitive advantage. NER adds to profit through a variety of channels, such as improved information and communication, better coordination of production, and increased employee morale. According to many managers who practice NER, the ultimate objective is the promotion of greater cooperation and unity of interest in the workplace (e.g., Basset 1919, Fuldner, 2000; Kaufman 2003b).

Organizations are more effective, in the management view, when workers and managers work together as an effective team. Teamwork, in turn, is facilitated when managers and workers share a common purpose and reap win-win rewards. Employers are opposed to unions because they foster an adversarial “win-lose” mentality in the workplace and promote conflict and divisive organizational politics. The purpose of NER is the opposite. Employers create NER to foster greater cooperation and unity of interest by reducing frictions, promoting employee involvement and empowerment, and providing a forum for workers and managers to construct mutual gain outcomes. To the degree NER is successful at this task, a beneficial by-product from the management perspective is that workers lose interest in union representation. Companies view this outcome as a benign form of “union substitution” constructed from superior

treatment and excellent management.

History: The idea that management can gain competitive advantage by shifting the employment relationship from a zero-sum adversarial struggle to a positive-sum cooperative endeavor was articulated in a comprehensive way for the first time in the industrial relations literature by John Commons in his book *Industrial Goodwill* (1919). This proposition was widely repeated in North American management circles in the 1920s and provided the *raison d'être* for the development of the Welfare Capitalist model. According to one observer (Leiserson, 1929), the “crown jewel” of this new management model was the employee representation plan. The stated purpose of NER, in turn, was to achieve cooperation and unity of interest. Thus, an early survey of NER in North America concluded (NICB, 1922: 53) “the ultimate objective of employee representation may be regarded as the achievement of cooperation between management and men – substitution of cooperation for antagonism.” In a similar vein, Clarence Hicks (1941) – arguably the most prominent and influential proponent of NER among practicing industrial relations executives of that period – stated “To the extent that American employers recognize the common interests of management and men and invite their employees to co-operate with them through representatives of their own choosing, to that extent American industry will pass from the stage of autocracy and its counterpart, antagonism, to one of friendly co-operation.”

The Welfare Capitalist model died or went into deep background in the Great Depression years (Jacoby, 1997; Moriguchi, 2005) and with it went the unitarist management model and positive conception of NER, replaced with the pluralist model of independent unionism and collective bargaining. Starting in the 1960s and 1970s, the unitarist model started to make a comeback, albeit repackaged as human resource management (HRM) and the high performance work system (HPWS). Beer and Spector (1984), for example, list sixteen principles that distinguish the HRM/HPWS model. Principle #6 is: “In the long-run there is a coincidence of interests between employees, management, and shareholders.” Kochan and Osterman (1994)

develop the same idea but call it the “mutual gain” model. Key to the HPWS is some formal system for employee involvement (Appelbaum *et al* 2000; Cappelli and Neumark, 2001). Indeed, so central is employee involvement (EI) that Lawler (1992) and others prefer to call the HPWS the “high involvement” model. As remarked on earlier in this paper, and developed at more length in Taras (2003), the modern literature on employee involvement and the HPWS largely omits explicit consideration of whether EI is delivered through direct or indirect (NER) forms of participation. But as documented by Kaufman, Lewin, and Fossum (2000) and Verma (2000), some form of NER is in fact found in a number of HPWS organizations in both the US and Canada. Further, employer groups in the US lobbied extensively in the mid-1990s for passage of legislation known as “The Team Act” that would relax the company union ban in the NLRA, citing the argument that the ban seriously restricted the ability of companies to implement the unitarist HPWS model (LeRoy 1997). (President Clinton vetoed the legislation and no new impetus for passage has emerged under President Bush.)

Evaluation: Evidence both pro and con can be marshalled on the unity of interest face of NER. For example, a number of labour historians (e.g., Gitelman, 1988; Rees, 1997) dismiss the Welfare Capitalist movement of the 1920s as a failed experiment that accomplished little. Similarly, critics of employee representation (e.g., Ozanne, 1967; Basken, 2000; Hiatt and Gold 2000) argue that the main purpose of NER is something quite different – union avoidance (discussed next) -- and the real meaning of “unity of interest” is “cooperate on our terms.” Other critics/skeptics admit that unity of interest may be a genuine management goal, but conclude that few companies can successfully create and maintain unity of interest over the longer run (Hammer, 2000). In support of this assertion, they point to the short half-life of many NER/EI systems and the documented cases where they are innocuous window-dressing (“kiss me” clubs) or the “fad of the day” (Gilson, 1940; Gilpin, 1992; Brody, 1994; Commission on the Future of Worker-Management Relations, 1994).

