

Should works councils be used as industrial relations policy?

The European works council concept has generally been opposed by labor and management, however, Canada's successful experience with mandatory committees indicates that such a concept might also be effective in the United States

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The traditional model of adversarial labor-management relations used in the United States and Canada has been the subject of much reflection during the past decade. The high number of industrial conflicts coupled with sagging productivity growth have given rise to a search for new models of labor-management interaction. That search has led to discussions on the appropriateness and desirability of the use of Japanese managerial techniques.¹ However, little attention has been given to the European institution of statutory works councils in which workers participate in the decisionmaking process at both the plant and enterprise levels.²

Because of the decentralized nature of collective bargaining in Canada and the United States, experts in these two countries have generally considered works councils to have little relevance. They argue that there is no need for councils because workers are represented by unions at the enterprise level.³ Moreover, the unions generally have regarded works councils as inferior to unions and contrary to free collective bargaining. Also, management generally has viewed statutory works councils as potentially disruptive and an infringement on management rights.⁴

Despite these formidable impediments, there are several reasons why the works councils concept deserves to be looked at once more. This article explores these reasons. It reviews the various collective bargaining schemes, reports Canada's experience with mandatory committees, and dis-

cusses the advantages and disadvantages of works councils and mandatory committees to unions, collective bargaining, management, and the wider public.

Collective bargaining and other schemes

The fundamental premise of Canadian and U.S. labor policy is that working people should be able to participate in decisions which critically affect their working lives.⁵ The primary mechanism designed to accomplish this is the Wagner Model, enacted in the United States as the National Labor Relations Act of 1935. Canada later adopted similar legislation, which gives employees the right to bargain collectively. The original supporters of the NLRA believed that because of the many advantages of collective bargaining over individual employment contracting, the great majority of employees would opt for collective bargaining. The Wagner Model, in effect now for half a century, may very well have encouraged the great expansion of collective bargaining which occurred between the 1930's and the 1950's. However, it appears that the model is unlikely ever to produce universal or nearly universal collective bargaining. After five decades of experience, only a minority of employees in the United States and Canada participate in collective bargaining and U.S. participation is shrinking instead of expanding.⁶

To some analysts, the fact that a majority of employees have not availed themselves of their right to bargain collectively is an indication that those employees prefer to negotiate their terms and conditions of employment indi-

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vidually with their employer.⁷ However, in the contemporary world of complex organizations, individual bargaining is not a viable alternative to collective bargaining. Each individual cannot negotiate in regard to broad enterprise-wide policy issues such as occupational health and safety, training, and technological change. If employees are to be involved in the initiation and administration of policies concerning such issues, a collective mechanism is needed. Otherwise, the only choices available are acquiescence in unilateral management actions or exit from the enterprise.⁸

A currently popular substitute for collective bargaining is the quality-of-worklife schemes introduced voluntarily and unilaterally by employers.⁹ However, the voluntary approach to employment relations has two major drawbacks. First, experience to date indicates that voluntarism will result in only a minority of employees being involved. For example, subsequent to World War I, when Germany introduced statutory councils, a number of American employers emulated the European experience by voluntarily introducing employee representation schemes.¹⁰ Although these schemes became widespread, the majority of employers did not incorporate them.¹¹ Despite a great deal of publicity and government encouragement, participative management schemes, voluntarily introduced by employers, are still the exception instead of the norm.

Second, voluntarism depends largely on the good will of the employer. Workers do not acquire the right to participate but merely are granted the privilege to participate by an enlightened and benevolent employer. If the employer changes his or her mind about the efficacy of participation, the scheme may be terminated regardless of employees' wishes.

Canada's mandatory committees

Industrial relations developments in Canada suggest that the statutory works council option may be viable in the United States. Although not called works councils, recent initiatives have characteristics very similar to European works councils. Several Canadian provinces introduced mandatory occupational health and safety committees during the 1970's.¹² Typically, committees are required in all establishments with a certain number of employees. For example, in Ontario, committees must be set up in establishments with 20 or more employees and in Saskatchewan, the figure is 10 employees or more.¹³ In unionized firms, the union appoints committee representatives and in nonunion firms, employee members are usually elected. The committees have a mandate to oversee safety regulations and jointly to develop and monitor safety and health policy at the enterprise level. They must meet regularly and keep records of their meetings. The intent of the legislation is that decisionmaking within the committees be cooperative rather than adversarial. The available research suggests that the intention has, by and large, been met. Pran Manga and his colleagues reviewed the minutes of 17,682 Saskatchewan committee meetings from 1973 to 1977 and found that 82 percent of the meetings

