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A Comparison of the Wagner Model and Statutory Works Councils

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Paper presented at a symposium on labour-management cooperation in Canada organized by the Royal Commission on the Economic Union and Development Prospects for Canada, Ottawa, June 22, 1984

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Research and Working Paper Series No. 227
June, 1984

Two Policy Approaches to Labour-Management Decision Making at the Level of the Enterprise: A comparison of the Wagner Model and Statutory Works Councils

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It is generally conceded in the liberal democratic world that working people should have a right to participate in the making of decisions which critically affect their working lives. (15,16,36,37,40) The proposition flows naturally from general democratic principles. As Robert Dahl has recently noted, "If democracy is justified in governing the state, it must also be justified in governing economic enterprises; and to say that it is not justified in governing economic enterprises is to imply that it is not justified in governing the state". (15)

The principle also has more pragmatic foundations. Joint labour-management decision making is seen to be practically valuable as a means of channelling otherwise unpredictable and destructive industrial conflict. (16,25,46) It is considered to be worthy of public support because in its absence the stronger of the two parties to the employment relationship (usually the employer) is likely to exploit the weaker thereby requiring state intervention. (16,25,46) Joint employment decision making is also considered to have positive value because of research which suggests that when employees are involved in decision making the quality of decisions is generally improved. (16,36) Finally, research suggests that worker participation in employment decision making generally has positive effects on the participants. Alienation decreases and satisfaction increases. (6,36) In short joint decision making should be supported by public policy because:

1. Democracy is an intrinsically good thing.
2. Overt, destructive conflict needs to be controlled.
3. In its absence exploitation is likely to occur.
4. Productivity is likely to be enhanced thereby.
5. Job satisfaction is likely to increase.

Across the western world numerous schemes have been invented in order to make employee participation operative. In this paper my purpose is to compare and contrast two modes of addressing the issue: Wagner-style collective bargaining and (what I will call) the statutory works council approach. I have limited my attention to collective decision making in which employees participate by right. Therefore, I have excluded all participative decision making which is initiated and controlled by management. My interest is in plans supported by legislation which employers may not terminate at will. Thus the schemes referred to by Nightengale in his recent book on Workplace Democracy would not qualify. (36) I've also eliminated from consideration innovations designed to increase the rights and bargaining power of individual employees. For example, the right to be dismissed only for just cause — an individual right which has been introduced recently in some Canadian jurisdictions — is beyond the scope of this paper. I have discussed the development of individual rights elsewhere. (4)

Since my focus is on decision making at the level of the enterprise, I have made no attempt to incorporate observations on labour-management cooperation at higher levels. For example, I ignore what is generally known in Canada as tripartism. (3,24)

Finally, I've excluded the phenomenon of workers' participation on Boards of Directors. That topic is, of course, relevant but it is a complex one in need of detailed consideration in its own right.

For the past several decades the primary Canadian policy instrument concerned with Joint Labour-Management decision making at the level of enterprise has been the Wagner model. First introduced in the U.S. and later adopted in Canada, the stated purpose of the model is to encourage collective bargaining. (40,43,44) Towards that end it has been only partially successful. Since its inception the practice and procedure of collective bargaining has increased in use. On the other hand, after several decades of experience, only a minority of those affected have made use of their rights as specified by the model. (5,11,40,44)

In recent years a new Canadian approach to collective employment decision making — The Statutory Works Council (SWC) model — has begun to take shape through proposals put forth by various task forces, commissions and government agencies. Some form of council or committee has been proposed or implemented in regard to a growing list of issues including: work sharing; training and education; profit sharing; pension management; occupational health and safety; plant shut downs and technological change. (See Exhibit 1).

Although the details of the schemes differ considerably, nevertheless they exhibit a number of salient characteristics which, taken as a whole, may be referred to as a distinguishable model. The prototype has much in common with statutory schemes prevalent in Western Europe. Thus, I have drawn on European experience with works councils in my comparison with the Wagner model.