But there is also strong evidence on the other side. Sumner Slichter (1929: 432) called the new unitarist labour practices of the Welfare Capitalist model “one of the most ambitious social experiments of the age” and Leiserson (1929: 164) surveyed the results of Welfare Capitalism for employer-employee relations and concluded it was “an impressive sum.” The contention that Welfare Capitalism and NER were more than innocuous window-dressing is supported by the fact that during the 1930s and 1940s AFL and CIO unions were largely unable to organize plants of the leading practitioners of Welfare Capitalism (e.g., Standard Oil, DuPont) despite numerous attempts (Chase, 1947). Recent research (e.g., Fairris, 1997; Pencavel, 2003) also provides econometric evidence that companies with NER plans paid higher wages and had lower turnover and higher productivity.

Similar but more recent evidence comes from Canada. The JIC at Imperial Oil is now in its eighth decade of operation and has at most production facilities withstood union organizing campaigns. Likewise, the Dofasco company, one of Canada’s two largest steel producers, has operated a large-scale NER system for a half-century (Storey 1987). That workers can be quite satisfied with NER is also suggested by Rundle (1998) who documents that unions won 48 percent of NLRB elections in the US when the company had no EI program but only 30 percent when an EI program was present. Finally, one notes that the HPWS model has spread in popularity and adoption over the last three decades in both the US and Canada, suggesting that the unitarist concept is not simply a pipe dream of management consultants and writers. Further, the component of the HPWS that has gained the most attention is employee involvement and participation; indeed, some management writers equate a strategic approach to HRM with high-level employee involvement (McMahan, Bell, and Virick, 1998). Evidently, then, the role of NER as a leading-edge management practice and vehicle for greater cooperation and efficiency in the workplace continues to have relevance.

### *3. Union Avoidance.*

Premise: This face posits that the primary purpose of NER plans is union avoidance. From this perspective, employers in North America have a deep hostility toward unions, reflecting in part the North American ethos of individualism and sacrosanct private property rights but equally or more so the threat that unions pose toward employers' profits and control in a decentralized bargaining system. Unions provide workers with collective power that allows them to raise wages, increase benefits, and gain job security. Likewise, unions democratize the workplace, replacing employer autocracy and arbitrariness with joint governance, written procedures, and due process in discipline and discharge (Derber, 1970).

To escape the yoke of unionism, employers use both the "carrot and stick" to dissuade workers from organizing (Lawler, 1990). NER plays a central role in both approaches and is why trade unionists hate it. A Canadian union leader (Basken, 2000: 491) says "There are no benefits to company unions. They just keep the trade union movement figures lower," while the American AFL-CIO observes "the ultimate goal [of NER] is... to stifle legitimate worker voice and to stave off genuine worker organization" (AFL-CIO Press Release 22 Feb. 1995, p. 1).

The "carrot" approach of union avoidance is what we earlier referred to as union substitution. Its objective is to buy-off the workers by giving them more than the union can in the form of superior wages, better conditions, and some mechanism for voice and dispute resolution. The latter is often implemented through NER. The union substitution philosophy is well illustrated in the observation of Gibb and Knowlton (1956: 585), referring to Standard Oil's newly inaugurated Welfare Capitalist program, that "There was a ready, if unspoken appreciation of the fact that the new plans and practices were suffocating by sheer weight of generosity the forces of unionism within the company." [Note that generosity and unity of interest are potentially two different things.] A similar strategy is used by modern practitioners of NER. Taras (2000) describes, for example, how Imperial Oil pays industry-leading wages and benefits in the Canadian petro-chemical industry, while Kaufman (2003) notes that Delta Air

Lines uses the same strategy in the US.

