

Co-determination and worker participation: *What does it mean for unions?*

Trade unions have put forward demands for more power in the workplace, for an end to unilateral restructuring of firms, for full disclosure of company information. Now that the labour ministry of our new democratic government has started a full review of labour legislation, it may be possible to establish these demands as rights in law. But there has been no discussion within the labour movement of how these rights should be institutionalised – in other words, of co-determination. *SA Labour Bulletin* decided that its 1994 seminar should focus on this theme, and invited two international speakers: world authority on corporatism and co-determination Wolfgang Streeck, and trade unionist and writer on worker participation Andy Banks. They were joined by two South African trade unionists – NUM's Gwede Mantash and FAWU's Peter Malepa. The seminar was co-hosted by Sociology of Work Programme (Wits University) and National Labour and Economic Development Institute. We thank the Dutch trade union federation, FNV, for their financial support.

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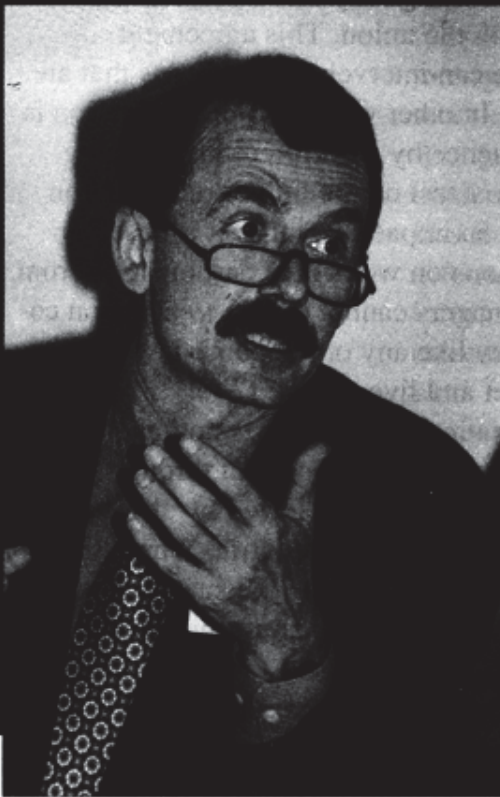
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Co-determination and trade unions

Co-determination is a form of accommodation between capital and labour at the workplace. Co-determination presupposes that unions assume that somehow they have to come to terms with capital. On the other hand co-determination presupposes the recognition on the part of capital that unions will be around for some time, and that one has to come to terms with a unionised workforce that makes its interests heard at the workplace. It is only under these conditions that co-determination can emerge – as a *modus vivendi*, an arrangement between management on the one side, and labour on the other.

Wolfgang Streeck



There are five basic points which should be made about co-determination:

Firstly, co-determination is the collective participation of workers in the management of the workplace, or in the management of production. Issues affected by co-determination include the deployment and re-deployment of labour; the hiring and firing of workers; the organisation of work; matters of discipline at work; introduction of new technology; the restructuring of the enterprise; and training and re-training issues. These issues usually come up in societies where there is a co-determination system.

Secondly, co-determination, almost by definition, limits managerial prerogative. Managers often have to do things that they would otherwise not do. In particular, this involves:

- providing information to representatives of the workforce;
- consulting with workforce representatives – to ask for proposals, counter-proposals and listen to alternatives; and
- in some systems achieving consensus with a workforce.

Information, consultation and co-determination in the narrow sense are the three modes by which managerial prerogative in co-determination systems is limited. It is for this reason that managements very often don't like co-determination. This is

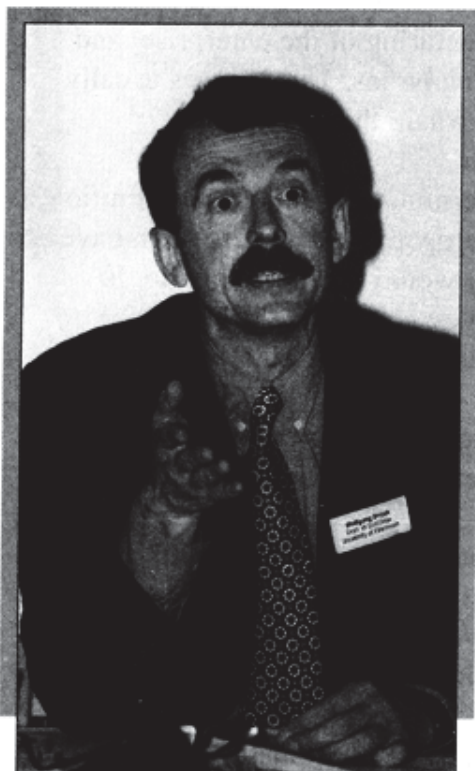
especially so where workforces have a right to veto any proposed action on the part of management. Then management has to change their course and do something else that meets with the agreement of the workforce.