EXHIBIT 1

Existing or Proposed Statutory Works Councils in Canada

Occupational Health and Safety: Labour management committees are required in several provinces including Saskatchewan, British Columbia, Ontario, Quebec and New Brunswick. The federal government announced in May, 1984 its intention to require such committees. The function of the committees is to establish enterprise safety and health policy and to oversee the application of legal regulations. The pacesetter act was introduced in Saskatchewan in 1972. (4,35)

Work Sharing: Under the scheme introduced by the federal government in 1982 employee representatives had to approve worksharing plans in order for companies to acquire government assistance. (47)

Redundancies: Unorganized as well as organized employees in the federal jurisdiction have the right to negotiate the terms of a plant shut down. Under this scheme, introduced in 1982, binding arbitration is available in the event of an impasse. (4,9)

Profit Sharing: In its budget of February, 1984 the federal government announced plans to encourage profit sharing. To take advantage of government financial incentives companies will have to set up a joint committee to devise a share formula and to monitor the operation of the plan. (23)

Pension Management: The federal government also announced in its February, 1984 budget its intention to require employee participation in pension management. It will only do so, however, if requested by a majority of the employees. (38)

Technological Change: A federal task force on Microelectronics and Employment recommended in its 1982 report that committees to oversee and nogotiate the implications of technological change in the work place be required. These committees would be able to submit impasses to binding arbitration. (4,30,31)

Training and Education: The Jean Commission on Adult Education in Quebec (1982) recommended the establishment of joint committees which would have the function of developing and overseeing enterprise level training and education policy. Impasses would be settled by binding arbitration. (4,32,33)

In the mid-1970's Labour Canada sponsored a trip to Germany by Charles Connaghan. The result was a publication entitled Partnership or Marriage of Convenience, A critical examination of contemporary labour-relations in West Germany with suggestions for improving Canadian labour-management relationships based on the West German experience. (13) It produced a national debate, one part of which focused on the works council concept. The general response of Labour and Management was negative. (18,20) Both sides agreed that collective bargaining (under the regulations of the Wagner model) was preferable to statutory works councils. That debate, however, was not informed by an objective comparison of decision making under the two models. Instead, statutory works councils were stigmatized as alien institutions inappropriate in the North American context. (14) Indeed, in his recent book Nightengale remarks, "It is difficult to imagine a works council in this country operating in parallel with a trade union." (36,p216). However, what Hanami refers to as "limited function" works councils do now co-exist with unions in Canada and if current proposals are carried into law many more will soon come into being. (28) Clearly the time is ripe for a careful consideration of these two models.

There are four major dimensions on which the Wagner and the statutory works council models differ. The way in which they come into existence is quite different. The models assume different agencies through which employees are to be represented. The bargaining or decision-making processes differ considerably. Finally, the two models use different methods for resolving impasses. My objective here is (1) to compare and contrast the two models against each other on the four dimensions (2) to assess them against the standards for employee participation noted in the introduction (eg. democracy,

conflict control, avoidance of exploitation, productivity improvement and job satisfaction) and (3) to suggest ways of altering either or both of them with a view towards improving their performance.

Establishment Procedures

The explicit purpose of the Wagner model is to encourage the practice and procedure of collective bargaining. It does not, however, compel collective bargaining. Instead, a relevant group of employees may, if they see fit to do so, take steps to initiate bargaining. They must form a trade union — usually a local of a larger national or international union — and the union must attract the support of a majority of the relevant employees in order to be certified by the state as the legal bargaining agent of the employees. It is expected and considered to be reasonable and legitimate for employers to resist unionization so long as they do not engage in blatant coercion, threats and intimidation. (40,44,46)

In contrast to Wagner the SWC model simply requires the establishment of joint decision making in all covered enterprises. Employees are not generally required to take the initiative. In the schemes reported in Exhibit 1 the only exception is the proposal on pension management which will require evidence that 50% of the covered employees want to be represented before government will require representation. (38)

Federal plant shutdown legislation requires the employer to take the initiative to begin negotiations with the union or, if the employees are unorganized, with an elected employee committee. He may not legally carry

through his plans until an employee representative group has been constituted and negotiations have been completed. (4,9)

Under the federal worksharing initiative the government would not fund any scheme unless the employees had been consulted and agreed to it. (47) A similar provision appears in the new federal plan designed to encourage profit sharing. (23) Most proposals for joint schemes simply state that councils must be established in enterprises above a certain size. Proposals in regard to technological change (30) and training (32) follow that approach as does legislation in regard to health and safety. (35)

