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M. LITT THESIS

Industrial Relations in West Germany: The Operation of a Works Council In a Predominantly White-Collar Small Organisation in West Germany

by

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S U M M A R Y

INDUSTRIAL RELATIONS IN WEST GERMANY : THE OPERATION OF A PREDOMINANTLY WHITE COLLAR SMALL ORGANISATION IN WEST GERMANY

This thesis describes the operation of a Works Council after initially reviewing the concept of co-determination and existing literature. It details the Company in which the study took place over a thirty month period and is written by a former Works Councillor employed by that Company. It is not, therefore, a pure academic study of a controlled experiment written by an academic; the great expansion of research into West German industrial relations particularly after the 1972 Labour Management Relations Act and 1976 Co-determination Act appears to have missed out the operation of Works Councils and concentrated on worker directors and the subsequent effect on them caused by the legislation. This study aims to fill the gap.

Chapters 4, 5 and 6 respectively concentrate on problems encountered by the Works Council and employer in the areas of unequal treatment, grievances and job evaluation/performance appraisal. Each area encompasses the relevant articles of the legislation and their interrelated difficulties; emphasis is placed not only on the facts and the problems but on eventual solutions - if any - and how the system was, or was not, able to cope with them. In addition to describing issues and how they were handled by both Works Council and Management, I have tried to emphasise how Management tries to keep all activity within a largely inflexible legislative framework.

Few, if any, studies exist that have been carried out or written by participants in the Works Council system (see Chapter 2). In particular there is a distinct lack of material written by Works Councillors in the white collar sector of smaller organisations with a multi-national background.

Using for reference the International Labour Organisation translation of the 1972 L.M.R.A. under which the Works Council operation was governed, this thesis is the unique experience of an Englishman elected to two successive terms of office as a Works Councillor the second as Deputy Chairman of the Works Council.

The results of the study may lead to a revision of the general conclusions about the Works Council system, particularly as a system of management accountability, a basis of employee involvement and participation as well as a major influence on co-operation and low levels of conflict; it may also provide realistic guidance as to whether the system is initiating or simply reactive, and whether a Works Council can be a stand alone body rather than simply part of a complex system.

The reader is, therefore, invited to approach this study as the author has done - a new product.

Foreword

Once the pride of Western Europe for its famed economic miracle, West Germany has fallen well behind. In terms of working hours, it seems that West Germany's nation that once considered hard work an obligation, has discovered the good life. In 1981 workers enjoyed up to six weeks holiday a year along with 14 regional days off. The country experiences some 1.5 million people in a labour force of 26 million reporting sick on any given day; absenteeism is much higher than major competitors such as Japan and the United States of America. The work ethic has been undermined but morale generally is quite high. The West Germany currency, the deutschmark, is clearly not having a good time; a poor country becoming poorer is no story and hardly anybody cares except its creditors. A rich country appearing suddenly in a poor man's suit is somewhat different. Despite agreeing, in 1981 and 1982, to deficit spending measures the West Germans have not halted the recession, and, with the economic upheaval of the 1970's oil price problems appear to be in a long terms deficit situation. It had been easy to overcome the initial oil price increases with high currency reserves and with the deutschmark rising in value against the dollar. This absorbed a large part of the real impact on the economy. The oil crisis appeared to be a real problem only for countries with currencies as weak as, or weaker than, the dollar. Since 1978 the deutschmark has become a petro-currency though West Germany tried to dissuade foreign banks from holding it and to use it as a reserve currency alongside the dollar. Perhaps the economic bubble began to burst simply because the management of the economy had been beyond suspicion for too long. This study of Works Councils and their operation has been carried out during the foregoing phase in the economic life of West Germany.

The problem of employee participation is that industrial relations in West Germany are governed by legislation (see for example Chapter 4), which often seems to be far removed from the real conditions under which it is supposed to operate. The Works Council as one method of participation may face antagonism from employees who may feel it istoo buraucratised; sometimes employees feel that the Works Council belongs to management or is too remote. Often the only means of communication available to a Works Council are those provided by the management for example, the physical space for a general assembly of employees (see chapter 3). Other problems facing a Works Council include overcoming the apparent social distance between itself and its electorate, frivolous complaints by employees (see chapter 6) who often do not have the courage of their own convictions and a strong management attempting to neutralise their activities (see chapter 5).

In addition to describing issues and how they were handled by both Works Council and management, I have tried to emphasise how management tries to keep all activity within a largely inflexible legislative framework.

The great expansion of research into West German industrial relations particularly after the 1972 Labour Management Relations Act and 1976 Co-determination Act appears to have missed out the operation of Works Councils (see chapter 2). The reader is therefore invited to approach this study as the author has done - as a new product.

The idea that started it all was essentially mine; having worked in an organisation as a procurement engineer (see Chapter 3) that had a Works Council that I neither liked nor understood, I read two books. First, Cullingford's 1976 study of 'Trade Unions in West Germany' which provided an excellent insight into the

industrial scene; secondly, Furstenberg's 1978 study of "Workers' Participation in Management in the Federal Republic of Germany" which shattered any pre-conceived ideas and illusions I held and is without doubt the most realistic study available.

Armed with such knowledge, the author set about the task of getting elected to his own Works Council - successfully, Using for reference the International Labour Organisation translation of the 1972 LMRA under which the Works Council operation was governed, the chapters of this study are the experiences of two consecutive terms of office, the second as Deputy Chairman of the Works Council.

Few if any studies exist however that have been carried out or written by participants in the Works Council system (see chapter 2); in particular there is a distinct lack of material written by Works Councillors in the white collar sector of smaller organisations. This study in unique because it is the practical experiences of a Englishman elected to two successive terms of office as a Works Councillor in a white collar smaller organisation with a multi-national background. The experience was, at times, professionally stimulating and at times totally frustrating. The study may lead to a revision of the general conclusions about the Works Council system, particularly as a system of management accountability, a basis of employee involvement and participation as well as a major influence on co-operation and low levels of conflict; it may also provide realistic guidance as to whether the system is initiating or simply reactive, and whether a Works Council can be a stand alone body rather than simply part of a complex system.

I have seen and been part of a Works Council and steeped in practical experience as I obviously am, I have tried to be objective and produce a cool and unemotional contribution to a debate plagued by a powerful rhetoric and beguiling propaganda; it is a critical and painstaking study combined with a unique practical experience; as objective as I have tried to be, I do not claim to be detached.

The debts in a formulating a text as wide ranging as this are many. Organisations and individuals within organisations have responded promptly and courteously to requests for information or materials for analysis. Footnote citations give credit to the source of published materials. The typing effort has been magnificent and patient.

Naturally, none of the individuals or organisations mentioned by name necessarily endorses any particular point in this study.

Chapter 1

Co-Determination in West Germany

General

The apparent success of the L.M.R.A. 1972 has led to the West German system generally being referred to as a model system of industrial relations; certainly, the system has coincided with considerable economic success up to the late 1970's and relative industrial peace. The studies carried out to-date that have contributed to the description of a model system have been carried out in a controlled environment - academics observing the operation of a Works Council - and often in unionised Companies with greater than 2000 employees (about 650 companies) where the L.M.R.A. is reinforced by the Co-Determination Act of 1976. A reasonable interpretation of such studies is the emphasis on the system of Works Councils in West Germany being just one part of an interdependant institutional framework, i.e. industrial and rather bureaucratic trade unions involved in fairly centralized pay negotiations (national and regional), and regulated by an elaborate system of labour law; in particlar, the relationship between Works Councils and board level representation especially in larger companies is crucial. Existing studies appear to concentrate on the trade union aspects, power and influence on the Works Councils. Indeed, much is made of this by the trade unions themselves claiming 70% membership of all Works Councils and thus an implied major influence on policies adopted. It is conveniently forgotten, however, that West German unionisation is second only to France as the lowest in Europe, Works Councillors are legally obligated to represent all employees (not just trade unionists), and that the reasons for joining a trade union are many and varied. However, the theory goes, Works Councils should not be seen in

isolation either from the other major institutional forms or from the economic/material context which, in turn, has supported an ideological framework that is different from that in U.K. Equally, the West German system is seen as a successful system of management accountability, a sound basis for employee involvement and participation, and as a major influence on co-operation and low levels of conflict.

Co-determination of employees in West Germany is two-fold. Firstly, representation and co-determination of employees on the supervisory boards of joint stock corporations and private limited liability corporations. Secondly, co-operation and co-determination of employees on the Works Council and in the Works. It is this second area upon which this study is concentrated.

With the advent of the Brandt coalition Government in 1969, came an emphasis on amending the Labour Management Relations Act (L.M.R.A.) 1952 regarding employee representation; the aim being to introduce real parity, for example, on Supervisory Boards. After lengthy discussion, the Government proposed legislation covering employer and employee representation on Supervisory Boards of corporations with more than 2000 employees. This proposal essentially encompassed what can best be described as strategic and major employers rather than the majority of industry and commerce.

When the proposal was made public, objections were put forward. Complete parity and machinery set up in order to make decisions possible in cases of deadlock seemed to be in breach of the law of property guaranteed by the basic West German Consititution. Equally, election of Supervisory Board members by delegates instead of electing them directly by the employees would devalue democratic principles because of the greater influence of trade unions on delegates.

Similarly, the representation of the managerial personnel and the election procedure to be used caused considerable debate. The Government in further consulation with unions and employers agreed to a revised piece of legislation which did not significantly differ from the original; even the powerful Christian Democrats (C.D.U.) accepted the revisions despite their earlier strong opposition to the principle of parity.

The Labour Management Relations Act 1972 thus became law and it applies to all wage earning and salaried employees with two exceptions. Firstly, flying staff of an airline (Article 117) and secondly, Managerial personnel who by their status and under their contract of employment are entitled on their own responsibility to hire/dismiss employees, or, have a general authority and full power of representation, or, perform duties mainly in their own responsibility, which in view of their importance for the existance and development of the works, are regularly assigned to such personnel on account of their particular experience and knowledge (Article 5, paragraph 3). In only three cases, Managerial personnel are mentioned in the legislation, i.e. Article 105 information about hiring or change of position of Managerial staff, Article 107 Appointment as Member of the Economic Committee, and Article 108 Assist the Employer's side during meetings of the Economic Committee. The significance of this will be seen later in the Chapter dealing with grievances.

The Legislation

The main substance of the L.M.R.A. can be broken down into ten areas:-

Status of Works Council and trade unions: Article 2 states that co-operation of employer and Works Council is in the best interests of employees and the Works. Acticle 74, paragraph 1, provides for meeting at least once a month for discussion of disputed matters with a sincere desire to reach an agreement and make suggestions for settling their differences; industrial actions between the employer and the Works Council are unlawful. Article 37 covers the honorary nature of Works Council office, no remuneration, release from work without loss of pay to attend educational and training courses necessary for the activities of the Works Council and approved suitable by the competent central labour authorities of the State (three weeks maximum). Under Article 78, Works Councillors are not be be disturbed or hindered in the performance of their duties, are not be be discriminated against or favoured on account of their office. Articles 123 and 103 protect a member of the Works Council from dismissal during the term of office plus one year after it, unless sufficient grounds exist for immediate notice of termination. Such grounds must have the consent of the Works Council or the Labour Court in the event consent is withheld. Articles 79 and 120 bind the Works Council to keep trade business secrets with financial penalties for cases of violation. Article 74, paragraphs 2 and 3, ensure employer and Works Council refrain from activities that interfere with operations or disturb peace in the works and both parties cannot undertake political activities within the works. Article 77 prevents interference with the Management of the works by any unilateral Works Council action. Article 40 obliges the employer to provide to the necessary extent the premises,

material facilities and office staff required for the meetings, consultations and day-to-day operation of the Works Council; similarly, any expenses incurred by the activities of the Works Council shall be borne by the employer.

Individual Personnel Matters: Under Article 99, paragraph 1, in works normally employing more than twenty employees entitled to vote, the employer must notify the Works Council in advance of any employment, grading, re-grading and transfer, and submit to it the appropriate information on the person concerned; the Works Council will be informed by the employer of the implications of the action envisaged and supply it with the necessary records and obtain the consent of the Works Council. Article 93 permits the Works Council to request that all vacancies for certain types of jobs are advertised within the works before being filled. Article 95 requires that Works Council approval shall be given to guidelines for the selection of employees for recruitement, transfer, re-grading and dismissal; ironically, if the employer does not wish to formulate guidelines, the legislation does not compel him to do so. In Article 99, the Works Council is obligated to refuse consent if staff movement would constitute a breach of any other legislation, a collective labour agreement or a works agreement or, indeed, of a court decision; consent can also be refused if the movement would constitute a violation of a selection guideline established under Article 95; other grounds for refusal are if it is to be assumed (based on fact) that the movement is likely to result in the dismissal of or other disadvantage to employees of the works not warranted by operational or personal reasons; if the employee concerned will suffer by the staff movement, although this is not warranted by operational or personal reasons, consent may be refused as well as the situation where the vacancy has not been advertised as required under Article

93; an important feature in view of the growing anti-immigrant feeling in West Germany is the grounds for consent refusal if (based again on facts) it is to be assumed that the applicant or employee envisaged for the staff movement would disturb the peace of the works through unlawful conduct or gross violation of the principles of law and equity and non-discrimination against persons on account of their race, religion nationality, origin, (also mentioned in Article 75), political or trade union activity or convictions, or sex. If the Works Council refuses its consent, it must notify the employer in writing giving its reasons, within one week of being informed by the employer. In this case, the employer may apply to the Labour Court to overturn the Works Council decision. Article 102 contains the provisions for employee dismissal; the Works Council is to be consulted before every dismissal and given reasons for such action by the employer. Notice of dismissal given without consulting the Works Council in advance is null and void. The Works Council may oppose a dismissal if the employer in selecting the employee for dismissal disregarded or did not take into account hardship caused, if the dismissal would contravene a guideline for selection under Article 95, if the employee whose dismissal is being envisaged could be kept on at another job or works site, if the employee could be re-trained or the employee could be kept on under changes terms of his contract to which he has indicated his agreement. Should the employer wish to pursue the dismissal dispite the Works Council's refusal to consent, he may turn to the Labour Court to overturn the Works Council decision although he must retain the employee until the Labour Court reaches a verdict.

Vocational training: Under Article 98, the Works Council is entitled to co-determination related to the implementation of a vocational training programme and may submit proposals for such a programme through Article 96; Articles 92 and 97 respectively, provide the Works Council with information related to manpower needs and information on training to be provided within the works.

Rights of the individual employee: According to Article 81, the employer must identify to an employee his duties and responsibilities and familiarise him with appropriate safety legislation; similarly, the employee must be informed in good time about any changes in his working activity. Article 82 gives the employee the right to be heard by a competent person on any operational matter and Article 83 gives him the right to inspect his personal file, defined as, all documents held by the Company referring to that employee; the employee can request a Works Councillor to be present during such a inspection. Articles 84 and 85 provide a basic grievance precedure, conciliation in the event of dispute and protection for the employee against possible recrimination for raising the grievance.

Various degrees of co-operation: The legislation permits Works Council recommendations (Article 80), proposals (Articles 2 and 74), information (Articles 80 and 99), consultation (Articles 90, 92, 102 and 106) and co-determination within a certain framework (Articles 99 and 102). It is only Articles 87, 93 and 95 that permit real Works Council co-determination on the basis of parity with the employer.

General duties of the Works Council: These are many and varied but in essence are detailed in Article 80 viz to observe that laws and agreements are carried out properly, recommend actions to benefit employer and employee, receive suggestions from employees and pursue them with the employer if they appear justified, promote rehabilitation of disabled persons, to co-operate closely with juvenile representation, to promote the employment of elderly employees and to promote the integration of foreign employees. To enable the Works Council to perform its duties, the same Article obligates the employer to furnish records at any time including sight of the payroll showing gross salaries/wages of employees. Equally, the Works Council may consult outside experts at the employer's expense.

Social Matters: There are rights of co-determination in Article 87 for the Works Council in matters such as order in the works, conduct of employees, daily working hours including overtime, salary/wages payment, principles governing holiday periods and arbitrating on disagreement between employer and employee on when a holiday may be taken, introduction and use of new technology, industrial accident regulations, welfare services, allocation of company-owned housing, principles of remuneration and suggestion schemes, design of workplace and environment. Equally, the employer must inform the Works Council of action affecting such matters, particularly impact on the nature of work and employees (Article 90). If a change in work places a severe burden on employees, the Works Council may request action to compensate employees (Article 91).

Economic Matters: This can be considered as two distinct areas, i.e. information and operational changes. An economic committee is required when there are more than 100 employees and the committee has a duty to consult with the employer on economic matters defined as, economic and financial situation of the company, production and sales situation, investment and rationalisation programmes, methods of work, works closure in whole or in part, geographical transfer of work(s), mergers, financial objectives and any other matter that is in the vital interests of employees (Article 106). The same Article ensures that the committee reports back to the Works Council the information supplied by the employer. Appointment of the committee is normally done by the Works Council for a period corresponding to the Works Councils term of office (Article 107). In larger companies, the committee should meet at least once per month with the employer (Article 108). In terms of pure operational changes the employer must consult the Works Councils about the changes envisaged. Article 111 defines reduction of operation, mergers, geographical transfer, fundamental changes in the organisation and introduction of entirely new production methods as changes requiring consulation. Agreements must be in writing between the employer and Works Council as has the Social Plan in the event of redundancy defined in Article 112.

Conciliation: Article 76 provides for a conciliation committee to settle differences of opinion between the employer and Works Council; the committee may be established as a permanent feature or assembled on an ad hoc basis. Membership is equally apportioned between both sides with an independant Chairman who may be appointed by the Labour Court if no agreement can be reached. Decisions made by the committee are only binding if agreed to by the employer and Works Council.

Works Agreements: In accordance with the provisions of Article 77, works agreements are to be negotiated by the Works Council and employer, recorded in writing and signed by both sides. The agreements are mandatory and any rights granted to employees cannot be waived or forfeited without approval of the Works Council. Unless otherwise agreed, works agreements may be terminated by either side at three months' notice. After expiry, the agreement remains in force until such time as a new agreement is reached.

Areas of Concentration

Chapter 2 reviews existing studies of Works Councils and chapter 3 provides the context in which study was carried out. Chapters 4, 5 and 6 respectively, concentrate on problems encountered by the Works Council and employer in the areas of unequal treatment, grievances and job evaluation/performance appraisal. Each area encompasses the relevant articles of the legislation and their interrelated difficulties; emphasis is placed not only on the facts and the problems but on eventual solutions and how the system was, or was not, able to cope with them.

Chapter 2

A REVIEW OF EXISTING LITERATURE

There is no good bibliography available on the subject to Works Councils in West Germany. 1

Almost all of the literature available in the English language covers worker participation and/or industrial democracy containing an element of Works Council information; similarly the literature is often the result of comparative studies in more than one European country and generally restricted to the legal status of Works Councils. A study carried out by an elected number of a Works Council in West Germany is not available thus making this thesis unique.

During the last 25 years, in most European countries employee representation at the factory and/or enterprise level has been institutionalized either by law or contract. In comparing the various institutions, it is very difficult to find common denominators for the system used. Depending upon national customs or political development, these institutions and their impact vary considerably from country to country. Changes are frequent and there is a trend towards greater involvement of employee representation in the decision-making processes of companies.

Before trying to review the present situation and basic developments in West Germany it is necessary to look at the literature which has inspired the institutionalization of worker representation in companies. This literature is almost completely of a sociological/political nature with its origins going far back in the 19th century.

The demand for democracy has practically accompanied the development of the industrial age but it became especially strong in the twentieth century.

The general increase in living standards and the higher level of education for large parts of the population has increased their interest in democracy.

The trend to democratize everyday life (and not only political systems) is obvious and includes such traditionally hierarchical systems as the Church and other old established instituations like universities which have also traditionally been hierarchic structures. Under the pressure of student revolts and other developments this conservative attitude has been changed and students have gained greater participation in various bodies of university administration. Other examples of increased participation are the campaign for nuclear disarmament or against the building of nuclear power plants or the counsumer movements.

People today are interested to participate in decisions which affect their environment or their work place. They are no longer content to passively accept the directives of political or other forces. 2

Working conditions have been strongly influenced by mechanization, automation and computers. Division of work and large industrialized units resulted from these developments. Another result is the drive for humanization of work (including more democratic decision-making) especially at the factory level. Phrases often used in this connection are 'better quality of life', both at work and outside of the working place and 'social responsibility' of the enterprise towards the consumer and the employee. 3

Industrial Democracy takes different forms in defferent countries, but it has a common definition: that each individual in the work organization should share in the information and power relevant to the decisions that affect him. To what extent the individual receives information, and participates in decision-making is the point of departure for the various movements arising from the humanistic base. 4

The theoretical ground work for reorganization in Europe has been done mainly by Tavistock Institute in London and Einar Thorsrud of the Work Research institute of Oslo, Norway. Thorsrud has become the major theoretican in Europe and has conducted programmes throughout Scandinavia and much of Europe. His approach is based on the premise that the workers have to be instrumental in change and improving their job environment. More specifically, his assumption is that those who actually perform a work are most capable of making decisions about their work.

An inalienable part of democracy is freedom and the right of the individual to personal development. One of the most difficult questions in the definition of democracy is the limit attached to this freedom and the protection of minority rights.

Representative industrial democracy has created information rights and in some countries decision making rights for a large number of employees. critical evaluation of the institutions existing in West Germany shows the danger of creating too many institutions in one company for one and the same purpose, namely information to employees and participation of employees in certain company decisions. This can result in a confusion of responsibilities. The decision-making process must not be hampered by too

many committees and councils. Besides, too many institutions make it difficult for the individual to express his opinion effectively. 5

The traditional strategy 'labour opposes and fights capital' must be over-come. Democratization is supposed to create a partnership between these two forces in the enterprise. The democratization of economic life has resulted in far-reaching participation of the employees in the development of their enterprise but also in a more efficient working of the enterprise. Structures leading to this result do not reduce the activity and the impetus of the enterprise in the free market system. Democratization of enterprises means that the employees elect representatives who act in their name. This trend imposes a very important responsibility on the trade unions which under this system cannot think only in terms of conflict strategy but of co-operation. 6

Sociological research work has shown that some degree of participation and involvement in desired by most employees. A question very difficult to decide is at which level the participation is desired. British studies have shown that a 'substantial proportion of individuals feel that they should be informed, but not necessarily further involved, in decision-making processes'. 7. At the immediate work shop level, the desire for direct involvement is expecially strong. Employees feel that at this level they can contribute positively to developments. 8.

It is very difficult to judge whether the new participative employer-employee relations increase the competitiveness of European industry, for example compared with the industry of the United States. Cooperation machinery can be slow, cumbersome and time consuming. Executive privileges are reduced or even abolished. On the other hand a correlation can be seen between new participative systems and social peace. This strengthens the competitiveness of the countries concerned versus countries without cooperative schemes.

In literature one finds many terms which are sometimes confusing and this confusion is aggravated by the fact that terms used in one language are sometimes very difficult to translate meaningfully into another language. The terms 'industrial democracy', 'participative democracy', 'co-determination', 'work-participation', sometimes do not have the same meaning for employees and employers. Additional confusion results from the different definitions in different legislations. This confusion is not limited to words, but includes the institutions: works council, joint council, enterprise or other forms of employee representation in factories and companies have completely different constitutions, powers and objectives, and this increases the difficulty of translating the local word for the institution into another language without describing in some detail the influence and objectives of the institution.

Not only can translations be confusing, terminology is difficult to define because each country has developed certain definitions or better expressions for the kind of cooperation, consultation or information rights which are granted either by law or agreement to the employees. To compare these terms with each other, one must see the individual term in the context

of rights and duties granted by this institution to employee representatives in enterprises. This confusion can also be found in the literature of the late Sixties and early Seventies.

In the Twenties, in the United States the terms 'industrial democracy' or 'workers' participation' were synonymous with what is now called 'collective bargaining'. 9 In Europe, 'workers' participation in management' and 'collective bargaining' are now two very different processes which must not be confused. In both processes elements of co-operation and conflict exist. Both are intended to solve conflict situations or to avoid them. Both schemes exist in most countries side by side, and subjects which are in one country solved by collective bargaining procedures are in another country within the jurisdiction of the participative institutions. 'Collective bargaining' generally refers to nation-wide or local negotiation between employer and employees or employee organization whilst 'workers' participation' takes place in factories or companies. 10 Clearly collective bargaining and participation can occur at any level from workplace up to a Company, and national bargaining is now accepted to play a fairly minor role in the private sector. 'Workers participation' covers many approaches to associate people with the decisions in their workplace which affect them directly or indirectly. 11 Employees are directly affected by decisions relating to their workplace or their working environment, indirectly by decisions affecting their company and its future. Consequently, 'workers' participation' can be institutionalized at the lower level of the works

councils and similar bodies or at the higher level of the board of directors or supervisory boards. Some European countries have participation only from below, ie the works council at the shop floor, others have in addition participation from above, ie membership of employees in the management or supervisory organ of the company.

Entirely distinct from the institutionalized 'workers' participation' inside the company is the idea of 'workers' control of enterprises'. This term describes financial participation in or complete ownership of the share capital of the company by the employees. In Western Europe, this development has commenced only recently and to a small extent in some countries, but it is the prevailing theoretical model in Eastern Europe. The best known and most described example of workers' control is Yugoslavia.

For a study of the rightsand duties of employee representative institutions in enterprises it is necessary to differentiate between the West European countries with their privately owned industries and the East European socialist countries. The possibilities for the exercise of democratic economic rights are in a market oriented economy (Western-type democracy) of course different from centralized planned economies, which are part of a completely different political state and system.

This thesis only describes an employee representative institution in the private sector. Most European countries also have laws and regulations for the representation of public servants but from a legal point of view it is almost impossible to compare these representations with each other. They are part of the legal philosophy and institutions for the public service in the respective countries, which have grown for historical reasons and, therefore are not comparable.

