

Deregulation and the Attack on Labor –excerpted from Right Turn (1986) by Thomas Ferguson and Joel Rogers

The [Reagan] administration also used the enormous discretion of the executive branch to relieve business of many of the burdens of regulation. Building on the reforms of the Carter Administration, it effectively concentrated control of the regulatory process in the OMB, where David Stockman presided, and even without major legislative actions, it succeeded (through leadership changes, staff cuts, reduced budgets, changed agency rules, and other means) in gutting enforcement at major regulatory agencies of special concern to business. The notoriously complex and heterogeneous nature of the American administrative process prevents any adequate summary of the Reagan regulatory program here. But it is safe to say that it comprised another giant, if almost hidden, transfer program, shifting all sorts of costs away from business and onto the rest of the population.

In the critical area of environmental regulation, the Administration simply refused to implement all sorts of key provisions of existing air- and water-pollution laws. Over Reagan's first term, EPA's overall budget was reduced by 35 percent (a cut of 50 percent was proposed), enforcement against strip-mine violations declined by 62 percent, prosecution of hazardous-waste violations declined 50 percent, and FDA regulation enforcement declined 88 percent. Exposure limits on hazardous chemicals were raised above previous EPA levels, sometimes on the order of 10 to 100 times. The number of "emergency exemptions" for business for restrictions on pesticide use more than tripled (in 1982 better than 97 percent of business requests for such exemptions were approved by EPA). The Administration's treatment of hazardous-waste problems may be taken as exemplary. At present, according to the Office of Technology Assessment, there are approximately 378,000 waste sites that may require corrective action. The vast majority (87 percent, on one estimate) pose threats of groundwater contamination. As of 1985, the Reagan EPA had put only 850 of these on its "priority" list for action. Of these, it cleaned up only six during its first term; whether they were cleaned properly and completely is sharply disputed. That year, with this record, the Administration proposed phasing out the "Superfund" for toxic-waste cleanup; for fiscal years 1984-85, it proposed no funding at all for the EPA's groundwater programs.

In some areas, however, the Administration was prepared to spend money. When Reagan ran for office, he announced that "I am a Sagebrush Rebel," and soon went about the business of rewarding this business constituency. (western ranchers). Early in its first term, the Administration announced plans to sell off as much as 35 million acres of federal land, at the low price of \$17 billion. This proposal was eventually beaten back, but efforts at other "privatization" of natural resources continued. The Administration made massive sales of federal timber and embarked on an extensive leasing program of off-shore oil and gas rights (originally proposed to cover one billion acres) and coal development rights to federal properties—all done in ways that turned resources over to private actors at below-market prices. It opened millions of acres of already degraded grazing land to private users, with usage fees set at less than a quarter of market prices. And it promoted enormous water projects, including the wasteful and environmentally disastrous Bonneville Unit of the Central Utah Project. This, too, was a major subsidy to business. On average, irrigators pay back only about 10 percent (without interest) of the massive investments made by the public.

In other areas of "regulation" as well, the Administration led a broad attack on long-standing policies. It presided over a quiet revolution in antitrust policy (leading law professors to joke to their classes in the subject that they now were teaching "protrust") that helped spur one of the great merger manias in recent U.S. history. It gutted enforcement of voting rights, other civil rights, and affirmative-action programs. It launched a broad campaign of nondisclosure and secrecy in the executive branch, and while further institutionalizing business involvement in the promulgation of new regulatory standards, it declined to enforce provisions for public

participation. Calculating accrued benefits over ten Years, the Administration estimated the total "savings" from these and other programs of regulatory reform to be \$150 billion; if the number is to be credited at all, virtually all of it should be credited to business.