"considered specific health and safety concerns," and that "most concerns have been acted upon."¹⁴

Several dispute resolution devices are available to these committees. Typically, if labor and management representatives disagree about their interpretation of a government regulation, they may ask a government safety officer to resolve the issue. If the parties disagree about the wisdom of initiating a requirement over and above government regulations, then the employer decides. However, in Saskatchewan during the 1970's, employers had to consider the fact that the administration was publicly committed to ensuring the joint development and application of enterprise-level safety and health policy. According to Manga and others, the government insisted that "all business be conducted through the committee," and that "all agreements between management and the labour department occur subject to committee approval."¹⁵ Largely because of this policy, the committees achieved "increased legitimacy and enlarged authority."¹⁶

Canadian legislation also permits individual employees to refuse to engage in unsafe work, but they may be subjected to disciplinary penalties if they use that right in a frivolous or irresponsible manner. According to Morley Gunderson and Katherine Swinton, that law "automatically gave workers a legislated right to participate in management of the workplace. . . ."¹⁷ Such legislation gave rise to fears of widespread abuse of the right to refuse unsafe work. However, after reviewing the experience in Ontario from 1976 to 1980, Gunderson and Swinton concluded that the data "do not support employer fears about widespread abuse by either individuals or unions."¹⁸

Another Canadian example of a statutory works council deals with plant shutdowns and layoffs of groups of workers under the jurisdiction of the Federal Government. When an employer plans to lay off 50 or more employees in a 4-week period, a joint committee must be set up. (As in the case of health and safety committees, if the employees involved are unionized, the union appoints members to the joint committee. Nonunion employees elect representatives from among their ranks.) The function of the committee is to "develop an adjustment program to eliminate the necessity for the termination of employment or to minimize the impact of such termination on the redundant employees and to assist those employees in obtaining other employment."¹⁹ The committee is only required to deal with "matters as are normally the subject matter of collective bargaining in relation to termination of employment."²⁰ The most radically innovative aspect of this legislation is that it provides for binding arbitration to resolve disputes which reach impasse. When a mass layoff is planned, the employer must take the initiative to set up a committee 16 weeks prior to the event. If the committee has not reached agreement in 6 weeks, outstanding issues may be submitted to a neutral person who is appointed by the Minister of Labour. The job of the neutral is to "assist the joint planning committee in the development

of an adjustment program” and to “render a decision” on outstanding issues if no mutual agreement is reached.²¹

Of about 15 to 20 cases of mass layoffs through May 1984, only two required an arbitrator, according to interviews with Labour Canada officials. Few complaints about the operation of the scheme have been reported to the Department of Labour. In short, the available evidence suggests that the procedure is working. The compulsory dispute resolution procedure does not appear to have exacerbated adversarialism as some research might lead one to expect.²²

Now that mandatory health and safety committees and redundancy committees have paved the way, it is likely that Canada will use the statutory joint decisionmaking approach more extensively. Noting the use of statutory joint committees with regard to layoffs, a 1982 Federal government task force recommended similar committees to oversee the introduction of technological change.²³ Like the layoff committees, the technological change committees would submit impasses to binding arbitration.

In February 1984, the Federal government announced its intention to encourage firms to establish profit-sharing schemes. For the government to participate financially in these schemes, joint committees would be set up to define profits, negotiate a distribution formula, and to oversee the implementation of the plan.²⁴ During the same period, the Federal government announced its intention of requiring employee participation in pension management if the majority of employees affected wanted to be so represented.²⁵ Subsequently, however, a new government was elected and its intentions in regard to joint committees are, at present, unclear. Finally, a 1982 report from a commission on adult education, appointed by the Quebec government, recommended the establishment of joint committees to develop and oversee an enterprise-level training policy.²⁶ One very innovative aspect of the Quebec committees is that they would control a budget funded by a levy equivalent to 1.5 percent of payroll.

These developments indicate that, despite being dismissed by U.S. and Canadian industrial relations experts and practitioners, statutory works councils are a viable policy option. In fact, special purpose works councils are already functioning satisfactorily in Canada.