In most European countries the trade unions have always insisted that they are the only exclusive representation of all employees, regardless of membership in a trade union or the degree of unionization in the respective country. This 'one channel' claim has resulted in strong opposition by trade unions to works councils especially the the United Kingdom, and in other countries. The trade unions were afraid that works councils could develop into collective bargaining institutions and thus become the exclusive bargaining partner for management or employers organizations. In countries having 'two channels' of employee representation, trade union representation exists side by side with elected works councils. Especially in countries with laws for compulsory election of works councils, these works councils are the true representation of all sections of the workforce. Such degree of democratic representation is almost never achieved by a trade union because they represent only their members and not all employees or competing trade unions make a universal representation impossible.

It is, therefore, not surprising that the trade unions in those countries where national works council systems were created either by statute of agreement have attempted to exercise influence in their institutions. In some countries e.g. Sweden the trade unions have an exclusive right or a special priority to present candidates for the works councils. But even in countries without such an established privilege the trade unions have a strong influence on the selection of candidates which of course depends upon their strength in the enterprise. Even though the Austrian and West German Works Councils Acts foresee voting rights for all employees regardless of membership in a trade unions or not, trade unions candidates in strongly organized enterprises have greater chances to be elected by the work force than non-union members. Despite these facts, legally there exists 'two-channel' representation: the works council as the democratically elected

institution representing all employees of the enterprise and independently from the trade union representation in the enterprise as partner in collective bargaining with management (if collective bargaining agreements are not negotiated at regional national or industry level).

Since the works council is an institution that is part of a system of industrial democracy, it can very well be argued that the word 'democracy' in itself requires a universal electorate and voting rights for every employee and not reserved for members of a trade union.

Works Councils or committees can be legally established in two ways: they are either mandatory by law or they are negotiated in industrial agreements or collective bargaining agreements. Whether a law or a collective agreement serves as base for such a committee depends to a large extent on the legal tradition of the country concerned. The United Kingdom and Ireland have traditionally relied on collective bargaining concepts. The Scandinavian countries also have used this system, probably due to the face that in these countries strong trade unions and strong employer associations exist. In West Germany, and in line with its tradition of labour law, legislation has been used.

It remains to be seen whether other countries follow this principle of having broadly defined legislation combined with agreements which are flexible and can be better suited to the needs of the factory or enterprise.

The choice between legislation and collective agreement depends partly on the legal history and custom of the various countries. Central European countries with legal systems emanating from Roman law rely more on legislation than common law countries. Their legislation has a tendency to be very

explicit and complete and to regulate every detail of the works council system (good examples are the Austrian and West German election ordinances).

The joint relations between management and the workforce take place in institutions which are specifically designed to promote cooperation and to solve problems at the shop floor level. These institutions are in general not instruments of collective bargaining. The trade unions watch these institutions to make sure that the collective bargaining rights which were granted in most of these countries to the trade unions by legislation are not impaired by works councils. In the beginning, the works councils had only to be given information on various aspects of the company or the factory. Gradually the amount of information has been increased, and the information to be given now includes economic and financial information. The more rights were granted to the works councils by the various parliaments or by agreement, the easier it became for these councils to engage in collective bargaining with management on questions immediately connected with shop floor activities. Many countries have in their legislation regulated agreements to be concluded between the works council and the management of the firm. A very typical expression for these agreements is the German word 'Betriebsvereinbarung', which means 'Agreement for the Plant' and which regulates questions which have a close connection with the plant level. These agreements can be seen as supplementary to nation-or industry-wide collective bargaining agreements which are negotiated by trade unions on one side and employer associations on the other side. Thus a double layer of agreements is developing and the

development in the Scandinavian countries can be seen as typical. Broad agreements or laws are expanded by detailed and specific agreements for a plant or a company and have a certain flexibility of approach taking into consideration the needs of the plant. Centralized collective bargaining cannot make provision for the differences that can arise between the employees and management in the factory and these local differences must be solved under local circumstances which require negotiation 12

There are a further twenty five studies published during the 1970s which are little more than an index of West German labour legislation; whilst they are of relevance to the overall literature concerning Works Councils, they are of little or no relevance to the operation of a Works Council in reality. The publications are however briefly reviewed below:

Klein (1963) produced a monograph on co-determination with comments upon legislation at that time; definitions of Works Council and Staff representation in the public services of West Germany are provided. The monograph also covers the rights of Works Councils under the LMRA 1952 (see chapter 1), joint consultation provisions and the legal status of the Works Council and Works Council membership. 13

Beinhauer (1972) produced a one hundred and thirty two page english translation of the LMRA 1972 which introduced co-determination rights additional to the provisions of the 1952 Act. 14

The Confederation of British Industry (1973) published a brief outlining the labour relations systems and working conditions in West Germany. The brief covers trade unions, employers associations, Works Councils, collective bargaining, arbitration, hours of work, overtime, public holidays and paid annual leave. 15

Roberts' (1973) article comments on labour legislation in West Germany with particular emphasis on the rights and powers of the Works Council. The rights and role of the trade unions receive some attention as does a brief comparative study of the situation in UK. 16

National Economic Development Office (1973) formulated a report on a comparative study of labour relations and productivity in the chemical industries of UK, France, Holland and West Germany. The study covers employee attitudes, shift work, practices, maintenance, occupational safety and comments on labour legislation relating to collective agreements, collective bargaining, Works Councils management Boards, vocational training and profit sharing. 17

International Labour Organisation Management Development Branch (1973) produced an article on co-determination in West Germany including an historcal and legal review of the LMRA 1972; the article also covers the functions of the Works Councils and worker representation on management Boards. 18

Albeda (1972) published a conference report of workers participation experiences in Holland, Belgium and West Germany; the report comments on Works Councils and the concept of co-determination in each of the three countries. Some attention is given to the comparative state of labour relations and the position of the respective trade union movements. 19

Jones' (1973) article comprises a comparative study of worker participation systems in Europe with particular reference to co-determination in West Germany; the article examines the structure and powers of the West German Works Council and the general impact of the 1972 LMRA on that country's labour relations. It also covers the obstacles to adoption of the West German model in the UK. 20

Blanpain (1974) in an article presents a comparative study of labour legislation relating to worker participation and the functions of Works Council in Belgium, France, Holland and West Germany. 21

Ramm (1974) in a revised conference paper identifies the provisions of the 1972 LMRA, which differ from the 1952 Act, thus leading to increased powers of co-determination for West German Works Councils; the article also covers the role of the trade unions and employers organisations resulting from the change in legislation. 22

Szakats (1974) comments in an article, on the concept and practice of co-determination in West Germany. Works Councils are included along with the role of the worker Director. Emphasis is given to the changes in legislation historically most notably the LMRA's of 1952 and 1972. 23

Wilpert (1975) discusses in a social research article, the West German model of co-determination and covers the intitutional framework and functions of the Works Council; generally reviews the legal status and impact on labour relations of the Works Council in the country. 24

The Industrial and Commercial Training Periodical (1976) contains an article reviewing the status of worker participation in West Germany including the function of the Works Councils and trade unions. 25

Adams (1977) assesses the role of the Works Councils and the trade unions in West Germany; the article traces the historical background to Works Councils and comments on current legislation. 26

Connagham (1976) focuses on the history of workers participation in West Germany since 1922. The article covers Works Councils and their co-determination rights suggesting that co-determination is a partial answer to good labour relations. 27

Vollmer (1976) details worker participation in the Works Councils of West Germany and examines the impact of co-determination on trade unions and management. 28

Virmani (1978) produced a comparative study of historical Works Council legislation in West Germany and Yugoslavia with a view to creating a workable plan for India; suggests that co-determination should be limited to social policy in his new model based on West German Works Councils for India. 29

Hoffman (1976) reviews the LMRA 1972 and comments on the co-determination Act 1976 in a monograph outlining the historical and legislative development affecting Works Councils in West Germany. 30

Endruweit's (1978) article summarises new powers of West Germany's Works Councils resulting from the 1976 Co-determination Act and the differences between it and the LMRA 1972. There are comments on trade unions and employers organisations attitudes towards the new powers and the general movement of worker participation resulting from both sets of legislation. 31

Blanpain's (1978) monograph covers the role of Works Councils of multinational organisations in France and West Germany. Includes a comparative analysis of work organisation and management attitudes in the decision making process. Essentially a review of historical developments in collective bargaining and joint consultation. 32

Hartmann's (1979) article on alienation between leadership and membership of Works Councils in West Germany is one of the better studies. He applies the social theory known as the "Iron law of oligarchy" to Works Councils and on the basis of a survey finds that the size of enterprise and training are directly related to leadership tenure. 33

The German Information Centre in New York (1977) produced an introductory pamphlet on worker participation, especially co-determination, in West Germany. Includes excerpts of text pertinent to labour legislation such as the Co-determination Act 1976 and LMRA 1972. 34

Archer, Matschke, and Schobel (1978) surveyed the state of industrial democracy in UK and compared it to co-determination in West Germany; the study uses conclusions and impressions of a working group that toured major industrial enterprises discussing the role of the trade unions and Works Councils. 35

Koch (1978) in a research report provides a comparative analysis of labour relations in West Germany and UK; the report concentrates on the role of shop stewards in both countries but only comments on Works Councils status under the 1972 LMRA. Also describes the origins of the metalworker's unions (I.G. Metall). 36

Jacobs Orwell, Paterson and Weltz's comparative study (1978) reviews labour relations and employers policies with respect to technological changes at the enterprise level in West Germany and UK. The study considers trade union attitudes and employers organisation reactions to major innovations for example relocation of industry, new factory organisation, computerisation; discusses the desire to reduce costs in UK industries as well as the West Germany system of co-operation through the Works Council framework. 37

The foregoing twenty five studies have covered a decade of what in some sense is a hybrid of two subjects - conflict and the theory of the labour movement. It is an index of the concern with the topic variously called "worker' participation" and "industrial democracy" albeit heavily concentrated into a legislative review.

Over the period the prinicipal objects of concern were historical and descriptive accounts of participation in individual countries, evaluations of the effects of the various experiments on the welfare of workers, and comparisons of the participation gained in various schemes of industrial democracy. Although the general economic orientation with regard to the evaluation of the benefits of participationtends to be ignored in favour of legislative reviews, the more micro tools of industrial psychology have not made a major impact on the mainstream industrial relations literature on workers' participation. The major exceptions are the Industrial Democracy in Europe Project (IDE 1979) and the Norwegian Volvo experiments. 38

The studies of individual country experiences fall into two categories. First, the kinds of participation arrangements which appear to be of interest to researchers are confined to only part of the range of possible forms of participation. Profit-sharing as a form of participation seems to be of limited interest. There is very little interest in Works Councils which is overshadowed with two general line of interest; one of primary academic interest as relates to "capitalist" countries and the other related to experiments in some form of market socialism The first line of enquiry draws on the rich complexity of the West German system of co-determination, with its varieties of forms and scopes of participation over various issues and subjects (Hartmann 1970) 39, looking at its application in other countries (Emery and Thorsrud 1970, Westenhole 1979) 40, and perhaps towards the likely adoption of some parts of the German system in EEC Company Law.

The second line of work has generated study of the Yugoslav model of self management. As with many experiments in industrial democracy, there is usually conceded to be a gap between theory and practice (Bertsch and Obradovic 1979) 41 and by no means is participation evenly spread across the workforce (Rus 1970, Obradovic 1975). 42

The evaluations of the worker participation schemes which accompany individual country or comparative studies tend to indicate that the fruits are generally modest (Rosenstein and Strauss 1970). 43

Although there is evidence that the organisation itself has a substantial impact on the kind and amount of participation (Nightingale 1979, IDE 1979). 44, the bulk of the evidence suggests, as the DIO group found in its study, that workers have very little control on any topic (DIO 1979). 45

A glaring omission from research in the decade is that of how to apply the knowledge gained from study in one country to the conditions of another country. What can be applied to the British or indeed the American industrial relations systems that has been learned from West Germany? Ironically the only major attempt of transposing a system from one country to another was the British Industrial Relations Act in 1971. As is well known the Act rapidly failed to achieve any of its prime objectives. As is also well known, the Act contained numerous attempts to implant or graft American ideas and practices eg. enforcable contracts, unfair industrial practices; the attempt was in part the product of direct Anglo-American scholarly interaction. One article by Englemann and Thomson (1974) explored the failings of the Act but did not grapple with the underlying issues of transferability of industrial relations practice. 46 Given that there is considerable Anglo-German scholarly interaction and that many studies indicated in the chapter, review the legal

status of workers participation/industrial democracy, it appears to me there is not enough research into how institutions like Works Councils actually operate nor is there sufficient research to establish transferability of the system; cultural differences are a matter of opinion and trade union loss of power fears are too often used to dismiss transferability.

Furstenberg is a rare exception to the picture of research I have painted here; in a 1978 research paper 47 reviewing a series of projects predominantly carried out in West Germany (and in the German language) he summarised the main features of the situation created by the legislation concerning workers' participation in West Germany:-

a. Certain rights have been established enabling every employee to participate through his elected representatives at plant level in some important areas of management activity.

b. These areas, however, do not include the economic organisation of the undertaking and the shaping of the respective policy.

c. With the exception of a presence on the supervisory boards as institutions, the trade unions are not present within the undertaking. Their influence is indirect, operating mainly through the personal link between Works Council members and union members on account of the fact that many Works Council members hold union office.

d. In case of disagreement or conflict within the plant, there is legal provision for placing the issues before a mediator or the labour court. This procedure in turn fosters the tendency to shape each issue in a legally acceptable form.

e. One of the most important trends in industrial relations in the Federal Republic of Germany is increasing institutionalisation. Unpatterned interactions have become regulated and functionalised within a growing systems of legalised social norms. But even when occasional meetings to resolve conflicts, give advice and make decisions are transformed into committees or councils, the task of integrating the participants remains. The legal aspect of industrial relations institutions differs greatly from the real conditions under which they are supposed to operate.

Kolvenbach (1978) in his study of employee councils in European companies is an equally rare example of being accurate about Works Councils in West Germany. 48. He concludes that Works Councils do play an important role in German enterprises; when the LMRA 1972 came into effect, serious difficulties were foreseen by trade unions as well as employer organisation. Fortunately this has not materialised. The co-operation between Works Councils and management is an integral part of the day to day life of the enterprise. In many cases the legislation has avoided conflict situations and the influence of the Works Council has gradually increased. The Labour Courts have defined the co-determination rights of the Works Councils and sometimes enlarged the possibilities for the employee representatives to participate in decision making at the shop floor as well as the Board level. Kolvenbach also remarks that West Germany has often "contaminated" its neighbours with employee representative institutions. This may well be correct but I feel it should not be overlooked that such institutions are generally as a result of seeking comparable economic success to that enjoyed by West Germany during the 1960's and 1970's. The German national character favours formal institutions although I do not believe this in itself is an essential criterion for industrial peace or industrial democracy.

Macbeath (1973) considers that the positive result of worker participation through Works Councils and the attitude of the trade unions has brought West Germany freedom from industrial strife, and joint responsiblity of worker and employer. 49

Schlotfield (1976) claims that through the early involvement of workers representatives, mistakes in planning are avoided and thus difficulties with the workforce recognized at early stage. 50

It must be said however that whilst literature appears preoccupied by legislative reviews and the involvement of the trade unions in the Works Councils systems in West Germany, it ignores the fact that the Works Councils are not trade union instruments and they are not elected by union members only but by the entire work force; this factor should strengthen the Works Council position and give them an influence based on their own right and confidence of their constituency. The following chapters should prove this to be an important factor in the way Works Council's handle specific issues.

Millar (1979) in a comparative study of German and British Management does cover the consultation structure in West Germany and even gets away from a preoccupation of legislation in pointing out that there is a more to the Works Council system than Workers Directors in large enterprises 51. Millar also found a striking aspect of Works Councils in West Germany was their dual interest; firstly, as a representative of the workforce who elected them but, secondly, as having a concern with the welfare of the Company as a whole. This contrasts with an exclusively Union form of representation where interests tend to be more partisan and sometime directed towards outside pressures rather than the interests of the Company as a whole or even of most its workers. Certainly Millar considered that Works Councils in West Germany

felt that "if things are going well for the Company, they're going well for us"-that the Company's welfare was their welfare. Demands were tempered with this constraint in view. Millar clearly feels there is some scope for the adoption of the West German Works Council system in UK; Millar holds that writers on industrial relation in UK indicate that due to it unique history, the UK is above or beyond legislative solutions 52. American styles of human and industrial relations, Millar also argues, have been treated with scepticism but both American and European type Works Councils seem to have achieved a communication network, which is all too frequently absent in Britain. 53.

The remaining three useful publications are firstly, Cullingford (1976) 54; in his trade union study of West Germany there is an excellent historical sketch covering the labour movement prior to the 1939-45 War and its recreation thereafter; the present organisation and functions of the German Trade Union Federation: attitudes and policies of the German Unions in the industrial relations field; strikes in West Germany up to 1969 with particular reference to the metal workers' strike of 1971 and the dispute in the chemical industry in the same year; co-determination background and practical application along with the LMRA 1972 and Co-determination Act 1976 are reviewed; the study concludes with a review of the state of the trade unions and their future objectives. The study was produced in close co-operation with the German Trade Union Federation and especially with the Federations then President, Heinz Oskar Vetter. The study is without doubt the most accurate guide to the evolution of the German Labour movement.

Secondly, in the ILO (1981) study of workers' participation in decisions within undertakings 55, the subject is participation in decisions - whether they belong to the private, the mixed or the public sector.

The study concentrates on institutional machinery for participation and does not deal with new forms of work organisation that tend to associate the workers with the programming and organisation of their own tasks in factories and offices; there is a whole chapter devoted to Works Councils and similar specialised bodies. Despite the diversity of participation machinery in many countries the ILO concludes that they tend to have the same objective; an attempt is made to associate the workers and their representatives in decisions thereby avoiding whenever possible a situation in which those decisions would be taken unilaterally; the trend is the communication of information, followed by consultation with the Works Council (E.G. West Germany), leading finally to proper collective bargaining.

Finally, Thimm's (1980) book based on three case studies at Volkswagen, BASF and Siemens in West Germany which is probably the only scathing attack on the West German system. 56. Thimm argues that the admiration of American academicians and journalists was equaled by the interest of Amercian management in the stable nature of German labour relations; thus German co-determination became to be viewed as the wave of the future, which every country would have to adopt if it was not to be left behind. He shows that co-determination is complex, not stable or well defined. Rather he expresses an ever shifting compromise between two entirely different and mutually exclusive visions of worker participation, which consistently reflects changing economic conditions. German co-determination has changed greatly from 1952 to 1972 to post 1976. Moreover he argues that other European countries have not been able or willing to adopt German co-determination legislation since they lacked the necessary historical and political traditions of Germany. His analysis of European Co-determination phenomena considers the following points to be of importance:-

a. employee co-determination practices and legislation are deeply rooted in a country's history and institutions cannot easily be transported from one country to another.

b. co-determination laws change with political and economic conditions; a Socialist government during a period of stagnation, for instance, will provide an entirely different environment for employee - union participation in economic decision making than will a Liberal Adminstration during an economic expansion phase.

c. there is a difference between employee and union co-determination though frequently this is not recognised.

Summary

Bernstein (1976) offers a list of six necessary conditions for a democratic workplace 57. These include the formal structures of participation and a participation/democratic consciousness among labour and management, an economic return to the workers on the surplus they produce, ready access to management - level information, guaranteed individual rights, and an appeals procedure to protect workers from possible management reprisals when they criticize existing procedures or oppose proposed policy changes. These requirements are met only in West Germany by virtue of the LMRA 1972 and Co-determination Act 1976. The results of research show a rather limited effect of participation on organizational democracy. The potential for worker influence in the running of the enterprises by legally based participation would not appear, from research, to have been realised. Workers participate in the execution but not in the setting of organisational policies. Research

has not however identified what factors individually, or in combination, hinder or facilitate democracy in the workplace. Research does not specify whether worker participation leads to more effective organisation in the longer term.

Further, research findings do not show how extensive the involvement of workers is even in the execution of company policies. Where participation is by representation, the vast majority of the workforce remains outside the decision making process. Where participation is direct, the workforce appears to be only marginally involved. As a rule, the research describes small groups of workers usually in larger companies who over time become islolated in the organisation. When participation structures are diffused throughout organisation, some workers are more active than others. The evaluation research is silent on the questions of the extent and depth of participation.

There is a need for research that examines the participation process itself and addresses the relatively simple questions of who participates, how participation occurs, and what organisational characteristics faciltate or hinder their participation. Such questions are being raised by organisational behaviour researchers on union participation (Gordon et al 1980) 58 and they should be raised with respect to organisational participation as well.

The following chapters should help to fill part of the research void by providing an empirical insight of the operation of a Works Council in West Germany; not a controlled experiment based on "story telling" but realistic views on major and minor issues, how they were handled by both sides and written by the former Works Councillor.

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5. Skard O. "Democracy and the Individual, some reflections on the Process of Democratisation in Working Life" Norwegian Employers Confederation Oslo. 1977.

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8. An interesting theory was published in 1962 by Th.Ramm, who is of the opinion that a leading idea of legislation on works councils is the principle of protection. He explains the necessity to protect the individual worker from 'the de facto superiority of power in society of the employer'. The works councils protect the workers from arbitrary actions of employers. This is of course different from the concept of democracy within the enterprise through the institution of work councils. But since the time of this publcation, the concept and the influence of works councils have substantially changed. (Th. Ramm, "Works Councils in the Member States of the European Economic Community," International and Comparative Law Quarterly, Supplementary Publication No. 5 (1962), London page 39).

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Chapter 3

The Company and the Works Council in General

The Company

The Company is a tri-national European industrial organisation registered in Southern Bavaria on 26th March 1969, to design, develop and produce a military aircraft for service from the late seventies with the Air Forces of UK, Federal Republic of Germany and Italy, and the German Navy.

The three parent Companies of the organisation were located in UK, FRG and Italy.

A UK-based engine consortium was building the turbofan to power the aircraft and was responsible contractually to the tri-national organisation located in Southern Bavaria.

The initial production requirement was for 807 aircraft. Nine prototypes were being built - four in the UK, three in Germany and two in Italy. The flight test programme was being monitored and co-ordinated by the Southern Bavaria organisation.

The Division of work was arranged such that the Italian parent Company had designed and was building the wings, the British parent Company the nose fuselage and cockpits, rear fuselage and tail unit, and the German parent Company the centre fuselage and wing pivot. Aircraft were assembled in all three countries according to national requirements. More than 200 sub-contractors in three parent countries were working on components, equipment and materials for the aircraft. Those sub-contractors had, in turn,

sub-contracted work to some 300 other companies, the majority of which were in UK, Germany and Italy.

Parallel with aircraft development, sub-systems were procured through a framework of special equipment selection procedures agreed by the Customers and the Southern Bavaria Company. Aircraft equipment was procured under the Company's control by the parent companies; those measures ensured that the Customers and industry operated a central selection systems of suppliers. Equipment selection was divided into four categories: first, Customer furnished equipment e.g. Weapons; second, jointly selected equipment in which the Company analysed competitive tenders and made recommendations which were considered by the Customers; third, in cases where the Customers had elected not to make a selection, the Company was free to make its own; fourth, equipment for which the Company was responsible.

As stated earlier, the Company was first registered in 1969 and established in Southern Bavaria; whilst being a West German limited company organisation, the employee population was intended to reflect the shareholding of the three parent companies located in the United Kingdom, Italy and West Germany respectively. The employees were initially assigned from the parent companies prior to additional recruitment from the international and local labour markets. The manpower planning target was three hundred employees by the mid-1970s, stabilising at that level until the mid-1980s. The Personnel function was to be staffed purely by West Germans despite the probable mix of nationalities to be employed.

Manpower figures in three year phases were planned and achieved as follows:

1969 to 1972 - 1 to 150

1972 to 1975 - 151 to 300

1975 to 1975 - 300 per annum average

1975 to 1978 - 300 per annum average

1978 to 1981 - 300 per annum average

(Actual July 1980, 317 employees)

1981 to 1984 - 350 per annum average

1984 to 1987 - Gradual reduction by natural wastage to 250

No data available post-1987

The Company's primary business objective was the project management of a tri-national high technology military aircraft; the employees were 95% white collar and 5% blue collar. Unionisation of the white collar employees was 8% and the blue collar were 90% unionised; the Company therefore saw no necessity to become members of the employers federation (BDA). The federation had a national agreement with the giant I.G. Metall (IGM) trade union; federation members implemented collective bargaining agreements in full, but non-members, or those having observer status, tended to implement circa 90% of such agreements. For example a federation pay award of 5% would be 4.5% for non federation members. It should be noted that Company employees were split 80% male and 20% female. The project management function governed production, design and modification of the aircraft which took place in each of the partner enterprise Companies. Interface with the Customer was the prime central role within the project management function.

As the Company grew towards its manpower targets, there was some entrenchment of national attitudes, particularly between the non-West German assignees and those recruited from the international and local labour markets;

Southern Bavaria itself was not hostile to foreigners but had a tradition, custom and a language dialect that even non-Bavarian West Germans had difficulty in understanding.

Each year the Company informed all employees of its objectives for the following year using the opportunity presented by the general assemblies called by the Works Council. The approximate time centre of this study was December 1980, thus making the Company's 1981 general objectives an appropriate matter for summarising as below from the Autumn 1980 general assembly statement by the Company.

Basic development of the aircraft was largely complete although development flying and supporting engineering work would continue for quite some time. The initial clearance of the aircraft for use was issued in June 1980. Continuing development, as well as modifications and 'Post Design Tasks', were envisaged.

The production programme made very good progress during 1980. By the end of the year 17 aircraft had been delivered. Detail parts manufacture and structural assembly had reached the planned maximum rates and the front fuselage, as the pacing component of the programme, was brought forward by several weeks against an already very challenging build schedule.

Initial experience with the aircraft during Instructor Aircraft Training and at the Aircraft Tri-national Training Establishment was very good. However, progress in the supply of Spares, which would determine maintenance and overhaul timescales in the near future, had been far from satisfactory and continued to require attention.