Finally, in what was a sharp break from prior policies-which had ranged from active promotion to malign neglect-the Administration mounted a wide-ranging offensive against organized labor, beginning with a string of anti-union appointments at the Department of Labor. As Secretary it brought in Ray Donovan, an obscure construction company executive from New Jersey who had been a leading fund-raiser for Reagan efforts there. Donovan's firm, Schiavone Construction, was a repeat violator of national health and safety laws. During the late 1970s, it was cited an average of ten times per year for "serious" violations (defined as involving "a substantial probability that death or serious physical harm could result") of the Occupational Health and Safety Act. (After a series of inconclusive federal investigations into charges that he engaged in kickbacks, bribery, and extortion schemes while at Schiavone, Donovan would later become the first sitting Department Secretary in U.S. history to resign under criminal indictment.) At OSHA itself, the Administration appointed Thorne Aucter, another construction company executive from a firm with a history of repeated OSHA violations. At the National Labor Relations Board, the Administration's first appointee was Robert P. Hunter, a former aide to anti-labor Utah Republican senator Orrin Hatch, a central figure in blocking Labor Law Reform. Among Hunter's other anti-labor bona fides was his authorship of the chapter on the Department of Labor in the Heritage Foundation's famous *Mandate for Leadership* policy blueprint for the Administration. There he urged many of the policies subsequently adopted in the Department, including the gutting of OSHA and the Mine Safety and Health Administration (moving both to a more "cooperative" relationship with industry) and closer review of the "pro-labor bias" at the Bureau of Labor Statistics (as well as sharp cutbacks in its funding). Hunter also found the NLRB to be too pro-labor and "ivory tower" in its approach. Among a host of procedural and policy recommendations, he urged greater use of injunctive powers against unions and the extension of coverage for Taft-Hartley's section 14(b)."

With Hunter on board, the Administration moved to replace outgoing NLRB chair John Fanning with John Van de Water, a Los Angeles-based management consultant who specialized in preventing or breaking unions. When this effort failed, it placed management lawyer Donald L. Dotson (formerly of Wheeling-Pittsburgh Steel and, earlier, labor counsel for Westinghouse and Western Electric) in that critical spot. Only months before his appointment, he had argued that "collective bargaining frequently means labor monopoly, the destruction of individual freedom, and the destruction of the marketplace as the mechanism for determining the value of labor," and held that the NLRB (under Carter and previous Administrations) had engaged in a "selective enforcement and perversion of the Labor statutes," exhibiting a "tendency to act as a legal aid society and organizing arm for unions."

Later, Dotson and Hunter were joined by Patricia Diaz Dennis, another management lawyer (formerly of ABC and Pacific Lighting), whose appointment the Administration often described as a "triple," since she was a woman, a Hispanic, and a nominal Democrat who strongly supported the President. Finally, as Solicitor for the NLRB, to whom Dotson promptly gave enormous new powers, the Administration appointed Hugh Reilly, veteran staff attorney for the rabidly anti-union National Right to Work Legal Defense Foundation. Remarkably, he continued working for that organization even after accepting government employment.

Such appointments heralded major changes in policy. At OSHA, for example, enforcement of existing law dropped precipitously, while the development of new workplace standards came to a virtual halt. Over the [fiscal year] 1980-82 period, OSHA complaint inspections declined 58 percent, while follow-up inspections declined 87 percent. Citations for violations of the act also fell, dropping 50 percent for serious violations, 91 percent for willful violations, and 65 percent for repeat violations. At the bottom line, total penalties (including both state and federal programs) dropped 78 percent, while failure-to-abate penalties fell 91 percent. By the end of

Reagan's first term, enforcement levels would have slid to a point where they provided virtually no deterrent to violations of the act. Manufacturers who violated the law could expect, on average, a penalty of only \$6.50 for doing so. The agency also stalled repeatedly, and in some cases even suppressed its own studies of worker risk, in issuing standards for such known workplace carcinogens as asbestos, formaldehyde, and EDB. It would not be until June 1984 that the Reagan OSHA issued its first new final standard for a workplace carcinogen, which was immediately challenged in court as inadequate.”