European experience suggests that legal initiatives designed to require participation might be more symbolical than practical in effect unless careful consideration is given to policing legal requirements. In West Germany, for example, works councils are required in all establishments with five or more employees. (12) However, research continually shows that no councils exist in large numbers of small establishments. (2) The reason for this situation is that, in essence, the onus is on the employees to set up the councils. In companies with no council the labour court may take steps to establish a council but only on application of three or more employees or from a trade union represented in the establishment. (12) The latter provision, introduced in the early 1970's, has led to a large increase in the number of operating councils in some industries. Nevertheless, there are still many companies where the required participation procedures are not in effect.

In Canada, the federal worksharing and profit sharing plans have a built in monitor in that evidence of on going participation must be produced in order for government funds to be granted. The occupational health and safety

schemes also have policing procedures. In Saskatchewan, for example, the committees must keep minutes of their meetings. Copies of the minutes are carefully monitored by the labour ministry. (35) Thus, failure to receive a set of minutes is evidence that a committee is not working or not working satisfactorily. Committees are also required in Ontario to keep minutes but there does not seem to have been a concerted effort to monitor them. Not too much attention has been paid to this issue in regard to the proposed technological change and training committees. The federal government's new pension management proposal practically assures a development where unionized employees will participate in overseeing pensions but non-union employees will not. Unions will be able to mobilize the required 50% but most likely, few non-union employees will make the effort.

Why do the two models differ so drastically in their approach to establishing joint decision making? One of the main reasons it seems to me is because collective bargaining is considered to be primarily an economic instead of a political phenomenon whereas the reverse holds with respect to joint committees. Despite the democratic rhetoric used by many industrial relations scholars (16,40) collective bargaining is considered by most informed observers to be primarily a device whereby employees may place themselves on a stronger economic footing in dealing with their employers. It is considered to be a power resource to which employees may turn when they are dissatisfied and angry with unilateral employer policy. It is seen to be primarily a tool for improving the position of the sellers with respect to the buyers in the process of determining the price for labour. From that perspective it is perfectly reasonable to require those who will benefit to take the steps necessary to enhance their bargaining position. It is also

perfectly reasonable to accept that those who will be disadvantaged will attempt to avoid a change in status. Finally it is also reasonable to assume that those who have not taken steps to acquire additional bargaining power must be relatively satisfied with the status quo and that the state should not interfere with buyers and sellers who are apparently satisfied with their market relationship. In his recent writings Beatty has explored in some depth the implications of this pervasive image which he laments. (7,8)

Quite different conclusions flow from a political theory of the employment relationship. From a political perspective employees may be thought of as citizens of a work society which, like all societies, must be governed. (15,17) In the absence of collective decision making by right the form of governance is command-and-obey authoritarianism. (36). One group (management) makes, administers and adjudicates the rules with respect to another group (the employees). From this point of view employee efforts to unionize in order to bargain collectively may be thought of as attempts to replace authoritarian enterprise governance with a form of democracy. (15,16) This perspective leads to quite different conclusions than does the economic one. First, since democracy is considered by society to have high intrinsic

value (37) the effort by employers to avoid democratization should be roundly condemned. Second, employee-citizens should not be put in the position of having to surmount numerous obstacles in order to establish democratic decision making. Third, employee attitudes about the goodness or badness of substantive conditions under authoritarian forms of enterprise governance should be entirely irrelevant. Since democracy is a good thing in and of itself, it needs no subsidiary justification for its establishment.

The statutory works council model flows more naturally from the political theory than from the economic one. As a policy approach it is much truer to the proposition that employees should, as a matter of right, be able to participate in the making of decisions which critically affect their working lives.

The development of the SWC approach places the Wagner model in a new perspective. If worker participation in employment decision making is an inherently good thing why not require that it take place in all relevant establishments and that it address all relevant issues? If collective bargaining is the preferred form of industrial democracy why require workers to surmount multiple barriers in order to implement it? We do not permit our municipalities and school boards to choose between authoritarianism (no matter how benevolent) and democracy. Why should we permit such a choice to our enterprises?