Since the aircraft programme represented a significant part of the overall Defence Budget of Germany, Italy and United Kingdom over the next years, it was expected that it would have to undergo very critical programme reviews, particularly with regard to funding.

The following particular objectives were highlighted:-

(1) The impetus of the Production Programme must be maintained in line with the planned aircraft delivery schedule. This required dedicated efforts in particular, from the Production and Procurement areas, but all other areas needed to acknowledge this goal in their activities as well as provide all support required.

(2) Good serviceability of the aircraft must be demonstrated. Therefore, the basic supply of spares must be substantially improved.

(3) In the Engineering area the Company must achieve the gradual finalisation and completion of the basic development in order to demonstrate efficient industrial programme control. At the same time, the Company must process the increasing load of modifications more efficiently.

(4) In order to safeguard the aircraft's efficiency in future years and to expand the range of applications with the present customers, the company must firmly establish the technical growth potential of the system and initiate customer-supported work to prepare for the development of further variants of the aircraft.

(5) With the aircraft being introduced into service, the Company must establish it as a leading candidate for procurement programmes in the forthcoming years on a defined export market.

(6) Internally, the Company must implement the already initiated co-ordination and integration of data handling by means of concerted efforts between all functional areas concerned.

Through efficient performance of all tasks, the Company must present itself to Customers as the most attractive contractor for all up-coming tasks. International collaboration must be demonstrated as being the preferable alternative to choose. Obvious problems and difficulties of such collaboration must be kept at a level where they are outweighed by the actual benefits. Once that was achieved, the Company had an excellent chance to be requested to carry out additional work as had happened already in the past with development of the aircraft, procurement of engines for the series programme, and the substantial support efforts for In-Service use. It was the Company's aim to remain active in managing series production, enhanced development and logistic support well through the nineties and, by qualifying for the management of a future European aircraft programme, to provide indefinite future prospects for the Company.

The Company was the Weapon System Contractor for the aircraft and, as such, had to prepare and arrange the timely supply of aircraft to the Customers participating in the programme and its proper support.

The Company, being answerable for entire contracts, needed to exercise, in all areas contributing to the implementation of contracts, a management overview. In particular, the responsiblity for formal commercial contacts with the Customer and for marketing the product outside the three participating Nations.

In order to comply with its task, the Company must continue to organise its affairs such that efficient management for a complex programme in an environment of international collaboration was provided. This required maintaining a determined ordering and monitoring function versus its suppliers and sub-contractors.

Special effort must be undertaken to integrate the possibly diverging interests and aims of all of the many participants in the programme to enable progress towards jointly accepted targets. Particularly in relation to its parent Companies, the Company's staff acted as the joint organisation of an industrial consortium rather than as the prime contractor vis-a-vis its sub-contractors. That situation was reflected by the very close inter-relationship between parent Company representatives and staff on the various levels.

The composition of the Company's staff reflected the co-operation of three Customers and parent shareholder Companies in the aircraft programme; it was the Company's objective to provide a framework for harmonious and, therefore, successful working relationships between the staff with the different backgrounds essential for co-ordinating an international project.

The Company pursed a tightly controlled staffing policy to allow its manning to remain concentrated and flexible and to provide job security.

The Company had adopted a policy of supporting wherever possible within its scope of activity, the development of professional and management capabilities of its in-house staff. For all vacancies in management positions, the potential of in-house staff would be considered.

- end of general objectives summary.-

The organisational structure of the Company was nine separate Directorates. Each Directorate was headed by a Functional Director, responsible directly to the Managing Director, a Deputy Functional Director, a Head of Department and, depending upon the size of the Directorate, two Section Leaders each with staff reporting to them.

The 1981 main objectives of each Directorate are also summarised below from the Autumn 1980 general assembly presentation given by the Managing Director:-

FLIGHT OPERATIONS (British Director, German Deputy)

The primary objective was to complete flying and reporting which would allow the best possible standard of aircraft delivered in the declared timescales. This was not wholly in the Company's hands since recommendations for clearance to the Services ultimately emanated from them, however, Flight Operations needed to ensure that all possible measures were taken to enable the Services to complete their task.

PROCUREMENT (British Director, German Deputy)

Procurement would, through the provisions of the arrangements with the parent Companies, continue to co-ordinate and monitor the activities of these Companies for purchases of aircraft equipment.

The availability of equipment to the series production build line must be assured as a first priority. Special attention was needed to the reliability of equipments, particularly in the aircraft final assembly stage, where experience to-date had indicated a high level of defects. In that context the combined efforts of System Engineering, Quality Assurance and Procurement would ensure that appropriate action was taken with those Suppliers whose equipment fell short of acceptable reliability levels. Careful attention to configuration standard of equipment would also be necessary to ensure equipment standard was compatible with aircraft needs.

FINANCE AND CONTRACTS (German Director, British Deputy)

Finance and Contracts would maintain its overview of the commercial aspects of the programme, in particular by maintaining contractual cover for all areas of work and passing this on as required to sub-contractors/suppliers.

PROGRAMME MANAGEMENT (British Director, German Deputy)

Programme Management would continue to provide functional expertise and fulfil the Company's responsiblities in the areas of configuration management, work definition, central planning, and central document control, as well as to support the Managing Director's office in a staff function.

PRODUCTION (Italian Director, German Deputy)

Production would maintain its overview and direction of aircraft assembly carried out at the parent Companies; in particular, the Directorate was to improve communications between the parent Companies to ensure expertise was shared and duplication of effort avoided.

PRODUCTION SUPPORT (German Director, British Deputy)

The Directorates activities centred upon eliminating short falls in achieving a satisfactory level of support in terms of spares, ground equipment, technical publications, and training for each of the Company's Customers; in addition, the levels of support were to be placed on a proper contractual basis at an early date.

MARKETING (German Director, British Deputy)

Planning specific market compaigns in those areas where sales opportunities had been identified; organise and co-ordinate the necessary activities for sale of the aircraft to other European Customers on behalf of the parent Companies.

SYSTEMS ENGINEERING (British Director, Italian Deputy)

Were to continue to co-ordinate and manage progress with the development, production investment and aircraft production programme, with particular reference to: design improvements and appropriate modifications.

-end of the main objectives of each Directorate-

The nationality of the Functional Director and his Deputy was allocated by the parent Companies and did not change throughout the life of the aircraft project; similarly, the Managing Director was German and his Deputy, British. The Managing Director was a full member of the Board of four; the other three Directors were the Chairman of the respective parent Companies.

Below the level of Deputy Functional Director, no specific allocations were made by the parent Companies but theapproximate nationality, parent Company assigned and labour market employees was:-

46% parent Company, 54% labour market.
Of the parent Company employees 50% are British,
42% German and 8% Italian.
Of the labour market employees 33% are British,
64% German, 4% Italian and 1% other nationalities
(Dutch and American).

(Percentages calculated on July 1980 status which was representative of the normal situation within the Company at the time of the study.)

The nature of employee's employment Contracts caused allegations of discrimination; details of the Contracts and the issue of discrimination are identified in chapter 4.

The Company's comparative place in the industrial structure was unique only in the respect of its business. Hitherto, such aerospace projects had been on a two-party share basis, e.g. Anglo French or French German. The Company bore some similarity to the two party form; it was established to manage a specific long-term project while the other projects were initially

managed by assigned parent Company employees prior to recruitment on the international and local labour markets; similarly, the Companies were located in major European cities. Equally, the Company's Personnel staff were nationals of the locations site. All West German Companies employing more than 20 employees were required to have a Works Council.

The Works Council

A Works Council was first established in February 1971 under the L.M.R.A. legislation of 1952 consisting of five members, all of whom were German, three of them were women.

Subsequent Works Councils were formed under the 1972 legislation and were made up as shown below:-

May 1972	-	five members; all German. Two of whom were women.
May 1974	-	seven members; five German, two British. Two members were women.
April 1978	-	seven members; five German, two British. All male.
Nov 1979	-	seven members; three Germans, four British. One member was a woman.
April 1981	-	seven members; four Germans, two British and one American. Two members were women.
Dec 1982	-	seven members; five Germans, two British. Three members were women.

Membership was determined by Article 9 of the 1972 legislation:-

Number of Eligible Voters	Works Council Members
5 to 20	1
21 to 50	3
51 to 150	5
151 to 300	7
301 to 600	9

From the nationality membership of the early Works Councils, it may be surmised that only the Germans understood the functions and duties of a Works Council. Similarly, although the working language of the Company was generally English, all of the Works Council correspondence was German and operated under German legislation; other nationalities, notably the British contingent, were not proficient in German, nor had they a great desire to be. Further, there may have been thoughts in the minds of non-German employees assigned from parent Companies - these employees made up the majority of the non-German in the early days- that the former partner Company senior executives who held Director posts in the Company, would look after their interests. These Directors, however, knew less about the system of representation than most employees and it was not until the advent of the 1974 election that non-Germans began to realise that their interests could best be served by representation on the Works Council. By 1979, the next election reflected a desire for a redical change of approach by the electorate after a prolonged period of domination by the then German Chairman. The 1979 and 1981 Works Councils to which I was elected, the latter being the one for which I became Deputy Chairman, attempted a more informative approach to the electorate to overcome an image of Works Council isolation. Isolation was such that three separate bodies had been created. Management; employees; the

Works Council. In some previous Works Councils information was given by inspired leaks from Works Councillors who disagreed with the Chairman's policies but were not prepared to engage in open confrontation with him, particularly as they considered themselves a very small minority.

The history of the Works Council can be divided into two main phases. First phase 1971 to 1979; second phase 1979 to 1982. The criteria for this division are: regularity of meetings and reporting, nature of contact, such as special and informal versus formal meetings, and the turnout at meetings; these are discussed in more detail below.
This thesis will, however, concentrate on the second phase, most notably because I was an active member of the Works Council during that phase and able to closely study its operation, but also because this was the period in which a great deal more activity took place.

Throughout the first phase, (1971-79) the Works Council were passive compared to phase two. For example, legislation provided the opportunity and obligation to regularly report their activities to employees by means of a quarterly general assembly; during phase one, the Works Council reported only on an annual basis.1. Technically this was in breach of legislation but common sense prevailed. The report centred upon the four social occasions per annum which were organised by the Works Council (Spring, Summer, Autumn and Christmas festivals) but paid for by the Company; the assembly was essentially called to hear the annual report by the Company covering the financial state and trends of business. During phase 2, the Works Council averaged two general assemblies. Discussion with other Works Councils in the region, reveals that they chose to report to the employees 4 times per annum.

Whilst contact with employees took place daily in the course of business during phase 2, at specially convened meetings to discuss an employee's problem if he so wished, there was considerable contact out of working hours,

for example, at social occasions. Average turnout at general assemblies (Phase 1 and 2) was 35% of employees entitled to attend. All assemblies were held during normal working hours. Whilst turnout was restricted by the space available within the building and rarely varied, the percentage was similar to the attendance experienced by other Works Councils in the region regardless of industry. The similarity was established by my discussions with those Works Councils.

The forum presented the phase 2 Works Council not only with the opportunity to report activities to the electorate, but to make its point (hopefully truly reflecting the whole employee spectrum), to the Company on matters considered to be of serious concern and particularly those matters about which the Company needed to be embarrassed.

At the first general assembly of the phase 2 Works Council in March 1980, only four months after its election, the report covered thirteen areas of activity which were of direct concern to all employees. The areas were health and safety at work; pension scheme proposal; canteen committee to investigate complaints; holiday regulation changes; labour turnover and manpower planning; communication between the Company and employees; attempted amendment of the general Company/Works Council agreement governing working hours; clarification of business travel regulations; proposal by the Works Council to compensate employees for travel costs incurred to and from place of work; effect of adverse publicity on employee morale; information required by the Works Council to enable proper assessment of hirings and transfers and finally, Works Council investigation of alleged unequal treatment of employees. At each successive general assembly, employees were given a progressive report on each of those activities. Not only was this an essential feature of phase 2 in terms of providing employees with information but it was also a

demonstration

of the range of problems that employees had requested the Works Council to investigate; requests were rarely, if ever, made in writing and normally took the form of oral requests to individual Works Councillors either during or outside working hours. Works Councillors did not reveal sources of requests in order to respect employee confidentiality. The confidentiality 'rule' did leave the Works Council open to allegations of pursuing its own personal interests, but as an individual member, I took it upon myself to investigate requests by other Works Councillors prior to making my own decision whether to support such requests. The only exception was that of alleged unequal treatment (see chapter 4) which all Works Councillors were requested to investigate as soon as the November 1979 election had been completed. It should be noted that employees making the requests were not just those from the labour market, i.e. former partner enterprise employees were also concerned about the allegations of unequal treatment. The confidentiality rule was, however, rigorously maintained in this matter.

The Company was always given the right of reply at phase 2 general assemblies by pre-arrangement, although they rarely, if ever, knew the content of our presentations. In terms of the economic state of the business, the Company took the opportunity annually to provide broad information. On at least one occasion, however, in 1981, the Company merely presented economic information and chose not to comment on the phase 2 Works Council activities report. The economic information presented on the occasion was an explanation of the Company's balance sheet and profit and loss account, and a summary is presented here as an illustration of the content of this kind of presentation. It stands in marked contrast to the issues raised by the Works Council as illustrated above.

The Managing Director explained in general terms the two documents and the following points were highlighted:-

BALANCE SHEET

1. ASSETS (Aktiva)

a) Outstanding Share Capital (Aktienkapital)

The Shareholder Capital (Stammkapital) was announced as being DM X millions, of which an amount of DM X - Y millions was still outstanding. Due to the good cash flow situation it was not necessary to request the remaining outstanding capital from the shareholders. The reason for the increase of the share capital being that the Company was acting as the selling Company for products to other Customers and, therefore, must show more credibility than the previous share capital in relation to the value of possible orders.

b) Fixed Assets (Sachanlagen)

The fixed assets of the Company (furniture etc) were declared as being XX thousand DM at the end of the year. This included depreciation. It should be noted that as a general rule the Company chose the method of depreciation which spreads the cost in equal annual amounts over the estimated period of life cycle of the asset (lineare Abschreibungen).

c) Investments (Finanzanlagen)

The Company's Canadian office was a 100% owned subsidiary company valued at approximately YY thousand DM. This Company had been created to support potential sales in Canada. It was staffed by two marketing executives recruited from that country.

d) Current Assets (Umlaufvermogen)

The current assets had been valued at DM X Y Z million.

e) Deferred Charges (Rechnungsabgrenzungsposten)

The final item on the asset side showed an amount of DM A Z million of deferred charges.

2. LIABILITITES (Passiva)

a) Share Capital (Aktienkapital)

The share capital amounted to DM X million as already stated.

b) Revaluation of Assets (Wertberichtigung auf Sachanlagen)

There had been an amount of DM Z Z thousand shown in respect of assets which had been revalued.

c) Reserves (Ruckstellungen)

An accrued amount of X thousand DM was declared for items such as equipment risks, marketing risks, outstanding taxes and auditing risks.

d) Current Liabilities (Verbindlichkeitch)

The total of DM X Y Z million refered mainly to the partner Company enterprise efforts as already stated under Current Assets (which was split into trade creditors, installment payments received, bank loans).

e) Deferred Income (Rechnunsabgrenzungsposten)

This was the amount as shown under Deferred Charges and a small amount of A B C thousand DM was shown purely as a cosmetic accounting balance.

f) Net Profit (Bilanzgewinn)

The net profit was declared as A B C thousand DM. It should be remembered that this profit was not all distributed to the Shareholders, but activities like Feasibility Studies had been financed from this profit figure.

PROFIT AND LOSS ACCOUNT

1) SALES

The trading revenue (Rohertrag) of DM X Y millions being the difference of the net sales (Umsatzerlos) of DM A B C million and expenditures (Aufwendungen) of DM X Y Z million was, in fact, the real Company in-house basic sales, or turnover (Company own cost).

This amount was further increased as a result of:-

a) Income from money lent to Company personnel (Ertrage aus Ausleihugen).

b) Dividend from bank accounts (Sonstige Zinsen).

c) Income from the sales of Company equipment above book value (e.g. sale of company car) (Ertrage aus dem Abgang von Gegenstanden des Anlagevermogens).

d) Income from previous reserves being cashed (Ertrage aus der Auflosung von Ruckstellungen).

e) Other income (e.g. income from letting office space).

Those various increases brought the Company in-house total gross sales (Erlose) to DM A B million compared with the total Company expenditure (Aufwendungen) amounting to DM X Y Z million detailed as follows:-

2. EXPENDITURE

a) Labour Costs (Lohne und Gehalter)

An amount of DM X Z million was accounted for by costs which constituted basic labour cost, Christmas bonus, holiday bonus, housing (rental) allowance, education fees, health insurance contributions and savings premiums.

b) Social Expenditure (Sozialabgaben)

The amount of Y Z Z thousand DM referred to those contributions which the Company had to pay as stipulated by legislation in respect of:-

State pension, health insurance,
insurance for unemployment
(gesetzliche Sozialabgaben,
Alters-, Kranken- und Arbeitslosenversicherung).
Berufsgenossenschaft
(roughly equivalent to the English
"Factory and Office Acts" provisions).
Insurance for holiday entitlement reserves
(Sozialabgaben wegen Urlaubsruckstellungen).
Fine to cover failure to employ disabled persons
(Schwerbehindertenabgabe).

c) Allowance for Old Age Pension (Aufwendungen fur Altersversorgung)

This allowance referred only to three employees for which the Company directly had made pension arrangements.

d) Depreciation on Fixed Assets (Abschreibungen auf Sachanlagen)

This item took account of the normal depreciation of the fixed assets of the Company.

e) Interset (Zinsen)

The Company paid a nominal amount for interest on bank loans.

f) Taxation (Steuern)

X Y Z thousand DM was paid in various kinds of taxes in accordance with German Tax Law.

g) Other Costs (Sonstige Aufwendungen)

Approximately 50% of the total Company in-house turnover referred to this item and covered the following items:-

personnel secondment, rent of buildings, insurance, travel costs, telex and telephone, advertising, stationery, outside computer time, photo-copying, electricity, printing costs and marketing activities.

No question time was allowed during Phase 1 Works Council assemblies. However in Phase 2 time was usually allocated for questions from the employees to either Works Council members or the Company; this proved unsatisfactory at first since the questions were extremely slow in coming due to an unwillingness to speak in public. This was rectified by allowing written questions submitted prior to and/or during the respective presentations, an innovation introduced at the April 1980 General Assembly. The questions were quickly grouped as far as possible during a short break; the questions read out the the Works Council, ensuring the questioner's anonymity,

and answered by the person to whom the question was directed. There was no question time during phase 1 Works Council general assemblies.

General assemblies lasted circa 35 minutes during phase 1, and 3½ hours during phase 2. The feedback received in phase 2 was normally favourable in organisational terms and mixed in reaction to content. Feedback was sought verbally by each Works Councillor from as many employees as possible within 24 hours of the assembly. Presumably, the phase 2 Works Council were not always able to please all of the people all of the time but whatever the reaction to content, feedback was fully discussed by the phase 2 Works Council with the objective of ensuring that it encompassed as many employees' views as possible in the concepts and policies pursued on their behalf. At no time did feedback indicate that activity should cease in any matter or policy pursued except that of unequal treatment. (see chapter 4). The discussion took place at specially convened Works Council meetings arranged circa 48 hours after each assembly.

Evolution of Works Councils in Companies of this size might be caricatured as follows: enthusiasm - we will change the world - realism and recognition of the limitations of Works Council rights, cynicism - and acceptance that one does the best one can in the light of lack of rights and the personalities of the management representatives with whom one is forced to interface. True dedication in either phase 1 or 2 was rare, therefore, and less than forty percent of members sought re-election. Of that percentage, less than half were successfully re-elected. This, naturally, gave management the distinct edge; professionalism and experience was generally low on the Works Council but the management representative with whom they interfaced was the same person from 1971. As a Works Council body, however, the reasons for seven elections when only four were required by legislation were generally:-

1974 - employee size had increased sufficiently to warrant two additional members.

1978 - term of office completed by legislation.

1979 - membership thought to be unrepresentative of employee nationalities and dominated by the personality of the Chairman.

1981 - election required by legislation.

1982 - election caused by my re-assignment to U.K.

Election data is tabulated in Figures 1 and 2 respectively.

From Figure 1 the following interpretation is made:

- average number of candidates during Phase 1 and Phase 2 are similar; 14 in Phase 1, 13 in Phase 2.

- average number of candidates seeking re-election in Phase 1 is 1 (7%) and Phase 2 - 4 (30%); this demonstrates a more determined set of candidates in Phase 2 who were also free from the domination of the Phase 1 Works Council Chairman.

- average voter turnout during Phase 1 is 77% whereas the issues undertaken by Phase 2 prompted an increase to 88%.

- it should be noted that the turnout at elections held by other Works Councils in the region averaged 80% during the same periods and that candidates seeking re-election averaged 30%; Phase 2 would thus indicate a return to the norm although the turnover of candidates is clearly high.

From Figure 2 the distribution of votes indicates that, in terms of the successful white collar candidates, 50% of the Phase 1 electorate achieved the Works Council team that they wanted; equally the distribution indicates a lack of concensus within the electorate as to whom they wished to elect. During Phase 2, 76% achieved their desired Works Council team and the 1979 and 1981 elections, in particular, demonstrates a much greater consensus within the electorate concerning the candidates they preferred. It should be noted that my discussions with other Works Councils in the regions suggest that the 1979 and 1981 elections were very similar to the voting patterns for successful candidates in elections held throughout the total period of 1971 to 1982 inclusive.

Despite the high turnover there was a consistent Works Councillor trade union membership of forty percent throughout the life of the Works Councils. (This percentage is low compared to national results shown in Figure 3). Whilst the length of trade union membership was impossible to establish, many Phase 1 and 2 Works Councillors conceded that their membership for protection purposes was essential during their respective terms of office. Trade unions were the usual source for almost all the Works Council training courses, either general, informative and operational, or specialist in one area of the legislation. The legislation itself (Article 37) permitted four weeks paid leave for training of new Works Councillors in their first term of office and three weeks for subsequent terms. Such training opportunities would have increased the professionalism of both phases of the Works Councils but were rarely taken up.

It is clear that the Phase 1 Works Council adopted a passive role and did no more than was necessary to achieve a relatively smooth operation of management - Works Council relationships; this was due to the dominance of the Chairman. This dominant character was able to establish himself as leader of three Phase 1 Works Councils, enforce his viewpoint without unified resistance or equally forceful argument. Article 26 LMRA clearly defines the role of the Chairman as merely the speaker of the Works Council and to represent the adopted view of the Works Council. The Chairman is not permitted to act independently 2. If a Chairman is dominant, however, this definition can easily be circumvented. Similarly, if Works Councillors lack the knowledge of relevant legislation and do not rectify this by training, a Chairman can virtually run the Works Council single handed. The effect was that the Phase 1 Works Councils built themselves a reputation solely for organising Company social functions. This produced a considerable amount of apathy by employees towards the Works Council as a body. Not until the 1979 election, however, was anything done to change the situation.

The Chairman managed to dissolve the Phase 1, 1979 Works Council on the basis of not being truly representative of the nationality split of the electorate. This was permissible under Article 21 of the legislation as was the voluntary resignation of all Works Councillors. A return to power would have given him a considerably longer term of office and it was known that some relatively new employees were creating a groundswell of opposition; an early election was a gamble on the electorate being unwilling to vote such employees onto the Works Council if, indeed, they were willing to accept nomination to run against him. The gamble failed and an election list of sixteen saw him finish in the bottom half. The issues raised by the Phase 2 Works Council changed the role of the Works Council into one of initiative taking and keeping employees informed about what was happening. The difficulty remained,

however, of changing the image of the Works Council as being a separate entity from management and employees rather than a truly representative body of all employees. During Phase 2, great emphasis and effort was placed on and in reacting to upward pressure from employees whilst at the same time, keeping them informed about issues at national level. The trade union members (40%) of the Phase 2 Works Council were encouraged to seek free advice and relevant literature from their trade unions to develop professionalism. Similarly, contact was developed in Phase 2 with other Works Councils in the region to enable advice to be sought if necessary; Phase 1 Works Councils contact with other Works Councils had been limited to discount purchase schemes for domestic appliances.

Another major difference between Phase 1 and 2 Works Councils was that of administration and, particularly, records.

To obtain a record of the actions of the Works Council, and proof that the meeting met the quorum requirements before a vote is valid, Article 34 LMRA requires preparation of written minutes to be signed by the Chairman and one other member of the Works Council. The article applies to all other works committees and representative organs. As a minimum, the minutes should indicated the persons present at the meeting, the vote with which resolutions were adopted or rejected, and the exact text of any resolution which was adopted.

Failure to prepare written minutes does not affect the validity of a resolution, but constitutes a breach by the Chairman of the Works Council of his duties as Chairman. The Phase 2 Works Council chose not to exploit this breach at their first meeting in December 1979 because it was considered that the bad publicity would serve no useful purpose to either the Works Council or the Company.

All members of the Works Council are entitled to inspect the files of the Works Council, including its written minutes. The employer and union representatives do not have a right to inspect the minutes of the Works Council but may obtain a copy of the minutes of those meetings (or portions thereof) in which they participated.

The archives of the Phase 1 Works Councils contained a mere four sets of minutes covering the period 1971 to 1979; the Phase 2 Works Councils documented every weekly meeting. It is apparent that during Phase 1 very few meetings took place and very little was discussed. Phase 1 Works Councils seemed content to be passive and achieved very little during their terms of office. Phase 2 Works Councils chose, however, to be more professional in their administration and ensure their Chairman was not in breach of his duties.

There is, therefore, a clear distinction between the two phases of the Works Councils in the Company. This study took place in Phase 2 where the Works Council took the initiative, ceased to be merely a social function organisation and tried to be purposeful wherever feasible; success in achieving the purpose, however is a subjective evaluation as will be seen later in identifying initative achievement.

