TO: All Staff

FROM: Darrel Mitchell

DATE: Friday June 18, 1993

RE: Employee Involvement Committees

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Attached is some reading material regarding employee involvement committees that may be of interest to you.

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D.C. 20570

FOR IMMEDIATE RELEASE (R-1937)
Thursday, December 17, 1992 202/632-4950

NLRB FINDS COMPANY'S EMPLOYEE PARTICIPATION COMMITTEES ILLEGAL

The National Labor Relations Board held in a decision released today that Electromation, Inc. violated the National Labor Relations Act by establishing and dominating five employee representation committees which the company set up to deal with problems relating to wages and other employment conditions at its Elkart, Indiana plant.

The majority opinion, joined by Chairman James M. Stephens and Members Dennis M. Devaney and Clifford R. Oviatt, Jr., emphasized that the violation here was based on the particular facts of the case and that it was not determining generally that labor-management cooperation committees, operating under other circumstances, would necessarily be found unlawful. Members Devaney and Oviatt filed separate concurring opinions, as did Member John N. Raudabaugh, who did not join the majority opinion. Member Raudabaugh, concurring separately, set forth his own guidelines and parameters for determining the legality of employer conduct vis-a-vis such committees.

Affirming an Administrative Law Judge's finding, the Board found that the "Action Committees" established by Electromation constituted a labor organization within the meaning of Section 2(5) of the Act, and were not simply "communication devices," as the company claimed. Having established that the employee committees were a labor

organization, the Board went on to conclude that the employer dominated and supported the committees in violation of Section 8(a)(2). The Board pointed out that the company organized the committees, created their nature and structure, and determined their functions. "The prohibition against employer dominated unions was a central aspect of the Act's purpose," it said.

The company set up five Action Committees in January 1989, after receiving a petition signed by 68 employees asking management to reconsider its unilateral decision to drop an attendance bonus program and a wage increase in 1989. Management announced that it wanted to get feedback about employee concerns through the employee members of the committees. Supervisors and managerial personnel served as committee members and the discussions concerned conditions of employment.

A month later the Teamsters union made a demand to the company for recognition. There was no evidence that the company was aware of organizing efforts by the union until this time. Management informed the committee members that it could no longer participate in the committees until after the union election on March 31.

In finding that the Action Committees constituted a labor organization, the Board stated that they "were created for, and actually served, the purpose of dealing with the Respondent over conditions of employment," and that "their only purpose, was to address employees' disaffection concerning conditions of employment through the creation of a bilateral process involving employees and management in order to reach bilateral solutions on the basis of employee-initiated proposals." It also found that employee members of the committees acted in a

representational capacity and the committees were an "employee representation committee or plan" as set forth in Section 2(5).

In concluding that the employer dominated and supported the committees in violation of the Act, the Board stressed that the employer: came up with the idea of creating the Action Committees; drafted the written purposes and goals of the committee; set the rule that an employee could serve on only one committee; and appointed a management representative to facilitate discussions. Accordingly, the majority held that, "the Respondent dominated the Action Committees in their formation and administration and unlawfully supported them."

(Copies of the decision will be available to be picked up at 3:00 p.m., December 17, 1992, in the lobby of the Board's building at 1717 Pennsylvania Avenue, NW, Washington, D.C.)

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HUMAN RESOURCES MANAGEMENT

Ideas & Trends

Issue No. 293 | January 20, 1993 | This issue is in two parts. This is part one.

NOTE: We began the year with issue No. 292, pages numbered 209 through 216. This issue, No. 293, consists of pages numbered 9 through 16. Pages 209 through 216 will be indexed as pages 1 through 8 in the 1993 index.

Electromation appeals NLRB ruling

Wimberly & Lawson suggests that employers not be discouraged from creating and maintaining employee involvement committees

THE FEDERAL APPEALS COURT IN CHICAGO WILL GET an opportunity to render its opinion of Electromation's "action committees." As reported in Issue No. 292 of IDEAS & TRENDS, the National Labor Relations Board held in *Electromation, Inc.* that the company violated the NLRA by dominating employee involvement committees it set up to address labor-management problems. The Board's decision was narrowly focused on the particular facts of the case, which was a disappointment to many who had hoped the Board would provide practical guidelines for lawfully creating and maintaining employee involvement committees.

THIS ISSUE

CCH will closely monitor the case's development and let you know what the court decides—and how the decision impacts employers—as soon as a decision is rendered. But what should employers do in the meantime?

