

## TRANSCRIPT

### The Work Goes On

**Guest:** David Lewin

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**David Lewin:**

Unionism is a form of voice, but I think it comes down to the role of employee voice in a capitalist economy.

**Orley Ashenfelter:**

Welcome to [The Work Goes On](#), a podcast from the [Industrial Relations Section at Princeton University](#). I'm your host, [Orley Ashenfelter](#), the Joseph Douglas Green 1895 Professor of Economics at [Princeton University](#).

In this podcast series of conversations with leading thinkers and practitioners, we are creating an oral history of an entire generation of industrial relations experts and labor economists whose contributions to their fields have been absolutely extraordinary. Our guest today is [David Lewin](#), the Neil Jacoby Emeritus Professor of Management and Human Resources at the [University of California at Los Angeles' Anderson Graduate School of Management](#). David, welcome to [The Work Goes On](#).

**David Lewin:**

Yes, thanks Orley.

**Orley Ashenfelter:**

Before we begin the full podcast, tell me before we start, who is Neil Jacoby, the person whose name is on your chair?

**David Lewin:**

He was the Chief Operating Officer of Norton Simon Enterprises, I think in the 1950s and '60s, and then in the '50s he became the Chairman of the Council of Economic Advisers under Dwight D. Eisenhower for the United States.

**Orley Ashenfelter:**

Fascinating. I remember the name and I remember he was a distinguished considered academic. And I was a little bit surprised to see that was your chair. But let's really begin by talking about your background. Where did you grow up?

**David Lewin:**

My parents were immigrants from Poland and Czechoslovakia. So, I am a first generation American. My father was a civil engineer and at one point was consigned to the U.S. Navy in Long Beach, California, as distinct from Long Beach, New York. So, I was born in California because he and my mother were there

then and I grew up in Los Angeles. I actually attended Los Angeles High School, which is now 105 years old. It's the oldest high school in the city of Los Angeles, and I stayed in Los Angeles until 1970 when I accepted my faculty job at Columbia University in the business school and then went to New York.

**Orley Ashenfelter:**

Where did you go to undergraduate school?

**David Lewin:**

I went to California State University at Northridge, majored in accounting. I then worked for an accounting firm, which was the predecessor to today's Grant Thornton. In my day, it was Alexander Grant and Company. For a year I worked full-time and went to my MBA program full-time at UCLA, and then was encouraged to go on for a Ph.D. and I did at UCLA and left there in 1970 to go to Columbia to accept my faculty job with my dissertation in hand, but not quite done. And the next year I completed the dissertation. So, it's a long-winded answer, I grew up in LA and went to New York.

**Orley Ashenfelter:**

It's interesting. I'm a native Californian too, actually. I grew up in Southern California, but not in Los Angeles, further south, so we have that in common. But I must admit the switch from Los Angeles to New York and Columbia, that must've been a shock for a guy who grew up in California.

**David Lewin:**

My two grandparents were both Orthodox rabbis who migrated to the United States. My father had seven brothers and sisters killed in the concentration camps, but the parents survived. And every few years when I was a young teenager, we would drive from L.A. to New York. One pair of grandparents lived on a fourth-floor walkup on the Grand Concourse in the Bronx. The other grandparents lived in a farm in Colchester, Connecticut named after the British town of Colchester. And both of my grandfathers were Orthodox rabbis.

**Orley Ashenfelter:**

That's very impressive, actually. You almost sound like someone who could have been born in Brooklyn. A lot of the people on this podcast, I've been shocked to find out, were actually born in Brooklyn itself. What was your dissertation about?

**David Lewin:**

The title of my dissertation was "Wages and Employment in Local Government Employment," and I did a study of compensation for various levels of employees in L.A. city and county and that included comparing their compensation to the compensation of similarly situated people in private companies. And that got me started on the whole business of employee and executive compensation. The official title was "Wage Determination in Local Government Employment."

**Orley Ashenfelter:**

Do you remember what you found?