Works Council Election showing seat representation and overall voting precentage

Election Year	Total Seats	Seat Representation		Candidates		Members seeking re-election		Members re-elected		Overall votes turnout %
		White Collar	Blue Collar	W.C.	B.C.	White Collar	Blue Collar	White Collar	Blue Collar	
1971	5	4	1	13	1	0	0	0	0	72
1972	5	4	1	11	3	1	0	1	0	73
1974	7	6	1	11	2	1	0	1	0	81
1978	7	6	1	21	2	2	0	2	0	84
1979	7	6	1	16	2	3	0	2	0	85
1981	7	6	1	7	2	4	1	3	0	91
1982	7	6	1	17	2	5	1	3	1	90

Works Council seat representation and precentage votes cast

Election Year	Seats		Percentage votes cast for successful candidates						
	White Collar	Blue Collar	WC1	WC2	WC3	WC4	WC5	WC6	BC1
1971	4	1	22	11	10	8			100
1972	4	1	14	12	11	10			50
1974	6	1	13	12	12	10	10	9	63
1978	6	1	10	7	7	6	6	6	67
1979	6	1	18	16	14	13	12	10	69
1981	6	1	19	16	15	14	12	12	63
1982	6	1	15	13	11	7	7	5	57

National results of the Works Council Elections 1978

Trade Union Area	No. of Firms	Total No. of Works Council Members	DGB	DAG	Other Bodies	Not in Trade Unions
IG Bau, Steine, Erden (Building, Stone, Soil TU)	5.794	25.098 (100%)	18.139 (72,3%)	209 (0,8%	21 (0.1%)	6.729 (26,8%)
IG Bergbau and Enegie, (Mining and Energy TU)	378	3.174 (100%)	3.037 (95.7%)	45 (1,4%)	33 (1.0%	59 (1,9%)
IG Chemie Papier, Keramik. (Chemical, Paper, Ceramics)	2.489	16.864	14.416 (85,5%)	319 (1,9%)	150 (0,9%)	1.979 (11,7%)
IG Druck and Papier (Printing and Paper TU)	2.021	9.222 (100%)	7.197 (78,1%)	151 (1,6%)	112 (1,2%)	1.762 (19.1%)
Gewerkschaft der Eisenbahner Deustschlands. (German Railways TU)	47	194 (100%)	178 (91,7%)		5 (2,6%)	11 (5,7%)
Gewerkschaft Gartenbau, Land-u. Forstwirtschaft. (Horticultural, Agricultural and Forestry TU)	121	450 (100%)	293 (65,1%)	2 (0,5%)	10 (2,2%)	145 (32,2%)
Gewerkschaft Handel, Banken u Versicherungen. (Trade, Banks and Insurances)	5.054	25.656 (100%)	14.247 (55,5%)	3.331 (13.0%)	188 (0,7%)	7.890 (30,8%)

Trade Union Area	No. of Firms	Total No. of Works Council Members	DGB	DAG	Other Bodies	Not in Trade Unions
Gewerkschaft Holz u. Kunststoff (Wood and Synthetic Material)	1.801	8.512 (100%)	6.803 (79,9%)	61 (0.7%	7 (0.1%)	1.641 (19.3%)
Gewerkschaft Leder (Leather TU)	317	1.909 (100%)	1.549 (81,1%)	15 (0,8%)	4 (0,2%)	341 (17,9%)
IG Metall (Metal TU)	10.528	67.285 (100%)	56.873 (84.5%)	1.387 (2,1%)	423 (0,6%)	8.602 (12.8%)
Gewerkschaft Nahrung, Genub Gaststatten. (Food, Luxury Foods, Restaurant TU)	2.269	12.086 (100%)	9.506 (78,6%)	274 (2,3%)	22 (0.2%)	2.284 (18.9%)
Gewerkschaft Offentl. Dienste, Transport u Verkehr (Public Services, Transport and Traffic TU)	1.713	9.326 (100%)	7.334 (78,6%)	361 (3,9%)	64 (0,7%)	1.567 (16,8%)
Gewerkschaft Textil Bekleidung (Textiles/Clothing TU)	2.762	14.679 (100%)	12.235 (83,4%)	209 (1,4%)		2.235 (15.2%)
Endergenbnis 1978 (Final Result 1978)	35.294	194.455 (100%)	151.807 (78,1%)	6.364 (3,3%)	1.039 (0,5%)	35.245 (18,1%)
Endergebnis 1975 (Final Result 1975)	34.059	191.015 (100%)	148.102 (77,5%)	5.872 (3,1%)	959 (0,5%)	36.082 (18,9%)

Von den gewahlten Betriebsratsmitgliedern sind: from the elected works council members are:	Angestellte White collar	Weiblich Female	Auslander Foreign	Erstmals gewahlt Elected for the first time
1978 insgesamt 194.455, davon 1978 total thereof	71.167 (36,6%)	33.319 (17.1%)	6.279 (3,2%)	80.754 (41,5%)
1975 insgesamt 191.015 davon 1975 total thereof	64.924 (34%)	30.006 (15,7%)	4.949 (2,6%)	80.196 (42%)

Betriebe mit Gemeinschaftswahl

Business with community elections

1978 23.424
(66,4%)

1975 23.089
(67,8%)

Durchschnittliche Wahlbeteiligung

Average electoral participation

1978 (82,9%)

1975 (82,7%)

NOTES:

1. Article 43 LMRA obligates the Works Council to call a general assembly once in every calendar quarter and report on its activities.

   The employer must be invitied to the works meetings and department meetings and notified of the agenda. He is entitled to address the meetings. At least once in every calendar year the employer or his representative must make a report to the works meeting on staff questions and social affairs in the establishment as well as on the financial position of and trends in the establishment, in as far as there is no risk of a disclousure of trade or business secrets.

2. The Chairman is the speaker of the Works Council and represents that body in the decisions it adopts. The Chairman is not authorized, however to act independently on behalf of the Works Council or to adopt decisions in the name of that body. Unauthorized acts of the Chairman may be binding on the Works Council if relied on in good faith by third parties (e.g. the employer) and if ratified, expressly or implicitly by failure to object, by the Works Council. The Chairman is not authorized to manage the affairs of the Works Council, even in those cases in which no committees of the Works Council have been formed and the Works Council may not delegate that function to him or ome of its other members, whether pursuant to a general power of attorney or individual powers of attorney. If, however, the Works Council has less than nine members, the Works Council may delegate to the Chairman, or to the Chairman jointly with another member of the Council, the authority to conduct the current

business of the Works Council (i.e. internal, organizational or administrative matters). There is no evidence that the phase 1 Works Councils delegated such responsibility to their Chairman.

The Chairman, however, is the person entitled to receive all statements and declarations which are to be made or submitted to the Works Council.

Works Council Chairmen, however, have been known to be authoritarian. For example, as part of an empirical study on co-determination, the highly competent Works Council Chairman of a German multi-national Company was interviewed. During the conversation, the Chairman's wife telephoned and said that her physician had prescribed a new medication. The Works Council Chairman had his chauffeur in his Company car pick up the medication in the Company clinic and immediately deliver it to his wife. Clearly, the Works Council Chairman had become an integral part of top management and did not hesitate to adopt all the perquisites due to his position. For further details, see Thim "The False Promise of Co-determination", p.128. Toronto. 1980. Lexington Books.

Similarly, the epitome of a cadre of conscientious trade union officials is Kurt Herrmann, the Works Council Chairman of BASF A.G. in Ludwigshafen, a class conscious skilled worker and a patriot, the very backbone of the Social Democratic party. In an interview with the "Mannheimer Morgan" 9th May 1978, Herrmann freely admitted that he is authoritarian in the sense of authority and believed that running a tight ship (straffe Fuhrung) is a necessity. He differed from his predecessor, Rudi Bauer, who had been Works Council Chairman for over a decade, and from most Works Council Chairman of the era, by accepting an adversary relationship between employer and employee, Works Council and management. Herrmann recognized the pluralistic society and represented specific interests, which he considered that even management cannot understand. He further considered that there are group interests and, hence natural conflict. See also, Thim. op.cit., pp.152 and 153.

Chapter 4

Discrimination and Equality of Treatment

The purpose of this Chapter is to identify a major issue that arose in the Phase 2 Works Council terms of office and how the issue was handled by both the Company and the Works Council.

The issue was considered by the Works Council to be one of discrimination and equality of treatment as a direct result of the differing nature of the employees' contracts of employment.

The Chapter will also establish the relationship between law and negotiation.

The facts and the problem

As stated in Chapter 3, the Company was incorporated by the partners from Italy, UK and West Germany (termed the partner enterprises hereinafter).

At July 31, 1980, the Company employed a total of 317 persons of whom 116 (46.6%) were assigned from the partner enterprises whilst 201 (53.4%) were recruited from the labour market. All labour market recruited employees had a standard labour contract regulating primarily basic salaries and working hours. Employees from partner enterprises had standard contracts plus an agreement that the Company will pay such employees certain allowances which are identified below. The Company provided all payments and carried these payments as aggregates in its balance sheet.

As a result of the separate agreements, all of the former employees in the partner enterprises enjoyed the following privileges:-

a) Christmas bonus: an additional 1% of their salaries to be taken as the basis of calculation was paid for each year of service in the partner enterprises.

The former partner enterprise employees coming from Italy and Gt.Britain enjoyed the following additional privileges:-

b) Interim payment on their arrival in Germany.

c) Hotel expenses for the individual employees and their families for a period of up to 4 weeks following their arrival if private accomodation is not available.

d) The estate agents fees were paid.

e) An interest-free loan was granted to put up a required deposit/guarantee for rented accomodation.

f) Re-location expenses for furniture and household equipment.

g) A current monthly lodging allowance to compensate for the difference in rent between the employees' home countries and Germany.

h) Payment of the return travel expenses for the employees and their families once a year.

i) Payment of the education and training costs for the children at an International school.

These allowances were paid by virtue of agreements made between the Company and the former employees of the partner enterprises. Company employees other than defined do not enjoy these privileges even if they came from abroad (Netherlands, Italy, Gt.Britain, USA).

As far as retirement pension provisions were concerned, the following distinction was made between the former employees of the partner enterprises and the other employees. The former employees had the right to maintain their affiliation with the partner enterprises' pension funds by voluntary independent contributions. The other employees may join a pension scheme provided by the Company following 10 years of service.

Moreover, the partner enterprises had agreed to taking back their former employees. The Company and the partner enterprises made an agreement to the effect that the Company could not dismiss the former employees except on consultation with the partner enterprises.

Those agreements were concluded with any former employee of the partner enterprises whilst, in general, all of the other employees were precluded.

Legislation

The legislation provides protection and, indeed, penalties against discrimination by either employers or employees and attempts to ensure equality of treatment. The principle is Article 75 and is summarised below.

1) The employer and the Works Council shall ensure that every person employed in the establishment is treated in accordance with the principles of law and equity and, in particlar, that there is no discrimination against persons on account of their race, creed, nationality, origin, political or trade union activity or convictions, or sex. They shall make sure that employees do not suffer any prejudice because they have exceeded a certain age.

2) The employer and the Works Council shall safeguard and promote the untrammelled development of the personality of the employees of the establishment.

Commentary

Sub-section (1) specifically prescribes equal treatment of all employees in the works. The Works Council and employer must accord all employees equal treatment and treatment in accordance with general principles of fairness and justice, and must assure that all employees in the works similarly comply with the standards of this paragraph. If necessary, both the employer and Works Council have the duty to advise and educate the employees of their duties pursuant to this Article. Any employee who violates this fair and equal treatment provision may be dismissed, and the Works Council may insist upon the dismissal pursuant to Article 104, which governs the grounds for such dismissal.

Similarly, sub-section (1) prohibits discrimination based on race, nationality, national origin, religion, political persuasion, union affiliation or non-affiliation, sex and age. While some degree of differential treatment is permissible in accordance with general principles of freedom of contract when structuring the initial employment relationship, equal treatment is the norm and a fundamental right of all employees. Political activities by employees outside the works are permissible unless such activities directly and adversely affect the works. Similarly, differential treatment on the basis of union affiliation or non-affiliation is absolutely prohibited. This does not mean, however, that union and non-union members must be granted identical terms of employment. Specifically, it is not required that non-union members must be accorded coverage under the provisions of collective labour agreements negotiated between the union and the employer. The prohibition against sex discrimination generally requires equal pay for equal work. Finally, there is not to be discrimination on the basis of age. Employees may not be forced to retire, be dismissed or denied employment, transfer, or participation in educational programmes because they have passed a specified age.

In addition to the general non-discrimination provisions, sub-section (1) proscribes any other forms of discriminatory or differential treatment which is not required by the needs of the works. Certain exceptions from application of Article 75 may be created for enterprises serving special purposes. 1 Thus, a political party may require, as a condition of employment, that the prospective employee is not a member of an opposition party; a church organization may condition employment upon membership of the organization.

Sub-section (2) is designed to maximize the personal development of all employees. This Section proscribes unnecessary regimentation of the employees and of the employment process and procedures. To the extent possible, consistent with the needs of the works, employees should be assured a humane working environment and must not be subjected to requirements which are unduly demeaning or restrictive. Hence, codes of conduct, dress codes, general programmes of employee supervision and control, medical examinations, searches of employees when entering or leaving the works, are permissible only to the extent required to assure the proper conduct of the works and must minimize interference with the personal rights of employees.

Infringement by the employer or the Works Council of its duties of complying and assuring the compliance with the requirements of Article 75 may constitute a violation 2 and may cause the dissolution of the entire Works Council or the dismissal of certain of its members. If the employer violates the requirements of Article 75, employees damaged by such violations may bring an action for damages. If the employer violates the provisions of Article 75 in connection with the hiring, integration, re-classification or transfer of employees, the Works Council is entitled and required to refuse its consent. 3

Every Works Council enters office determined to change the world. Sooner or later - sooner, if is fortunate - it is forced to reconsider its assumptions and procedure. It is the making of the Works Council if it is prepared to examine itself seriously and to draw the necessary conclusions. If that test is failed, if energy is expended on rationalizing the status quo, mounting crises and disarray are inevitable.

In that sense, the grace period of the Phase 2 Works Council ended when the matter of discrimination by virtue of origin, was raised with the Managing Director as will be seen later in this Chapter.

The successful candidates elected to the first Phase 2 Works Council had openly declared to any member of the electorate who enquired about their policies, that alleged discrimination by the Company would be investigated should they be elected. As far as I was able to determine in discussion with my new colleagues, only two of the seven successful candiates considered discrimination as the sole reason for their candidature. The remaining five, including myself, considered their election due more to the need for a united and democratic Works Council than had been apparent during Phase 1. Thus, the debate by the new Works Council was relatively short on discrimination as an issue for investigation along with many other issues discussed in later Chapters of this thesis.

Works Council Debate

The Works Council debated to what extent the employment contract arrangements were contrary to the law, in particular to what extent they infringed the principle of equal treatment, and:

a) which legal instruments could be employed, and what could be achieved, in the event of the Company being unwilling to harmonize the situation;

b) to what extent contracts concluded by the former employees of the partner enterprises could be amended in such a way that the employees are deprived of the privileges so far conceded;

c) to what extent the Company could properly offer amendment of the contracts concluded with the former employees of the partner enterprises, in such a way that they became secondees from the partner enterprises and not being employed by the Company under German Labour Law Contracts.

d) and to what extent an individual employee could be sued for breach of contract if during a Labour Court Case the details of the employee's personal contract of employment became public.

The debate began at the first meeting of the Phase 2 Works Council on 6th December 1979, continued at a further two meetings in the same month culminating on 25th January 1980 after which meeting a memorandum was formulated for presentation to the Company; the memorandum identified the nature of the different employment contracts, expressed the view that such contracts may constitute an infringement of Article 75 and requested the Company to comment. The decision by the Works Council to submit the memorandum was taken after several oral complaints were made by non-partner enterprise employees to individual Works Councillors about partner enterprise employees enjoying the additional financial benefits. None of the complaints were supported in writing because of the fear of reprisals by the Company, and cannot herefore be documented.

Company/Works Council Dialogue

The Company did not formally respond to the Works Council memorandum so the Works Council requested a meeting. The request prompted the Managing Director to advise the Works Council Chairman in a February telephone call that discrimination was not an issue he was willing to discuss because he considered discrimination did not exist. The Works Council pursued the request.

It took until late March 1980 before a meeting with the management could be arranged. Many of the non-partner enterprise employees were meanwhile reaching a peak of disenchantment and many had discussed departure for greener and perhaps less discriminatory pastures. When the management finally responded to the discrimination charge, it was an anti-climax - action should be postponed, preferably forgotten. Most employees were unaware that the question of discrimination had briefly been raised by the Works Council in office during 1974, without success. 4 Employee morale was at a low ebb in late 1979, as reflected in the number of predominantly oral complaints made by employees to the Works Council about management attitudes in general. Such complaints were in addition to those made about discrimination and were made by both former partner and non-partner enterprise employees.

The emptiness of the management reaction to a charge of discrimination had consequences far beyond employee unhappiness. It symbolized the lack of consensus on what constituted discrimination and a lack of preparedness on the part of management for this kind of issue - carrying with it the possible implication that it might have to be resolved by the Labour Court, an experience which this management had not contemplated and clearly viewed with some trepidation. The extent of concern - perhaps verging on panic - on the

part of management was reflected in (unprovable) warnings to individual Works Councillors not to press the matter, as it might damage their prospects. Whilst this cannot be substantiated, it is important to register something of the atmosphere surrounding this issue.

Events within the Company presented the Works Council with a searing dilemma. It had no strike option (Article 2) and it would have been wrong to conduct itself as if it had. The Works Council was understandably reluctant to encourage employees into open resistance that it could not then support. With a low percentage of trade unionists (see Chapter 3) a strike called by unions would have no effect. On the other-hand, Works Councillors are ultimately judged not by their contemplation of dilemmas but their ability to conceive alternatives.

From the first day discrimination was raised, oral arguments for inaction cascaded from employees. At first the Works Council was warned not to push too vigorously or history would blame it if the management decided to close down operations and move elsewhere. It was also said that the Works Council's action should be a measured one in order not to destroy the possibility of eventual tolerance for some diversity held out by the early proclamations of the management that there was no case to answer. Then restraint was urged to remove the incentive for legal proceedings and the potential bad publicity that could be involved. Next, the Works Council heard that the management must not be driven into a corner by rash Works Council actions. In any event, it was said, discrimination had been conceded by previous Works Councils which legitimized the whole situation. Employee arguments were ignored.

The Works Council decided that despite the flagrant violation of the LMRA, all high level Works Council/Management contact should continue and, indeed, be intensified. The worse the crisis, so the argument runs, the more important such contacts are - even a closed door meeting of the Works Council Chairman and the Managing Director.

These arguments reflected an odd coalition of extremist views between those who wanted to do nothing and those who argued that unless one did everything, it is better to do nothing. In a deeper sense, the Works Council faced a conceptual breakdown. Once the Works Council was unleashed, it should have been clear that discrimination, as it had developed, would be crushed unless a decisive reaction by the management imposed the need for a reconsideration.

All the time-wasting indecision - all the threats of action unless discrimination ceased - missed the two principal points. First, time was on the management side. The longer discussion lasted, the more likely was the collapse of resistance; discrimination would continue because opposition had been quelled. Second, the only chance of saving anything would have been a management reaction so immediate, so clear, so beyond rhetoric, so strong - and at the same time, leaving open a road for negotation - as to have given some pause to the Works Council and raised some thought for compromise. The prospects for this were admittedly slim; but even these prospects vanished completely when the management carefully rehearsed reasons at the April 1980 General Assembly and later in the Labour Court why nothing should be done and so tacitly, if unintentionally, colluded with discrimination. The Managing Director also stated at the Assembly that "only a Labour Court decision would change my view that discrimination does not exist in this Company".

Any fear of employee reaction against the Works Council policy seemed to me similarly unwarranted. No doubt the employees expressed some unhappiness from the beginning about any effort to make the management pay a heavy price. But the Works Council could argue that it was in a better position to protect the employees over discrmination arguments, with respect to which it suspected they were more clear-sighted than their electorates and, in the end, it was the Works Council who had to take the lead. It had a duty to make it clear that discrimination was not acceptable. It had to defend the policy of co-existence by defining not only its possibilities but also its limits. If it had equated policy with a fear of Company reprisals, it encouraged the sense of impotence that breeds employer dictatorships. Moderation is a virtue only in those who are thought to have an alternative.

As for the 1974 Works Council acceptance of discrimination by virtue of origin, there was something self-destructive, almost masochistic, in the management's penchant to sell itself short. Ignorance of Labour Laws is not an acceptable excuse for a policy which, apparently, flouts the law.

Two further meetings with Company, solely to discuss this problem, took place in April and July of 1980. Neither meeting was able to reach any form of agreement in the face of a hostile Company attitude.

The problem of devising some form of sanctions against the management was difficult. The Works Council could have vetoed every new employment contract to force the discrimination issue or have quietly discouraged employees from working overtime - the level of which, in its view, was colossal. Dangerous sanctions they may have been, in terms of a possible violation of Works Councils legal duties, but they would have been effective.

While one can applaud dedication to a policy of co-existence with management as the whole concept of the LMRA, in terms of discrimination, this goal could not be achieved unless the Works Council could devise its own penalties for management intransigence together with incentives for moderation. Peace in the organisation, to be meaningful or lasting, must ultimately reflect not only an accommodation but a sense of justice.

The foregoing, then, is the background to the Works Council versus Management battle on discrimination which led the Works Council almost a year after it was first raised in 1979, to seek legal advice in November 1980. There had in reality been very little dialogue which would have enabled the Works Council not to have taken the unanimous decision at a November meeting, to seek legal advice; in the opinion of the Works Council legal advise did not constitute an issue on which all employees needed to be consulted.

Legal Consideration

Between November 1980 and January 1981, seven meetings took place with the Works Councils legal advisors to discuss the problem of alleged unequal treatment (see also para (a) to (d) pp 90 and 91) and what rights of co-determination - if any - were available to the Works Council. Detailed below are the results of the discussions with the Works Councils legal advisors.

The problem of equal treatment under labour legislation is fundamentally beyond controversy. There are, however, a number of decisions and comments with partly diverging results, relating to the question of the rights of the Works Council (co-determination).

The facts involved and the questions raised bring up additional problems, including the question to what extent more or less confidential separate agreements between the Company and the former partner enterprise employees are actually permitted, and to what extent the Company is bound to disclose the general framework, as well as to what extent the Works Council can aim at a Company-internal employment agreement in the sphere of allowances and retirement pension provisions.

The validity and the general impact of the principle of equal treatment in the German legislation governing the relationship between Management and Labour are beyond any controversy. Similarly, the principle of equal treatment has been applied as an independent legal principle in private law.

The principle of equal treatment forms part of private law. It prohibits arbitrary, i.e. biassed discrimination of individual employees as compared with others in a comparable position.5. On the other hand, it does not prohibit the preferential treatment of individual employees.6.

This principle implies the requirement of unbiassed distinction or the prohibited exemption from a specified system. 7 It is ruled that individual or groups of employees may not be treated more unfavourably than the majority of their colleagues without a sensible substantive reason, i.e. by mere arbitrary action. 8

However, the problem of when infringement of the principle of equal treatment is involved or which reasons justify unequal treatment, needs material clarification on the merits of each case. 9 It is taken for granted in literature and court practice that the principle of equal treatment is applicable without any restriction in the sphere of bonuses, wage supplements and retirement pension scheme. 10 Court practice has also accepted the application of the principle of equal treatment to wage bracketing frameworks. 11

The Works Council took the view that varying payment of voluntary employer's allowances (lodging allowances, travelling expense allowances, Christmas bonuses) and the varying arrangements in relation to the Company pension scheme should have been subject to the principle of equal treatment.

Another requirement of applicability of unequal treatment exists in the fact that employees in one and the same Company are involved. This requirement is beyond controversy. What is controversial is whether the principle of equal treatment is applicable also to employees of different companies of the same enterprises, by way of analogy to the different companies in one group. 12.

The principle of equal treatment is fundamentally applicable only as long as employment exists; it does not apply to engagement and application for employment. Such arrangements rule out agreements which have been concluded between partner enterprises' former employees and their former employers, namely:-

a) the opportunity to continue contributions to their former Company retirement pension funds.

b) the consideration of the years of service at the Company when they are re-employed;

c) the agreements regarding dismissal and possible return to their former employments.

The principle of equal treatment reaches its bounds in the individual freedom of contract. The Works Council and its legal advisors interpreted this to mean that equal treatment can never be applied when a certain arrangement has been made between the contracting partners in separate agreements. The principle of freedom of contract thus takes precedence over the principle of equal treatment under labour law.

The preferential arrangements were made in all cases by way of separate contracts (the so-called side letters). The arrangement per se comes under the realm of unrestricted freedom of the contracting partners to design contracts. These arrangements by separate contracts are, however, made with all of the former employees of the partner enterprises, and not with the other employees. Hence, a standardized attitude of the management is involved which comes close to a business practice of uniform arrangement by separate contracts.

The arrangement that employees from the parent Companies receive additional allowances and bonuses while the other employees to not, creates unequal groups of employees. Only when individual employees, regardless of origin, recieve these alowances as well, can there be no infringement of the equal treatment principle.

The matter under investigation is therefore the problem whether the regulations established by the employer and the resulting formation of groups in the Company, constitute, as such, an offence against the principle of equal treatment. The general question of whether the distinction of former employees is admissible needs to be considered and only then can the individual preferential arrangements be discussed. From the precedents studied, the employer is given a fairly wide scope of discretion for grouping so that he has enough margin for differentiation by certain criteria. The employer is fundamentally free in his ability to exempt certain groups of persons but this precludes entirely biassed arbitrary discriminations. 13 Particularly in the case of bonuses, the employer is permitted to form groups by family status, period of service in his Company, age, but not by groups that are distinguished by the employees coming from certain companies (associated with the Company). Until November 1980 only the comparable cases

had been decided in legal practice, where employees were given a distinctive treatment following their takeover or new association of several companies. In such cases, the employees were given different treatment depending on their former employments as far as anniversary allowances and regulations concerning the Company pension schemes were involved. It was always acknowledged that an offence against the principle of equal treatment would not be involved when, for instance, Christmas bonus payments were continued. A differentiation by the payment of such a bonus is generally deemed admissible. 14.