Advantages and disadvantages

American and Canadian unions have traditionally been opposed to employer initiated representation plans (which they call company unions) as well as to proposals that the European practice of statutory works councils be emulated.²⁷

Mainstream union policy holds that works councils are unlikely to be effective while at the same time precluding the practice of genuine joint decisionmaking via unions and collective bargaining. These fears are not unreasonable. Nevertheless, a careful consideration of the European works council model along with Canada's successful experience

with mandatory committees suggests that the works council approach may not be inimical to union interests.

For unions, the works council model emerging in Canada is different from European practice in that Canadian unions designate representatives to the statutorily required occupational health and safety committees and to the plant shut-down committees. In Europe, the committees have identities and authority separate from the unions.²⁸ One advantage to the Canadian approach is that the union does not have an independent body with which it must compete. The presence of such competition is often said to be a major source of union shop floor weakness in West Germany.²⁹ Another advantage of the Canadian scheme is that it provides unions with added capacity to be effective in their members' interest. It has been very difficult for unions to negotiate issues such as safety, training, technological change, and pension management. These are issues which a bystander may consider important, but which usually have a lower priority to union members than money and immediate job security. Although union members are often willing to strike or at least to pose a credible strike threat in pursuit of financial and job security issues, they are much less prone to do so over issues such as safety and training. As a result, these issues are frequently either traded off or never put on the bargaining table. In both Canada and the United States, the majority of collective agreements are silent regarding such issues.³⁰ Through the device of management's rights clauses which are found in most collective agreements, employers retain the unilateral right to develop and implement policy regarding all issues not in the collective agreement. In short, under collective bargaining, employees are able to participate in many critical decisions only to the extent that they are willing to accept the risk of lost income as a result of a strike. The emerging Canadian model sets in motion a different dynamic by making designated issues individually subject to arbitration. For example, if no agreement can be reached on severance provisions in the event of group layoffs then, in the federal jurisdiction, that dispute may be submitted to arbitration. The trade-off dynamic which is prevalent under collective bargaining is made inoperative because the issue is addressed in isolation from other issues. Under the developing Canadian model, unions could continue to negotiate comprehensive collective agreements. However, if disputes occurred over technological change, training, or other issues subject to joint decisionmaking, the union, in its capacity as employee agent on the joint committee, could have an arbitrator resolve that particular issue. The new scheme probably would result in a substantial increase in collective agreement clauses (or in separate agreements) regarding designated issues.

A major disadvantage to unions of the Canadian mandatory committee is that government imposition of statutory duties on trade unions threatens free collective bargaining. In effect, the health and safety and redundancy initiatives in Canada have made unions the agents of government pol-

icy. Canadian unions have been more than willing to take on these roles and would, most likely, gladly accept an expanded mandate. Nevertheless, the procedure does diminish the independence of the industrial relations system. This aspect of the Canadian model must be viewed with some concern given that free collective bargaining is considered to be a keystone of democracy. One solution would be to give unions the option to act as agent or, alternatively, to permit employees to elect committee members separately. That option, however, sets up competitive dynamics which have caused problems in Europe.

Another potential disadvantage to unions would surface if the belief became prevalent that statutory committees made unions and collective bargaining redundant. Clearly, the motivation of many employers to implement representation plans during the 1920's and 1930's was to deaden employee enthusiasm for free collective bargaining by independent unions.³¹

However, there are reasons to believe that a works council policy in the United States and Canada might encourage rather than discourage the expansion of collective bargaining. First, once unorganized employees experience the benefits of representation on a limited range of issues, they will probably want to be represented on the full range of conditions of employment. There is practically no likelihood that the mandatory committees in Canada will assume the union function of negotiating over wages. Thus, unorganized employees who want to participate in decisionmaking over remuneration will still have to use their collective bargaining rights. The transition of employee associations into genuine trade unions in the public sector is suggestive of what may happen if the works council strategy is embraced. Public sector labor-management relations in much of the United States and Canada has moved from joint consultation on a limited range of issues to collective bargaining on a broader range of issues.³²

