



CANADIAN INDUSTRIAL RELATIONS AND THE GERMAN EXAMPLE

A RESEARCH REPORT

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During the past several years Canadian industrial relations have been subject to a good deal of public discussion and debate. High inflation, unemployment and an unenviable strike record have all been attributed in part to deficiencies in the collective bargaining system. Perhaps the most controversial recommendation for change has recently been made by Charles Connaghan a vice president at the University of British Columbia and former management association official who proposed the adoption of certain aspects of the German system. Connaghan's report, which was commissioned by the federal government, has received a good deal of media coverage and has been a key issue at numerous conferences and meetings.¹

In light of this debate we shall first outline the German system and then consider its performance relative to the Canadian. The principal features of German Co-determination which have been discussed in Canada are the following:

1. Collective bargaining is carried out by unions and employer associations at the regional industry level.
2. Workers' Councils elected by all employees are required by statute in firms with more than five employees.
3. Elected worker representatives sit on boards of supervision. Worker's have parity in the coal and steel industries, near parity in firms with more than 2000 employees and one-third representation in firms between 500 and 2000 employees.

4. There is regular consultation between trade unions, employer associations and the government. Consultation takes place before important legislation is passed. In addition, joint labour-management-government bodies direct the efforts of various agencies which spend public funds amounting to over one-fourth of the total gross national product.²

5. There is a council of "five wise men" - economic experts whose forecasts are highly respected and considered to be the framework for wage and price movements.

6. There are highly professional trade union and employer association representatives. Associations on both sides of the labour market engage in first rate economic and social research.

Are German worker interests better represented in this system than are Canadian workers via the system in Canada? Several observations may be made.

Most workers in Germany have the statutory right to be represented in industrial decision-making. The majority of Canadian workers have no such right. They may be represented by a trade union but only if more than 50% of their fellows decide to become trade union members. While workers are supposed to be able to make this decision free from employer intimidation and coercion, in fact intimidation and coercion are rife because of weak legal sanctions. Employers in Canada almost always contest union organizing campaigns.³

Until recently, however, the situation in Germany may

not have been much better. The law requiring the establishment of works councils had equally weak sanctions with the result that councils had not been established in many firms, especially small ones. For example, in industries within the jurisdiction of the powerful Metalworkers Union only 9% of all plants with less than 50 workers had a works council in 1972. As a result of changes in the law which permit unions to demand the establishment of councils, this seems to be changing. Since 1972, 1834 new councils have been established within the Metalworker's Union jurisdiction.⁴

Works Councils in Germany have co-determination rights concerning several issues including hiring, firing, promotions, recruitment and selection standards, transfer of workers, working time, the social consequences of mass layoffs, and the system of remuneration.⁵ If these issues cannot be settled amicably they may be submitted to arbitration or the labour courts in some instances. In practice, however, third parties are only rarely resorted to.⁶ This may be due to the fact that both sides fear inadequate decisions and thus work hard to reach satisfactory agreements or it may be due to the fact that employers dominate the councils and councillors are afraid to challenge management. Arguments have been made on both sides but solid data are hard to come by. Councils are forbidden by law to strike.

In Canada, certified unions may raise any issue concerning terms and conditions of employment. The law places an onus

on both sides to bargain "in good faith" with a view towards signing a collective agreement. Sanctions against bargaining in bad faith are weak, however, and are often ignored. Many unions, for example, find it extremely difficult to win a first contract after becoming certified. The only effective sanction a union has is its right to withdraw labour. Likewise the primary management sanction is the ability of the company to withstand union pressure tactics. As a result most bargaining in Canada is a power struggle with the strongest party exerting its will quite often to the detriment of the other side. With the exception of a few public sector jurisdictions, unions do not have a right to arbitration as a recourse, with a few exceptions. In the province of British Columbia a newly certified union which finds it impossible to reach agreement with the employer may submit the entire dispute to binding arbitration by the Labour Relations Board. Ontario disputes may be submitted to private arbitration but only if both employer and union agree to that course.

In Germany works councils are charged with ensuring the application of the industry-wide collective agreement, as well as supplementary council agreements and social legislation. However, procedures for ensuring that these rules are applied fairly and equitably are informal and their effectiveness is questionable.⁷ Neither unions nor works councils in Germany have chosen to negotiate detailed stipulations to regulate shop floor relations. In Canada, collective agreements are very detailed as a rule and procedures for ensuring that the agreements are carried out are formal, well-developed and

intensively utilized. There can be little doubt that Canadian unions have secured greater worker control over the daily experience of the worker in the office or factory.