The criterion of previous employment in a Company or enterprise, as such, is not biassed in principle. In each case, however, a concrete definition of the criteria is required. The Federal Labour Court have justified their decisions mainly with the argument that when an employer took over another enterprise he would not have had any scope of discretion regarding these employees and he takes over the existing employments without any restrictions. Hence, he is under the obligation to these employees to protect and maintain their present possessions. Following the practice at the Federal Labour Court, the fact that the employer is under an obligation to his employees, does not create a valid claim on the part of the other employees to enjoy the same privileges. 15. The situation under discussion was different because the Company was not legally obligated to pay the allowances in question but had used its descretion to favour the former employees of the partner enterprises.

Although the employer has freedom of contract he must not use that freedom to create such financial differences between employees that may create an illegal situation - in this case, possible discrimination.

The distinctive criterion must also be compatible with the concrete organization of the Company or enterprise. This means that in a small family enterprise, for instance, it is possible to apply distinctive systems other than those applicable in a large establishment. In the latter case, coarse features will be permitted in differentiation whereas in a small craft shop more individual criteria relating to the specific persons may be put into operation when unequal treatment is concerned. In the present case, the general distinction by previous employment appears to be compatible with the actual organization of the Company. The fact that the Company has been incorporated by the three parent companies for the specific purpose to realize a defined project plays a specifically decisive role. The criterion of employment in one of the parent companies is, hence, directly linked up with the organization and business purpose of the enterprise.

There must also be a special connection between the distinctive criterion within the scope of the actual legal relation, on the one hand, and an isolated case. Particular consideration must be given to the purpose of voluntary allowance and bonuses. 16

The question of whether an unbiassed distinction is made, needs judgment by objective criteria in its turn, independently of the employer's subjective aims and statements. There must be an adequate correlation between the grounds and the consequences of the distinction. 17

The Company advanced two specific purposes or grounds of differentiation when it addressed the April 1980 general assembly:-

1. the necessity to have employees acquainted with both the engineering know-how and the management of the partner enterprises;

2. a compensation for the disadvantages involved in a change from one country and Company to another, to the favour of employees coming from abroad who continue their career in Germany naturally only for an interim period in their lives.

Both are certainly factual criteria which, on principle, justify a differentiation. The Company also stated at the same general assembly that only a Labour Court instruction would change their views on this matter.

Regarding the first ground it must be stated that this distinction was certainly justified in the stage of Company incorporation. The general preferential treatment of these employees by allowances was based on an objectively substantiated purpose of recruitment. Over a ten year period this aspect had been pushed far into the background. The work at the Company was now being carried out predominately by employees engaged from the free labour market. Moreover, even with regard to concrete jobs carried out by the employees - e.g. when they are entrusted with duties abroad - obviously a distinction is no longer made by their origin, i.e. whether they come from the partner enterprises or from the free labour market. As a result of the period for which the Company has existed, a standardization of qualification had been brought about, which no longer justified a specific purpose of recruitment. From paragraph two of the Company's Articles of Incorporation, the partner enterprise companies held the same opinion when it was agreed that all employees should be given equal treatment six years after Company incorporation. Even though this agreement does not have an immediate effect on an employee's title to equal treatment, it explains, as stated before, the objective justification of the unequal treatment. A differentiation, however, does not become non-objective merely because it turns out to be inexpedient

and unsuitable in the course of advancing development; it is accepted that those facts and conditions should be considered which prevailed at the time when such a differentiation was applied. 18 In the present situation, the fact remains that ten years after incorporation, a corresponding distinction was still made.

Moreover, decisions taken by the Federal Labour Court in 1976 which denied an offence against the principle of equal treatment, may be interpreted inter alia, that after six years of employment employees should be given equal treatment so that equalizing adjustments by the employer would not be necessary. 19 This means that the initially unequal conditions would be more and more equalized especially by the lapse of time. 20 That case, however, was based on the fact that an ever-increasing number of employees favoured by the retirement pension scheme, retired from the Company for reasons of their age. In the present situation such a settlement by the lapse of time does not exist. The unequal treatment is continuously re-established whenever a new employees is engaged, whether he comes from a partner enterprise or has been recruited from the free labour market. The second specific purpose rather binds the Company to grant reasonable expense allowances to all employees equally interrupting a professional career abroad in order to work for the Company for a limited period of time. The Company, however, only grants the allowances to former partner enterprise employees. This statement applies especially to all current payments made during the employment, i.e. lodging allowances, travelling expense allowance as well as education and training subsidies.

The question depends on the actual conditions applying to each employee. The argumentation given by the Company appears to be generally doubtful insofar as it is a matter of fact, even for applicants from the labour market, that the project is limited in view of time. In this respect too, there is rather a presumption to the effect that such foreign employees want to work in Germany for a period limited in view of time, and that they have not finally interrupted their careers in their home countries.

The following aspects must also be taken into account:-

a) The scope of discretion applying to the granting of recurring payments on conclusion of the contract is generally wider than the scope applying to the current allowances and bonuses granted during the employment. The consideration of the former employment with relation to the Christmas bonus can be justified only with the criterion of interrupted professional career and the particular interest the partner enterprises have in the employees.

b) It may be relevant whether there are contractual and financial links between the Company and the partner enterprises. The letter of confirmation by the partner enterprises, on the one hand, and the wording used in the first item of the separate agreements give a certain indication. Financial and tax criteria, for instance, have been accepted in legal practice to be unobjective grounds of differential. 21

Reasonableness of a unilateral arrangement by the employer can be examined only within the framework of such an isolated arrangement. In contrast to the principle of equal treatment which can be applied particularly to attack the absence of such an arrangement, here only the alleged purpose can be examined. Therefore, an examination on reasonableness is possible with relation to the arrangements concerning the retirement pension provisions.

Within his scope of discretion, the employer is fundamentally free to determine the beneficiaries including the regulations about the waiting period. When the entilement to pension claims is made contingent on ten years of service, such regulation is principally not inequitable because all employees have the chance to qualify for expectancy under the retirement pension scheme as a reward for his loyalty to the Company. In the present situation, certain doubts arise insofar as the Company's enterprise is project-bound and limited in view of time. Non-partner enterprise employees should have been advised in their employment contracts that they were precluded from joining the retirement scheme until ten years continous service had been completed. The ten years service did, however, count in benefit calculations. As far as these employees with pre- 1974 contracts are concerned, to merely discover they were precluded from the pension scheme is arguably unreasonable. An offence against the principle of equal treatment could reside in this fact. Similarly, non-partner enterprise employees engaged at a later date (post-1974) are treated differently compared to those engaged earlier in that ten years service would not count in benefits. It should be noted that a discrimination of employees being newcomers to a Company against employees having been in the Company's services for a longer period of time is generally permitted. Such distinction should however, be disclosed and published so that the newcomers know from the very beginning whether or not they will come under the retirement pension scheme.

Possibilities and chances of success

The offence against the principle of equal treatment and against the unreasonableness of a contractual arrangement may be advanced by each employee affected when he has his case decided upon trial at the Labour Court, claiming the payments to which he is entitled. It is emphasized, in this respect, that an offence against the principle of equal treatment is assumed to exist. 22 More recent precedents can also be understood to imply the fact that the courts, too, apply a more differentiating and fact-related approach in decisions about whether, in a specific case, the distinctive criterion is objective and unbiassed. 23 This may be interpreted that the Courts will examine in detail the criteria used by a Company to differentiate between employees rather than accept the Company's assertion that custom and practice demands such differentiation.

In opposition to the claims held by a single employee under his individual contract, the Works Council has the general duty to look after compliance not only with the principle of equal treatment, but also right and justice in Company-internal employment agreements. 24 What is of similar interest is the extent to which the Works Council creates opportunities of arrangement beyond the general possiblity of co-operation and discussion with the Company. For example, agreements between a Company and a Works Council can be made which go beyond the minimum requirements of the legislation. 25

Right of co-determination

The question whether a general fund has been created or whether the retirement pension provisions have been made through general direct pledges or promises may be left undecided according to recent court practice at the Federal Labour Court. 26 All of these, as far as they have been generally adopted in the Company, are subject to the right of co-determination. 27 Any retirement pension scheme is subject to co-determination when theoretically formed groups of employees are given separate contracts to the same effect. 28

In this situation, merely the right of co-determination is of interest. The sphere free of co-determination is as follows:-

The employer is free in four respects:- i.e.

whether he wants to provide the financial means for the Company-internal retirement pension scheme; to what extent he wants to do so; which type of provisions he wants to make; and which employees of groups of employees he wants to provide for.

The definition of the beneficiaries includes also the question of the specific waiting period following which there is a fundamental eligibility for pension payments, in other words: the question of loyalty to which payment is to be linked. 29.

Consequently, the Works Council is primarily entitled to co-determination only as far as arrangement problems are involved. There could not be any influence by the right of co-determination, particularly on the problems of waiting time. 30 Later opinion, however, suggests that the Works Council would not be restricted to participation in questions relating to arrangement but would also be entitled to examine any pension scheme. 31 The Works Council could therefore have the possibilty and the duty to demand remedial action. In this respect, the employer's decisions about the establishment of such a scheme and particularly about the definition of the future beneficiaries and the corresponding funding framework could be subject to change by the Works Council.

These possibilities, however, must not be interpreted as an extenion of the rights of co-determination. The Federal Labour Court leaves this question undecided but it is unlikely that the comprehensive definition within the legislation could be extended. 32

Such voluntary wage supplements as lodging allowance, education, subsidies are subject to co-determination. In this respect, the term 'wages' is meant to denote any remuneration in consideration of services rendered, i.e. any payments made by the employer for the purpose of consideration, irrespective of their specific designation. 33 Bonuses have the nature of a remuneration in consideration of services rendered. The voluntary factor involved in these payments is relevant as the employer cannot be forced to make such payments. Even though in the case of voluntary payments the co-determination right is not excluded it is restricted as to quantity, which means that extension of the payments to other, or all, employees cannot be enforced by exercise of the right to co-determination.

As far as non-recurring moving allowance is concerned there is doubt whether it is covered by co-determination. The nature of a pure expense allowance prior to the employee's entrance upon his duties appears to be quite normal. Even if the nature of such an allowance could be construed as remuneration, it is extremely doubtful that the Works Council could demand a right of co-determination.

When the employer grants a loan out of his current means, the loan is not defined as a wage payment. Such a payment is not, therefore, subject to Works Council co-determination.

The Christmas bonus is subject to co-determination. There is only one variation to the effect that the method of calculation of the Christmas bonus is controversial. Even though the general arrangements concerning Christmas bonus calculation come under the co-determination, it must be noted that the payment framework determined by the employer is not subject to co-determination. Hence, a general increase of the Christmas bonus for one group of employees cannot be achieved through co-determination. 34

The question of whether an offence against the principle of equal treatment is involved or whether a specific agreement by contract has been made by unilateral action in an unfair way, is a legal problem not coming under the jurisdiction of a mediation (or conciliation) board; unfortunately, if the Company will not negotiate, the employee has no option but to take his complaint to the Labour Court. The same option is also open to a Works Council.

Whilst the option available to the Works Council appears clear, it does in fact create another problem. To take a problem to the Labour Court, a specific infringement of the legislation should have occurred. From the foregoing, it can be seen that whereas the problem orginated from the discrimination possiblities, the problem overlaps into areas of co-determination (Articles 75 and 87 respectively). Indeed, only a gross violation of the principle of equal treatment would entitle the Works Council to seek a Labour Court decision. 35 It is also feasible that the Labour Court may not be willing to clarify one article against accepted interpretations of another.

Opinion suggests however, that there could be a right of petition on the part of the Works Council in cases where an arrangement, regulation or agreement that would otherwise be subject to co-determination, is attacked on the grounds of discrimination or unequal treatment. 36 Clearly, in the present situation, there is good reason to assume that internal Company regulations are involved - even if they have been stipulated in individual contracts of employment - which do not comply with equity, justice and which constitute a possible infringement of the principle of equal treatment.

There were three other areas of concern to the Works Council. Two of them were possible options open to the Company and the third an individual concern regarding the basis of information and data to be provided in the event of legal proceedings:-

a) With reference to the principle of equal treatment it is not possible, the Works Council concluded, to amend the employment contracts to the detriment of the employees so far favoured.

b) Unilateral amendment of the contracts with the former employees of the partner enterprises to remove their allowances could be achieved by the Company through termination. Such action would need to have the collusion of these employees and we considered this was unlikely. Thus, we felt we could protect the interests of the former partner enterprise employees whilst attempting to harmonize the remaining majority of employee contracts.

c) Disclosure of an employment contract by an employee in proceedings before the Labour Court does not constitute a breach of the employment contract.

Events leading to a decision

The legal advice sought by the Works Council in November 1980 was presented to the Company in February 1981. The Works Council had still not decided to seek a Labour Court decision on the matter and were hoping the Company might vary its attitude in the light of the legal advice. The Company requested time to consider its reaction but indicated their reluctance to comment until the April 1981 Works Council election had taken place. The election saw no change of Works Council policy, after considerable debate, which was communicated to the Company. The Company's policy also saw no change.

Shortly afterwards the Company refused to pay the invoice presented to them for the legal services used by the Works Council. Tactically, this was an attempt by the Company to persuade the legal service not to take any further part in the problem but resulted in further litigation by the Works Council against the Company on the responsibility for costs. 37.

The Works Council debated whether to seek a Labour Court decision and informal discussion with other experts led to general agreement with the concept of the Labour Courts's involvement however, rather than the Works Council taking the problem to court, an individual approach was considered but rejected. 38 It was agreed that rather than expose any employee to the probable recrimination of such action, the Works Council would take collective responsiblity; additionally, it was probable that the Court's decision on the problem might well pave the way for individual cases. No meetings were arranged between the Company and the Works Council whilst litigation was under way concerning the cost of legal advice; after August 1981 when this litigation had been resolved in favour of the Works Council, the Company refused to discuss the matter of alleged discrimination until October 1981. As that meeting the Company reiterated its view that there was no case to answer. The Works Council at a meeting on 29th October 1981 decided by a majority vote (of 6 to 1) that it had no alternative but to pursue the matter in the Labour Court on behalf of the electorate.

The result of the appearance in court was the Judge's opinion that since the additional financial benefits payable to former partner enterprise employees were part of the overall employment contract, payable by the Company and, as such, subject to fiscal taxations, then those benefits were subject to co-determination with the Works Council. 39 The Judge considered that it was unthinkable that foreigners in particular from the same country, whether they be former partner enterprise employees or not, should be treated differently, This, perhaps, indicated that he considered German nationals to be not entitled to the financial benefits. The Judge ordered the Company to allow the Works Council co-determination rights and negotiate the additional financial benefits payable to employees.

The Judge reached his decision after hearing the Company argue that even if their policy was wrong, it was causing individual strife rather than the total disruption of peace in the Works, that the Works Council had implied. Heavy emphasis was placed upon the essential role of former partner enterprise employees in the successful operation of the Company, the special knowledge and experience such employees had and without which the Company was doomed to failure. Clearly, the Company argued, such employees needed additional financial benefits to attract and keep then with the Company. Finally, the Company argued that the Works Council legislation was not in force when it was decided to pay the additional financial benefits, adding that, the Works Council had, to-date, ignored its rights and had thus forfeited co-determination as specified. 40

The Works Council discussed what further action could be taken whilst negotiation ordered by the Judge was commencing, such as, should all former partner enterprise hirings be vetoed, or a veto on all non-German hirings on the basis that they would be seriously disadvantaged by their salary classification. The Works Council concluded that such actions would leave the Works Council open to accusations of disruption and being impossible to work with. Hence, the Company might be able to seek the Works Council's removal from office, which, in turn, would almost certainly damage nogotiations. 41

To some extent, the Works Council was hopelessly trapped by its own good intentions and social conscience.

A viable, if not totally satisfactory, solution was to seek an agreement with the Company that any hiring approved by the Works Council was to be without prejudice to the outcome of the final negotiations. The Company agreed. To ensure the Company could not argue at a later date that the Works Council was again condoning Company policy or ignoring its co-determination rights, every hiring approval would be annotated accordingly. Notwithstanding this arrangement the Company chose to appeal against the Judge's decision on the basis that it was not clear whether the Works Council's co-determination rights applied to former partner enterprise employees or all employees. The appeal was heard at the Regional Labour Court in Munich. The Judge ruled in October 1984 that the co-determination rights applied to former partner enterprise employees only. The Company decided that such rights could not be retrospective and lodged another appeal. By end August 1985 the appeal had still not been heard and the issue remains outstanding. Consequently, negotiation of additional financial benefits payable to employees have not taken place between the Works Council and the Company.

Summary

Within individual undertakings the urge to find a working solution to a problem is strong. Such urges, however, require a receptive attitude by both the employer and Works Council. To those who would prefer a working solution, the idea of perennial conflict is less appealing because they perceive conflict as something limited to certain organisational areas within a structural and functional context to be respected. There can be no doubt that some provisions of the legislation reflect such an attitude towards the problems of Works Council and employer co-operation. However, as long as little initiative is shown by the employer as regards taking an active part in the discussion, there will be little co-operation as this Chapter has demonstrated.

The state of employee participation is due to a long historical development culminating in the adoption of legislation such as the LMRA. The underlying purpose was to avoid conflict between employer and employee through the introduction of legalised institutions, for example, Works Councils, thereby enabling the employees to have a certain influence on decision making. The basis, therefore, of employee participation, as this Chapter demonstrates, is legal provisions and not negotiations.

Another important feature is that employee participation takes place indirectly, though the elected representatives of the employees. The individual employee usually feels unaffected, although he is able to put forward complaints and suggestions; some information of vital concern is given to him but in reality he has little chance of shaping relations between his Works Council and employer. It should be stressed however that the Works Council ensures the protection of the vital and fundamental interests of employees whatever conflict may develop between itself and the employer. This Chapter clearly demonstrates that unless an issue is clearly legislated upon, the employer may be able to use the Courts for a solution rather than negotiate with the Works Council. Equally even if the Labour Court decision does not favour the employer, the employer may still use the process of law to defer implementation of that decision as long as possible. Thus there are distinct limitations on the effectiveness of co-determination, which evidently rests upon law and perhaps derives some of its weakness from that fact.

NOTES:

1. Article 118 L.M.R.A. established that the legislation does not apply to companies and establishments that directly and predominantly pursue political, religious, charitable, educational, scientific or artistic purposes.
2. Article 23 L.M.R.A. provides employees the opportunity to apply to the Labour Court for an order to remove any Works Council or individual members on the grounds of dereliction of statutory duties; similarly, an employer may be ordered by the Labour Court to cease activity causing a violation of the Act.
3. Article 99 L.M.R.A., Sub-section 2, permits the Works Council to refuse its consent to a hiring, transfer or re-classification of an employee on several grounds including any action that would, in the Works Council's opinion, constitute a breach of the Act, for example, unequal treatment.

4. Letter dated 31 July 1974 as a result of a Works Council/Company meeting on 24th April 1974, to discuss equal treatment of non-German employees; the letter summarised the explanations given at the meeting by the Managing Director viz the need for experienced partner enterprise personnel who were not truly domiciled in the Federal Republic of Germany and the incentives required to attract such personnel. The Works Council of that period accepted the explanations given although they clearly were not asking for an explanation of the differences between former partner enterprise employees and all other employees.

5. Schaub, Gunter. 'Arbeitsrechthandbuch'. 4th edition. page 599. Munich . 1980

6. Federal Labour Court (BAG) AP number 3 on Section 242 German Civil Code (BGB). 13 September 1956.

7. Federal Labour Court (BAG) AP number 4 on Section 242 German Civil Code (BGB). 3 April 1957.

8. Goetz, Hueck. "Der Grundsatz der gleichmassigen Behandling im Privatrecht' page 65. 1958 Munich.

9. ibid.

10. ibid. page 67. See also Schaub. op cit. page 304.

11. Federal Labour Court (BAG) AP number 15 on Section 242 German Civil Code (BGB). 25 April 1957.

12. Goetz, Hueck. op cit. page 64. See also Schaub. op cit. page 598.

13. ibid page 69.

14. Federal Labour Court (BAG) AP number 13 on Section 242 German Civil Code (BGB). 5 December 1957 and AP number 41 on Section 242 German Civil Code (BGB) 25 August 1976.

15. Weise, Gunther. 'Alterversorgung und Gleichbehandlung bei der Verschmelzung und Umwandlung Von Gesellschaften'. page 434 RdA. Bonn. 1979.

16. Goetz, Hueck. op cit. page 186.

17. Weise, Gunther. op cit. page 433.

18. Goetz, Hueck. op cit. page 196.

19. Federal Labour Court (BAG) AP number 41 on Section 242 German Civil Code (BGB). 25 August 1976.

20. Weise, Gunther. op cit. page 437.

21. ibid. pp 436 and 437.

22. Burowski/Gaul.' 'Das Arbeitsrecht im Betrieb'. 6th Edition. page 309. 1970. Heidelberg.

23. Federal Labour Court (BAG). 'Betrieb' page 752. 1979.

24. Article 75. LMRA.

25. Articles 74 and 85 LMRA define the principles of collaboration and the Works Council's role in dealing with grievances respectively; theoretically there is no barrier to the Works Council making arrangements with the employer beyond the scope of the Articles providing the Act itself is not violated.

26. Federal Labour Court (BAG) AP numbers 1, 2, 3 and 4 on Article 87 LMRA. 12 June 1975.

27. Article 87 LMRA defines the twelve matters in which the Works Council have a right of co-determination; operation of the establishment and conduct of employees; daily working hours; reduction or extension of working hours; time, place and form of payment; holiday schedules; introduction of new technology; health and safety; form, structure and administration of social services; company housing; establishment of and modification to remuneration methods; job and bonus rates; suggestion schemes. The Article also provides for binding conciliation in cases of dispute but only if both sides wish conciliation.

28. Jobst Grumpert. 'Mitbestimmung bei Betrieblicher Altersversorgung'. page 606. 'Betriebsberater'. 1976.

29. Hanau Peter. 'Die Mitbestimmung in der Betrieblichen Altersversorgung nach der neuen Rechtsprechung des Bundesarbeitsgerichts'. page 91. 'Betriebsberator'. 1976.

30. Fitting. Auffahrt, Kaiser. 'Betriebsverfassungsgesetz'. 13th Edition. Article 87 annotations 44 - 47. 1980 Munich.

31. Hanau Peter. op cit. page 93.

32. Article 87 LMRA. See also note 27 above.

33. Fitting et al. op cit. Article 87 annotations 54 and 54a.

34. ibid. Annotation 54.

35. Article 23 LMRA. Sub-section 3 establishes that only where an employer has grossly violated his duties under the Act, the Works Council may apply to the Labour Court.....

36. Hanau Peter. op cit. Article 87 annotation on BAG AP number 4.

37. Article 40 LMRA specifically states that any expense arising out of the activities of the Works Council shall be defrayed by the employer. In view of the Company's refusal to pay the invoice presented to them, litigation resulted in the Labour Court which found in favour of the Works Council. See Munich Labour Court decision 17 BV/37/81 dated 27 August 1981.

38. Experts in this instance are defined as Labour Court specialists on Works Councils in the region with whom regular contact was made; use was also made of the free service available to trade unionists on the Works Council most notably the white collar union D.A.G.

39. Article 87 LMRA sub-section 1 paragraph 10, indicates a right of co-determination in questions related to remuneration arrangements in the establishment, including in particular the establishment of principles of remuneration and the introduction and application of new remuneration methods or modification of existing methods.

40. Munich Labour Court decision 21/BV/148/81 dated 15 April 1982. Which was subsequently redefined by Munich State Court decision 21/BV/148/61 dated 10 October 1984.

41. Article 2 LMRA requires the Works Council and employer to work together in a spirit of mutual trust. Article 74 paragraph 2 emphasizes that acts of industrial warfare between employer and Works Council are unlawful; similarly, the employer and Works Council shall refrain from activities that interfere with operations or imperil the tranquility of the establishment.

Chapter 5

Job Evaluation and Performance Appraisal

The purpose of this Chapter is to demonstrate the role of the Phase 2 Works Council in taking initiatives and pursuing them to the implementation phase. The title of this Chapter covers one such initiative; how and why it arose, the relevant legislation, difficulties encountered and the system finally produced.

At the first meeting in December 1979 of the Phase 2 Works Council, the members discussed what they saw as problem areas and issued affecting employee morale. The first problem of alleged discrimination has been covered in Chapter 4; the second problem on the list was one of employees motivation combined with a lack of a career structure. Added to this combination was a salary structure throughout the Company which did not appear logical. The December 1979 Works Council meeting agreed to examine the salary differentials throughout the Directorate and consider how it could persuade the Company to rectify the situation. The task was delegated to me.

The relevant Sections of the legislation governing this activity by the Works Council are Articles 87 and 94 respectively. The former is detailed below.

Article 87 (Co-determination)

1) The Works Council have a right of co-determination in the following matters:-

1. matters relating to the order and the conduct of employees in the Company;

2. the commencement and termination of the daily working hours, including breaks and the distribution of working hours among the days of the week;

3. any temporary reduction or extension of the hours normally worked in the Company;

4. the time and place for and the form of payment of remuneration;

5. the establishment of general principles for leave arrangements and the preparation of the leave schedule as well as fixing the time at which the leave is to be taken by individual employees, if no agreement is reached between the employer and the employees concerned;

6. the introduction and use of technical devices designed to monitor the behaviour or performance of the employees;

7. arrangements for the prevention of employment accidents and occupational diseases and for the protection of health on the basis of legislation or safety regulations;

8. the form, structuring and administration of social services where scope is limited to the Company;

9. the assignment of and notice to vacate accommodation that is rented to employees in view of their employment relationship as well as the general fixing of the conditions for the use of such accommodation;

10. questions related to remuneration arrangements in the Company including in particular the establishment of principles of remuneration and the introduction and application of new remuneration methods or modification of existing methods;

11. the fixing of job and bonus rates and comparable performance-related remuneration including cash coefficients (i.e. prices per time unit);

12. principles for suggestion schemes in the establishment.