Bargaining Agents

Another major difference between the two approaches has to do with bargaining agents. In Wagner-style collective bargaining the employee agent is always a trade union or an association which is independent of the employer. As it has developed in Canada the SWC approach requires (or permits) the

local union to assume the rights and obligations of the employee representative in those firms where a local union exists. This approach is a fairly unique one in international context. In countries with statutory works councils the usual practice is to require councils in addition to trade unions. (2,10,39) For example, in West Germany the councils are the primary worker representative mechanisms inside the enterprise. (2). Unions negotiate multi-employer collective agreements but councils oversee their implementation. The councils usually have close relations with the unions. Indeed, councillors are for the most part active trade unionists. But the councils are not structurally a part of the trade union. They are legally separate entities.

One potential problem with the Canadian approach is that by granting unions legal rights and obligations the unions become, to a degree, agencies of government. They improve their capacity to be of benefit to members but, in so doing, surrender some part of their autonomy. This aspect is not new but is rather an extension of practice under the Wagner model. Under Wagner, unions accept the responsibility to fairly represent both union members and non-unionists in the bargaining unit and in so doing take on quasi-governmental functions. Free unions are essential components of democratic societies. Thus, their loss of freedom should give rise to some concern. On the other hand, most unions have few qualms about accepting increased authority and power via legislation.

Under the emerging Canadian Statutory Works Council model the employee bargaining agent in unorganized enterprises varies from proposal to proposal. The most common format is to require that employees be elected from among their peers to sit on a joint committee with an equal number of representatives

appointed by management. That is the present practice in regard to occupational health and safety and it is called for in the proposals for technological change and training and education. (4,30,33,35) Proposals for employee participation in regard to pension management and profit sharing provide few details. Under work sharing the policy was simply to require evidence that the employees had been consulted and agreed to the scheme.

One potential problem with the development of the SWC's in non-union companies is that they may not be effective. How is an isolated group of employees supposed to acquire sufficient knowledge about issues as complex as training and technological change in order to participate effectively? (4) The answer in West Germany is that the works councillors associate themselves with the unions and the unions provide them with training and technological assistance. Works councillors are permitted to take time off with pay to attend relevant courses. (2) The Saskatchewan health & safety legislation also permits committee members to take time off with pay to acquire relevant training. (35) Without the resources of a union or comparable worker organization behind them, however, it is doubtful that independent committee members can be optimally effective. In Germany the councils with the closest union ties are the one's which are most effective. Very little comparative union/non-union research on committees exists in Canada. One relevant datum is to be found in a report prepared by Gunderson and Swinton. Under Ontario Occupational health and safety legislation almost all cases of refusal to do unsafe work take place in unionized settings. The unorganized apparently are unwilling to make use of their statutory rights. (26)

The obvious answer to ineffective non-union committees is unionization.

However, while a good case (from the political perspective) may be made for mandatory collective bargaining, mandatory unionism raises numerous problems. Compulsory, universal unionism is not entirely unknown in Canada. It exists, for example, in the Quebec construction industry and in primary and secondary education in Ontario. (5) However, the preponderance of opinion begins with the proposition that unions are independent institutions with their own history, philosophy, customs and traditions which people should be able to join if they choose. To compel people to join voluntary organizations like unions is generally considered to be improper.

What then may be done? One solution would be to require universal collective bargaining through unions with a proviso that employees who did not want to associate themselves with the customs and traditions of the labour movement could opt out through a decertification process similar to that which exists under the Wagner model. Such an approach would be much more consistent with the proposition that employees should be able to participate by right in critical employment decisions than is present policy.

Under the Wagner model the job of union as bargaining agent is to negotiate and oversee a collective agreement. (44,46) The advent of the SWC model has expanded the legal rights and obligations of unions. Under health and safety legislation, they are charged with ensuring that government regulations are implemented. (35) It is easy to envision this logic being extended. In addition to the list of SWC issues noted above unions might also be asked to oversee the implementation of employment standards and human rights legislation. Instead of a multiplicity of dispute resolution procedures the grievance procedure could be used to settle disputes over the application of both collective agreements and employment related legislation. In Western

Europe works councils typically oversee the application of the entire relevant "web of rule" not just that part of the web encompassed by the collective agreement. (2,28,39)