Second, it is unlikely that works councils in nonunion firms will represent their members' interest as effectively as councils in unionized firms. The latter will be able to draw on the staff and expertise of the national or international unions. Unions also will be able to provide council members with necessary training. For these reasons, one may expect that the works councils will seek unions, just as independent local unions sought internationals in the 19th century, and as company unions did during the 1930's. Today in West Germany, a major function of unions is to provide training and assistance to the works councils. The most effective councils are those which maintain close union ties.³³

Impact on management and enterprise

For management. Employers may resist the imposition of councils to ensure that they maintain their unilateral right

to manage.³⁴ They are likely to believe that additional regulation will restrict their ability to respond quickly and effectively to new conditions thereby hampering productivity and competitiveness.³⁵ However, available evidence provides little support for that proposition. A review of the West German co-determination system (of which works councils are a prominent element) in the 1970's found that the system was working effectively. Very few examples were found where worker intransigence resulted in productivity setbacks.³⁶ Moreover, there was substantial evidence of positive effects. For example, in the coal and metal-working industries, worker representatives were consulted from the outset about massive technological changes which were carried out without substantial social disruption.³⁷

In Canada, research on the functioning of the Saskatchewan health and safety committees indicates, as noted earlier, that the committees generally reach mutually satisfactory solutions to the issues that are raised.

Management officials often argue that joint decisionmaking should not be compelled, but instead should be voluntary. Several recent analyses of U.S. and Canadian labor problems vigorously support joint employment decisionmaking at the enterprise level, but gingerly refrain from recommending that participative decisionmaking be compelled.³⁸ The analyses conclude that imposed systems will generate low trust and hostility instead of the cooperative attitudes and behavior essential to productive joint decisionmaking. However, experience with statutory works councils in West Germany and Canada do not support that proposition. The data indicate that such councils and committees generally operate in a cooperative, nonadversarial manner. The experience with group layoff committees in Canada is limited, but in most cases, the parties reached agreement without involving arbitration. A study of West German works council decisionmaking during the 1970's indicated that the parties rarely resorted to arbitration: of 6,240 works council agreements negotiated between 1972 and 1979, only 70 required mediation or arbitration.³⁹

FIFTY YEARS OF COLLECTIVE BARGAINING under the National Labor Relations Act has not yielded universal participation. If the proposition that workers should be able to participate in decisions which critically affect their working lives is to be taken seriously, new options must be considered. Works councils are a viable option. Works councils, which require joint decisionmaking for specific issues with binding arbitration as a last resort, can work successfully alongside collective bargaining conducted under the Wagner Model. Indeed, works councils may very well result in a resurgence of union growth. Experience suggests that statutory works councils are likely to assist the quest for productivity and competitiveness. □

¹T. Mroczkowski, "Is the American Labour-Management Relationship Changing?" *British Journal of Industrial Relations*, March 1984; D. V. Nightengale, *Workplace Democracy* (Toronto, University of Toronto Press, 1982); C. W. Summers, "Industrial Democracy: America's Unfulfilled Promise," *Cleveland State Law Review*, 1979, pp. 29-49; and J. Crispo, *Industrial Democracy in Western Europe, A North American Perspective* (Toronto, McGraw-Hill Ryerson, 1978).

²Works councils do not imply participation on governing boards; councils are separate from board participation.

³D. Q. Mills, "Reforming the U.S. system of collective bargaining," *Monthly Labor Review*, March 1983, pp. 18-22; D. V. Nightengale, *Workplace Democracy*, pp. 216; and J. Crispo, *Industrial Democracy*.

⁴D. Q. Mills, "Reforming the U.S. System."

⁵Milton Derber, *The American Idea of Industrial Democracy 1865-1965* (Urbana, University of Illinois Press, 1970) and C. W. Summers, *Industrial Democracy*.

⁶J. B. Rose and G. N. Chaison, "The State of the Unions: United States and Canada," *Journal of Labour Research*, forthcoming.

⁷Jeanne M. Brett, "Why Employees Want Unions," *Organizational Dynamics*, Spring 1980, pp. 47-59.

⁸A. Goldman, "Settlement of Disputes Over Interests," R. Blanpain and F. Millard, eds., *Comparative Labor Law and Industrial Relations* (Deventer, Netherlands, Kluwer, 1982).

⁹D. Q. Mills, "Reforming the U.S. System," and T. Mroczkowski, "American Labour-Management."