CCH took the liberty of posing this question to the law firm of Wimberly & Lawson, P.C. Attorneys Martin H. Steckel and James W. Wimberly, Jr., both principals at the firm, were gracious enough to provide some useful guidelines to consider in the wake of *Electromation*.

They note that employers should not be discouraged by the decision from "creating and utilizing" employee involvement committees. When properly constituted and operated, such committees "can be helpful in contributing to the smoother and more efficient operation of any business," they conclude, because the fact-specific nature of *"Electromation, Inc.* has not undermined or further limited the use of 'employee committees.'"In addition, the maximum penalty — disestablishment of the committee—is very minor, they add.

Some tips on establishing and operating employee involvement committees are provided by Messrs. Steckel and Wimberly on page 15.

Smoking in the workplace

EPA identifies environmental tobacco smoke as human carcinogen; OSHA urged to control workplace exposure

Each smoker costs a company at least $1,000 a year because of decreased productivity and increased health care costs, CDC reports. Employers should therefore prohibit workplace smoking to protect workers' health, to reduce health care costs, and to protect themselves from possible future liability, concludes a coalition of health associations.

A MAJOR ENVIRONMENTAL PROTECTION AGENCY REPORT issued January 7, 1993, concludes that secondhand smoke is a human carcinogen responsible for approximately 3,000 lung cancer deaths annually among nonsmokers in the U.S. The EPA study did not consider nonrespiratory effects of passive smoking, but the report noted that there is evidence suggesting that environmental tobacco smoke (ETS) may be linked to other types of cancers and to heart disease as well. The report concludes that the widespread exposure to ETS in the U.S. presents a serious public health problem and classifies ETS as a "Group A" lung carcinogen—one of the 10 substances, including benzene and asbestos, that are known human carcinogens.

continued on the following page

IDEAS & TRENDS IN PERSONNEL is published biweekly by Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago, Ill. 60646. Included at no additional charge with subscription to any one or more of the CCH HUMAN RESOURCES MANAGEMENT volumes: COMPENSATION (2 volumes), EEO, PERSONNEL PRACTICES/COMMUNICATIONS, EMPLOYMENT RELATIONS (including labor law), and OSHA COMPLIANCE.

Employee monitoring

continued from p. 11

The employee was eventually discharged when one of the recorded conversations revealed that she had violated company policy by selling her lover a keg of beer at cost. Just prior to discharge, the employee was played a few seconds of the incriminating tape. One of the employers also disclosed the contents of the recordings, albeit in general terms, to the employee's husband and her lover's wife.

Although the employee was told that the telephone might be monitored in order to reduce personal calls, she was not informed that the phone was in fact being monitored. Therefore, the employee's consent to the interception could not be implied, the court concluded. Furthermore, consent was not established by the fact that the extension in the employer's residence permitted them to listen to calls made at the store because the employee could detect, by an audible "click," when the extension at the residence was picked up.

Exemption for business use of telephone extension

The employers attempted to defend the telephone monitoring by proferring what is referred to as an exemption for business use of a telephone extension. Two elements must be proved for this defense to be viable:

1. the telephone company must supply the equipment use for telephone monitoring or that equipment must be connected to the telephone line; and
2. the equipment has to be used in the ordinary course of business.

Unlike the federal appeal court in Atlanta, the federal appeal court in St. Louis rejected the argument that the extension telephone itself was exempt equipment. The recording device, not the extension phone, was used to intercept the calls, the St. Louis court concluded. Furthermore, the recorder did not satisfy the first element because it was purchased by the employers, not provided by the telephone company, and it could not operate independently of the telephone.

The court went on to note that even if the extension phone intercepted the calls, the interception was not in the ordinary course of business. Although the employers had a legitimate business reason for monitoring the calls in light of the burglary, the 22 hours of calls that were recorded were excessive because they were monitored without regard to their relation to the employer's business interests. ■

Electromation decision

Commentary by Attorneys Martin H. Steckel and James W. Wimberly, Jr. of Wimberly & Lawson, P.C.

continued from p. 9

A few simple tips or guidelines in establishing and operating employee committees will reduce even further the likelihood of NLRB involvement or personnel problems which may result from a poorly operated committee.