This common observation was recently borne out in a comparative study of the German and American steel industries. The author found that by comparison to America in Germany discipline was handled in a haphazard manner, grievance systems in most companies were underdeveloped and underutilized, arbitrary coercion of workers by management on the shopfloor was much more common, and that health and safety conditions received less attention.⁸ There are, however, serious problems and gaps in the North American system. Grievances may take a long time in being processed and often enough "justice delayed is justice denied."⁹ Moreover, while the unions may seek to ensure that social legislation is obeyed they have no legal mandate to do so, and are often ineffective in providing such ensurance. For example, many cases of employers disregarding health and safety standards in unionized firms have only recently come to light.

The result of collective bargaining in Canada is a collective agreement which usually runs for one, two or three years. Agreements generally contain a management's rights clause which specifies that anything not in the contract is reserved to management discretion. These clauses permit management to make unilateral changes during the life of the contract. Utilizing their "rights" managements have,

for example, shut down operations, subcontracted work and introduced major technological changes during the life of the contract which have had widespread effects on the work force. A few jurisdictions have recently forbidden employers to make major technological changes without first negotiating with the union.

In Germany issues are handled as they come current and management cannot make changes in any of the specified aspects of the employment relationship without first discussing the issue with the council and getting council agreement, subject to arbitration. Most observers agree that parity representation on supervisory boards in the coal and steel industries has facilitated the massive changes which have taken place in those industries since World War II.

In Canada workers have no right to elect members to directing boards. Presumably unions could seek to negotiate seats on boards but to date none have seen fit to do so.¹⁰

Industry-wide bargaining in Germany is generally conducted in a highly professional manner. Since only minimums are being negotiated for a large group of firms, breakdowns and strikes are rare. Moreover, since most unions respect the economic analyses carried out by their own organizations and by such groups as the "five wise men" they are likely to seriously consider the impact any agreement would have on the economy.

Because of the intensely adversarial nature of the Canadian

system, local bargaining is less professional and more power oriented. Unions generally make demands far in excess of what they reasonably expect to achieve and managements propose inordinately low terms. Many negotiators make no attempt to justify on social or economic grounds the demands made but instead depend on their muscle to force concessions. A long list of issues sometimes running into the hundreds must be negotiated in a two or three month period or an impasse will result often leading to a strike. Since the effect of any one plant agreement on the economy will be minimal the parties rarely take such issues into serious consideration. However, advantageous agreements signed at one firm are used by unions at other firms to bolster the determination of the workers to hold out for higher increases. This pattern following does, no doubt, have a cumulative effect on the economy. Strong groups such as those in construction are often able to hold out for excessive increases while weak groups such as those in the services sector are barely able to win basically adequate compensation. Over time some groups thrust ahead and others fall back. The laggards then push to catch up exerting more pressure on the economy. The result is an inadequate and unjust system where the powerful win, the weak lose and no one considers the effects of his actions on the over-all system.¹¹

Bargaining is made more difficult in Canada by the fact that social legislation is deficient. For example, pensions

and vacations are important bargaining issues in Canada because the government does not ensure adequate benefits through legislation.

At the level of interaction with the government, union influence in Canada is considerably less than that in Germany. Labour has no right by law or custom to preview and critique legislation, nor until recently were unions consulted as a matter of course by government before new policy initiatives were taken. Labour's influence on policy has been weaker than in Germany because its political partner the New Democratic Party is only a small minority third party at the federal level while the natural (although informal) ally of the DGB in Germany is the powerful Social Democratic Party.

The foregoing analysis would seem to indicate that several aspects of the German system are more advantageous to workers than are their functional equivalents in Canada. While it is widely accepted that the overall excellent performance of the German economy is attributable at least in part to the industrial relations system, the overwhelming majority of commentators are sceptical about its applicability to Canada. Although most aspects of the German system have been debated, only a few facets have been given serious policy consideration. Connaghan made the following recommendations:

1. Establishment of a consultative body at the national level drawn from all economic units in society.
2. Establishment of a council of economic advisors similar to the "five wise men."
3. Prior government consultation with Labour and Manage-

ment before passage of relevant legislation.