Thirdly, co-determination involves workforce representatives in issues of production, as opposed to distribution. It is therefore not about wage bargaining, but about how capital and labour interact in the workplace to produce the product that later gets distributed. Through co-determination labour at the workplace affects the way in which the product is produced, and it does so moreover in a pro-active rather than a reactive manner. Where there is co-determination labour has an institutionalised opportunity early in the decision process to either be informed or make their voice heard, to be consulted or even intervene. Under co-determination workers do not just hear about a decision after it's been made, and then react to it maybe by taking industrial action. In a co-determination system labour becomes involved in the managerial decision making process *as a decision is slowly forming*. In other words, they are involved not only in the output of decisions, but in the making of the decision itself.

Fourthly, such intervention in managerial decision-making and in managerial prerogative is usually based on legal rights or a legally backed industrial agreement, not just on the sheer power of the union at the workplace. In the Swedish case there is a national law which makes it obligatory for firms to have a co-determination agreement with the union. This agreement regulates how the workforce can intervene in decisions that are subject to co-determination. In other words, co-determination is a system of regularised influence by workforces on a routine basis. It doesn't require a test of strength or mobilisation each time so as to have an impact. Because it is based on rights it removes decisions on workforce participation from managerial choice. Managers cannot decide to abandon co-determination. It is a law like any other labour law that the two sides have to accept and live with.

Fifthly, co-determination typically does not take place through unions or collective bargaining, but through works councils. A works council is a body elected by all workers regardless of union membership. In countries where such bodies do not exist then co-determination usually takes place through a union body which is carefully separated from collective bargaining over wages. Typically in such systems wage bargaining is centralised, and the union at the local level exercises co-determination rights over issues other than wage bargaining. This is because negotiation over distribution of the product is often conflictual. To avoid conflict interfering with the regulation of production, the role of labour in the production process is separated from its role in distribution of the product.

There are two concepts often attached to co-



determination which are misleading. One is joint consultation and the other is labour/management co-operation.

Joint consultation differs from co-determination in that all consultation means is that the two sides sit down together, and management informs workers about what they want to do, and then listens to a response. Where there is a strong co-determination system workforce representatives, in addition to having the right to listen and respond, also have rights to co-decision making. They can say no, and ask for a different decision. So it is more than just joint consultation, it involves an element of representation of interests.

Co-determination is not necessarily identical with labour/management co-operation either. Indeed, co-determination can be quite conflictual. Very often under co-determination labour and management argue for a very long time over a decision, for example the introduction of new technology. And they will have very different views on this at the beginning and they will need a long time to come to a consensual solution. This is not necessarily co-operative. Indeed it often requires that workers make their voices heard very strongly before management is willing to make a concession, and in this respect it is not so different from collective bargaining.

Co-determination is not identical either with what is frequently called a participatory work organisation, or team work, or decentralisation of decision making to the worker on the production line. Co-determination is the relationship between management and labour. It is not about workers in their everyday work exercising discretion or judgement. These things may spring from co-determination and very often they are debated in co-determination bodies. In the United States, for example, we find that in those workplaces where there is something like co-determination over work organisation, the introduction of new forms of work organisation like team work is easier and often more stable. However, co-determination is not a new form of work organisation, but a form of representative intervention by the workforce in the way in which management works.

Co-determination in international perspective

Turning to the international picture, co-determination through some form of works council exists in all advanced industrial countries except the United States and Britain. On the European continent and in Scandinavia systems of co-determination have emerged over the years and have become very much part of the local labour relations scene.

The two countries that have had considerable problems with their industrial relations, Britain and the United States, and where unions have not fared very well in the last 10 to 15 years, were countries where there was no such thing as works councils or co-determination. Whereas in countries like Germany, Sweden and Italy in the 1970s and 80s, council-like structures

emerged that contributed significantly to the strength of these labour movements and to their capacity to survive the pressures of restructuring and internationalisation. So rather than being the exception, co-determination is part of everyday practice in most advanced countries and industrial relation systems.