- ☐ Do not create the committee near-in-time or in response to union organizing activity. If you do, it will increase significantly the prospects of NLRB litigation brought by suspicious union advocates, even if the committee passes the most stringent test under Section 8(a)(2).
- ☐ Make it clear with the workforce and with management from the beginning that the committee *does not* function in a representative capacity. The committee members are "individuals" who may be designated from various departments. However, they should not serve as "representatives" of the department.
- ☐ Define committee goals and objectives which emphasize their role in "mutual or bilateral education," "communications," "idea generation," "suggestions" or "sounding board." Avoid terms which might lead the committee to expect an unrealistically large role in management decision making.
- ☐ Establish that the committee is not expected to become involved in setting wage rates, reviewing benefits or directly involved in management decision-making, except within a very narrow range of discretion which is outside the normal "management prerogative."
- ☐ Be very careful to avoid the "election" of members or their long-term service in position. (Service on the committee should be limited to less than a year, preferably six (6) months.) While you may wish to have persons on the committee only from among those interested in serving, have some objective mechanism for selecting members, such as alphabetical selection. This will reduce the perception or expectation of some formal "representation" right. It will also reduce the implication that the committee is designated and directed by management rather than a more open forum.

If you follow these few guidelines, you will reduce significantly the prospect of being the subject of the next *Electromation*-type case. In addition, it will increase your chance of having an effective committee which will operate smoothly and does not evolve into a Section 8(a)(2) violation *or* become a counterproductive force with which to deal. ■

Commentary/by Aaron Bernstein

MAKING TEAMWORK WORK—AND APPEASING UNCLE SAM

To hear many employers talk, you would think the sky had just fallen. They argue that a mid-December ruling by the National Labor Relations Board (NLRB) has dealt a potentially crippling blow to employee teams, which companies have set up by the thousands in recent years. The reason: to boost productivity and quality and restore U.S. competitiveness (page 12). The board's decision already has been appealed, and management lawyers are advising companies to prepare for years of litigation. But there's a more constructive response: Employers should take some cues from the NLRB and give employees more say in running teams.

The NLRB case involved Electromation Inc., an Elkhart (Ind.) maker of electrical parts. The company set up five committees of up to six employees and one or two managers to deal with issues such as pay scales for skilled workers. Then the Teamsters, which was trying to organize Electromation, claimed that the arrangement violated the National Labor Relations Act of 1935. Among other things, that law bans sham unions—groups that perform some functions of labor unions but are controlled by management.

'TAINTED.' The NLRB decided that Electromation did breach the law. The company's teams elicited other workers' views and dealt with traditional bargaining issues such as wages and working conditions, so the board labeled them "labor organizations" as defined by the act. It also found that the teams were "dominated" by management, which formed them, set their goals, and decided how they would operate.

Several NLRB members argue that the Electromation ruling doesn't outlaw work teams per se. But management groups say that thousands of similar teams exist. "The Electromation decision says that any employee-involvement program may be tainted," says Arnold E. Perl, a Memphis lawyer who wrote a brief in the case for the U.S. Chamber of Commerce.

This needn't be, however. True, teams that act in a representative fashion on any condition of employment—improving safety, for instance—now are suspect. But all employee-involvement systems can be made legal. Management still has the right to suggest that they be formed, help set them up, and even finance them. The key is that teams must not be dominated by management. The NLRB decision doesn't say what that means. But board member Dennis M. Devaney agrees that secret-ballot elections of members would probably be one test.

There could be some others. Teams might have wide latitude in deciding what issues to deal with and have the right to meet apart from management. Independent teams also couldn't be dismantled by executive whim—though the law doesn't require a company to follow up on employee proposals. "Employers must decide if they really want employees involved, or if they want to keep all the power," says Lewis L. Maltby, an expert on workplace rights at the American Civil Liberties Union.

Some proponents of team systems, such as former Labor Secretary Ray Marshall, point to Europe as a model. In Germany, workers elect representatives to a plant-level "works council" that management must consult on most decisions affecting employees, from work organization to health and safety policies. The councils aren't unions and can't call strikes.

BACKDOOR FEARS. In the U.S., General Motors Corp.'s Saturn Corp. is the leading example of independent teams. There, groups of 5 to 15 workers perform managerial tasks such as hiring. They also elect representatives to higher-level teams that make joint decisions with management on virtually every aspect of the business, from car design to marketing to sticker price. Saturn is unionized, but a similar approach could obviously work at unorganized companies.

Most U.S. employers distrust the works-council idea as a backdoor organizing tool for unions. And some just don't want to give up so much power: Many companies have a narrow concept of what teams are, defining them simply as groups of workers who find ways to do their own jobs better. But in a concurring opinion to the Electromation decision, NLRB member John N. Raudabaugh argued that even these teams might be considered labor organizations under the broad definition of the 1935 act, should someone press that point. So the best insurance may be truly to empower employees on teams, even if they represent only themselves.