4. Development of more professional trade union and employer representatives assisted by government financial support.

5. Government encouragement of broader-based bargaining structures.

6. Experiment with the works council approach in Crown corporations.

Some of these recommendations the federal government had already been in the process of implementing even before Connaghan was commissioned to carry out the study. At least as long ago as March, 1975 the federal government had begun to encourage the development of broader-based bargaining. Since about the same period it has consulted more closely with Labour on policy questions although Labour and Government are still a good way apart on how a permanent relationship should be structured.

In October of 1976 the federal Minister of Labour announced several proposals which he claimed "should provide this country with a more constructive and responsive labour relations system."¹² Among them were several which were apparently developed with the German system in mind including:

1. A multi-partite forum for consultation including representatives of government, labour, business, the farming community, consumers, and "possible others."

2. Establishment of a collective bargaining information center which would produce "information on the economic and the

various bargaining issues which was acceptable to both parties."

3. Improved education and development opportunities for labour market practitioners. In this regard the government recently announced a 10 million dollar, three year grant to the Canadian Labour Congress for the improvement of labour education.

4. Establishment by statute of plant health and safety committees. These committees would be expected to both monitor legislation and work with management to promote health and safety in the workplace.

5. Granting the right to non-union employees to grieve against alleged unjust dismissal. Under this scheme any individual could file a complaint with the Department of Labour.

6. Encouragement of broader-based bargaining.

There were several other proposals but those noted were the primary ones related to the German system.

Assessment

Despite all of the attention and public debate, both Connaghan's proposals and the initiatives of the government have been very modest. What then is the likelihood that the German system will be emulated in Canada?

First, few serious proposals have been put forth to grant workers representation on directing boards. Both Labour and Management are opposed. Management holds that doing so would undermine the free enterprise system by diluting the control of the owners of capital.¹³ Moreover, they also argue that

workers on boards would drive away investment capital. These charges are made despite the fact that many European countries have placed workers on boards in recent years without notable adverse effects. Furthermore, in Germany, where representation has gone the furthest, investment has remained quite strong.¹⁴

Organized Labour has opposed the idea because it feels that board representation would undermine its role as the agent of pure worker interests. Unions do not want to be saddled with responsibility for joint decisions which result in negative outcomes for workers. Their historical approach has been to let management manage and to intervene only to restrict the prerogatives of the employer.¹⁵

Another argument sometimes made against worker directors is that there is no perceptible demand by workers for such schemes. Needless to say it is a bit unrealistic to expect workers to demand changes they have never had experience with either directly or vicariously. Nevertheless a recent Gallup Poll asked a cross section of the Canadian public if they thought it would be a good thing for workers in large companies to be able to elect members on boards of directors. Unexpectedly 71% said it would be a good thing, 14% felt it would not be and 15% didn't know.¹⁶

Union opposition may wear down in time as the operation of European systems and the benefits to workers of board representation becomes better known and understood. However, the process is likely to be a long one.

The establishment of plant health and safety committees as well as granting to non-union employees the right to grieve unjust dismissal would seem to be moves somewhat in the direction of the works council idea. These changes will, however, still leave the covered workers with much less protection than their German counterparts. For example, rather than calling for health and safety committees in all enterprises, the draft legislation does no more than permit the Minister of Labour to require the establishment of such committees where he deems them to be necessary. Nor is the proposed grievance system for unorganized workers a great leap forward. At present non-union employees may take complaints that their employer is violating employment standards to the Department of Labour. The new proposal would extend and put more teeth into this system by formalizing Department of Labour conciliation and by granting to employees the new right to binding arbitration should conciliation fail.¹⁷ The problem is that the great majority of employees do not know what their rights are. To meet this problem the government intends to expand its advisory services and to publish a "code of good industrial relations practices" somewhat on the British model.¹⁸ However, one must be somewhat sceptical about the likely effectiveness of these new innovations. Without the power and expertise of the trade unions behind them one wonders if many unorganized workers will be willing to challenge their employers. Many unions fear that the Department of Labour is attempting to usurp their role in the system.