In British Columbia the provincial government has recently taken a step in that direction. Under the Employment Standards Amendment Act, proclaimed in effect as of December 1, 1983, "When a collective agreement already covers certain terms and conditions of employment, the provisions in the corresponding part of the Employment Standards Act will not apply." On the other hand, "If a collective agreement does not contain those terms and conditions of employment then that part of the Act will apply as if part of the agreement." As a result, "Disputes arising from those provisions will now be processed through the normal grievance and arbitration procedures of the collective agreement rather than by lodging a complaint with the Employment Standards Branch." (19) The Act has two major effects. First, it removes "the risk of double jeopardy for employers." It also places new responsibilities on trade unions to oversee the application of relevant legislation.

Once again this development must be considered from the perspective of union freedom as well as from an efficiency point of view. Increasing union responsibilities should be more efficient than current procedures and it should provide covered employees with greater assurance that their rights will be adequately protected. However, by accepting new legal responsibilities unions become less free to develop and implement policies of their own.

A more comprehensive approach to enterprise level employment decision making also could be achieved by providing statutory committees with broader a mandate than is currently envisioned for them. Proposals in Canada generally call for multiple, issue-specific committees. It would seem to be more

efficient to establish one multiple purpose committee for each enterprise which would share responsibility for all of the issues noted above. The committees might also be asked to oversee the full range of applicable employment legislation. Multi-purpose councils are prevalent in Europe although in some systems special purpose committees for issues such as health and safety also are required. (22,28)

In addition to dealing with the substantive issues noted above, joint committees might also be asked to co-decide wages and benefits. After all, no issue is more critical to employees. Perhaps the biggest problem with that option is that it could undercut the appeal of trade unions and weaken the free labour movement.

Should the concept of statutory committees be discarded altogether then? Some analysts believe that statutory councils with authority to decide any issues are a threat to independent trade unionism because they assume functions which otherwise might be performed by unions. On the other hand, many employer-sponsored representation plans initiated in the 1920's and 1930's evolved into independent unions in the 1930's and 1940's. Statutory councils may give unorganized employees experience in dealing collectively with their employers and whet their appetite for more. If statutory committees had the right to negotiate not only the issues noted above but also wages and benefits would there be any need for unions? The answer, from history, is yes. Independent statutory councils would be similar in many respects to independent local unions of the 19th century. Like their predecessors they would be at a disadvantage in dealing with their employers because their resources would be very meagre. In West Germany the councils work best when they maintain a close relationship with the trade unions who provide them with training,

research and other valuable resources. It is very likely that many independent SWC's in Canada would turn to unions for assistance. Indeed, instead of discouraging union growth SWC's with a mandate to negotiate wages and benefits might foster growth. But that course of action is risky. It would be prudent for the foreseeable future to limit the prerogative to negotiate over wages and benefits to certified unions.

Bargaining Process

In Wagner model bargaining the parties begin with extreme positions and conceed towards each other. At the start there are many issues "on the table". As bargaining proceeds some issues are traded off. Management is expected strongly to defend its unfettered ability to decide. Thus, in order for unions to influence issues such as those proposed for SWC decision making they usually must pose a credible strike threat. (11,34,36,43) The strike threat is the primary dynamic producing concessions on both sides because strikes usually have negative consequences for both parties. On many of the issues noted above unions have not been able to compel management to include a clause in collective agreements. Table 1 provides some relevant data. Of bargaining units containing 200 or more employees (with construction excluded) unions participated in the administration of pension funds (in 1982) in only 134 or 6% of them. They participated in the administration of health and welfare plans in 5% of the units. There was a committee whose task it was to look specifically at technological change in less than 10% of the units. In only one fifth of one percent of the agreements was there a provision which called for the collective agreement to be reopened in the event of a

TABLE 1

Collective Agreement
Provisions, December, 1982

(All Industries, 200 or more employees, Excluding Construction)

Provision	Agreements with Provision	
	#	%
TOTAL	2235	100
Administration of Pension Funds		
Union/management jointly	128	5.7
Union only	6	0.3
Training or retraining (not related to technological change	1298	58.1
Administration of Health & Welfare Plan		
Union/management jointly	106	4.7
Union only	9	0.4
Labour-Management Committee - technological Change	215	9.6
Technological Change reopener	5	0.2
QWL Committee	24	1.1

Source: Labour Canada Survey Reported in D. Wood & P. Kumar (eds.) The Current Industrial Relations Scene in Canada, Kingston: Queen's Univ., 1983.

technological change.