That may sound revolutionary to many executives. But if Corporate America is serious about teams—and the results they produce—the Electromation decision need be no more than a healthy midcourse correction.

Bernstein is BUSINESS WEEK's Workplace editor.

WHEN TEAMS ARE ILLEGAL

A mid-December ruling by the National Labor Relations Board (NLRB) held that employee teams created by Electromation Inc. were illegal. Experts say that many companies have similar teams. Here are the primary factors to look for that could mean a team violates national labor law

REPRESENTATION Does the team address issues affecting nonteam employees i.e., does it represent other workers?

SUBJECT MATTER Do these issues involve matters such as wages, grievances, hours of work, or working conditions?

MANAGEMENT INVOLVEMENT Does the team "deal with" any supervisors, managers, or executives on any issue?

EMPLOYER DOMINATION Did the company create the team or decide what it would do and how it would function?

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SAN FRANCISCO CHRONICLE
FRIDAY, JUNE 18, 1993

Labor Ruling Causes a Stir

NLRB revives old ban on employee committees

By Carl T. Hall
Chronicle Staff Writer

Everybody seems to desire more democracy in the workplace. Yet it turns out what many call "democracy" is illegal in America.

The National Labor Relations Board recently found that seven employee committees set up by the Dupont company to deal with safety and fitness ran afoul of a Depression-era ban on "company unions."

The NLRB had reached a similar decision in an earlier case, involving a dispute between the Teamsters union and an Elkhart, Ind., manufacturer called Electromation Inc. But management-aligned labor experts nevertheless were startled by the June 7 Dupont ruling.

"There was a feeling that the board could not possibly have meant what it said" in the Electromation case, said Garry Mathiason, a San Francisco labor lawyer who represents companies. "Then, lo and behold, we get Dupont."

An appeal to the federal courts is pending. The outcome has broad implications for employers that have set up employee programs such as quality circles, labor—management safety committees and team management groups. Washington, D.C., labor lawyer Charles Cohen said that American industry need not rush to "radically change the way it operates" just yet. Even if the NLRB is upheld, he said, it's possible for employers to sidestep the legal mine fields if they pay close attention.

Employers face no grave penalties even if they do misstep, other than the disruption of having to dismantle a program or redesign a committee. But if the company winds up in a labor dispute, an improperly handled worker-participation committee could become a problem.

"Employers have to be very careful when they set up these committees now," said Mona Zeiberg, senior labor counsel at the National Chamber Litigation Center in Washington, an affiliate of the U.S. Chamber of Commerce.

Typically, the issue only arises when a union or someone else finds reason to complain. The NLRB does not initiate enforcement actions; it rules instead only when someone files a formal charge of an unfair labor practice.

In the Electromation case, the Teamsters alleged that the company set up

NLRB: *Page D2 Col. 4*

WORKPLACE DEMOCRACY

Recent decisions by the National Labor Relations Board established guidelines for employers to follow when they form committees of employees to handle workplace issues such as safety and quality control:

- So-called 'company unions' — labor organizations dominated by employers — are illegal. Workplace committees may fall into this category if they are set up to 'deal with' the employer on a broad variety of issues.
- Committees that promote changes in wages, hours and benefits — even a tennis court — amount to 'labor organizations,' even if there is no formal collective bargaining.
- Employees must be free to set the agenda and effectively control such committees, or they may be vulnerable to legal challenge.
- 'Brainstorming' groups are acceptable as long as they serve merely in a 'suggestion box' function, passing along information to management but not advancing specific proposals.
- Even if a participation program runs afoul of the law, the NLRB initiates no action unless someone files a charge of an unfair labor practice.

NLRB: Board's Labor Ruling Causes a Stir

From Page D1

worker-involvement programs in order to thwart a Teamster organizing drive. The union later won bargaining rights at the plant.

During the 1920s, company-sponsored sham unions were a common defense tactic used to stymie bona fide organizers. Disputes on that issue have become rare in recent years. The NLRB says that of 9,300 cases it has handled during the past three years, only about 20 had to do with a company-union issue.

Meanwhile, business-school journals for years have been encouraging American companies to abandon their old-fashioned dictatorial ways and "empower" their workers. Among the most prominent champions of a team approach to management is U.S. Labor Secretary Robert Reich.