Both Management and Labour are opposed to the widespread introduction of the fuller works council concept. In non-

union firms Management will not willingly give up its unilateral power to determine terms and conditions of employment and in unionized firms there appears to be no point to the change since local unions carry out functions similar to the German works councils already, and indeed have more influence in several respects. Labour is opposed because it fears that the establishment of works councils would undermine its function. If workers could rely on having representation via councils then they might cease to support the unions vigorously. Moreover, the unions believe that legally established works councils would be weak sisters likely to be dominated by employers.

For the most part, trade unionists feel that the inadequate representation of workers should be solved by the expansion of the labour movement. Towards this end unions have continually demanded changes in legislation making it easier for non-union employees to choose union representation free from employer interference. However, few government jurisdictions have been willing to act forcefully in this regard. To bring about a significant change it would probably be necessary to clamp a total ban on employer activities during union organization campaigns and to legislate severe penalties for infringements of the ban. Employers, however, argue that they have a "free speech" right to speak their minds and that employees have the right to choose union or no union on the basis of all relevant information including the attitudes of the employer. This argument has been accepted by Canadian Federal

and Provincial governments.¹⁹

Despite the push for broader based bargaining, developments in this regard will probably be slow. Each province has its own law regarding labour relations which makes inter-provincial bargaining difficult.²⁰ Moreover, labour relations boards in Canada have typically certified unions on an employer by employer or plant by plant basis thus augering against the development of wider bargaining structures. Some recent legislation has required broad-based bargaining in construction and the public sector especially.²¹ However, because of the nature of the labour movement and employer organization such bargaining is unusual. Employers in Canada are poorly organized into the associations necessary for industry-wide negotiations. Moreover, there are a multitude of independent unions rather than one union for each industry as in Germany. Finally, plant by plant bargaining is deeply ingrained in Canadian history and custom and old established ways of doing things will be difficult to overcome.

Until recently, perhaps the most promising area for significant change was at the governmental policy level. The Canadian Labour Congress in its "Manifesto For Canada" demanded a say in the establishment of social-economic policy and the federal government was somewhat responsive.²² The CLC wanted influence over both policy and the administration of several social programs.²³ The government was not willing to go along with the latter demand, nor would it agree to the CLC demand for a tripartite rather than a multipartite structure, but it was firmly committed to establishing some form of tripartism.

In the Spring of 1977 the prospect for meaningful national consultation brightened due to the establishment by several important companies of a Business Council on National Issues.²⁴ One of the primary difficulties with developing a national consultative system has historically been the low level of employer solidarity exhibited in the lack of any national organization capable of speaking with authority for employer interests.²⁵

By the Fall of 1977 the probability that a permanent tripartite structure would be worked out had, however, fallen significantly. Many groups of trade unionists were not sold on the idea of tripartism. They were afraid that it would actually result in Labour's co-optation. They also feared that it would weaken the link with the New Democratic Party. Others held that tripartism would undermine the parliamentary system.

At its recent convention the Canadian Union of Public Employees, Canada's largest union, voted to oppose the Congress leadership on the issue. Moreover, since the CLC has been unable to win its primary objective in the past few years of having wage and price controls removed immediately and without qualification, scepticism in the ranks of organized labour has been growing. As a result, the continuation of the current CLC policy of pushing for tripartism is in serious doubt.

The combination of the "five wise men" concept, increased education of labour market practitioners, and the establishment of a collective bargaining information centre is an attempt by the government to bring more rationality and social responsi-

bility to the bargaining environment. It is to be doubted, however, that the expected result will be easily achieved. To be effective, a significant change in bargaining structure would be a necessary pre-requisite. As long as bargaining is at the local level, local unions and employers are unlikely to accept that their individual actions will have a significant effect on the economy. Moreover, we do not believe that either Labour or Management will defer to data and analysis produced by supposedly neutral bodies like the collective bargaining information centre or a council of economists unless the parties first develop staffs of economic experts of their own who are able to technically assess and challenge the efforts of such bodies and win the respect of practitioners. Neither Labour nor Management has developed an extensive corps of such experts because technical and analytic ability have been subordinate in Canada to the acquisition and manipulation of power. Changing this focus will require a major revolution in attitudes and perspective.

Conclusion

The foregoing discussion might lead one to conclude that the outlook in Canada for change away from intense adversarialism to towards a more cooperative system in which worker interests are more fully represented is very bleak. Indeed, one should not expect any dramatic developments in the near future. However, the process of peaceful social change has always been a slow one and there is no reason to expect that the historical pattern

will differ in Canada. The process of change has at least begun. Industrial Democracy is a salient public issue in Canada and slowly the attitudes and values necessary for a significant extension of democracy at the workplace are being developed. Despite the problems it would be incorrect to conclude that this process will be halted. Rather, we expect that it will gain momentum during the next decade.