2) If no agreement can be reached on a matter covered by the preceding sub-section, a conciliation committee makes a decision. The award of the conciliation committee takes the place of an agreement between the employer and the Works Council.

Commentary

1. Article 87 gives the Works Council an absolute right of co-determination with respect to all matters listed in Subs. (1). Co-determination means that as to those matters which are specifically listed, the employer must not act without the specific consent of the Works Council. It also means that in the event an agreement cannot be reached between the employer and the Works Council, either side has the right to call upon the conciliation board, the decision of which will substitute for the agreement between the employer and the Works Council and which will have the force of works agreement. Co-determination for purposes of Article 87 will exist with respect to only those issues covered thereunder which are of general application to the works, i.e. which apply to the entire works, to certain branches, to a group or groups of employees, or to

certain positions in the works, and does not apply with respect to measures which are intended to apply only to individual employees. Hence, the employer continues to be free to enter into individual contracts with certain employees regulating certain terms of employment which, if they had general application, would be subject to co-determination. Co-determination cannot, however, be circumvented merely by the employer's negotiation and execution of a multitude of individual employment contracts with individual employees since such contracts, taken as a whole, set a pattern of general application of employment conditions. Co-determination exists regardless of the size of the works so long as a Works Council of a least one member (works steward) exists and applies to both permanent and temporary measures which generally fall within one of the twelve categories set forth in Subs. (1). In those works without a Works Council the employer can make decisions without regard to participation by employees. Since co-determination will exist, regardless of the size of the works or the Works Council, with respect to all matters described in Subs. (1) and which are of general application, it is advisable, particularly in larger works, to enter into general works agreements with the Works Council setting forth general guidelines and an institutionalized pattern of co-determination so as to avoid discussion and resolution as to each decision which may involve co-determination. This is particularly important in light of the fact that in the absence of an organized system of discussing and deciding upon matters subject to co-determination, urgent matters may be stalled and important decisions may be postponed. Article 87 does not provide the employer the right to take temporary action or measures in those cases in which urgent action is required or is in the best interest of the works.

2. While Article 87 provides a general and absolute right of co-determination with respect to matters listed therein, two important exceptions are provided in Subs. (1). The first exception relates to laws and regulations which prescribe certain minimum standards which may not be varied unilaterally or even by agreement (e.g. the law regarding employment safety which imposes upon the employer the sole obligation to assure to all employees a safe place of employment). The second and more important exception indicates that a collective labour agreement may restrict and have priority over the co-determination rights of the Works Council. Subs. (1), sentence 1, read in connection with Article 77 (3), indicates that general terms and conditions of employment are to be primarily agreed to by collective labour agreement. Hence, no co-determination right will exist as to those matters which, though covered under Subs. (1), are specifically regulated by an effective collective labour agreement. Unless specifically authorized by collective labour agreement, the employer and the Works Council may not, by means of works agreement or, failing such agreement, by calling upon the conciliation board, force more or less favourable employment terms than those agreed upon in the collective labour agreement. Hence, co-determination will exist only to the extent had no collective labour agreement been negotiated. Co-determination is not, however, precluded once a collective labour agreement expires or as to those matters which are not specifically regulated in the agreement or as to which the agreement is ambiguous.

3. The list of matters contained in Subs (1) as to which an absolute right of co-determination exists is exhaustive. Subs. (1), No. 1, provides a right of co-determination with respect to all matters which are designed to achieve or maintain the external order of the Works Council or to control the conduct of employees in the works. Such matters include the introduction of time clocks (which also would be subject to co-determination pursuant to Subs (1). No. 6), restrictions regarding canvassing, newspaper or other sales or distribution of propaganda materials on works property, body searches of employees when entering or leaving the works, the parking or storage of vehicles, the use of telephones for private purposes, general rules of conduct applicable to the relationship of employees inter se, dress codes, restrictions on or prohibition of smoking in the works, restriction of moonlighting, restrictions on the use of alcohol in the works. Further, any disciplinary proceedings contemplated or initiated against employees violating works rules designed to achieve order in the works are subject to co-determination. Co-determination extends not only to the establishment of the general guidelines applicable to disciplinary proceedings, but also to specific disciplinary proceedings involving individual employees. In light of the right of the Works Council to participate in all disciplinary matters, it is advisable, particularly so in larger works, to establish a disciplinary committee composed of an equal number of representatives of the employer and the Works Council.

4. Subs. (1), No. 2, provides a right of co-determination with respect to any measurers fixing the beginning and end of the daily work day (including any temporary changes therein which are of general rather than just individual application) and allocating weekly working hours to the days of the week. Hence, the Works Council has a right of co-determination with respect to any temporary changes of regular working hours, such as the initiation of overtime programmes, using of different work shifts, and experimental initiation of flexible starting or quitting time programmes. This right to co-determination comes into play no matter how temporary the change may be, including in cases in which only a single shift may be cancelled or extra working hours may be scheduled during peak work periods. Closely related to No. 2 is No. 3 which provides a right of co-determination with respect to any temporary shortening or extension of regular working hours. This provision is primarily designed to cover overtime or short hours work scheduled on a very temporary basis.

5. Subs. (1), No. 5, gives the Works Council a general right of co-determination in matters relating to the establishment of the general vacation schedule and of the general principles regarding vacation policies. This right of co-determination extends to the specific scheduling of vacations for the individual employees, and the Works Council and, if necessary, the conciliation board, may become involved in disputes between the employer and individual employees regarding the scheduling of their vacation. Finally, co-determination exists with regard to establishing the general policies for granting special vacations such as vacations for rest and recreation, and vacations for continued education.

6. Subs. (1), No. 6, provides an absolute right of co-determination in all matters involving the introduction of technical equipment which is designed or may be utilized to control or supervise the behaviour, productivity, efficiency and general output of employees in the works (e.g. remote control cameras, productivity meters, quality control systems, etc). No co-determination exists, on the other hand, if such supervision or control is exercised by supervisory personnel such as a foreman, quality control supervisors, etc.

7 Subs. (1), No. 7, gives the Works Council the very important right of co-determination with respect to all matters of employment safety and protection of health. This provision has gained in importance since passage of the Regulations Governing Places of Employment (Arbeitsstattenverordnung) which was enacted in late 1975 and which established a comprehensive regulatory framework applicable generally to all places of employment maintained by industrial or commercial enterprises to assure a safe as well as humane working environment. The regulations establish at times detailed safety standards applcable to "places of employment", defined to include not only the facilities in which the work process is directly carried on, but also all secondary facilities which may be used by employees in connection with their work, including medical and sanitary facilities, training and storage facilities, temporary work rooms, construction sites and other open-air areas. Specifically, the regulations prescribe minimum air quality standards for all work areas, and the installation of air conditioning, air filtration or ventilation systems to achieve such standards, the taking of specified precautions to avoid common safety hazards and to minimize the risk of injury caused by falling objects, fires, dangerous

and toxic gases, fumes, dust, smoke, electric shock, mechanical vibrations and unusual or intense heat, maximum permissible noise levels in places of employment, minimum requirements regarding the size (in) terms of area, height of ceilings, availability of air, etc and physical layout of work rooms, extensive provisions relating to facilities for rest and recreation, sleeping rooms for expecting or nursing mothers, and sanitary facilities, and prescribe specified medical and first-aid facilities in those works with more than 1.000 employees. Of similar importance is the Law Regarding Medical Personnel of the Works, Safety Engineers and Other Experts for Employment Safety which requires all employers to investigate whether the employment or use of medical personnel or other experts in employment safety are necessary in the works. In determining whether employment of such personnel is necessary, the employer must consider the risks of accident and injury which may exist in the works and the extent to which such risks may be minimized by employment of appropriate experts. The Works Council has an absolute right of co-determination in the selection and employment of medical personnel or other safety experts, which right also extends to the dismissal of such personnel.

8. Co-determination pursuant to Subs. (1), Nos, 8 and 9, exists only to the extent the employer has provided certain social and housing facilities for the benefit of his employees. Neither the establishment nor the closing of such facilities is subject to co-determination. Hence, co-determination exists only with respect to the administration and management of facilities which were established by the employer. "Social facilities" for purposes of Subs. (1), No. 8, are those facilities which are established and provided by the employer for the sole benefit of his

employees (but not including managerial employees) and which take the form of a fringe benefit. Such facilities must be made available to employees without charge and must be of a permanent rather than temporary nature. Neither No. 8 nor No. 9 were intended to give the Works Council any voice in determining the amount of employer contributions to establish, maintain or operate such facilities, such decisions resting within the sole discretion of the employer. Subs. (1), No. 9, relates specifically to housing furnished by the employer for the benefit of his employees. A co-determination right exists only with respect to those housing facilities which are in fact made available to employees and does not, for example, extend to the management and administration of apartment buildings owned by the employer which are not generally leased to employees. Once such housing is leased to employees, however, the Works Council has a right of co-determination with respect to the general leasing policies and terms and conditions, and has a right to participate in the decision as to which leases are granted or cancelled.

9. Subs. (1) Nos. 10 and 11 provide for co-determination by the Works Council in questions of general compensation policies which are applicable in the Works. Pursuant to No. 10, the Works Council may participate in the structuring of general compensation guidelines which are applicable throughout the works, to certain branches of the works, or to certain groups of employees. This would include some voice of the Works Council in profit-sharing or certain premium compensation, incentive, piece work or performance oriented compensation schemes. Co-determination becomes particularly important in the determination of the amount of compensation to be paid for above average performance quotas (i.e. work premiums). 1

Equal worker co-determination at all levels of the economy has been described as "the crucial question of our democracy" by the President of the German Trade Union Federation (DGB), Heinz Oskar Vetter in 1976.

It is Article, 87, sub-section 1, paragraph 10, that permits the Works Council to take an initiative such as job evaluation. The Works Council however only has the right of co-determination if the Company is prepared to accept the need for implementing an initiative.

At the 1st February 1980 Works Council meeting, I presented to my colleagues a general outline of the paper I intended to formulate and at a meeting with the Company on 8th February 1980, the Managing Director stated that he would consider a job evaluation paper sympathetically. On 17th March 1980 the Works Council agreed to submit my paper entitled "The Way Ahead" to the Company; the paper detailed the reasons that the Works Council considered a job evaluation scheme necessary and made specific proposals which are detailed below:-

Staff Grading Scheme ("The Way Ahead")

Part I

With reference to the Works Council/Company discussion in February 1980, we propose a Staff Grading Scheme which we consider would be in the best interests of the Company and its employees. In a paper of this nature it is necessary to provide background , alternatives and to comment on participation in the non-legal sense of the word. This is a complex area but we highlight three areas where improvement in "participation" practices seem to be needed.

Participation as a way of life

Firstly, managers must be prepared to develop a regular system of participation which is well understood and respected by employees and their representatives. It is only in this way that there will develop an atmosphere ot trust and respect which will enable the most difficult and contentious problems to be dealt with jointly. It is no use a manager showing an interest in participation only when he has an awkward problem on which he wants his employees's help and co-operation. In those circumstances, participation will be seen simply as a management device for selling unpopular decisions to the workforce and, as such, will be totally counter-productive.

All-embracing participation

Secondly, participation must be real. It must go beyond trivial issues to matters of direct concern to the workforce, like changes in working methods, expansion of the Company or introduction of new technology, e.g. EDP! Furthermore, consultations must take place at an early enough state to enable them to affect decisions. There is nothing more likely to create distrust than to establish participation systems to act as a rubber stamp for decisions already taken elsewhere.

Participating in "Performance Data"

Thirdly, management must be ready within the limits of confidentiality to make information about the Company available to the employees and their representatives. If employees representatives are to be expected to take a realistic view of the Company's prospects, then they must be given access to as much information as possible about the Company so that they can reach a considered and informed view.

Comment:- It is clear from Part I that the Works Council wished to create an atmosphere that would allow it to work with the Company without continually resorting to legislation (see Chapter 4 for instance)

Part II

A reasonable analysis of the 1979 Work Council election is that there was (is) substantial support for the "platform" of some form of career structure and grading of personnel. It is clear, therefore, that some formal career structure is necessary, if a satisfactory morale/operational situation is to be assured.

Formal career structures are likely to have some of the following effects, each of which might substantially aid Company efficiency:

1. Relate effort and reward. A career structure, if related to a job evaluation scheme will tend to relate effort to reward.

2. Relate internal and external salaries. It is likely that a career structure will help to relate salaries paid internally with those paid externally,

3. People will know where they stand. Company morale should be improved by a knowledge of current and future job responsiblities and salary prospects which a career structure should give.

4. Reduce the turnover of staff which the Works Council calculated for 1979 to be 6%. This is an obvious cost-related benefit in terms of recruitment, training and then replacement.

We will not explore in general terms the concept of Staff Salary Grading Schemes, and in Part IV of this Paper provide a brief practical example.

The fixing of individual levels of pay suggests a systematic approach through job evaluation, ignoring the titles given to jobs but assessing the value and nature of the work itself. This may mean a general or specific re-classification of jobs. Where a staff salary grading scheme results, it is usual to fix a minimum and a maximum for each job classified ladder (probably covering a range of comparable jobs) related to age or other criterion which can easily be understood and accepted by all concered.

Once an employee is allocated to a grade, he could normally expect to enjoy automatic progression up the ladder, subject to satisfactory routine personnel reports, marking time eventually on reaching the top. Such an arrangement may mean staying for the rest of his service with the Company at the maximum salary for that grade, and raises an incentive problem with regard

to the long service employee, continually doing his best, but having limited ability. This suggests a special case to be decided individually on its merits. A more talented employee could expect to receive promotion, at some stage or another, as a result of which he would be able to climb on to the rungs of a higher ladder (grade) well before reaching the top of the present shorter ladder. Eventually, he could be promoted right outside the scheme and become classified as "ungraded staff".

Age has been mentioned by the Company at recent hiring sessions to the Works Council in connection with salary, but a strong case can be made out for pay at any level being related to the job in hand, irrespective of age. In practice, particularly where grading schemes are in force, it often happens that a younger man replacing an older and more experienced colleague, now possibly past his best and thinking of retirement, will start in the same job but at a lower salary than that currently being paid. Grading scheme apart, however, it could be felt that a top quality young management recruit would merit at least comparable pay! Against that argument it may be considered inadvisable to give the new-comer too much too soon; by starting at a lower level than that enjoyed by his predecessor, there should be room to move to enable more substantial increments to be granted later. It is, however, dangerous to generalize and, in any case, the final answer may depend on such external factors as labour supply and demand, at any given time, and whether there is any bias towards full employment or recession.

Grading schemes must be rationalized with inflationary trends, the scales being realistically brought up to date, at appropriate intervals. Adjustments to changes in the cost of living may result from automatic "voluntary" management review (periodically or according to an agreed rise in the cost of living) or read across from trade union collective bargaining. Whether the

outcome is a flat rate percentage increase throughout the organization, or a more sophisticated graduated adjustment to take account of income tax etc., at various levels of pay, it is primarily a matter of circumstance.

The Company should also give automatic consideration to scheduled progression within a salary, perhaps annually, subject to satisfactory work, and to promotion from one grage to another as and when they arise.

In most German companies, a wage and salary policy is laid down as a matter of course but the routine responsiblity and authority should be delegated to the Personnel Department, the appropriate Functional Director and the Works Council, for carrying grading implications into practicl effect. The Managing Director would consider top level salaries for ungraded staff and deal with any exceptional circumstances.

Cost of living increases, however, are not the only adjustments that must be made, for in Europe, it is still necessary to relate salary scales to geographical locations, i.e. Bavaria is an expensive area in many respects! With this in mind, there may be a "Bavarian allowance" paid to all employees, additionally to scale salaries.

Whatever the pattern of remuneration, there must be room for flexibility. Although the agreed pattern of salary scales concerned must be kept within reasonable bounds, it must be remembered that this is an excercise involving the well-being of the Company.

Comment:- the Works Council's objective was to have a career and salary structure by agreement with the Company; the objective was not to enter collective bargaining on pay and clearly the Works Councils function was not to become involved in what was a trade union negotiating matter on a national basis.

Having explored the general concept of grading schemes, we now provide some detail of how it may be achieved.

Definition

Job grading is a means of assessing the value of a job by taking into consideration:

(a) experience required;
(b) initiative required;
(c) skill required;
(d) measure of responsibility entailed;
(e) supervision and/or direction needed.

Classification of Jobs

The following are the six grades into which all office jobs can be classified:

Grade A - simple tasks requiring no previous experience and performed under close supervision, e.g. sorting.

Grade B - tasks which, because of their simplicity, are carried out in accordance with a limited number of well defined rules after a comparatively short period of training. These tasks are closely directed and checked, and are carried out in a daily routine covered by a timetable and subject to short period control, e.g. simple copying work or straighforward adding operations using an adding machine.

Grade C - task which are of a routine character and follow well defined rules but requiring either a reasonable degree of experience or a special aptitude for the task, and which are carried out according to a daily routine covered by a timetable and subject to short period control, e.g. simple ledger machine operation or the checking of Grade B work.

Grade D - task which require considerable experience, but only a very limited degree of initiative and which are carried out according to a pre-determined procedure and precise rules; the tasks are carried out according to a daily routine which varies, but not sufficiently to necessitate any considerable direction, e.g. shorthand/typing of a simple straight-forward nature.

Grade E - tasks which require a significant but not extensive measure of discretion and initiative, or which require a specialised knowledge and individual responsibility for the work, e.g. dealing with queries of a non-routine character or group supervision of routine work.

Grade F - tasks which necessitate exercising an extensive measure of responsibility and judgement or the application of a professional technique (legal, accounting, statistical, engineering) e.g. acting in close liaison with the management or section/departmental supervision.

Procedure

Although there are several job grading systems, the same broad principles apply to all of them. The usual procedure is as follows:

(a) examine the job very thoroughly;
(b) prepare a job description and analyse the requirements of the job;
(c) compare the job under investigation with others;
(d) arrange the jobs in their correct sequence;
(e) relate the jobs in the sequence to a monetary scale.

Systems

Job grading systems are four in number:

(a) Ranking

Simple placing or ranking of each job in the organization according to its relative importance to other jobs.

(b) Classification

Although the procedure is similar to the ranking system procedure, it is carried out in a different order. In this case, the first step is the determination of grades and wage/salary levels

(c) Points Rating

After a detailed examination of the jobs under investigation, each job is given a points value based upon the mental and physical effort, experience, training and other requirements of the job; it is therefore a prerequisite of the system that each of these factors is given a points of value, which is determined by its relative importance, e.g. experience may be given a maximum of 20 points, mental effort a maximum of 10 points and so on. Having arrived at the total points value for the job, it is then translated into terms of money, using a suitable formula.

(d) Factor Comparison

Each job is analysed into factors (usually five) common to all types of job, e.g. skill, mental effort, physical effort, responsibility, working conditions. A number of key jobs are selected as representative of the various levels within the overall wage structure and in each case a calculation is made to determine the proportion of the total wage paid for each factor. If, for example, a job merits a total monthly salary of DM 1,000.--, the factor comparison may be rated as, say, DM 400.-- for skill, DM 300.-- for mental effort, DM 100.-- for physical effort, DM 150.-- for responsibility and DM 50.-- for difficult working conditions.

Remarks

Of the four grading systems explained, the following should be considered:

Ranking is a simple system and is therefore easily understood and administered; it has its disadvantages and is regarded as inadequate, because insufficient detail is taken into account. Moreover, the placing of jobs in their order of importance is not sufficient to indicate the degree of difference between the jobs in the grade.

Points rating has the advantage of simplicity and can be easily explained to the employee. It may, of course, be criticised on the grounds that the awarding of points to the respective requirements of the job is too arbitrary by nature for the purpose of arriving at a value, which is so crucial in

calculating the extent of an employee's earnings. Factor comparison resembles the points rating system in principle but is more complex and therefore more difficult for employees to understand. It has this merit however; once the money value of the chosen key jobs has been established, the money value of any job at an intermediate level can be read-off quite simply by reference to its position on the scale.

Conspicuous by its absence so far in these remarks is that of Classification! Based on the age of the Company and its apparent lack of long-term prospects, one would normally associate with a Company, then Classification appears to the Works Council to be the most appropriate, most simple and reasonable basis for a grading system within the Company. Using the classification of all office jobs explained at the beginning of this, Part III, Paper, i.e. Grades A to F inclusive, Part IV provides a simple example of how classification could be applied.

Comment:- "Classification appears" is significant in that the Works Council were not professionals in job evaluation techniques. The Works Council considered the paper to be of a preliminary nature and in the event of a positive response from the Company, intended to carry our further research (see later in this chapter).

Taking Grade F as an example, the Works Council used a salary "print-out" and removed Section Leaders, Department Leaders, Secretarial, Typist and Clerical salaries to establish an average salary for "an engineer".

The approximate average was calculated to be DM 4,304.-- per month which, for the purpose of this Paper, should be considered as 1979 economic condition.

Assuming engineer's job contents, regardless of function, are broadly similar, DM 4,304.-- should be the normal rate on commencing employment. This clearly is not the case as is demonstrated by the differentials in various Departments. A condiderable number of employees have already complained orally to the Works Council about such salary differentials.

Taking an example of one group of engineers, there is a spread of DM 3,500.-- to DM 6,400.--; the average being DM 4,509.-- which is similar to the aforementioned overall engineer's average of DM 4,304.--.

The Works Council has assumed that the top salary is the most experience body and therefore use such a figure as the top end rate in a scale:-

Start	DM 4,300.--
Year 1	4,515.--
Year 2	4,740.--
Year 3	4,977.--
Year 4	5,226.--
Year 5	5,488.--
Year 6	5,762.--
Year 7	6,050.--
Year 8	6,353.--
Year 9	6,680.--
and so on.	

Notes

(a) this would mean immediate uplift for some to close apparent unnecessary differentials;

(b) the steps are approximately 5%, which is in-line with the Managing Directors 1979 directive for rewarding effort in June of each year.

(c) steps would be automatic subject to satisfactory performance analysis;

(d) steps also provide flexibility to reward additional permanent work/effort between annual increase subject to (c) above;

(e) stepts payable June each year and would replace current directive at (b) aforementioned.

(f) cost of living increase percentage automatically increases step, i.e. if increase is 8% then each step increases by 8%.

(g) cost of living percentage, approximately January each year paid on existing step levels!

(h) those already paid over the average DM 4,304.-- place into relevant year step, i.e. those paid already DM 5,226.-- enter grading as F Year 4; alternative is, for example, they are already overpaid and must wait until grade year catches up with them, although the way the grade is structured, there should not be many such cases. Such cases would receive cost of living rises however!

(i) Section Leaders and Departmental Leaders should maintain a 5% and 10% respective differential or call them ungraded staff and the Managing Director sets their salaries;

(j) such a grade structure would eliminate existing unnecessary salary spreads;

(k) the grade structure should be circulated to all employees.

Grades below engineer

The start salary on each grade would be progressively lower but the Year pattern and 5% steps would be the same.

It may be possible to have some overlap between the lower grades, to reward, say, a lower grade person who is efficient, loyal but limited to that grade because of ability.

Similarly, differentials for Section Leaders and Department Leaders should be maintained on the lines of those of Grade F explained previously.

Clearly, notes (a) to (k) inclusive, also apply to the lower grades, namely secretarial, clerical and typist functions.

Part V

The main responsibility for improving the situation must rest with both the Works Council and the Company itself; the Company, in particular, must act with responsibility and respect towards the Works Council/employees. In the long-term, this is the only way to bring about a real improvement in the overall situation.

The Works Council believe that the proposal will provide a fair and balanced framework within which both the Works Council and Company can set about providing balance and fairness.

The Works Council requested a written response and offered to discuss the matter with the Company.

The Company response in April 1980 was almost negative; they considered the suggestion constructive but felt that the numbers of employees and the range of tasks did not appear well-suited to, or require, the restrictions of formal grading schemes. The door was not entirely closed as the Works Council were invited to pursue the matter by further discussion and to consider performance appraisal as an alternative.

The Company agreed to a Working Party on Performance Appraisal in May 1980. The Works Council still considered at its meeting later that month that job evaluation was necessary in the Company and was a prerequisite of a performance appraisal scheme; the logic being that employees and appraisers needed to know exactly the role of an employee prior to any system of appraisal. The Works Council also agreed to a survey being carried out by myself (concerning job evaluation and performance appraisal), to determine

union and employer attitudes within the E.E.C., from which the Works Council considered they would either be in a better position to pursue job evaluation or in the worst case withdraw from the Working Party. The results of the survey are tabulated in Figure 1. The conclusion was drawn by the Works Council that job evaluation combined with some automatic movement through grades established by job evaluation, was the best solution; the DAG response (shown in Figure 1) that job evaluation ensured maximum objectivity in salary structures was particularly persuasive in reaching such a conclusion; performance appraisal at worst could be the tool to be used for more substantial movement. My task was, therefore, to convince the Working Party that the end result should arrive at such a conclusion.

The Works Council considered that the Working Party should operate within an agreed framework and formal terms of reference. This was particularly useful owing to the Working Party membership which consisted of a Deputy Director, two Department Leaders, a Personnel Department representative and one Works Councilor, i.e. myself; in terms nationalities, three Germans and two Britons; in terms of partner enterprise, three and non-partner enterprise employees, two; four males and one female. The Works Council considered that none of the members were particulary pro-Works Council and this might create a problem when voting. The Works Council met with the Company in June 1980 and requested terms of reference for the Working Party; no objection was raised to the Working Party membership arrangements by the Works Council at the meeing because it was the Managing Director who specified the arrangements and the Works Council had no desire to delay the Working Party being constituted. The Company declined to set terms of reference arguing that it did not wish to restrict the investigation. The Works Council accepted the argument.