The traditional distinction between union and non-union based participation at the workplace has been withering away in most countries. The main distinction is between works council-based participation (non-union) and union-based systems of workplace participation, the latter being through collective bargaining, the former through co-determination.

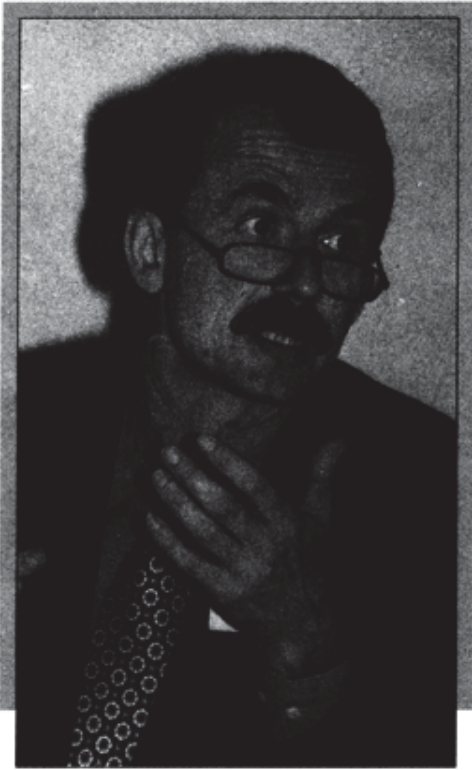
In the last 20 years though, this distinction has become increasingly blurred. Where there were councils, they have increasingly become unions, as in the German example. Works councils that were originally merely consultative, over the years were taken over by the workplace union and assumed functions that were more co-determination like – that is, the right to co-decision making. Germany and the Netherlands are such cases, where consultation was increasingly infused with representation and unionism.

In other countries in which unions were the only players at the workplace, such as Sweden and Italy, workplace unions increasingly assumed works council functions. Unions became councilised by separating wage bargaining from bargaining over other issues and establishing, together with employers, joint councils that became involved in the organisation of the workplace.

The reasons for this are numerous, but largely they have to do with the way in which modern workplaces operate. It is impossible in the operation of a modern workplace to separate *technical* problems of work organisation and management, from problems of the *interests* of the workers in the work organisation. The reason is that decisions have become so decentralised and frequent in flexible technology and a flexible workplace, that managements have to build consensus for their decisions every day, and in a large number of decision sites.

At the same time, workers and unions can no longer afford to sit back and let management decide, and wait for the product to be produced and then distributed, because the many decisions that are made in a modern workplace affect labour deeply in their everyday work. It becomes important therefore for workers to know what management is up to, and to influence managerial decisions at an early stage.

For this workers need not just power but also information. They need to know what management is doing. They need to know the economic situation of the firm and the technology that the firm uses. They need bodies therefore that become informed early on. They need representatives that understand the economic, technological and organisational conditions of the firm, and then have the skill and power to intervene on a current



basis in these decisions.

Such interventions cannot however be based on immediate mobilisation since they are often about difficult technical issues. Influencing these things at an early stage through strike mobilisation is something that no union can do on an everyday basis. There would be no production if one tried to do that.

It is important that workplace representatives have rights to intervene, to be present at an early stage, to get the necessary information and to make themselves heard. Pressure politics alone will not get you where you want to get in order to influence these very complex decisions.

The statistics for six European countries illustrate the relationship between union strength and co-determination agreements. The percentage of the workforce which is unionised in each of these countries is as follows:

- Germany – 38%
- Netherlands – 26%
- France – 10%
- Spain – 10-15%
- Sweden – 85%
- Italy – 39%.

Those who suspect that co-determination rights undermine union strikes can be put to rest by the examples of countries like Italy, Sweden and Germany which have strong or moderately strong labour movements, and at the same time strong co-determination rights. On the other hand countries like Spain and France, with weak co-determination rights, also have very weak unions.

In different systems the relationship between the union workplace organisation and the works council varies. In Germany there is sometimes a union workplace organisation in addition to a works council. This is rarely the case in the Netherlands; frequently the case in France where councils are weak; and normally the case in Spain where councils are even weaker.