There was provision for training or retraining of some sort in almost 60% of the agreements. However, Table 2, which reproduces data drawn from a broader sample of employers, indicates that the incidence of negotiated training plans was much lower. Respondents to a survey of establishments with 20 or more employees were asked: Do you have a plan or policy on training and development during normal working hours for your employees? The percentage of establishments answering "yes" are reported. Many respondents, it should be noted, did not answer the question and thus the data may understate to some extent the actual rate of union participation in training.

Finally, the very low rate of union involvement in quality of work life programs may be noted. Does this lack of employee influence on many issues which public inquiries say employees should participate in indicate a lack of employee interest? Perhaps. But data on employees' attitudes from the U.S. suggest that while wages and benefits have priority with most union members, they would like their unions to influence quality of life and management issues also. (34) The problem is that under Wagner model bargaining making headway with regard to non-strike issues is very difficult. Faced with intransigent managements unwilling to see their presumed rights further eroded many unions simply abandon efforts to negotiate issues such as training and technological change. Others never put such demands on the table knowing that to do so would be futile. Failure to achieve concessions on such issues might suggest a deficiency of leadership to the members.

Works council negotiations are quite different from Wagner-model collective bargaining. Instead of considering multiple issues simultaneously each issue

TABLE 2

Negotiated Training and Development Plans
in Canadian Industry, 1979

	Percent of units reporting a negotiated plan for:		
	Executive Professional Management Employees	Office Employees	Non-office Employees
Logging and Mines	0	2	19
Manufacturing	0	7	4
Transportation, Communication and Utilities	0	1	2
Trade	0	6	5
Finance	0	0	0
Service	23	21	14
Public Administration	N/A	2	2
All Industries	N/A	10	7

Source: Statistics From Survey of Educational Leave and Training and Development Ottawa: Labour Canada, 1981. Based on a survey of establishments with 20 or more employees.

is addressed separately from the others. Labour and management are expected to reach agreement on each of the issues instead of trading off one against the other. For example, in regard to health and safety labour and management are supposed to jointly develop procedures designed to ensure a safe workplace. It would be a bastardization of the process for the employee side of the committee to agree to allow management complete discretion with regard to safety in return for a 10¢ wage increase. Such a trade off, on the other hand, would be perfectly proper under Wagner-style bargaining.

The two decision processes also are different in terms of their relationship pattern.(42) Works councils are intended to be cooperative in nature while collective bargaining is adversarial. In a works council relationship the parties ideally work together to solve perceived problems instead of seeking to win at the expense of the opponent. (17,36,42) The German Works Constitution Act states that:

> The works council and the employer shall work together in a spirit of mutual trust and in co-operation with the trade unions and employers' associations for the good of the employees and of the establishment. (12,p99).

Evidence indicates that, by and large, the mandate has been carried out. (2,6) In Canada, evidence from Saskatchewan on the performance of the health and safety committees indicates that those committees — in both union and non-union settings — do work effectively and in harmony towards mutually beneficial solutions to perceived problems. (35,4)

One school of thought on workers' participation in enterprise decision-making holds that cooperative, problem solving behaviour cannot be compelled by law but must instead be embraced willingly by the antagonists. (35)

European experience does not support that theory. It suggests instead that if participation is not compelled by law most employers will not magnanamously share power and decision making with employees. It also suggests that cooperative problem solving can proceed even when joint decision making is compelled.

In the German context the key dynamic providing employees with real power is the ability of the council to submit issues to binding arbitration in the event of an impasse. Both employers and employees try to avoid arbitration because of the belief that arbitrators may impose inappropriate conditions. Thus arbitration is not used very often. (2,45) However, because they cannot proceed with impunity in the event of an impasse employers must negotiate in good faith.