**David Lewin:**

Well, I do. My first two published articles out of the dissertation, the first one was on police, fire pay parity, and it was published in the *Berkeley Journal Industrial Relations* in the fall of 1973, and what I found there was that the idea of parity had some issues because the fire department had excess supply and the police department did not and there were many other differences between the jobs that they were working. Firefighters could work 24-hour duty cycles and work elsewhere; the police could not do that. And then the second article out of my dissertation was published in *The Industrial and Labor Relations Review* in 1974. And that was the one where we showed that the pay structure of these governments had a slope in which the lower ranked employees in janitorial jobs or clerical jobs were paid more than their private sector counterparts, but once you crossed over to professional and executive positions, the private sector people were paid less. And so those were the two articles that came out of my dissertation.

**Orley Ashenfelter:**

It's interesting, actually, that's still old-fashioned common finding that unionization, for example, tilts the skilled differential so that lower-skilled people typically gain more from the union than those that don't as much I guess, as the city government did. Now, you were at Columbia for a long time. How long was it?

**David Lewin:**

Twenty years, 1970 to 1990. I rose through the ranks.

**Orley Ashenfelter:**

One of the things I remember with your work is you had a very deep interest in grievance systems and arbitration or dispute resolution systems.

**David Lewin:**

Yes.

**Orley Ashenfelter:**

When did that start?

**David Lewin:**

That's a good question, Orley. Let me think. My book, "The Modern Grievance Procedure in the United States," which was published 1988... I started to get interested in that in my first few years at Columbia. I wound up getting a National Science Foundation Grant, which ultimately resulted in the production of that book where I examined grievance procedures and post-grievance procedure settlement in four different entities – a steel company, a hospital, and two others. But I had become very interested in dispute resolution in the grievance procedure, and then I got interested in it for non-union companies. And my first published article, if I can remember correctly, on non-union grievance procedures was published in 1987 in *The Journal of Conflict Resolution* where we had data on grievance procedure filing, settlement, and so on in a series of non-union companies.

**Orley Ashenfelter:**

That is so interesting. I actually once visited a Greenacres Honda plant in Columbus, Ohio, which had instituted... They were non-union and they had instituted a non-union grievance procedure. I've never

quite understood exactly why they did that. I thought in part probably to avoid one of the benefits that unionization can bring and therefore, keep themselves from being unionized.

**David Lewin:**

Yeah.

**Orley Ashenfelter:**

Let's just take a little bit to talk about your work on grievance systems. I've always thought that's one of the benefits that people don't talk about much from a union, which is not necessarily wages, but it's the orderly work process for dealing with concerns that some people have about unfair treatment. What are your takeaways from the use of grievance procedures?

**David Lewin:**

Well, if you go to a typical union contract – say it's the United Food and Commercial Workers Union contract with supermarkets or the United Automobile Workers' contract with the auto companies or the United Steelworkers' contract with energy companies – the vast bulk of the pages are not devoted to wages or terms and conditions of employment. They're devoted to the grievance procedures. They're very elaborate, and I think what this basically means reduced to its essence, is that unionism is a form of voice. When Albert Hirschman wrote his famous book on [“Exit, Voice and Loyalty,”](#) it encapsulated this. It's voice, it gives these employees some kind of voice. And in many non-union companies today, including the Googles of the world, they have other arrangements for employees to have voice, but I think it comes down to the role of employee voice in a capitalist economy. And to me, that is the singular focus of most industrial relations studies beginning in 1947, when the Labor and Employment Relations Association was founded. It's the idea of employees having a voice.

**Orley Ashenfelter:**

But we should explain that when it was founded, it was called the Industrial Relations Research Association.

**David Lewin:**

The IRRA, exactly.

**Orley Ashenfelter:**

Not the LERA as it is now. I know you were president of it too. Which one were you president of, the LERA or the IRRA?