Critics of NER argue that the workers' gains in a union substitution situation are at best temporary and at worst manipulative and delusional. But the case against NER is much stronger, they argue, because often it is used to fend-off unionism as part of companies' overt or covert "stick" strategy of union suppression (Dunn, 1926; Gitelman, 1988). Union suppression keeps out unions by negative methods that rely on fear, coercion, and punishment, such as harassment and discharge of union activists, infiltrating the workforce with spies, and spreading rumors and disinformation about unions and their supporters. NER plans, the critics contend, play an important role in this strategy, per Senator Wagner's comment that "At the present time genuine collective bargaining is being thwarted immeasurably by the proliferation of company unions" (National Labor Relations Board, 1985: 23).

Proponents of this view point out, for example, that frequently employers only implement some form of NER when a crisis hits, and usually the crisis is the threat of unionization. The quotation by Senator Wagner was in the context of the mushroom growth of company unions in 1933-1935 that was precipitated by the spread of union organizing activity and the Government's encouragement of collective bargaining. The role of NER in this situation is several-fold. First, establishment of NER is intended to signal the workers that the employer will listen to them and redress their dissatisfactions, hopefully taking some of the steam out of the union drive. Second, by at least temporarily forestalling unionization a NER plan can also buy management additional time so it can better map-out a strategy to thwart the union, discover who the union activists are, and bring in union-busting consultants. And, finally, employers use NER to reward loyal employees, distribute pro-company propaganda, and pass on to management the names of trouble-makers. When the threat of unionization goes away, so does the employer's interest in NER.

History: Examination of the historical record reveals a strong correlation between union activity

and employer interest in NER. The “granddaddy” of NER plans set-up by Rockefeller and King at the Colorado Fuel and Iron Co. in 1915 was a direct outgrowth of the company’s bitter struggle to keep out the United Mine Workers union. The huge spike in the formation of shop councils and JICs in both the World War I period and the early New Deal period was also closely associated with a much-increased union threat. The number of companies with representation plans slowly declined in the 1920s in the US in lockstep with the decline in union density, but then more than doubled in only two years (1933-1935) when union organizing rebounded. Further, critics of NER in this period recounted numerous stories about companies discharging NER representatives who challenged management’s position and forming NERs to break strikes. A well-known example before World War II was the Weirton Steel Company. It fired union activists, rejected the government’s request to hold a representation election, and instead formed a company union (Bernstein, 1970).

One finds similar evidence in recent times. In a review of recent Canadian case law on nonunion representation, Taras (2006) finds many cases where the company scrambled to create a nonunion forum in reaction to a union drive. Further, she notes numerous allegations of a variety of unfair labour practices, including discrimination against union organizers, making threats of job loss or plant closure, and failing to bargain in good faith. The American case law reveals a similar pattern, Rundle (1994), for example, examined fifty-eight Sec. 8a2 cases where the NLRB ordered a NER plan disestablished and found that in only two was there neither a union organizing campaign underway nor commission of one or more other unfair labour practices by the employer.

Evaluation: Only a sophist would deny that union avoidance is a major purpose of NER. The empirical record is full of evidence from both Canada and the US that employer interest in and commitment to NER is strongly influenced by their desire to remain union-free. This conclusion is the easy part. But it is not the entire story, and it is more difficult to evaluate the

extent to which the union avoidance aim of NER is socially pernicious.

One appears to over-reach, for example, to claim that union avoidance is the sole or perhaps even primary motive behind all NER. In the 1920s most of the companies adopting NER were in the progressive vanguard of employers and faced a very small union threat (Nelson, 2000). Yet they invested large sums and money and management attention in creating employee representation plans. A similar pattern is evident today where EI programs and other HPWS practices are clustered in companies often held-out as model employers (Lawler, 1992; Kochan and Osterman, 1994).

Further, where union avoidance takes place as a union substitution program, it seems difficult to condemn the improved wages, conditions, and voice that result. Speaking in the late 1920s, Lesierson (1929: 146-7) took this position, commenting: "The weakening of trade unionism that has resulted [from NERs and Welfare Capitalism] is an undesirable consequence, but who will say then that we should go back to the days when management neglected its social responsibilities toward its employees. The labor movement....if it is weakened by the activities of personnel management.... needs to look to its larger program." One must also note that although NER has numerous shortcomings, so too do many unions – a fact sometimes unduly neglected by NER critics.

On the other hand, when union avoidance takes the form of union suppression then most people would readily agree that NER is being used in an anti-social way. Certainly this is the case when NER is utilized in an unethical or illegal manner to thwart the legitimate rights of workers to collective bargain. It is on these grounds that critics of NER oppose further legalization or encouragement of NER. Hiatt and Gold (2000: 510) state, for example, "when workers are unlawfully fired with virtual impunity in one of every four union organizing campaigns, it would be foolish to erect, or resurrect, another obstacle to workers seeking to improve their lot."