Joint decision making in other European countries (France is a notable example) has been less than satisfactory because schemes in those countries depend almost entirely on employer good will to reach terms acceptable to the employee side. In recent years the power of the employee side has been improved in many systems. (22,39)

In Canada, as in Europe, statutory works council proposals almost always forbid the use of strikes as impasse resolution devices. The most common alternative to strikes is arbitration. Proposals with respect to both technological change and training call for arbitration. (33,30) The federal scheme for negotiating the impact of plant shut downs requires a form of mediation — arbitration. (49) Health and safety legislation implicitly expects government inspectors to act as arbitrators should disputes over unsafe conditions occur. Employees are, however, permitted to refuse to

engage in work they considered to be unsafe. That right is tantamount to permitting a type of work stoppage. The right must be exercized with care, however, because employers may discipline employees who frivolously disobey orders. (35)

If collective bargaining is said to be a strike-threat system then SWC decision making may be thought of as an arbitration threat system. In all of the schemes noted above it is intended that arbitration be a final step, not the primary means of deciding. In theory arbitration can become addictive and it can be deadening to bargaining. The extent to which it actually has these effects, however, is ambiguous. In a recent review Gunderson concluded that "the available evidence does not allow one to say that arbitration destroys collective bargaining." (27,37) The German experience indicates that the parties under SWC procedures will probably try to avoid arbitration. When there is a works council-employer deadlock in West Germany a conciliation committee composed of equal numbers of employer and employee representatives with a neutral chairman (usually a member of the labour court) is struck. With the help of the chairman the committee attempts to resolve the impasse. If it fails to do so the chairman decides. A recent major study of 6240 works agreements negotiated between 1972 and 1979 found only 70 that were submitted to conciliation committees. The chairman was required to decide only 20% of those cases. In short, less than one-half of one percent of the agreements had to be arbitrated. (45)

The narcotic and chilling effects may be more prevalent when the issues to be decided are easily quantified. Two positions on a money wage increase are easily split or may be effectively resolved by reference to standards such as equity and ability to pay. (27) It is much more difficult for an outsider

to make a reasonable decision about enterprise policy with regard to issues such as training, safety and technological change.

In the folklore of North American industrial relations collective bargaining is considered to be far superior to alternative employment decision making procedures. But it is inferior to the SWC model in some critical aspects. By specifying the issue to be jointly decided and by providing for binding third party resolution of impasses the council approach ensures employee participation in deciding specified issues. If the law says that a labour-management committee will develop jointly a plan for the introduction of new technology with any impasse subject to arbitration then the employees involved will participate in the making of that plan. Under Wagner model bargaining the employees have no such assurance. If they want to participate in the development of a technological change plan they must be willing to give up something else and/or be ready to forego work and income for an indeterminate period of time in order to make their "demand" credible. Why should employees be expected to suffer in order to participate in decisions which critically affect their working lives?

The answer is to be found, once again, in the contrary theories underlying North American labour policy. If the parties to the employment relationship are simply market hagglers arguing over the terms of exchange of an economic commodity then they must have the right to withhold the commodity from the other side. In order not to distort the market the state should limit its intervention. From a political perspective, however, the strike threat system is an anomoly. It is analogous to the medieval method of dispute resolution known as trial by combat. When two parties had a dispute they would physically confront each other. The winner of the test of

strength was declared to be in the right by virtue of his victory. The assumption was that a higher power had provided the victor with the wherewithal to prevail and by doing so had indicated the virtuous one.

The strike is the primary tool in the kit of the independent labour movement. Given the North American history of hostility to unions (11,34) it is certain that organized labour will not part willingly with the strike. Nor should the labour movement be asked to do so. Nevertheless, in the light of the development of the SWC model policy makers should consider the possibility of providing unionized employees with a choice of procedures in the event of an impasse. If unions could either strike or submit issues in dispute to arbitration unionized employees would better be able to participate in critical decisions. Such a choice already exists (with restrictions) in the federal public service. (11) In British Columbia first contracts may be arbitrated. (43) Why not a system where second, third and fourth contracts, etc. could be arbitrated? (1)