**David Lewin:**

Well, that's an interesting question. The answer is the LERA because I think in the early 2000s Orley, the name changed from the IRRA to the LERA. But then in much of the early 2000s, we had a committee that was looking to determine the answer to this question: should the LERA establish its own separate meeting and not be affiliated with the Allied Social Science Association, which of course is dominated by the AEA? And the answer to that turned out to be yes. So, I was the only president for a year and a half, usually they are year terms. And in 2012 I was the president, but in 2013 after the LERA broke away from the ASSA, we had our own meeting in June instead of January. So, I got tagged with an extra six

months, and our first meeting was in St. Louis, Missouri. I remember it well. And we're now in our 11th year of a separate June meeting, but we still have slots at the AA-ASSA meeting in January.

**Orley Ashenfelter:**

Yeah, I know there's quite a few organizations that have slots at that meeting.

**David Lewin:**

Yeah.

**Orley Ashenfelter:**

I was president of the American Economy Association, which as you say is the organizing body for this Allied Social Science Associations.

**David Lewin:**

Yeah, I know you were.

**Orley Ashenfelter:**

There are many organizations there.

**David Lewin:**

Yeah, the American Finance Association still has its sessions with the AEA, but has his own separate sessions.

**Orley Ashenfelter:**

Oh, yeah. There are many others actually too, that groups that you probably don't even remember exist still. For example, the Union of Radical Political Economists still meets with the AEA. They don't maybe seem as radical today as they once did, and maybe not as many. Have you ever acted as an arbitrator?

**David Lewin:**

I have, but among my publications are publications about arbitrators. So, I decided fairly early on that as a researcher, I didn't want to be a participant, so I stopped doing arbitration and mediation. Although many of our members, as you would know well, of the LERA, are arbitrators and mediators. What I have been doing for the last decade is serving as an expert witness in labor and employment litigation involving issues of no poaching and noncompete agreements, independent contractor versus employee status, and alleged excessive executive compensation.

**Orley Ashenfelter:**

This is quite relevant because I don't know if you've noticed, but the Federal Trade Commission announced a ban on all future noncompete contracts. So, we should explain, non-compete contracts are one method that employers have to try to keep employees associated with an employment relationship they're already in and in particular, it prohibits them from taking a position at a competitor basically, within a certain length of time. But you may have noticed this, that actually the regulation, which I'm sure will be challenged in court says both that noncompete contracts in the future will be eliminated, but that for the top executives, they can still be enforced, but that new ones cannot be written. I was a

little surprised at that. It's quite a sweeping regulation. What do you think of that? What's your opinion of it?

**David Lewin:**

Well, the Department of Justice in the last 10 years or so has been pursuing antitrust litigation under the Sherman Act against companies for their noncompetitive behavior in the labor market. I mean, this is a huge thing. You probably know well, Orley, that when the Sherman Act was passed in 1890, for the first 25 years it was applied to labor unions, which were declared to be criminal conspiracies.

**Orley Ashenfelter:**

Monopolies.

**David Lewin:**

Monopolies, that's right, so that all changed.

**Orley Ashenfelter:**

Yeah, that's right.

**David Lewin:**

But now the Justice Department is pursuing antitrust litigation in the labor market. That's what all these no poaching cases are about, these non-compete cases are about. And so, any company that has a noncompete or non-disclosure agreement, it's anti-competitive. And if it were just executives, that would be one thing, but you know that the franchisors, the franchisors and franchisees, the restaurants and so forth, they have noncompete agreements for their cooks. I mean, come on, it's just outrageous. So, it's anti-competitive behavior, but we have a whole long history. Companies want to be anti-competitive to preserve their market shares and their profits.

**Orley Ashenfelter:**

Yeah. Actually, I'm very familiar with the noncompete agreements or no poaching agreements that the franchise companies had. Alan Krueger and I wrote about that early on in the field, the extent of it.

**David Lewin:**

I know you did. I know you did, yeah.

**Orley Ashenfelter:**

It seems to be to have more or less disappeared, but I guess there's potentially still cases that linger from the fact that there were those kinds of no poaching agreements.

**David Lewin:**

Right.

**Orley Ashenfelter:**

By the way, we should explain that no poaching was no poaching within the franchise.