Few proponents of NER would argue with the position that the law should be observed and illegalities punished. Given this, many proponents also claim that the union side exaggerates the incidence of illegalities and, further, seeks to restrict NER largely because organized labour does not want competition in the supply of employee voice. Raudabaugh (2000: 516) argues, for example, that “Restricting or prohibiting such [NER] programs amounts to nothing more than shoring up the union option at the expense of employee free choice.” The position we have taken on this subject is a compromise (Kaufman and Taras, 2000): allow workers to freely choose no union, a company-created NER plan, or independent union representation, but ensure that the right of workers to choose independent representation is strongly protected. Not only do we believe that freedom of association is a basic human right and should be fully protected (with stronger and more effective legislation and procedures than currently exist in the US) but also that a potent union threat is one of the forces that motivates employers to operate NER in an above-board and vital manner.

#### *4. Complementary Voice*

Premise: The fourth face looks at NER as a complement to trade unionism, not a substitute as in the second and third face. In this view, NER and trade unionism largely occupy separate domains and serve different goals and functions. This being the case, it is not a matter of “one or the other” but how best to “mix and match” the two into a composite system of voice.

The “complementary” viewpoint was expressed early-on by both Paul Douglas (1921) and Henry Seager (1923). Douglas states, for example, “Modern industry needs both the shop committee and the trades union, since both are necessary for the effective carrying out of the relationship between workmen and employer....The unions have hitherto have been chiefly combative organizations designed to protect and enhance the workmen’s share in distribution. This is still a necessary function,... The co-operative features of the relationship between employer and employee however, need to be developed equally.... and in performing this

function the shop committee is invaluable” (p. 107). In a similar vein, Seager observes, “Company unions are better calculated than trade unions to promote continuity, economy, and efficiency of operation” but that trade unions are needed “to contend against the grasping type of employer for more favorable wages, hours, or working conditions” (p. 11).

More recently, the idea of complementarity has been widely discussed with respect to European works councils. It is commonly observed, for example, that the works council handles local plant level issues through joint consultation and the trade union takes cares of industry-wide matters such as wages and hours through collective bargaining (Rogers and Streeck, 1995; Frege, 2002). In the Canadian context, Taras (1997b) has described how the mix of unions and NER has stabilized the wage structure and system of employee relations in the petroleum industry.

History: The historical record appears to reveal two lessons about the complementary face of North American NER.

The first is that the complementary face does indeed exist. In the 1920s there were cases where a plant or company had a joint system of governance with both a works council and trade union (National Industrial Conference Board, 1922). Similarly, then and now some companies have collective bargaining for one part of the workforce (e.g., production workers) and NER for another part (office and management workers). A modern-day illustration in the US is FedEx Corporation (Kaufman, Lewin, and Fossum, 2000). Also apropos are two other examples. The first is found within companies where collective bargaining and NER overlap and serve the same group of employees. A case identified by Helfgott ( 2000) is unionized companies that also have identity groups for employees of different gender/race/sexual orientations.

Chaykowski’s (2000) study of the National Joint Council system in Canada (a post-World War II nonunion variant of the British Whitley plan for government employees) provides a

second illustration. Originally Canadian civil servants were deprived of the right to unionise and instead developed elaborate systems of nonunion representation. When finally in the 1960s they were granted the right to organize, and rapidly did so, the NJC was maintained. Although the natural tendency might be to view the NJC and the burgeoning public sector unions as competitors, Chaykowski's surprising conclusion was that over time the two systems developed a productive synergy.

The second lesson of history appears to be that the complementary face of NER is destined to be low-incidence and unstable, at least absent legislative compulsion. Unions are highly skeptical of all NER forms, viewing them as not only competitors but latent threats to their very existence. Likewise, employers stoutly resist unions and will get rid of them whenever practical. Thus, the marriage of the two representational forms tends to be rare and short-lived. The exception appears to be when legislation, such as in Europe, mandates a peaceful coexistence between the two.