Wage bargaining is something that strong work councils are not usually involved in – the German and Dutch councils are not; the Italians only sometimes; the Swedes never. In a country like Spain, with weak councils, this is what councils usually do.

The size of a council varies with the size of establishments. A typical 500 employee establishment in Germany would have a works councils with nine members – in the Netherlands it would have 11, and so on. Although there is considerable variation from system to system, the common factor is that the law regulates how many people are elected by a given workforce.

In these countries a very large number of the workforce that is eligible to have works councils actually have them. In large firms they are almost everywhere. In Germany about 50% of the eligible workforce is actually represented by works councils. In



the Netherlands, where there are two different systems, it varies between 50 and 87%. In Italy it goes as high as 70%.

Works councils have legal resources – that is, under the law the employer has to furnish them with resources to perform their function. In some countries councils have a legal right for some of their members to be released from work full time on employer's pay.

In all countries works councils have rights to information and to consultation. Co-determination *rights* – that is, the right to co-decision taking – exist only in a few countries, like Germany, the Netherlands and Sweden. In other countries there is very little in terms of co-determination rights – this is the decisive difference between consultative councils, and councils which have the right to co-decision making.

In some countries works councillors can call in outside advisers and pay them from a fund that the employer has to provide in order for the works council to perform its function.

Works Councils and trade unions in Germany

The example of Germany provides some insights into a works council and co-determination system where there is a strong legal base for co-determination. Works councils and co-determination are provided for in a special piece of legislation called the Works Constitution under which all workers in establishments above a certain size can elect works councils.

Everybody has the right to stand for election. Unions, as well

as other groups of workers, can put up lists of candidates. Seats are allocated according to proportional representation. In the German system union candidates usually win about 80% of the seats on works councils. Works councils are therefore overwhelmingly unionised. In most of the other countries this is also the case. In countries like France the number declines to 40-45%, but essentially unions are in a very good position to win seats in such elections. Indeed the national legislation usually gives them certain prerogatives with respect to running candidates, putting up candidates and in the allocation of seats, on the assumption that it is good to have union representatives on the councils.

Works councils are entitled to close connections with unions. In the German case, the unionised councils work very closely with the union office either at the local or, if it is a large firm, at the national level. This close relationship involves, in particular, advice given by the union to the works councils. Works councils have to deal with very complex issues of personnel policy. Frequently they are not able to handle these things on their own, and then they can turn to the national union officer and ask for advice. In the large firms in Germany each works council is connected to an advisor – a special liaison person – at the respective national union headquarters. Much of the work that unions do in such a system consists in training and advising works councils. Union officials are often involved in negotiations between the works council and the management, helping and influencing these discussions.

Under German law unions have privileged access to works councils. If, for example, a large works council is having a meeting, the local union can ask to be present at the meeting. Even when works councils wouldn't want the union to be present, the union has the right to attend.

Works councils are also used by unions as an organising tool. Under the German system works councils are not obligatory. A firm does not have to have a works council, unless at least three employees or a union ask for an election.

Once this election takes place, unions can begin to put up candidates. Even if at the first election of a works council the majority of the council members are not union members, with time they often become members, because they find that without the training and the advice provided by the union they cannot perform their function effectively. As a result the most common organising tactic a German union uses these days is to begin by setting up a works council, and everything else follows.

The works council members then become the union organisers in the plant, the core of the workplace union organisation. Most of the shopstewards or stopstewards' convenors in German plants are at the same time elected to works councils. The difference between the leadership of the union at the workplace and the works council disappears in practice. The legal rights of works councils becomes a legal resource for the union.

The union, in its everyday operation at the plant level, uses the rights of the works council to pursue its objectives. What the works councils do with these rights is then influenced by the advice and the training given to the works councils by the external union. A complicated relationship of mutual support exists between unionised works councils and external unions. This works to the advantage of the councils because they get advice and information from the union. And it works to the advantage of the union, in that it has a strong foothold at the workplace, which management cannot remove. It is impossible to do away with an existing works council. A works council can only cease to exist if nobody wants to run for the council – which is an unlikely occurrence.

Once management has come to terms with this, they generally become more co-operative. They then see this relationship in the long term perspective, and are more willing to make concessions to maintain a good working relationship.