**David Lewin:**

Well, 10 years ago, I testified at the trial in the [High-Tech Employee Antitrust Litigation](#), HTEAL. The four defendants were Apple, Adobe, Google, and Intel and we had data, still privileged... The CEOs of those companies informally agreed to not recruit or hire each other's employees, but we had data from Apple and Adobe that showed that during the five-year period where the 62,655 employees claimed their wages were suppressed, the hiring between Apple and Adobe was actually greater than the three years prior and the two years later. So, the executives may have wanted to have these restrictions in place, but the actual operations turned out to show what the data showed, so there we are.

**Orley Ashenfelter:**

Yes, it's clear that maybe it's because of the Biden administration, but for whatever reason, it's clear that both the Federal Trade Commission and the Department of Justice have been concerned. I think probably because they've seen some written agreements or at least had some oral conversations with people who were actively engaged in at least attempts to suppress job competition.

**David Lewin:**

Right.

**Orley Ashenfelter:**

In that case, you mentioned the high-tech case. The judge who declared a class actually produced a remarkable set of anecdotal bits of evidence about how people had engaged in non-poaching agreements.

**David Lewin:**

And I think that judge was Lucy Koh, K-O-H, from the Northern District of California.

**Orley Ashenfelter:**

Yes, it was. Yes, it was. But there's the one question I'd like to ask you about that. I always speculated that case was brought originally to the Justice Department, you may remember.

**David Lewin:**

Correct.

**Orley Ashenfelter:**

And it was the announcement of the day of the case and of the settlement were on the same day. The Justice Department had arranged to settle the case, which basically in that case implied that whatever no-poaching agreements they had, they would stop. And it followed a period when there had been this, so-called Big Bang, Google had done a big jump in pay.

**David Lewin:**

Yeah.

**Orley Ashenfelter:**

Here's the question I wanted to ask you. This is the insider question. I've never been able to get anybody to answer it. Somebody obviously took the inside information they had to the Justice Department to complain about this no-poaching. Now, I've always speculated that the two companies that might've been engaged in that were Facebook and Twitter because at that time, they were not part of the no-poaching agreement, and they were ramping up like crazy and really needed to hire engineers and I think we're running into roadblocks. Do you think that's what the origin... Because somebody rolled over on somebody. We have never learned who that was.

**David Lewin:**

No, we never have. The original DOJ prosecution was the four companies I mentioned – Adobe, Google, Apple, and Intel plus Intuit, Lucas Films, and one other. There were seven companies originally. Three of them settled out. The remaining four were going to go to trial until they reached an agreement, but I don't know the answer to your question, but I suspect indeed, that Facebook was involved and others.

**Orley Ashenfelter:**

So, whatever you think of Sheryl Sandberg, she might've really very well broken up a conspiracy that had been going on for a while.

**David Lewin:**

Yeah.

**Orley Ashenfelter:**

But I've always wanted... I'd loved it, if I ever met her, I'd ask her if she was the one who did this, but it was really the beginning of those antitrust cases that have been brought. There are quite a few more now, you may have seen one just recently. The Beef Producers have settled a complaint with workers...

**David Lewin:**

Oh, yes. Yes, yes. The JBSs of the world. But let me say this to you Orley, without revealing too much information. We have a big antitrust in the labor market case in which the defendant is Delta Dental, and the plaintiffs are a class which still has to be certified of up to a quarter million dentists and from 40 states who claim their reimbursements are too low, the executive comp of the Delta Dental executives are too high, and the capital reserves of the Delta Dental entities are much more than they need for a nonprofit organization. And this is a very vigorous antitrust prosecution in what I still think is of the labor market.

**Orley Ashenfelter:**

Of course, it is a labor market. Absolutely. Dentists are workers just like professors [inaudible audio].

**David Lewin:**

Dare we say? Well, you probably know this better than I. It's my understanding that today most of the universities, including the top ones, have full-time faculty positions that are not tenurable.

**Orley Ashenfelter:**

That's a question. Yeah, that depends on where you're at, I think.