Evaluation: The complementary face of NER highlights a theme from the earlier part of this paper: namely, that there is much diversity in form and function of employee representation. In this regard, most commentators accept that both NER and trade unions have their strengths and weaknesses and both have a useful if necessarily delimited role to play in the workplace. This position was taken by Senator Wagner, for example, who stated that NER plans often improve plant operations and promote greater cooperation between managers and workers, while trade unions are necessary to take wages and other labour costs out of competition at the market level and give workers voice in the national polity (Kaufman, 2000a,b). The challenge is to craft a legislative framework that promotes the optimal mix of the two forms of voice, particularly when the need for and virtues of the two forms of voice vary so much across firms, industries, time periods, and macroeconomic environments (Sims, 2000). But this consideration leads to the next section.

## **NER'S UNCERTAIN FUTURE**

The future of NER in North America is uncertain, reflecting the diverse and changeable nature of the benefits and costs of NER and the present – but unlikely -- possibility of new legislation in one or both countries. Also making prognostication difficult is that NER, as earlier argued, is not a monolithic creature but one encompassing a tremendously variegated set of institutions and functions.

It is interesting to observe, firstly, that evidence suggests there is a roughly similar level of NER across major industrial countries, even in the face of large differences in union density, legal frameworks, and so on. For example, Lloyd (2001: 314) estimates that just under one-fifth of UK workplaces (with 25 or more employees) have a consultative nonunion employee representation committee (also see Terry, 1999; Gollan, 2000). Likewise, Addison, Schnabel, and Wagner (2000) estimate that roughly 20 percent of German firms have a works council (covering, however, three-fourths of employees), while in Japan joint consultation committees are found in approximately 30 percent of nonunion firms (Morishima and Tsuru 2000). And, as we earlier noted, survey evidence provided by Lipset and Meltz (2004) suggests that (roughly) 15-20 percent of workers in Canada and the US are covered by NER. Admittedly these numbers have significant variance, but on the other hand they are surprisingly similar given the very large differences in the institutional frameworks of these countries and their cultural/social histories. One can conclude from this evidence that NER has found a relatively stable if fairly modest-sized domain in the employment relations system of numerous countries. Certainly the fact that NER has a more-or-less similar density in the US and Canada (if the data are indeed accurate), even though trade union density and the legal treatment of NER are so different, is noteworthy.

These statistics suggest that perhaps there is an “equilibrium” level of NER in the range

of 15-30 percent of firms. If so, the trend of NER in Canada and the US may be relatively stable in the years ahead. But this equilibrium (if such exists) is itself a product of a constellation of individual decisions by employers and workers, presumably made on the basis of various benefits and costs. As these benefits and costs change over time, as surely they will, the observed level of NER will also change.

This paper is not the place for a full-blown consideration of this topic. So we will content ourselves with a few short observations.

First, evidence suggests that the incidence of large-size formal NER plans of the JIC type will remain relatively small – even if the US law were changed to give employers freedom of choice in this matter. Employers already have this freedom of choice in Canada, for example, and yet relatively few private sector Canadian employers use a JIC form of NER (Taras, 2000a; Verma, 2000). Anecdotal evidence provided in Kaufman, Lewin, and Fossum (2000) suggests the reason is that many employers regard a JIC as too cumbersome, expensive, and a “one size fits all” approach. Further, the emphasis in management circles in recent years has been on reducing fixed costs and increasing organizational flexibility and nimbleness – objectives that militate against a JIC and similar company-wide forms of NER. Taras (2000a,b) suggests several other cogent reasons. She points out, for example, that companies running JIC plans typically pay wages and benefits as high or higher than the union level, thus mitigating any direct labour cost saving, while successful operation of a JIC requires a tremendous amount of management time and sophistication (also see Grant 1988 and Kaufman, 2003c). Finally, employers fear that a JIC can easily turn into a labour union. As one manager told Taras many years ago, nonunion plans are “pet bears” because they require their “trainer” to keep sweets in his pockets and never turn his back for an instant.

Having said all of this, we also believe that a small number of companies will continue to find some form of company-wide NER an attractive HRM practice, if perhaps not in the mold of

the 1920s representation plans. Certainly were the NLRA to be liberalized in the US, we would expect some companies to go down this path, just as have some companies that fall outside coverage of the NLRA (Delta Air Lines) and as others did until forced to disband their NERs by the NLRB (e.g., Donnelly, Polaroid).