If abuse of the provision was feared labour ministries could be given the power to vet intentions to arbitrate. Under the Canadian version of the Wagner model the requisite machinery is already in place. (11,43) Conciliation Boards which now issue only non-binding recommendations could be made into arbitration boards at the discretion of the Minister. When an impasse occurs and a conciliator is appointed the union might ask the conciliator to recommend that an arbitration board be appointed. If in the judgement of the Minister some combination of democracy, justice, labour peace, productivity and job satisfaction were to be best served by arbitration, then he would agree to the request. If, on the other hand, he felt that the requesting party was not negotiating in good faith he

could refuse to allow the request. The availability of choice of procedures to the union would also, as George Adams and Morley Gunderson have noted, enhance the "demand" of unorganized employees for collective bargaining. (1,27) Many of the unorganized in Canada are in occupations and industries where the strike threat is not credible. (7,8) Since current Wagner policy requires unionists to be prepared to strike if they hope to win concessions from management many of the unorganized have, no doubt, concluded that certification would be a futile effort.

One other aspect of the bargaining process on which the models differ needs to be pointed out. SWC bargaining is continuous while Wagner bargaining is usually disjoint. Joint committees meet on a regular basis to discuss and resolve issues as they arise. Under the Wagner model the parties bargain comprehensive collective agreements periodically. Between bargaining rounds management has the right of first interpretation of the collective agreement and typically maintains the unilateral right to decide any issues beyond the collective agreement. (43,46)

These aspects of Wagner model bargaining were the result of management's insistence that it could not manage effectively if it had to engage in continuous negotiations with a trade union. (46) Once an agreement was signed the union should let management alone so it could get on with its functions. In the abstract the argument is compelling. There is also evidence from countries like Britain, France and Italy which suggests that management's worst fears might indeed materialize. On the other hand continuous negotiation in the context of the West German works council experience has not caused serious problems.

Because it is impossible to see into the future with clarity continuous

negotiations make sense if the prime objectives are to provide employees with a meaningful say in decision making and to improve productivity through employee involvement. However, the risk of disruption and conflict clearly increases.

Conclusion

The following proposals emerge from the analysis presented above:

1. The works council approach should continue to proceed. Legislation should be introduced providing for councils to participate in health and safety, work sharing, redundancies (if necessary!),profit sharing, pension management, technological change, and training and development. The councils should also be asked to take responsibility for overseeing the implementation of human rights legislation and employment standards.

2. Works council impasses should be arbitrable.

3. In each enterprise there should be a general council to oversee and coordinate the work of the various committees.

4. A one time referendum should be held allowing employees in all covered workplaces to vote for union representation.

5. Enterprise based unions should be permitted to assume the responsibilities of works councils if they choose to do so but they should not be required to do so.

6. Unions should be given the right to request binding arbitration in the event of a collective bargaining impasse.

These principles all follow from the political conception of the work enterprise. If they were all put into effect it is quite certain that

1) democracy would be enhanced, 2) working people would be better protected against exploitation and 3) job satisfaction would be more prevalent. It is not as clear what would happen in regard to conflict control and productivity. Recent North American research indicates that, under some circumstances at least, Wagner-style collective bargaining may enhance productivity. (21,29,34) In others, however, productivity may be hindered. Taken as a whole the available evidence does not indicate that increased unionization and employee participation would unnecessarily constrain efforts to compete effectively. Given the almost certain improvement on the first three standards and the not unlikely probability that productivity would increase a decision to implement the program would seem to be warrented.

What can be expected in regard to industrial conflict? Will a higher level of unionization produce a higher level of conflict? European experience suggests that the opposite effect may be expected. The most highly organized countries (Scandinavia, Austria) have a very low incidence of conflict. (39,41) When labour is highly organized it seems to be much more respected, and more confident. It also can be expected to face less management opposition. When unions represent 70% or 80% of the labour force management will see its task to be one of coming to terms with the labour movement instead of putting its energies into avoiding unions and collective bargaining. Survey research in the U.S. indicates that large companies abandon anti-unionism once they are about 40% organized. (34)

I don't need to be told that the program outlined here is "unrealistic". Of course, those who benefit by the status quo will argue for its continuance and most of those who favour change are more prone to give their full support to slow change. Thus, the programme outlined above may be considered an

ideal towards which policy might strive. There is no doubt in my mind, and I feel certain that there would be no doubt in the mind of anyone who would carefully review the experience outlined here, that this program, if implemented, would be a significant benefit to Canadians and to Canada.

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