Stanford University law professor William Gould, who has emerged as President Clinton's most likely choice to head the NLRB, also is a strong advocate of worker participation. Gould has said the laws should be changed in order to remove some of the legal ambiguities.

A little-known section of the 1935 National Labor Relations Act makes it illegal for a company to "dominate or interfere with" any "labor organization" in their plant. Nor are companies allowed to provide financial support to any such "labor organization." Even union-backed worker participation schemes technically may violate the law if employers provide even so much as office space.

That's one reason the two recent cases have gained so much attention. The decisions prompted many employers to take a much closer look at what until now has been considered part of the corporate woodwork.

Legal experts at Wells Fargo Bank, for example, have until now left formation of workplace committees completely up to division-level managers. Now, they have ordered a comprehensive review.

"We're pretty sure we are in compliance but we are looking into it," said a bank spokeswoman.

John Truesdale, executive secretary at the NLRB, said most employers should have nothing to worry about. He said fears to the contrary are based mainly on a distorted reading of the two recent decisions.

"The employer that invites the employees to volunteer for a committee, who then go and set their own agenda and give input into workplace issues, there's nothing wrong with that," Truesdale said. "It's only where the employer dominates the committee that you have a problem."

The Likely Labor Law Chief

By Carl T. Hall
Chronicle Staff Writer

William Gould IV, a Stanford University law professor and advocate of union-backed changes in federal labor law, has emerged as President Clinton's likely choice to head the National Labor Relations Board.

A White House announcement is expected within a few days. Administration officials said that while no final decision has been been made, Gould, 56, is known to be among a handful of contenders for the post.

Stanford already has prepared a news release in anticipation of the nomination. The Wall Street Journal yesterday reported that unnamed White House officials had recommended Gould for the job, and that Clinton was expected to approve the choice.

The five-member NLRB administers U.S. labor law, oversees union elections and rules in disputes between unions and managements. The board has regional offices throughout the country.

Gould, 56, was traveling yesterday and could not be reached for comment. A former United Auto Workers staff lawyer, Gould has been at Stanford since 1972. He graduated from the University of Rhode Island.

DuPont Is Told It Must Disband Nonunion Panels

Worker-Manager Teams Set Back in Ruling By U.S. Labor Board

By KEVIN G. SALWEN
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — In a major blow to corporate worker-management teams, the National Labor Relations Board ordered **DuPont** Co. to disband seven such panels and to deal instead with the company's chemical workers union.

At the same time, the board attempted to lay out how companies can set up the increasingly popular labor-management teams.

The decision has been eagerly awaited by U.S. companies because it is the first major case to address the issue of safety committees in corporations where a union is present. Late last year, the NLRB ruled that worker-management teams at **Electromation** Inc. of Elkhart, Ind., were illegal "sham unions" because they set up "action committees" at a time when the Teamsters union was trying to organize the plant.

The DuPont ruling is a blow to the philosophy of Labor Secretary Robert Reich, who is a strong advocate of worker-management teams as a way of solving workplace problems. Mr. Reich has said repeatedly that he would seek legislation protecting the sanctity of worker-management teams if the NLRB's rulings have the effect of stifling such groups.

Such legislation wouldn't be easy to enact. Labor unions would fight efforts to curtail their already dwindling muscle within corporations, and they still hold much sway within the Democratic Party.

The NLRB was unanimous in deciding that the DuPont safety and fitness committees were illegal "labor organizations" under the National Labor Relations Act of 1935. The panels made decisions concerning safety in DuPont's Deepwater, N.J., facility, but those determinations were subject to the approval of management members on the teams, the board said. The union has several thousand members, all at the Deepwater facility.

DuPont management dominated the committees in other ways as well, the NLRB decided. For example, the Wilmington, Del.-based chemical company set the size of each panel, and determined which

DuPont management dominated the committees in other ways as well, the NLRB decided. For example, the Wilmington, Del.-based chemical company set the size of each panel, and determined which employees would staff the committee if more than the required number volunteered. It also reserved the right to set up or disband any of the committees. Cumulatively, the board said, that meant the committees' administration was dominated by DuPont, rather than being an equal labor-management team.

Moreover, "some committees dealt with issues which were identical to those dealt with" by the Chemical Workers Association — and with even greater success, the board said. For example, the Antiknocks Area Safety Committee got a new welding shop for a worker who had complained of poor ventilation, while the union's attempt to resolve the same problem had failed.

Similarly, the committees decided on incentives and awards for workers, areas the NLRB said were "mandatory subjects of bargaining."