Policy changes at the National Labor Relations Board [the agency that oversaw workers' complaints about unfair labor practices by companies] were even more dramatic. Especially after consolidating a solid majority of Reagan appointees in 1983, the Board began making major changes in basic labor-law doctrine—all in the direction of favoring management over unions. During the first five months of 1984 alone, it altered long-standing policy in a slew of lead cases: narrowing the scope of activities subject to traditional NLRB protections; broadening the permissible range of employer conduct in union representation campaigns; lowering the costs to employers of unlawful activity during such campaigns; freeing employers from the constraints traditionally imposed on work-relocation decisions by the collective-bargaining obligation; and otherwise narrowing or excusing the employer to make changes subject to bargaining without informing unions before the change is made, or by permitting employers wider latitude to end the bargaining process by declaring impasse. The Board also announced a broad new policy of deferring cases, whenever possible, to private arbitration, thereby shifting more and more of the costs of dispute resolution onto unions, and removing the government as an active player in the enforcement of many worker rights. More subtly, perhaps, the Reagan Board gutted much existing law through biased application of it, sometimes overturning the credibility findings of its own Administrative Law Judges and hearing officers in the process.

In addition to being the most anti-union Board in history, the Reagan NLRB soon became the least efficient. The case backlog, or number of contested cases awaiting decision by the Board, grew dramatically, rising from about 400 cases when Reagan took office to a high of close to 1,700 cases by February 1984. By 1983, it would take the Reagan Board, on average, 627 days to move from the filing of an unfair-labor-practice charge to a final Board decision. Such inefficiency complemented the Board's anti-union animus. Because, as in any adjudicative system, the resolution of contested cases in one area (be that defined factually or in terms of the law) is typically related to the resolution of cases in cognate areas, the backlog had a huge and geometrically increasing bottleneck effect throughout the Board's regional system. And by slowing the processing of cases at the local level and stretching out the already nearly interminable procedural delays at all different stages of the organizing and bargaining process, it made it that much more difficult for unions to organize new workers or effectively represent the members they already had.

As it lay the foundations for these administrative changes in early 1981, the Administration was also moving forward on other parts of its programs. The budget and tax enactments of midyear, both of which (except for their military component) were strongly opposed by labor, promised to wreak untold havoc on union members' lives. A few weeks after they passed, in August, the President crushed a strike called by the Professional Air Traffic Controllers Organization, which had earlier been one of the handful of unions to endorse his 1980 candidacy. By then, of course, the vast Reagan recession that would mark the next two years had begun, throwing millions of workers off their jobs, driving the level and duration of unemployment to post-war record highs, prompting a host of "givebacks" and "concession bargaining" from unions, sharply reducing overall union membership, and, at least in the near term, fundamentally altering the bargaining climate between unions and employers. Cutbacks in unemployment benefits illustrated the synergy of the unemployment "cure" and the social-spending cutbacks. During the 1973-75 recession, unemployment insurance coverage reached as many as 80 percent of those who were officially without jobs; in January 1983, near the bottom of the

Reagan recession, less than half the official jobless were covered; by the fall of 1984 only about a quarter were covered.'

By the end of Reagan's first term, the full extent and success of this attack would be evident. By 1984, for the third year in a row, average first-year settlements in major bargaining contracts would lag substantially behind inflation, major strike incidence set a postwar low, and unions organized fewer than 100,000 new workers through NLRB representation elections. Even in that year of economic recovery and boom, real average gross weekly earnings were 12 Percent below their 1972 peak, while real adjusted hourly earnings were still in decline.

Most striking were the figures on trends in membership over the 1980-84 period. During that time, total labor-organization membership dropped 2.7 million, and the private-sector unionization rate fell to a bare 15.6 percent of employed wage and salary workers. Union membership fell absolutely, and as a percentage of industry employment, in every major industrial classification, with no apparent relation to the underlying growth or decline in employment. In goods-producing industries, where total employment declined by 800,000, union membership declined by more than **1.8** million. In service-producing industries, where employment grew by more than 4.9 million, membership declined by more than 700,000. And in mining and construction, where employment remained stable during the period, unionization rates still plunged by 44.1 and 21.4 percent, respectively. Clearly, what began happening to labor in 1981 outlasted the Reagan recession."