**David Lewin:**

Yeah.

**Orley Ashenfelter:**

But it's growing. And I think USC is probably one of the extreme examples, right near you, the University of Southern California.

**David Lewin:**

Yes. I think you're right about that. Yeah.

**Orley Ashenfelter:**

I think they're employing a lot of people who are not a part of the regular tenured faculty, and I think they're ripe for unionization in some ways. But let me ask you about that more generally, because I think it's a very broad question. The other hot news, of course, is that for the first time ever, one of the auto manufacturers in the south, in this case, Volkswagen, the German company, was unionized by the United Auto Workers, but it seems to be an overwhelming vote in favor of that.

**David Lewin:**

Close to 80 percent.

**Orley Ashenfelter:**

Now, and they had voted it down a couple of times before. Admittedly even the governor of, I guess it's Tennessee, even the governor had come out to speak against the union.

**David Lewin:**

Yeah.

**Orley Ashenfelter:**

I am a little bit surprised that politicians have taken such positions, but I suppose they have their own ideas of what they think is appropriate. Do you think this is just the tip of an iceberg and that we're going to see considerable more unionization in the future? Not just in places like Starbucks where it's been fought, I know tooth and nail by the company, but in places like these southern companies, well, they're not southern, they're automobile companies located often in the south. Do you think that's going to spread?

**David Lewin:**

Well, you've given me unexpectedly if I may say, an invitation, which I will do at the end of our call here to send you my latest paper, which is called "Emerging Labor Relations in High-Tech Industries," in which we try to explore the potential for unionization in the Starbucks of the world, the Amazons of the world, and so forth. I think we might be at a tipping point because even though it's hardly ever referred to as employee voice, all of the things that I see these days are people who want to have more voice, whether it's protests at Columbia or a positive union vote at VW, which as you point out, had two large negative votes previously, or the actions at Starbucks. I think we may be on the tip of a re-emerging unionization, even though there are alternatives to unionization. But the alternatives are still largely controlled by the employers. So, I think that vote at Volkswagen is quite significant is what I would say.

**Orley Ashenfelter:**

Yeah, I was impressed by it, partly because it's old-fashioned. I mean, the UAW is an old-fashioned style union. It is true, maybe this is important too, and I'd be curious what you think, they do have a new leader. The UAW fell in as often happens as unions age just like people, became sclerotic in some ways and had some difficult leadership. And they have a new leader who is clearly much more aggressive and sees the union movement as something for the future. And that may have something to do with that, I don't know. But do you think that it'll spread in the South and that's your view, that it may very well?

**David Lewin:**

I think it will spread in the South. The idea that governors of states like Tennessee and Georgia and so forth come out against unionization, it's contrary to what I think many workers today believe they should be for. They realize that they need a voice and a number of them, a large number are immigrants, but I think it's much more fundamental than that, and I think we are seeing a turning point at the curve. My colleague, Bill Canak, William Canak at Tennessee, who's a sociologist, has often pointed out how backward Tennessee's legislature and governor are. On the other hand, we're seeing these movements like the VW union vote that I think is going to lead a hallmark of change, at least that's my view.

**Orley Ashenfelter:**

It's a very interesting development I think all around. So, it's great, I think our timing of this podcast with you has worked out perfectly because we are able to bring up some things that I think are really relevant for the union movement and may very well be relevant as we go forward in lots of other ways. Anyway, our podcast has come to an end, and I'd like to thank you very much for joining us, David. It's been a great pleasure.

**David Lewin:**

Orley, thanks very much for having me on the podcast. It's been my pleasure.

**Orley Ashenfelter:**

Our guest today has been [David Lewin](#), who's the Neil Jacoby Emeritus Professor of Management and Human Resources at the [Anderson Graduate School of Management](#) at [UCLA](#). Please join us again for the next episode of [The Work Goes On: an Oral History of Industrial Relations and Labor Economics](#) from the [Industrial Relations Section at Princeton University](#). I'm your host, Orley Ashenfelter. Thanks for listening.

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