Footnotes

1. Charles J. Connaghan, Partnership or Marriage or Convenience? (Ottawa: Labour Canada, Ca. 1976).
2. Rudolf J. Vollmer, "Industrial Democracy West German Style," Labour Gazette, Vol. 76, No.8, August, 1976, p. 423.
3. See Roy J. Adams "Solidarity Self-Interest and the Unionization Differential Between Europe and North America," Relations Industrielles, Vol. 29, #3, 1974.
4. Roy J. Adams and C.H. Rummel, "Workers Participation in Management in West Germany: Impact on the Worker, the Enterprise and the Trade Union," Industrial Relations Journal, Vol. 8, #1, Spring, 1977, p. 16.
5. Ibid., p. 9
6. Ibid., p. 14, footnote 93
7. Ibid., p. 15
8. R. Herding, Job Control and Union Structure (Rotterdam; Rotterdam University Press, 1972).
9. See Labour Gazette, Vol. 75, #2, Feb. 1975, p. 86.
10. Negotiating seats on boards might result in legal difficulties. See Michael E. Murphy "Workers on the Board: Borrowing a European Idea," Labor Law Journal, December, 1976, pp. 751-762.
11. For a fuller development of this argument see Roy J. Adams, "Conflict and the Nature of the Industrial Relations System," Labour Gazette, Vol. 75, #4, 1975, pp. 220-224.
12. Address by the Honourable John Munro, P.C., M.P. on the Speech From The Throne, Ottawa, House of Commons, Monday, October 18, 1976, p.1.

See also John Munro, "Toward a Better Work Environment for Canada," Labour Gazette, Vol. 77, #6, June, 1977, pp. 251-255.

13. Ghislain Dufour, "Canada Cannot Import German-Style Co-determination," Labour Gazette, Vol. 77, #1, January, 1977.
14. Adams & Rummel, op. cit., p. 38.
15. The most thorough analysis and apologetic for this stance is Hugh Clegg's A New Approach to Industrial Democracy (London, Blackwell, 1960). For a Canadian assessment and rejection of European - style industrial democracy see Gordon McCaffrey "Industrial Democracy," Relations Industrielles, Vol. 27, #3, August, 1972, pp. 307-327.
16. "Workers-Directors Acceptable", Canadian Labour Comment, Vol. 5, #3, February 11, 1977.
17. Address by Honourable John Munro, op. cit.
18. Ibid.
19. For a fuller discussion of the difficulties of organizing the unorganized in North America, see Adams, "Solidarity or Self-Interest..." op. cit.

The Federal government is aware of the problem and plans to make certain changes such as speeding up the certification procedures and imposing first agreements where necessary. It also hopes that its Code of Good Industrial Relations Practices will begin to change rigid adversarial attitudes. However, these moves, while in the right direction are, we believe, marginal. They are not likely to produce a massive spread in employee participation.

20. Less than 10% of the Canadian labour force falls within the jurisdiction of the Federal government. In addition to rendering Federal government initiatives regarding bargaining structure difficult, this decentralized nature of governmental authority in Canada also severely limits the direct impact of the other initiatives noted above.
21. Both Quebec and Ontario have legislated province-wide bargaining schemes in construction and in Ontario a single union has bargaining rights for all civil servants. On developments in the construction industry, see Paul Malles, Employment and Industrial Relations in the Canadian Construction Industry (Ottawa: Economic Council of Canada, 1975). The Federal government has also been attempting to jawbone the parties into coalition bargaining in the grain-handling and air transport industries.

22. Canadian Labour Congress, Labour's Manifesto For Canada, approved by the 11th Constitutional Convention of the Canadian Labour Congress, held in Quebec City, May 17-21, 1976.
23. "Position Paper on the Practical Application of Labour's Manifesto For Canada," Canadian Labour Comment, November 26, 1976.
24. "Blue ribbon group will make the case for business" The Financial Post, April 30, 1977.
25. Roy J. Adams, "The Case for a National Employers' Organization for Canada," Labour Gazette, Vol. 77, #4, April, 1977, pp. 153-156.

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