¹⁰P. H. Douglas, "Shop Committees: Substitute for, or Supplement to, Trade Unions?" *Journal of Political Economy*, February 1921, pp. 89-107.

¹¹D. Nelson, "The Company Union Movement, 1900-1937: A Re-examination," *Business History Review*, Autumn 1982, pp. 335-57.

¹²Pran Manga, Robert Broyles, and Gil Reschenthaler, *Occupational Health and Safety: Issues and Alternatives* (Ottawa, Economic Council of Canada, 1981).

¹³*Ibid.*

¹⁴*Ibid.*, p. 219.

¹⁵*Ibid.*, p. 205.

¹⁶*Ibid.*

¹⁷M. Gunderson and K. Swinton, *Collective Bargaining and Asbestos Dangers at the Workplace* (Toronto, Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, December 1981), Study No. 1, p. 6.

¹⁸*Ibid.*, p. 7.

¹⁹Bill C-78, section 60.13 (1), Labour Adjustment Benefits Act, Ottawa, Labour Canada, 1982.

²⁰*Ibid.*, section 60.13 (2).

²¹Bill C-78.

²²D. V. Nightengale, *Workplace Democracy*, p. 186.

²³*In the Chips: Opportunities, People, Partnerships* (Ottawa, Ontario, Task Force on Micro-Electronics and Employment, 1982), see also Harish C. Jain, "Task force encourages diffusion of microelectronics in Canada," *Monthly Labor Review*, October 1983, pp. 25-29.

²⁴*Gain Sharing for a Stronger Economy* (Ottawa, Department of Finance, February 1984).

²⁵*Action Plan for Pension Reform* (Ottawa, Department of Finance, February 1984).

²⁶Michel Jean, *Apprendre: Une action volontaire et responsable*, Commission d'étude sur la formation des adultes (Montreal, Government of Quebec, 1982).

²⁷P. H. Douglas, "Shop Committees," pp. 89-107; D. Nelson, "The Company Union Movement," pp. 335-57.

²⁸E. Cordova, "Workers' participation in decisions within enterprises: recent trends and problems," *International Labour Review*, March-April 1982, pp. 125-40 and J. Crispo, *Industrial Democracy*.

²⁹R. J. Adams and C. H. Rummel, "Workers' Participation in West Germany: Impact on the Worker, the Enterprise and the Trade Union," *Industrial Relations Journal*, Spring 1977, pp. 4-27.

³⁰R. J. Adams, "Two Policy Approaches to Labour-Management Decision-Making at the Level of the Enterprise: A Comparison of the Wagner Model and Statutory Works Councils," (Hamilton, Ontario, McMaster University, Faculty of Business Research, June 1984), Paper No. 227; T. Kochan, *Collective Bargaining and Industrial Relations* (Homewood, Irwin-Dorsey, 1980); D. Lewin, "The Impact of Unions on American Business: Evidence for an Assessment," *Columbia Journal of World Business*, 1978, pp. 83-103; J. B. Rose, "The Non-Wage Impact of Unions," in G. Dlugos and K. Weiermair, eds., *Management Under Differing Value Systems* (Berlin, de Gruyter, 1981).

³¹D. Nelson, "The Company Union Movement," pp. 335-57.

³²B. Aaron, J. R. Grodin, and J. L. Stern, *Public-Sector Bargaining* (Washington, D.C., Bureau of National Affairs, 1978), and A. Ponak, "Public Sector Collective Bargaining," in M. Gunderson and J. Anderson, eds., *Union-Management Relations in Canada* (Don Mills, Ontario, Addison-Wesley, 1982), pp. 343-397.

³³R. J. Adams and C. H. Rummel, "Workers' Participation," pp. 4-27.

³⁴D. Q. Mills, "Reforming the U.S. System," pp. 18-22.

³⁵*Ibid.*

³⁶R. J. Adams and C. H. Rummel, "Workers' Participation."

³⁷T. Bain, "German Codetermination and Employment Adjustments in the Steel and Auto Industries," *Columbia Journal of Works Business*, Summer 1983, pp. 40-47 and R. J. Adams and C. H. Rummel, "Workers' Participation."

³⁸D. Q. Mills, "Collective Bargaining" and D. V. Nightengale, *Workplace Democracy*.

³⁹"West Germany: Works Agreements Reassessed," *European Industrial Relations Review*, December, 1983, pp. 14-15.