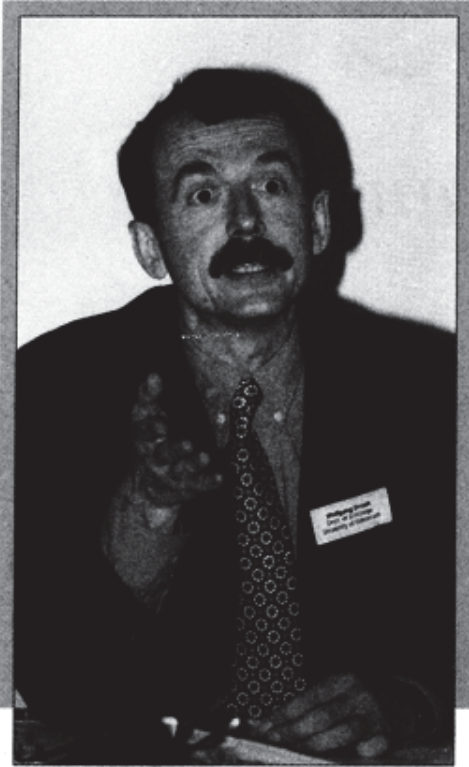
Where works councils have veto powers they can use it to extract concessions from management – which is the everyday situation in German plants. One such example of this is where councils may have an absolute and complete veto over overtime. The works council may use this as a bargaining point – saying they'll agree to overtime if management installs a new ventilation system at the workplace, arguing that overtime is hard work, that it gets hot in the plant and that the council wants their members to work in healthy working conditions.

The works council, which is de facto the local union, can then also use the various rights to information, consultation and co-determination to extract concessions from management. At the same time it remains as a council involved in the organisation of production, and remains bound by the need to have a productive production cost, and for the firm to survive as a competitive entity.

The works council and centralised bargaining

Under the law works councils are not able to engage in wage bargaining. They can, for example, use their full co-determination rights to extract a few additional wage concessions. This is not necessarily illegal, but certainly not legal either. Although this happens all the time works councils can't fundamentally interfere with the national union negotiating centralised national wage bargains.

This is something the national unions like because it neutralises the local workplace organisation as wage bargainers. It diverts the bargaining power and attention of local unions to the productive side of the labour/management relationship. Industrial unions like to be able to call the strike from the centre, and not to be faced with strikes that they have not authorised. One cannot be a centralised industrial union if every workplace organisation can go on strike on their own – the union will necessarily break apart. For any union that wants to have a



national agreement, the problem is how to prevent the local level going out after the national wage bargain has been settled, and get 20% more – thereby undermining the national agreement and destroying wage solidarity.

If one wants to contain these centrifugal tendencies it is important to have an institution set up that gives local workers co-determination rights that they do not have to strike for. Since they can use different methods to make themselves heard, the strike and the wage bargain remain in the hands of the industry union.

This relationship between co-determination at the workplace level and national industrial bargaining has been changing in the last 20 years in many of the countries that we've looked at – it has become more flexible, and new methods have been invented to coordinate these two levels of interaction between management and labour.

The German unions, for example, have learned that national industrial agreements are often too rigid and too uniform to apply to all the workplaces that are covered by them, and as a result they have learned to write into national agreements so-called “opening clauses”. In other words, agreement is reached with management that on certain issues, clearly defined in industrial agreement, works councils at the local level can make their own agreements; can choose between a pre-defined set of solutions; or can within a certain range negotiate additional or lower levels of provision.

This flexible mechanism of interaction between the local and the national level has worked well. There's also the reverse relationship – Volkswagen is a case in point – where works councils in large firms negotiate innovative agreements, for example on training or worker re-deployment, which then are taken over by the industrial union, and after a few years can be written into the national industrial agreement with the employers association.

There is a give and take between these two levels – very often the same people are involved in both nationwide and local bargaining. The works council chairperson of a large firm will often also be an office-bearer in the union at large. So there is a flexible connection between these two arenas, although the two arenas remain separate.

A final question: does co-determination make unions co-operative and domesticate labour? Yes, to a certain extent it does. It does so because it reflects the need for labour in today's economies to somehow find a *modus vivendi* with capital. But it also makes management co-operative. Management perceives co-determination as a constraint on what they can do. Co-determination makes union co-operate, but at the same time it also gives labour more power in the workplace and hopefully, makes management co-operative as well. ☆