A second speculation is that in the years ahead there may well be a growth in the use of smaller-scale, more decentralized and focused forms of NER. As the traditional “command and control” model of management and multi-tiered hierarchial business organization is displaced by models of “lean production” and “high commitment” with much-reduced layers of management, small-to-medium scale NER has a greater role to play and should grow in popularity. Thus, as Taras (2003) notes, while the labels and specific practices have changed as we transition from employee representation to employee involvement, at the core level they both involve some form of indirect representation, or what we have called NER. Recognizing that management often talks a better game than it plays in EI and other such “high performance” practices, we nonetheless believe that EI will grow in the future as will the need for NER to deliver it.

A similar thought applies to other forms of NER, such as peer review panels and other joint forums for dispute resolution. Numerous Canadian and American firms have moved toward greater use of ADR techniques, partly to avoid costly court suits, and often set-up some kind of in-house dispute resolution panel or committee (Colvin, 2004; Lewin, 2005). Again, here is a greater role for NER. Also present, we note, is the same age-old controversy that accompanies NER – whether employers “stack the deck” in their favor when they set-up their in-house arbitration and mediation systems, just as was alleged with the employee representation plans of the 1920s.

## **CONCLUSIONS**

To adequately study the NER phenomenon we need the national surveys and intensive fieldwork studies provided by Canadian and American governments earlier in the last century. With such data, the first step would be to provide an accurate description of NER, along the six constructs presented in Exhibit 1. Next would come more modeling of NER and ability to rigorously test many of the hypotheses discussed here about the four faces of NER and NER's many alleged and controversial benefits and costs.

In this essay we have sought to highlight the diversity and many faces of NER. Too often scholarly discussion of this subject in North America equates NER with "company union." Nonunion employee representation is, in fact, highly variegated in form, function and purpose and ranges all the way from a one person ombud to a corporate level employee committee reporting to the Board of Directors. Even the early company unions, on deeper examination, were tremendously diverse in terms of their operation and accomplishments. Modern scholars thus need to take to heart William Leiserson's (1928) astute observation that "almost anything that may be said about employee representation will be true."

Though widespread, we believe that absent any public policy advances that promote it, NER will remain a firmly established but modest-sized phenomenon with some growth in small-scale NER practices but little growth in complex NER plans. At the present time we see no groundswell of demand in either Canada or the US for different legislative treatment of NER. Although efforts to loosen the company union ban in the NLRA rose to the top of the policy agenda in the Clinton years, currently reform of the NLRA seems like a dead issue with neither employers, unions, nor the Bush administration interested in it. To we and some other industrial relations scholars, this seems like serious lacuna and missed opportunity, given the significant-sized participation/representation gap Freeman and Rogers (1999) found in the American workplace. Surely NER could play a constructive role in closing this gap, particularly since the majority of workers reported they wanted an intermediate form of voice between the "open door"

and an independent union. But the broader body of North American IR scholars have themselves been deeply suspicious of NER, as evidenced by the very timid and lukewarm treatment given to NER by the Dunlop Commission, so not even pressure for change emanates from this source. And cynics -- or perhaps realists -- would note that American companies seem quite adept at beating back unions with the existing armory of weapons they have, so it is small wonder that employer support for greater NER is modest-to-negligible. It appears, therefore, that NER in North America is caught in conflicting pressures in both the real world and academic world.

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**Exhibit 1: Examples of Diversity of NER Plans**