JOB EVALUATION AND PERFORMANCE APPRAISAL: EUROPEAN VIEWPOINT

NATION	EMPLOYERS ASSN	RESPONSE	TRADE UNION	RESPONSE
UK	C.B.I. (2) (Confederation of British Industry)	Supports J.E. but normally specific to a particular Company or organization. Supports P.A. usually within a formal grading structure.	T.U.C. (5) (Trades Union Congress)	Considers J.E. to be a time limited excercise to achieve equal pay between men and women. Not against P.A.
	I.P.M. (3) (Institute of Personnel Management)	Consider both J.E. and P.A. to be important personnel management functions.		
	C.M.T.C. (4) (Coventry Management Training Centre)	Consider J.E. and P.A. to be separate activities, but P.A. could be used, albeit wrongly, to correct results of J.E. Also considers trade unions are against P.A. and support J.E.		
FRG	B.D.A. (6) (Bundesvereinigung der Deutschen Arbeitgeberverbande)	Support J.E. and P.A. as they provide objective criteria for the determination of wages and salaries.	D.A.G. (7) (Deutsche Angestellten Gewerkschaft)	See J.E. as ensuring maximum objectivity in establishing performance related salaries. Do not appear enthusiastic about P.A. but consider as it's been continuous activity by employee's superiors anyway, than such appraisals should be open.
			D.G.B. (8) (Deutscher Gewerkschaftsbund)	Appear to favour both J.E. and P.A. as separate activities and emphasize the right of co-determination.

NATION	EMPLOYERS ASSN.	RESPONSE	TRADE UNION	RESPONSE
EIRE	F.U.E. (9) (Federated Union of Employers)	Supports J.E. but has reservations concerning flexibility. Supports P.A. and its use as a base for pay increases. Whilst they are not enthusiastic about automatic pay movement, they are being requested by the trade unions to agree automatic annual pay movements.	I.C.T.U. (10)	Over 200 employees J.E. is common approach and they insist on representation in the evaluation process. Hostile to P.A. and are pursuing automatic pay movement.
GREECE	C.G.I. (Confederation of Greek Industrialists)	Did not respond	G.S.E.E. (Confederation of Greek Workers)	Did not respond.
HOLLAND	V.H.O. (11) (Verbond Van Nederlandse Ondernemingen)	Not opposed to J.E. but point out the relativity of its results being a picture of the existing hierarchical structure of a company. Are not enthusiastic about P.A. and are hostile to automatic pay movement.	F.N.V. (12) (Federatie Nederlandse Vakbeweging)	Pursuing J.E. as an industry-wide policy. No enthusiasm for P.A.
LUXEM-BOURG	Not Applicable.		C.G.T./OGBL (13) (Confederation Generale du Travail)	Not opposed to J.E. as a classic system but have devised structures based on education and experience required for a job. Not opposed to P.A. but prefer some mimimum automatic pay movement.

NATION	EMPLOYERS ASSN.	RESPONSE	TRADE UNION	RESPONSE
DENMARK	D.E.C. (14)	Supports J.E. as a factor classified points system but has reservations about its non-flexibility. Appear to recognize P.A. as an incentive scheme rather than a management tool.	L.O.I.D. (15) (Landsornani-sationen I. Danmark)	Considers both J.E. and P.A. as obsolete and has had very little interest in either of them since 1965.
ITALY	C.G.I.T. (16) (Confederatione Generale dell Industria Italiana)	Consider that J.E. and P.A. have been used widely in state owned industries such as steel, iron, chemical and oil in the past, but that trade unions are now totally opposed to both systems.	F.L.M. (Federazione Lavatori Metal meccanici)	Did not respond.
FRANCE	C.N.P.F. (Conseil National du Patronat Francais)	Did not respond	C.F.D.T. (Confederation Francaise Democratique du Travail)	Did not respond.
BELGIUM	F.E.B. (Federation des Entreprises de Beligique)	Did not respond.	F.G.T.B. (Federation Generale du Travail de Belgique)	Did not respond.

In July 1980, the Works Council at a meeting, arranged to discuss the Working Party, re-affirmed the May 1980 decision to pursue job evaluation.

The fallback strategy was acceptance of a Performance Appraisal system that contained neutral elements in its operation, the Works Council, and the results of which were freely accessible to the employees.

The Working Party agreed to operate without an appointed Chairman at the October 1980 meeting but was otherwise reasonably democratic; four participants supported the Works Council's position of the need for job evaluation and/or performance appraisal; only the Personnel representative was vehemently opposed it for no apparently constructive reason. Whilst a vote was taken on points of disagreement, all participants were well aware of two ultimate rejection possibilities, i.e. the Works Council veto power (Article 94) and the Company's refusal to implement the recommendations of the Working Party. The underlying trend of opinion was movement towards a straight performance appraisal system and away from job evaluation. The motive expressed centred on the minimal chance of persuading the management to agree to the necessity of job evaluation, particularly considering the salary disparities known to exist, whereas performance appraisal might be acceptable as a resonably scientific attempt at placating unrest amongst employees concerning promotion criteria. I reminded the Working Party of the real issue at stake, i.e. the need for career structure, but there remained an unwillingness to take on the management - perhaps understandable from those who were not Works Council members and those not wishing to be seen to be too closely associated with such a body. The Working Party met twice in December 1980, once in January 1981, once in March 1981 and twice in April 1981.

At the May 1981 meeting the Working Party were made aware, by a dissatisfied member of a Department, that his Department was already operating a form of appraisal limited to the mid-year salary adjustment with a format that was open to abuse. The Works Council agreed to make a formal objection to the Company in June 1981. The Department concerned refused to discuss the matter with the Works Council on an informal basis earlier that month; the Works Council objection was based on the system not being offered to the Works Council for approval or comment in accordance with what the Works Council understood Article 94 to mean. The Personnel Manager apologised to the Works Council in September 1981, for the existence of the illegal appraisal - system. Under normal circumstances, the Works Council may have been worried about driving a wedge between themselves and one group of employees. There comes a time, however, when a minority has to be reminded that the interests of all are paramount.

Article 94 (Questionnaire and Employment Criteria)

(1) Staff questionnaires require the approval of the Works Council. If no agreement between Company and Works Council is reached on their content, the matter is decided by a conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the Works Council.

(2) Sub-section (1) applies mutatis mutandis, to any personal data contained in written employment contracts that are generally used in the establishment and to the formulation of general employment criteria.

At the May 1981 Working Party meeting it was agreed that the investigation of performance appraisal would be helped by a comparison of other Companies systems in Germany. Previous meetings whilst useful for exploring each individual Working Party member's views and ideas, were not making identifiable progress. The Companies chosen were Phillip Morris GmbH (tobacco industry), Hoechst GmbH (chemicals), IBM GmbH (computers), Deutsche Airbus GmbH (aircraft) and Airbus Industrie (aircraft). The choice allowed a view of comparable product Companies, comparable Company Organisations, Companies in Bavaria and Companies with high and low trade union membership.

Each Working Party member spent the next four months reviewing the chosen Companies' systems from documentation obtained from the respective Company's Works Council.

The Working Party met in November 1981 and January 1982 to produce a system. After a great deal of discussion within the Working Party an agreement was reached. Covering principles and recommended practice; the agreement is summarised in the following eleven paragraphs.

Principles of Appraisal

a) the appraisal takes the form of a discussion between employee and superior,

b) the appraisal is documented on an agreed format,

c) an action plan for the future is mutually agreed.

The specific aims were agreed:-

Performance Improvement

- to assess/improve the individual's effectiveness in task areas;

- to provide a record of any special circumstances that affect an individual's work;

- to compare the individual with others doing similar work, or to compare the performance of different departments;

- to provide a way (e.g. interview and record) for arriving at a commitment for action on either side to improve an individual's performance.

Manpower and Career Planning

- to provide information about possible transfers;

- to provide information about possible promotions;

- to provide information on the whereabouts of particular talents;

- to provide information about individual career aspirations.

Training

- to provide an action document for current training needs;

- to provide an action document for development training;

- to provide a vehicle for planning coaching and counselling activities.

Promoting Good Human Relations

- to provide a feedback of the Company's view of an individual's performance;

- to provide a feedback of the individual's view of the requirements;

- to provide a vehicle for discussing an individual's future;

- to encourage two-way discussions between manager and sub-ordinate on whatever subject either wishes to discuss;

- to show that the Company is concerned about people.

Personnel Administration

- to assist in the processes involved in salary and bonus decision;

- to provide a check and feedback on selection and training procedures;

- to provide ideas for improving the Company's organisation.

The Working Party agreed that role of the appraisal interview was of paramount importance as the main purpose of appraisal is to improve an individual's performance in the present job. The appriaisal interview is the key to the success of the scheme.

Improved performance is going to come primarily from changes the employee makes in his or her own behaviour, and such changes are only likely if and when the employee has been convinced that they are desirable. Discussion of performance, therefore, must take place in a face-to-face situation between manager and sub-ordinate. The appraisal form acts as a checklist for the exchange. Both parties will have the opportunity to speak freely, in order to examine the past and to plan for the future. The appraiser must conduct the interview in a way that is seen to be fair, and use his or her skills to influence the employee to want to improve.

The aim of the appraisal is not to present a criticism on the grounds of a discovered weakness. It is rather to encourage discussion by the employee on any weakness. Appraisers should:

- ensure that no employee feels that an admission of a weakness will be held against him or her;

- ensure that the links between job performance and reward, if any, are clearly understood.

The Working Party agreed that criticism improves performance only when:

- it is given with genuine liking for the other person;

- it is related to specific instances;

- the appraisee trusts and respects the appraiser.

The Working Party agreed that improved performances result when:

- goal setting, rather than active criticism is used;

- the goals are specific, jointly set, and resonable;

- the manager is regarded as helpful, facilitating, receptive to ideas and able to plan;

- the evaluation of performance is initiated by the employee, and as a prelude to further goal-setting rather than active criticism.

The Working Party agreed that the contents of the system should be communicated to all employees.

The agreements have been summarised to demonstrate the considerable progress made by the Working Party, although from a personal viewpoint the task had taken twenty-five months (December 1979 to January 1982 inclusive) and twenty meetings to achieve a compromise. My specific aim had clearly not been achieved as I was unable to persuade the Working Party to agree to the original job evaluation scheme. In reality, what had been achieved was only a formal but standardised method of ensuring employees had a visible means of recording what the legislation already allowed employees to demand (Article 82 provides the employees with the right to an evaluation of their professional development by the Company - the method is not defined in the Article).

I was unable to secure Working Party agreement to a neutral element in an appeals procedure should the employee disagree with his appraisal results; similarly, no agreements could be reached on the principle of an appeals procedure on the need for revised job descriptions before the appraisal system was introduced. The content of the appraisal form caused considerable argument at the January 1982 Working Party meeting. I was alone in requesting the facility of employee signature but chose not to use the Work Council power of veto (Article 94) because I considered that the overall appraisal system was the best compromise the Works Council was likely to achieve; the compromise was a format shown at Figure 2. The appraisal system was circulated to the Works Council and the Managing Director early January 1982. My Works Council colleagues agreed that the system was the best compromise but the Works Council at a late January 1982 meeting considered their involvement in the appraisal was necessary to ensure fairness and respectability.

The Working Party Personnel representative considered they (Personnel) were the neutral element and Works Council should only become involved in the course of events if an irreconcilable dispute arose between an employee and his superior. The Works Council considered Works Council involvement was necessary to prevent such disputes but would only participate in the appraisal if the employee wanted Works Council presence from the beginning. The debate on the neutral element became the excuse needed by the new Managing Director appointed September 81 (the Working Party was authorised by his predecessor) to stall on the introduction of the system. The Managing Director was not as open to suggestion as his predecessor. Bearing in mind the Works Council could not force introduction and had co-determination rights only when the Company wished to introduce a system, the Works Council could do nothing to expedite the situation. At Works Council meetings in March and April 1982 with the Company, the Company advised that the proposal was still under consideration. I persuaded the Works Council at a May 1982 Works Council meeting that the neutral element demand should be reconsidered. In addition, the Working Party had carried out its task in a timescale parallel to the events identified in Chapter 4, i.e. alleged discrimination. I felt that the relationship between the Company and Works Council which had deteriorated because of the discrimination issue and with the arrival of a new Managing Director, was incapable of producing an agreement on the neutral element of the appraisal system. I argued therefore that employees who were unhappy with results of appraisal were protected by legislation covering grievances (see Chapter 6) and could always seek Works Council assistance in disagreements with the Company; similarly all Works Council/Company agreements could be cancelled by three months notice (Article 77) and if the Works Council were not satisfied with the manner in which appraisal was being operated, the Works Council using Article 77 could withdraw consent. The Works Council voted on the issue; my argument was narrowly accepted (seven member Works Council

voting 4 to 3 in favour of accepting the system as formulated by the Working Party). The Company were advised by the Works Council in May 1982 that the Works Council were satisfied with the proposed appraisal system and the Company agreed to implementation for the next financial year.

The Chapter demonstrates that the phase 2 Works Council were prepared to take constructive iniatiatives on behalf of the employees and, indeed, that it considered would be in the best interests of the Company. Whilst such iniatiatives are permitted by legislation, it is clear that the Works Council were prevented by the legislation from imposing its views on the Company ie. Article 87 sub-section 1 paragraph 10 gives the Works Council the right of co-determination only if the Company is prepared to accept the need for implementing an iniatiative. Given that the iniatiative had taken over two years to achieve the status of an agreement, the Chapter also demonstrates the Works Councils perseverence with a Company who appeared to be very reluctant to accept a Works Council that was prepared to take iniatiatives. The 1972 legislation which introduced co-determination (1952 legislation did not cover it) and the 1976 legislation which extended the rights of co-determination, have not basically changed Company's attitudes towards employee initatiatives through co-determination (17). Company strategy remain one of opposing co-determination on the basis of it being a basic handicap for entrepreneurial policy (18).

Figure 2

Evaluation of Employee Work Performance

Name	Christian name	Employer	Born
Payroll no	Dept	Classification	
Periodic evaluation 0	Other reasons 0	Transfer 0	Reason 0

Scale to be used for evaluation:

Does not fulil expectations 1. Fulfils expectation only partially 2.
Fulfils expectations 3. Exceeds expectations 4. Far exceed expectations 5.

Evaluation Criteris	1	2	3	4	5
A. On the Job					
Qualitative work performance.					
Quantitative work performance.					
Work planning capability.					
Behaviour under stress.					
Reliability.					
B. Qualifications					
Practical knowledge.					
Theoretical Knowledge.					
Ability to analyse/evaluate problems.					
Adaptability.					
Prepared to take initiative.					
Prepared to take responsiblity.					
C. General Behaviour					
Discipline.					
Relations with colleagues.					
Relations with superiors.					
Relations with third party.					
Ability to integrate in a team.					
D. Management Performance (only for Management personnel)					
Planning and organisation.					
Prepared to make decision and take responsiblity.					
Capability to motivate and lead personnel.					
Prepared to delegate tasks and responsibilities.					
Prepared to co-operate with other Departments.					

NOTES:

1. Peltzer/Boer, op.cit., pp 182, 183, 184, 185, 186, 187 and 188.

2. W.H.Taylor Social Affairs Directorate CBI 4th March 1981.

3. A.Jago Courses Department IPM 16th December 1980

4. P.Jackson C.M.T.C. 3rd December 1980

5. M.Walsh International Department TUC 19th February 1981

6. Dr.Linder/Burmeister Geschaftsfuhrung B.D.A. 24th February 1981

7. Liesegang D.A.G. Landesverband Bayern 20th February 1981

8. R.Dombre Tarif Policy Department D.G.B. 15th May 1981

9. E.Handley Industrial Relations Department F.U.E. 10th April 1981

10. T.Wall Advisory Service I.C.T.U. 2nd April 1981

11. J.W.A.Coelewij V.N.O. 13th March 1981

12. J.Varkevisser F.N.V. 29th April 1981

13. J.Castegnaro President C.G.T. and O.G.B.L. 9th March 1981

14. K.Holm/O.Simonsen D.E.C. 22nd April 1981

15. P.Carlsen International Department L.O.I.D. 20th February 1981

16. D.Mirone Industrial Relations Director C.G.I.T. 19th March 1981

17. Furstenberg F. op. cit., pp 30

18. ibid pp 31

Chapter 6

The Works Councils Role in Dealing with Grievances.

Over fifty percent of Works Council time was spent on nine separate areas of the legislation.

The 1972 LMRA contains 132 Articles of which 24 are not relevant to this study, e.g. maritime regulations. Of the 108 relevant Articles only 48 were discussed during the Phase 2 Works Councils: this resulted in 924 Works Council discussions at 176 meetings over the 30 month period of the study. Nine of the Articles represented 52.4% of all Works Council discussions:-

Article	Description	Percentage of all Discussions	No. of Discussions
87	Co-determination	8.8	82
75	Discrimination	8.1	75
99	Hirings	6.8	63
77	Company/Works Council Agreements	6.2	58
85	Grievances	5.5	51
28	Committees	4.5	42
94	Job Evaluation/ Performance Appraisal	4.3	40
40	Works Council Costs	4.2	39
74	Meetings with the Company	4.0	37

52.4

Two of the areas, namely alleged discrimination and job evaluation/performance appraisal have been discussed in Chapters 4 and 5 respectively. A third is employee grievances.

The relevant Articles of the legislation are:-

84.

Right to make complaints

1) Every employee is entitled to make a complaint to the competent authorities in the establishment if he feels that he has been discriminated against or treated unfairly or otherwise put at a disadvantage by the employer or by other employees of the establishment. He may call on a member of the Works Council for assistance or mediation.

2) The employer shall inform the employee on how his complaint will be dealt with and, if he considers the complaint justified, remedy his grievance.

3) The employee shall not suffer any prejudice as a result of having made a complaint.

85.

Works Council's role in dealing with grievances

1) The Works Council shall hear employees' grievances and, if they appear justified, induce the employer to remedy them.

2) If there are any differences of opinion between the Works Council and the employer as to whether the complaint is well-founded, the Works Council may appeal to a conciliation committee. The award of a conciliation committee shall take the place of an agreement between the employer and the Works Council.

3) The employer shall inform the Works Council how the grievance is to be resolved. The foregoing shall be without prejudice to Article 84 (2).

The data of this Chapter was taken from my personal diary of events and it should be noted that all grievances were raised orally by employees to the Works Council.

Employee grievances were categorized into four distinct areas: salary, expense claims, personality clashes and miscellaneous; the area of discrimination by virtue of origin has been dealt with separately under Article 75 (Chapter 4). Whilst many of the grievances impinged on other provisions of the legislation, they were raised as items to be considered by the Works Council under this specific Article. The following case studies serve to demonstrate the employees' problems, the Works Council's role in assisting to resolve such problems, and the Works Council's role as a Welfare Agency. The case studies were to some extent trivial in content but

nevertheless were typical of the problems brought to the attention of the Works Council. The Works Council continued its practise highlighted in previous Chapters, of seeking advice from other Works Councils in the region where it felt more experience of the grievance legislation may have been gained.

The cases demonstrate a variety of problems brought to the attention of the Works Council. The role of the Works Council, in my view, was not only to adhere to the legislation but to seek solutions as quickly as possible. As this Chapter indicates, the Works Council took its role very seriously and sought solutions whenever possible within two weeks of a complaint being made - earlier if feasible. Some solutions were taken out of the Works Council's hands by the Company who were clearly capable of resolving employee complaints without Works Council assistance, e.g. the de facto trainer and early retirement employee (Category 1 - Case C, and Category 3 - Case B, respectively).

I considered, however, that in many cases the Works Council were used as a Welfare Agency and employees did not do enough to help themselves; equally, some of the cases should have been handled by a sympathetic Personnel Department. This was not a view shared by my Works Council colleagues, notably the Germans, as they considered employee welfare to be a major Works Council reponsibility. I did not dispute this but I warned them on several occasions, in 1980 and 1981, that Works Councils were in danger of being neutralised by the Company, who were obviously content to see us handling these cases thus keeping Works Council attention away from potentially more serious matters, for example, alleged discrimination (Chapter 4). As indicated in previous Chapters from time to time, the Works Council sought advice from other Works Councils in the region. This Chapter was no exception

see for instance Category 3 - Case B, and whenever other Works Councils were consulted, they generally agreed with the methods employed in seeking solutions to grievances but considered with their number of employees (in some cases up to 8,000) they would not have been as willing to become involved. Their Company's often had substantial trade union membership and had formal grievance procedures to be used prior to Works Council involvement.

As no stage was there any trade union involvement in grievances handled by the Works Councils of which I was a member. This was possibly due to a low trade union membership (see Chapter 3) and I cannot recall any agrieved employee requesting trade union representation or advice. Given the Company's employee size (Chapter 3) the Phase 2 Works Council considered a formal grievance procedure was unnecessary when the matter was discussed at the inaugeral December 1979 meeting.

Category 1 - Salary

Case A (August 1980)

An employee received zero increase in salary at mid-year review. His Supervisor allegedly stated this was solely because the Personnel Manager would not allow it.

There were two elements here; firstly, the need to educate the employee that mid-year salary reviews are based on performance and, as such, are not an automatic right; secondly, the alleged statement by the Supervisor. The Works Council discussed the situation immediately with the employee during which the first element was introduced and understood. Next an informal approach one week later to the Supervisor, who initially denied the alleged statement.

The Works Council then arranged for employee, Supervisor and Works Council representative to meet three days later. At the meeting the Supervisor retracted his denial but insisted that if the matter was taken formally to the Personnel Manager, the denial would be reinstated. The Supervisor further stated that the employee's performance had been satisfactory (note, not above average warranting financial recognition). The Works Council discussed the grievance with the Personnel Manager on a one-on-one basis the following day and he confirmed that he did monitor the Supervisor's evaluation and had concluded from regular dealings with the employee concerned that his (the employee's) professional performance was not above average; the Personnel Manager had then approached the Supervisor concerned who had agreed and withdrawn the recommendation for salary increase. The Supervisor confirmed the Personnel Manager's story to the Works Council and said it had a strong element of truth, but emphasized that he felt he had been intimidated into agreement. The series of events was related to the employee the next day and he was requested to consider whether he wanted to take the matter further, for example, a meeting between all concerned. The employee withdrew his complaint at that stage on the basis that he did not wish to prolong the agony, neither did he wish to be seen as a rebel in the eyes of the Personnel Manager. Advice from other Works Councils in the region revealed that they would have dropped the grievance after the Personnel Manager confirmed he had agreed with the Supervisor, not to give the employee a salary increase on the basis that, the Personnel Manager was technically correct otherwise he would not have even discussed the matter with the Works Council.

Case B (July 1980)

An employee was promoted with zero salary increase with a verbal promise of a salary review after six months; after nine months no salary increase had been forthcoming.

The elements herewere the verbal promise and proof thereof, the employee's performance during the six month period, and the general morality of the situation. Firstly, the employee could not prove the promise was made and revealed that it was a conversation between himself and his Supervisor prior to his formal promotion offer. Secondly, the employee had not sought, or been subject to, formal reviews of his progress during the period since promotion; he had assumed no news was good news. The Works Council decided the immediate approach should be directly to the Personnel Manager who, in turn, agreed to investigate. He reported two days later to the Works Council that having investigated the matter the employee had not been promised anything in writing, or to his knowledge, therefore the promise did not exist. In terms of the employee's performance, Personnel considered that he had met the standards required - just, and the reason for zero salary increase at promotion was that he was overpaid in his previous position within the Company. There was a general recognition by Personnel of mistakes made in the past, particularly not having appraised the employee's performance on a regular basis (see also chapter 5). The Works Council pointed out that whatever the rights and wrongs of the situation, an individual employee would now doubtless be bearing a grudge and when the story emerged on the "grapevine" at it inevitably would, general morale would dip and mistrust develop. The Personnel Manager further agreed to include in discussion the dangers of such situations whenever he had contact with Supervision in hiring and/or promotion. The employee was informed one day later by the Works

Council and decided to take no further action. Advice from other Works Councils in the region was to have advised the employee not to have pursued the matter as soon as it became apparent that the employee could not prove any promises had been made. As a general policy, the Works Council took upon itself to reinforce to employees the statement, most notably at General Assemblies, that if it is not in writing it does not exist when it comes to personal employment contracts.

Case C (May 1980)

An employee took on the de facto role of trainer of new employees on a section and complained to the Works Council that there was no financial reward for the training role but felt unable to refuse to carry out the task.

The Works Council sought an immediate informal discussion with the employee and his Supervisor at which the employee's problem was examined. The Supervisor took a sympathetic view and wished to take up the question of financial reward with the Personnel Manager, and requested Works Council support should it become nessary. The Works Council mentioned the case during an ad hoc meeting with the Company two days later, and the Personnel Manager agreed to investigate. Within one week the employee advised the Works Council that a substantial cash payment had been offered as a one-off arrangement and was happy to accept. The Works Council pointed out that if the training role was to continue, perhaps a salary increase would have been more appropriate. The employee refused to consider further action(s) and insisted that the Works Council ceased activity on the case. Informal discussion with the employee four weeks later at a social occasion revealed that part of the agreement with the Company, in return for the one-off payment, was to ensure Works Council took no further action; the employee also stated if that part of the

arrangement became public, the revelation would be denied. No further action obviously possible.

Case D (May 1981)

A Group of employees approached the Works Council and insisted that their salaries were low in comparison to other comparable empolyees within the Company; they requested the Works Council to confirm that the salaries were low and assist in rectifying the situation.