Still, the board attempted to create an outline from which companies could set up teams. For instance, such committees would need to avoid "dealing" with management as a union might. Specifically, the board indicated that the committees should exist "for the sole purpose of imparting information . . . or planning educational programs."

In addition, the board suggested that management not dominate the panels, but rather be a participant with a commensurate number of votes — notably a minority.

Meanwhile, the board singled out as being legal the quarterly safety conferences that DuPont began in 1989. At those conferences, the board said, it was announced that bargainable matters couldn't be dealt with and that "the conference wasn't a 'union issue.' "

Only three board members participated in the ruling, with Chairman James Stephens recusing himself. Board member Dennis Devaney issued a separate concurring opinion in which he said he read the law more liberally than his colleagues in regard to labor-management teams but that he also found DuPont's actions "plainly unlawful." Of the three members voting on the case, Clifford Oviatt Jr. already has left the NLRB. Another is serving a "recess" appointment and is likely to be replaced soon by President Clinton.

DuPont officials say the seven committees in dispute were disbanded almost a year ago.

Thomas L. Sager, DuPont's managing counsel, said the company will consider whether to appeal the board's decision to federal appeals court.

Late last night, the lawyer for the chemical workers, Theodore Lieverman, said, "The union is the representative of the employees for all purposes. Our case stands for a very simple, fundamental proposition that if you want labor-management cooperation, deal with the union."

A Worker-Involvement Program Violates Labor Law, U.S. Rules

By BARBARA PRESLEY NOBLE

Employers, lawyers and business trade associations expressed dismay yesterday after the National Labor Relations Board ruled that an employee-involvement program at E. I. du Pont de Nemours & Company violated Federal labor laws.

The board ordered Du Pont last week to dismantle seven committees established to deal with safety and recreation issues at the Chambers Works plant in Deepwater, N.J., and to bargain in good faith with the plant's union, the Chemical Workers Association.

The ruling comes six months after the board came to a similar decision in a complaint involving a nonunion company. In the view of some experts on workplace issues, the ruling threatens the existence of employee-participation programs, which hundreds of companies have adopted in trying to improve productivity and competitiveness.

"A feeling of despair will set in after one reads the Du Pont decision because once again it knocks down an employee-participation program," said Arnold Perl, a Memphis employment lawyer who appeared before the N.L.R.B. in the earlier case. "It is limited to the facts of the case, but it sounds repeated warnings that participation programs are at risk."

The case began in 1989, when the Chemical Workers filed complaints with the N.L.R.B., charging that Du Pont illegally set up and dominated what were in effect labor organizations when it created committees designed to improve safety and fitness. Establishing "sham" unions is a violation of the National Labor Relations Act of 1935, also known as the Wagner Act.

The union also complained that Du Pont refused to bargain, a move that would also violate the Wagner Act, bypassing the union and using committees to achieve its goals unilaterally.

A spokeswoman for Du Pont said the company was disappointed with the decision but has not decided if it will appeal. "We are not abandoning the idea of union-employee involvement," said the spokeswoman, Lori Fenimore. "Employee involvement is critical; it's a matter of finding a way to comply with the law."

In their broad outlines, the Du Pont committees represent the approach known as labor-management participation or cooperation or, usually in nonunion settings, employee involvement. As a practical matter, the approach often take the form of labor- or employee-management teams that work together cooperatively.

Proponents of such teams say some of the great success stories of corporate America, like the turnaround of the Xerox Corporation, are built on the labor-management cooperation model. Labor Secretary Robert Reich frequently promotes labor-management cooperation as a solution to the nation's global competitiveness problems.

But employee groups, especially unions, have been skeptical, arguing that "cooperation" can easily become "cooptation." They say it is easy for companies to manipulate teams. Corporations argue that they want to stay within the letter and spirit of labor law, but that they need guidance they have not received in recent rulings.

"We are very disappointed with the decision," said Daniel V. Yager, an assistant general counsel at the Labor Policy Association, a Washington-based employers group. "A lot of people had hoped we would get more clarification as to what employers can and can't do. We think the board wanted to provide more clarification, but they have made the issue more confusing."

The decision had been anxiously awaited by both labor and employers as a complement to the decision in a case involving the Electromation Company of Elkhart, Ind., a nonunion maker of electrical parts. In that case, which was decided in December after an unusually intricate series of proceedings, the board found that the company illegally created and dominated a labor organization. The complaint was filed by the teamsters' union, which eventually did organize Electromation. The decision was deemed, at least by the business comunity, as murky.