1. Forms	2. Functions	3. Topics	4. Representation Modes	5. Extent of Power	6. Degree of Permanence
<p>Ombud                      Joint Safety Committee                      Dispute Resolution Panel                      Scanlon Plan &amp; Gain-Sharing committee                      Departmental Production &amp; Coordination Committee                      Quality Improvement Committee                      Gender/Ethnic/Sex Identity Groups                      Employee-Management Advisory Committees                      Cross-Divisional Council for Employment Issues                      Plant Council                      Employee Committee on Board of Directors                      Company-Wide Representation Systems, such as JICs                      Staff Associations                      Professional Advocacy Groups</p>	<p>Communication &amp; Information Flow                      Production and Organizational Coordination                      Employee Morale &amp; Esprit de Corps                      Education and Training of Employees                      Employee Relations and Disposition of Irritants                      Employee Involvement                      Corporate Culture                      Cooperation &amp; Common Purpose                      Management &amp; Employee Development                      "Trojan Horse" for Union Organizing                      Union Substitution                      Union Avoidance                      Lobbying Government</p>	<p>Benefits, including Pensions and Health Insurance                      Safety/Health                      Working Conditions                      Grievances/Dispute Resolution                      Management Problems                      Employee Relations Climate                      Production Issues                      Equipment/Capital Issues                      Customer Service                      Quality of Products and Production                      Business Strategy                      Wages and other Terms and Conditions of Employment                      Status of the Occupation</p>	<p>Internal to the Firm (e.g., elected representative from among workers in the group)                      External to the Firm (e.g., players' agents in sports)                      Representatives Appointed by Management                      Representatives Elected by Workers (secret ballot)                      Degree of Independence of Representation (e.g., budget and resources; reporting relationships; ability to meet independently from managers, etc.)                      Ability to seek professional expertise outside the firm (e.g., lawyers, actuaries, etc.)</p>	<p>Completely Co-opted by Management                      Scope of Power (e.g. single topic or broad authority)                      Informal Consultation                      Advisory Groups                      Decisions made by Consensus only                      "Dealing With" Management through Preparation of Formal Positions                      Chairing or Co-chairing meetings                      Developing the Agenda                      Negotiating                      Distribution of minutes and positions                      Ability to Take Action to Promote Positions                      Vote-Taking in NER; majority wins                      Worker Veto Power over Change</p>	<p>Short-term, Ad Hoc Committee                      Time-limited, until a Problem is Solved                      Disbandable Structure upon Notice by One or the other Party                      Permanent Structure</p>

**Exhibit 2: Four Faces of NER**

	<b>Evolutionary</b>	<b>Unity of Interest</b>	<b>Union Avoidance</b>	<b>Complementary</b>
<b>Purpose</b>	Gradual improvement of labour's economic position and democratizing of the workplace	Create a harmonious workplace in which workers are aligned with drivers of firm success	To suppress demand for unions through union suppression and union substitution tactics.	Beneficial interaction of the unique competencies of unions and nonunion systems
<b>Paradigm</b>	History, Institutional (Evolutionary) Economics, pluralist Industrial Relations	Unitarist Human Resource Management, Organizational Development	Traditional IR for Union Suppression, paternalist/unitarist HRM for union substitution.	Combination of IR and HRM
<b>Utility to Firm</b>	Economies of scale in dealing with workers in groups; achieving better systems of voice among workers; superior worker-manager communication vehicle	Alignment of workers to firm's goals, foster cooperation, reduce adversarialism, improved communication	Early-warning system to detect employee discontent and union organizing, reduces employees' desire for union representation, vehicle for weeding out union activists and buying time to defeat the union drive.	Captures advantages of unions (e.g. standardized wages and benefits, taking wages out of competition) and advantages of nonunion representation in internal workforce governance (e.g. non-adversarial form of collective voice)
<b>Utility to Workers</b>	Gradual expansion of wages and benefits, greater voice and due process, substitutes independence for paternalism and autocracy.	Greater voice and influence in firm, direct access to management, higher morale, improved pay and benefits.	Company may raise wages and benefits and improve conditions to keep out union, workers may be so alienated by hard-ball tactics that it builds more support for the union.	Workers may get the best of both systems; Workers get benefits of unionization without paying dues, while turning attention to other workplace issues
<b>Utility to Unions</b>	Worker demand for unions gradually increases, union density rises over time.	If nonunion system not managed well, may lead dissatisfied workers to unionize.	The firm may over-do firings and repression, leading to "backfire" effect in which employees have a greater demand for union representation.	Positive: Unions retain their contribution as negotiators of terms and conditions of employment, making union organizing attractive Negative: Free-riding by workers makes unionization difficult

	<b>Evolutionary</b>	<b>Unity of Interest</b>	<b>Union Avoidance</b>	<b>Complementary</b>
<b>Examples of Worksite Practices</b>	Evolution of dispute resolution from "open door" to formal grievance system, replacement of informal and subjective HRM practices for written and formal procedures.	Joint committee on gain-sharing, peer review dispute resolution panel, employee representatives on board of directors.	Union substitution uses many high performance HRM practices, union suppression relies on heavy use of external consultants and attorneys, frequent terminations.	Collective bargaining of economic package, use of joint worker-management committees on working conditions, quality of worklife.