A delicate problem for the Works Council was that it was feasible to compare salaries (available from a salary list issued quarterly to it by the Company) but they were unable to provide detailed information concerning a more representative salary to an employee without disclosing confidential information concerning salaries. Equally, on reviewing individual qualifications, experience and type of task being performed, it was easy to see why there was a disparity between the employees who raised the grievance. The Works Council recommended to these employees that they took their grievance initially to their Supervision and, in the event that they did not achieve satisfaction, request Works Council presence at a meeting with the Personnel Manager. The employees accepted our recommendation made within two days of the complaint. In parallel, as the employees worked in an area of the Company with a high staff turnover (25% compared to the Company average of 4%), the Works Council mentioned the possiblity of low morale and general dissatisfaction in the area to the Personnel Manager at an ad hoc meeting called that week by the Works Council on another subject.

The group of employees were interviewed over a three day period individually and separately by both their Supervision and the Personnel Manager; this resulted in all but one employee dropping their claims and immediately withdrawing their requests for Works Council involvement - no reason being given. The remaining employee, insisted on another meeting with the Personnel Manager with Works Council presence. Whilst arrangement were being made for such a meeting, the employee withdrew the request and would not give a reason. Clearly, the Works Council could take no further action(s) other than continue monitoring salaries; remarkably, the group of employees all received token salary increases at the next mid-year review and one of them (the last to withdraw the claim) was promoted some time later.

Category 2 - Expenses

Case A (February 1980)

An Employee on Company business was delayed at an International airport by runway closure, due to an aircraft accident, and claimed expenses based on a 15 hour day rather then the 12 hour day scheduled. The expense claim was refused in total.

The difficulty lay in the regulations governing any Company's ability to have travel expenses set against tax. The Company could have paid the employee's claim in full but the tax authorities would only allow, in this case, the 12 hour claim against tax; many Company contracts did have some clauses imposed in them by Customers, insisting that claims for travel and subsistence levied against the contract would not exceed the maximum permitted tax deductible amounts; another definition is that claims over and above such amounts were to be paid out of the Company's operating budget or profit.

The Company therefore was somewhat sensitive to expense claims above the norm. The circumstances of the claim, however, were different and the Works Council considered that the Company should have been more sympathetic.

The Works Council approached the Accounts Department to verify that the reasons for the rejection of the claim was solely based on regulations rather than personalities. It was confirmed that regulations were the issue. The Personnel Manager was remarkably understanding when the Works Council raised the matter with him a day later and, subject to proof of delayed flights, agreed to intervene on the employee's behalf without prejudice to any future situation. The proof was forthcoming as was settlement of the expense claim. The employee in this case demonstrated a somewhat typical attitude of seeking Works Council assistance without exhausting available avenues.

Case B (June 1980)

An employee from a partner enterprise Company returned to his former place of residence, at Company expense, as agreed in his Contract of Employment on an annual basis; the expense claim submitted was rejected because of the route used.

The Works Council established with the employee at the time the complaint was raised that the total expense claim met the guideline of not exceeding the cost of airfares when travelling by private car. The employee insisted that the route was known in advance to his Supervisor and had in fact, reduced the mileage travelled by virtue of the car ferry route, which had eliminated the necessity for an overnight stop en route and was approximately equal to previous year's claims. The employees was, however, unable to obtain his Supervision's support in arguing his case and on that basis had sought Works Council assistance.

The calculations geographically proved the employee's case, although a glance at the physical map of Europe without knowledge of motoways, ferry routes etc., would have supported an initial rejection of the claim. The Personnel Manager was immediately approached by the Works Council. His attitude centred on approval in advance of the route used and rapidly became a matter of principle with him. It took four more meetings over two weeks between the Personnel Manager and the Works Council before he agreed that the issue at stake was financial and not a matter of principle. Finally, he accepted the calculations showing comparative routes and circumstances, versus the overall cost had the claim been based on airfares. Initially, I had considered the situation to be another case of an employee not exhausting available avenues prior to Works Council involvement. On reflection, the employee would not have succeeded had he not sought the assistance of the Works Council.

Case C (September 1980)

An employee claimed expenses for a business trip which were rejected on the basis that the trip was an errand. Problem was when was a business trip an errand and vice-versa?

Essentially, an errand was defined as a visit to an establishement within the area covered by the city telephone directory; outside that area of 30 kilometres it was a business trip and, therefore, subject to daily subsistence rates. The errand in this case was a visit that lasted a full working day and, as such, the employee incurred expenses such as lunch for which he was not entitled to reimbursement under the Company's area definition. The definition was in the Company's favour but the Works Council approached them on a common sense basis, two days after the complaint had been made by the

employee but without success. No further progress was made in this matter despite various Works Council protests and procrastinations at three meetings held in the following month; the case was cited at the General Assembly held during November 1980, as a warning to all employees. The warning was apparently successful in that no further incidents occurred. The Works Council did, one month after the General Assembly, attempt to re-define the area regulation, for an errand, to a radius of 10 kilometres from the Company's location in a memorandum to the Company. The Company formally refused the Works Council request within a week without giving a satisfactory explanation.

Category 3 - Personality Clashes

Case A (February 1980)

An older employee allegedly made statements verging on the libel against a much younger employee who sought Works Council assistance and advice.

The two employees worked in the same department and had contact only in that the mail distribution point was located in the older employee's office. The statements began essentially on the topic of personal relationships outside office hours and the general differences in views of life that exist between two generations. The situation had deteriorated into verbal abuse by both sides culminating in the older employee seeking legal advice and the younger employee's complaint to the Works Council. It was immediately established by the Works Council that employee's Supervision were aware of the clashes but had not sought to relieve the tensions by, at the very least, discussing the situation with both employees. The Works Council pursued such an approach but Supervision and Personnel showed a great reluctance to become

involved. Peace in the Works (Article 2) did not seem to matter. A week later, the Personnel Manager made it very clear at a meeting with the Works Council that he felt it was a Supervision task to solve the problem and certainly not his or the Works Council's. On four separate occasions in the next two weeks, the Works Council tried to arrange a meeting with all relevant parties, without success. As a last resort, the Works Council pursuaded the Supervision in the third week to change the mail location point and collection arrangement which resulted in zero contact betwen the two employees. This considerably reduced the tensions and litigation threats subsided some eight weeks later; eventually, the younger employee left the Company in May 1980. The reason for leaving was given as career advancement rather than the personality problem. This was a pity because it was generally considered by the Works Council that the employee was a above-average performer and had made a good contribution to the efficiency of the Company.

Case B (May 1980)

An older employee made a request to the Works Council to hold a referendum on the removal of the Personnel Manager from the Company.

This verbal request followed the hiring of another employee, subsequently made responsible to the older employee who consequently discovered the new employee was earning approximately twenty percent more in salary. It was well known that the older employee and the Personnel Manager did not like each other and that several stong verbal exchanges had occurred between them over the previous year on various matters.

Having calmed the irate older employee, the Works Council investigated his claim that his subordinate's salary exceeded his own. His claim proved to be well-founded, although the salary was commensurate with the new employee's experience and qualifications; the older employee had little or no academic qualifications but considerable relevant experience and, indeed, was rapidly approaching retirement age.

The Works Council sought advice from other Works Councils in the region about the requested referendum. Their advice was that such a referendum had no legal basis and if it were to be held the Company would be able to seek the Labour Court removal of the Works Council on the bais of being unable to work further with those elected (Article 2); they also pointed out that this could be exactly what the Company was seeking in view of the Article 75 situation (alleged discrimination covered in Chapter 4). Further discussion took place between the older employee and the Works Council one week later, at which the Works Council advised that it was possible the Company had taken on the new employee with a view to replacing the older employee when he retired; the older employee recognized the possiblity and was so incensed at the possible repercussions of a referendum explained to him by the Works Council, that he withdrew his request on the basis of not wishing to be associated with such repercussions. At a June 1980 ad hoc meeting between the Works Council and the Personnel Manager, the retirement situation was discussed. The Personnel Mamager followed up the discussion a day later with the older employee and, although tensions eased a little, the situation was a long way short of being acceptable; shortly afterwards (August 1980) the older employee was offered and accepted, without seeking Works Council advice, early retirement arrangements.

Case C (June 1980)

An employee left the Company. His de facto deputy appeared to be the natural successor. The Company appointed a replacement from the external labour market at a higher salary than the leaver. The passed-over employee complained to the Works Council about the situation and said the Personnel Manager had stopped him getting the job.

The Company's selection procedure (Article 99 covers actual hiring) was not part of the co-determination rights of the Works Council (Article 87) but the Works Council could, and did, insist that internal applications received full and fair consideration for any vacant post (Article 93). At the time of the hiring, in May 1980, the Works Council had strongly opposed the outside applicant when there seemed to be a better choice available internally. The information provided to the Works Council at that time demonstrated that the internal applicant could not match the Company's choice in experience and/or qualification (although he clearly had the edge in knowledge of the Company and the system), and that the internal applicant had received serious consideration including a formal interview. The Works Council had confirmed with the internal applicant that he had, indeed, received an interview and was satisfied with the way matters were proceeding. Clearly, the situation had turned sour when he was informed that his application was unsuccessful.

The employee was advised by the Works Council two days after his complaint that in their view he had received fair consideration and, without revealing details, explained that there were significant differences between himself and the appointee, favouring the appointee. He agreed he had not been led to believe he would be successful in his application but considered the

Works Council had let him down badly. No amount of discussion could shake him from such an illogical view. It was also apparent from the discussion that he had no foundation for his allegation concerning the Personnel Manager. The Works Council offered to attend a meeting between employee and Personnel Manager to clarify their respective attitudes but the employee refused, accusing the Works Council of being pro-management. Clearly one voter lost forever.

Case D (June 1981)

A non-white employee alleged that colleagues of the Department concerned showed discrimination in attitude. There were only two non-white employees in the Company.

Investigation by the Works Council informally revealed that there was indeed a problem but centred around two employees. The non-white's work output and general performance met the required standard. The colleague concerned could best be described as a domineering workaholic who consistently produced an extremely high work rate. The colleague was irritated by the non-white's inability and perhaps unwillingness to match her high work rate; this irritation was shown predominantly in a lack of patience with the non-white's difficulty in speaking German fluently particularly in social conversations. Our workaholic colleague was known to have particular respect for one Works Councillor, professionally and socially, so his influence was used in a one-on-one informal discussion a week later to defuse the situation. The two colleagues were then brought together by the Works Council. The invitation was extended to the employee's Supervisor but he declined to attend. The problem was solved with both parties agreeing to show a little more tolerance of each other. Supervision's lack of interest in the case was

essentially due to the autocratic nature of the Supervisor and clear dislike of Works Council involvement in his area. Having advised the Personnel Manager the day after the meeting, as a matter of courtesy, the opportunity was taken by the Works Council to urge some form of management training for the Supervisor in people management. The Personnel Manager agreed to discuss the matter with the Supervisor. No further action necessary on the part of the Works Council.

Case E (November 1981)

A Supervisor was made responsible to another Supervisor of the same rank on the basis that he had not shown the managerial qualities required and his professional knowledge left a great deal to be desired. The Supervisor alleged that he had been denied training opportunities by the Head of Department with whom there existed a clash of personalities.

The Works Council immediately sought the Personnel Manager's views on the situation and his view was generally supportive of the Supervisor's effective demotion based on the Departmental Head's assessment; he was, however, suprised to learn that the Supervisor had been seeking training opportunities and agreed to investigate. A week later, the Personnel Manager confirmed to the Works Council that there had not been any training requests. The Works Council immediately established with the Supervisor that such requests had only been made orally but had been specific and detailed. His Head of Department had turned down the requests initially on the basis that the courses were not relevant. From this situation had developed a clash of personalities which had stretched over a period of two years with somewhat disastrous results. All parties were brough together by the Works Council in December 1981 for a full and frank discussion, and there were lessons to be

learned by both Supervisor and Departmental Head. The Supervisor remained sceptical about the Departmental Head's motives but accepted that he had not helped himself in the problem. From the Works Council's point of view, it was another case of if it was not in writing, it did not exist. The workplace solution acceptable to all, was for the Supervisor to operate as a one man team, using the opportunity to attend relevant technical and managerial training courses, and review his progress over the following year at regular intervals. The Works Council and Personnel continued to monitor the situation at monthly intervals ensuring that the Supervisor remained happy with his progress. No further problem occured.

Category 4 - Miscellaneous

Case A (October 1980)

Vandalism in the car park resulted in damage to several employees' vehicles and they requested Works Council assistance to obtain compensation from the Company.

The car park was owned by a local Company who administeredthe industrial estate on which our Company was located. Our Company negotiated terms annually for the employees and contributed fifty percent of the monthly rental cost; the rental agreements were, however, between the individual and the industrial estate administration. Any complaints therefore must be taken up by the individual and not against our Company. The Works Council did, however, obtain agreement with Personnel within one week to formally protest about car park security arrangements. The small print in the rental contracts contained a disclaimer clause, and the employees thus withdrew their request for Works Council intervention in November 1980.

Case B (February 1980)

Two employees from the UK requested Works Council assistance to establish with the Company why arrangements for evacuation were not available in the event of a Soviet invasion of West Germany.

Clearly, one of the more usual requests. The Company's view was that whilst they were obligated to be socially responsible towards their employees, evacuation in the case of any invasion was beyond any bounds of reasonableness. The Works Council recognized this prior to requesting the Company to comment but it was considered worthy of at least asking the question. Concerned employees were advised by the Works Council to contact the British Consulate.

Case C (March 1980)

An employee sought Works Council assistance because he was not sure of individual job duties and alleged he could not clarify them with his Supervision.

This was a common problem (some 30% of all grievances) and it soon became apparent to the Works Council that many of such complaints were either unfounded or simply a case of re-writing a job description with the Supervisor's assistance (and Personnel agreement). No serious confrontation occurred between the Works Council and the Company when dealing with this type of complaint which was usually resolved within a week, by the Works Council approaching the relevant Supervisor.

Case D (April 1980)

An employee received written demand from Personnel for the return of interest accumulated on interest free loans.

This situation arose in terms of the Company, on request, would provide an interest free loan to new employees for the purpose of paying a deposit on rented accommodation (see also Chapter 4). The deposit was usually three months rent, held in a bonded account and returnable to the tenant at the end of tenancy assuming no damage had been done to the accommodation.

The Company argued in the written demand that interest accumulated on the account and should be repaid to them, i.e. the loan was interest free to the employee, not the landlord. Morally, a reasonable case if the interest could be extracted from the landlord. Very few people escaped losing some of the deposit and the Company insisted on full repayment of the loan.

The Works Council considered that the loan was payable to the employee; what the employee did with it was his business, especially if the Company would not become involved in disputes with landlords. Similarly, the loan was interest free. Such advice was given by the Works Council to any employees who found themselves in that situation. The Company mishandled this problem very badly indeed and caused considerable irritation amongst employees. Some employees caved in under the moral pressure and repaid interest they may have never received. Others successfully held out. The Works Council orally suggested to Personnel in May 1980 that if the matter was so important, they should request future new employees to sign an agreement that interest accumulated and received by the employee, would be repaid to the Company. This suggestion was put into immediated effect but it did not prevent the

Company from the occasional attempt with longer serving employees whose tenancy had ended or were moving to another area.

Summary

The forgoing cases demonstrated a variety of problems brought to the attention of the Works Council. A detailed analysis of all individual grievances encountered during the thirty month period of study was:-

	Year 1	Year 2	Year 3 (6 months)	total no of grievances	percentage of all grievances
salary	12	9	6	27	25.3
expenses	7	7	4	18	16.8
personality clashes	10	7	7	24	22.4
job duties	13	12	7	32	29.9
other	1	3	2	6	5.6
total	43	38	26	107	100

There is no other study available enabling an analysis of this empirical evidence in order to judge whether it is typical of otherwise of grievances within comparable companies. Informal discussion with members of other Works Councillors in the region revealed that they did not compile statistical data of this nature. I was advised however that from their practical experience over the same period, clarification of job duties was of a similar magnitude; the major grievance in their Companies was that of salary (some sixty percent of all grievances). Clear limitations to my stastical data are that personality clashes may well have been due to the mix of nationalities within

the Company (see chapter 3) and a comparison of trade union involvement in grievances was meaningless because Chapter 3 also demonstrated the Works Council and the trade unionist are one person in 80% of all Company Works Councils excluding the Company in this study.

A meaningful analysis was however that using the manpower figures stated in Chapter 3, only 14% of the Company's employees brought their grievance to the Works Council annually; in Thimm's "The False Promise of Codetermination" pp 163 to 169, an empirical study of the Works Council in Siemens showed that 74% of the employees do not take their grievance to the Works Council (54% of the 74% went to Supervision and the remainder went to colleagues). Thimm also identified in the study what Siemens employees expected of the Works Council ie 43% counsel and information, 36% solving general problems and 10% assistance in dealing with top management. According to Thimm his study showed "the Works Council serves both as a social welfare agency and a tool of worker participation". This Chapter supports Thimm's analysis of the Works Council being a social welfare agency within a Company containing a low percentage of trade union members (over 60% of Siemens employees in Thimm's study did not belong to a trade union).

Chapter 7

Conclusion

Works Councils in West Germany are supposed to function as a connecting link between employees and management thereby serving as a kind of buffer between potentially conflicting spheres of interest. Within the cross-fire, based essentially on legal provisions and not on mutual agreement, the first aim of the Works Council should be to neutralise tensions in order to fulfil its legally prescribed functions. The Works Council must also ensure that it is not distanced from employees by either its own actions or by those of the management. The efficiency of the Works Council is decisively determined by whether it is successful in working within the more or less neutralised marginal spheres of labour-management relations. In attempting to achieve this it is handicapped by several difficulties which take the form of problems of representation, of social integration and solidarity with the interests of all employees. Sometimes employees feel that the Works Council belongs to the management 1. This is particularly underlined by the fact that a Works Council functioning in an orderly way depends to a large extent upon the means of communication provided by the management.

The Works Council, like management, faces the problem of overcoming the social distance between itself and employees (see for example Chapter 3). The only opportunity for contact with large numbers of the employees is during elections and at general assemblies which take place during working hours; since employees are not interested in detailed successes and plans or political problems, the Works Council needs to create two way communication at general assemblies in order to prevent boredom and/or apathy by employees (Chapter 3).

If a Works Council takes the initiative it faces determined resistance from the management (Chapter 5). Management still insists on making main decisions. The Works Council is however unable to enforce basic decisions, since its power is merely constituted by law; the basic organisational structure is missing and the Works Council, though it has the power of negotiation, has not the power to enforce its position through the exercise of sanctions. (Chapter 4). It can be said that from an organisational point of view the Works Council is an appendage of the Company structure and its functioning is dependent upon a successfully functioning management. On the other hand its very existence may foster the peaceful development of industrial relations and this may help the Company become more effective both technically and economically.

If a Works Council wishes to operate successfully with management its relations have to be close; a certain degree of integretation of the Works Council into the Company structure represented by the management appears to be unavoidable. Management attitudes however towards the Works Council differ widely according to personal and background factors. After having overcome its initial reserve and uncertainty towards newly elected members of the Works Council, mamagement usually attempts to utilise their functions for its own purposes and to integrate (or coerce) them into the existing social system of the Company. Management can benefit from the existence of a Works Council if this body helps the personnel department in fulfilling part of its tasks (Chapter 6). In some cases the Works Council activities are even welcomed by management because they save time and money eg. the de facto welfare service often provided by the Works Council. Besides being useful such activity takes up a substantial amount of the Works Council members' time and energy and may hinder them from being active in more crucial areas.

Co-operation becomes more difficult where joint decisions on Company rules and systems have to be made. For example Chapter 5 demonstrates it took more than 22 months of negotiation on a performance appraisal system. This example also demonstrates the bureaucratisation of labour-management relations, which is due to the fact that the negotiations are mostly carried out in a judicial manner (Chapter 4). As management often has a legal advisor quickly available, legalistic interpretations are often taken of Works Council initiatives to make an obstinate Works Council ineffective.

There are areas in which the Works Council can be used as an executive organ of management policy. In order to obtain this type of co-operation, management has to give in to some of the demands which the Works Council may make on behalf of the workforce; some give - and - take was missing from the Works Council - Company relationship in this study. It may be said that the more successfully Works Council co-operate with management, the more they become incorporated into the Company and consequently their policy is influenced by the policy of the Company or even neutralised by the Company.

Certainly there exists in other Works Councils a problem of solidarity between the Works Council and the general policy of the trade union movement 2. Formally a Works Council should be independent of both management and the trade unions. The 1972 LMRA provides that the trade unions have no direct influence on the constitution of the Works Council but in reality trade union membership on Works Councils is high (Chapter 3) although not in this study; trade unions do provide a positive opportunity for the training of Works Council members and are able to provide free legal advice when conflict situations arise between Works Councils and management. Actually, the trade unions are the only organisations which can strengthen the Works Council particularly Works Council negotiating weakness but as in this study, Works Councils are able to operate without the support of the trade unions.

Though Works Councils in West Germany are an effective means of ensuring Workers' participation in management, their scope is definitely limited by the legislation. Similarly, the Works Council is a marginal institution at the crossing point of two interest groups - namely management and employees. Only in a few areas is it possible for these groups to use the Works Council totally for its own purposes. In this study, the Works Council tried to make its own policy according to its real situation and this means that it is more likely to make opportunist policy.

There are only limited opportunities for a Works Council to give employees the feeling of real participation in management; the most promising outlet for Works Council activity lies in influencing the execution of decisions. The lack of opportunity to create Company policy and a lack of comprehensive information from management, may lead to inner conflict within the Works Council as well as with management. In periods of social unrest (perceived or thought to be perceived), the Works Council is less a promoter than a barometer of the stability of the social system of the Company. Nevertheless, Works Councils are able to neutralise not only themselves but general conflict situations. Thimm (1980) argues that the high level of social co-operation between employees, Works Councils and management that prevails in the model co-determination companies, eg. Volkswagen and Siemens, is not typical of Works Council determination throughout West Germany 3. Thimm also concludes that Works Councils representing five hundred employees or less play a negligible role and strong management is able to reduce co-determination to a one way flow of information.

In my view, the Works Council is not in business to protect employees from themselves; if it adopts such a policy it will, regardless of size, become a Thimm statistic. I realise that the welfare role of the Works Council is important but feel that the Company used that role to neutralise the Works Council as much as possible (see Chapter 6). In this study the Works Council was fundamentally a lost cause without strong trade union support - the events of Chapter 4 may well have been different for instance.

Perhaps the success of a Works Council like that of the individual depends, ultimately, on choice. It is not natural in the sense in which legislation is often natural and intended to be progressive.

It is clear however that without the untiring and devoted efforts of West German trade unionists, able to hold their own in debate with politicians and academics of renown, Works Councils never would been brought about. It has to be recognised that there are many difficulties that stand in the way of developing and expanding Works Councils. Simmilar difficulties could be encountered if the concept of the Works Counil were to be attempted in the UK - if nothing else because the concepts were, in the last resort, despite all the theorising, worked out on West German shop floors and board rooms and are backed by years of experience (see also Chapter 2). Works Councils have replaced some of the tension by co-operation and understanding which could help the UK situation. Unfortunately, the significance of the German achievement in the modern industrial age is in my view totally overestimated; the danger for Britain is that if the political parties agree that in many ways the West German past economic prosperity and industrial peace is a demonstration of the theory's success, theory might be transplanted without any real regard for the reality of Britain's industrial relations. Whilst the feasibility of such a transplant would be difficult, it should be stressed

that the system of Works Councils in West Germany is one part of the interdependant institutional framework ie. industrial and rather bureaucratic trade unions involved in fairly centralised pay negotiations, national and regional, and regulated by an elaborate system of labour law in particular; the relationship between Works Councils and Board level representation especially in larger companies is crucial. Thus West German Works Councils should not be seen in isolation either from the other major institutional forms or from the economic context which in turn, has supported an ideological framework that is quite different from that in the UK. Obstacles to transplanting the West German Works Council legislation into Britain would be trade union opposition to judiciary involvement in industrial relations, opposition to anything resembling the Bullock Report or reductions of trade union power such as the so-called "Prior" and "Tebbit" legislation, management beliefs and practices. Works Councils could move away from the collective, single channel of representation used in the UK to a flexible conception of representation. This would be an attraction for certain political parties especially those interested in ending the closed shop and insisting upon ballots; the attraction would be disliked by active trade unionists and would be a most important part of their objection to Works Councils rather than any principled objection to the legislation. Some employers would probably prefer a legally regulated system of Works Councils to current workplace bargaining particularly where unions are strongly organised; many, where unions are weak or non-existent would resist Works Councils as an infringement of their de facto perogative; presumably the longer an economic recession lasts, the second group would become larger.

For Works Councils to succeed in UK, the legislation must include full and real co-determination rights regardless of Company size or strategic importance of the economy; perhaps this is advocating worker control of plants but not as a substitute for democracy.

It is clear that any Works Council in West Germany is faced with the increasing difficulty of distinguishing negotiation from consultation; indeed a special creature is required which does more than consult but less than bargain. In my view, the result is a tension and a paradox. On the one hand, relative inefficiency, stagnation and prolonged alienation are the inevitable accompaniments of the systemised elitism and repression that are necessary to carry out the first order of business; the preservation of power. On the other hand, the system is well designed to be impervious to the consequence of the failures and social demoralization that are built into it.

Based upon my unique experience of Works Councils, I therefore consider that as a system of management accountability they are successful in West Germany; as a basis for employee involvement and participation, they are not totally successful; as a major influence on co-operation and a cause of low levels of conflict, perhaps successful but as economic conditions deteriorate and unemployment rises then it is probable that employees may realise that Works Councils are not the panacea they first thought. To transplant the Works Council system (not Worker Directors etc) into UK might be the labour movement's road to real participation of the 1980s, assuming that the movement faces the reality of their currently weak position in society.

NOTES

1. A view also expressed by Mausolff.A. in "Gewerkschaft und Betriebsrat in Urteil der Arbitnehmer." Darmstadt. 1952.

2. See for instance Furstenberg.F. "Workers Paricipation in Management in the Federal Republic of Germany" I.I.L.S. Geneva. 1978.

3. Thimm A.L. "The False Promise of Co-determination." Lexington. Toronto. 1980.

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