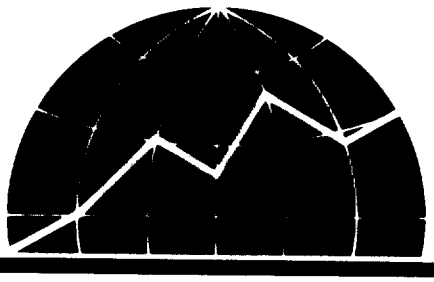
Foreign labor developments



Employee representation on U.S., German boards

Everett M. Kassalow

In recent years, a small number of U.S. companies have accepted employee or union representation on their boards of directors.[1] However, the practice of employee board representation has had a fairly long history in the Federal Republic of Germany, dating back to the end of World War I. Employee board representatives from both countries met in the fall of 1988 for an exchange of recent experiences in "board-sitting."[2] This report compares the employee board representation system in Germany with that of the United States by viewing their structures, relationships with unions, and influences on management.

Structure

Germany. The origins of employee board participation differ greatly between the United States and Germany. In Germany, legislation gives employees the right to name board directors. Three systems exist, varying by size of company or industry, or both.

In the oldest system, employees have parity with stockholders;[3] they nominate the same number of persons to the board as do stockholders. This system covers the coal and steel industry. In the second system found in companies with 2,000 workers or more, employees have "near parity" with stockholders. Although employees in these companies elect as many board representatives as do stockholders, one employee representative must be a managerial employee. Moreover, the chairperson of the board, who casts an extra vote in case of a tie, is de facto chosen by the stockholders.

The third system consists of companies with 500-2000 employees. These employees nominate one-third of the board members; the stockholders choose the remainder. All of the German participants agreed that although the one-third arrangement limits real power for the employees, it provides access to company information which might not otherwise be available to them. However, employee representatives are sometimes kept off of key subcommittees, bypassed for decisions because such decisions had been previously decided informally in stockholders' representatives caucus meetings, and so forth. Still, they are able to bring employee problems to the boards' attention, and in many companies, the other two-thirds do try to reach a consensus with the employee representatives.

This striving for consensus rather than having split votes seems to be a characteristic of all three types of board representation. But except for coal and steel industries where full parity is established, decisions tend to be dominated by stockholders' views, although employee representatives' pressure does have influence, according to the German participants. In recent years, new economic difficulties, competitive pressures, and restructuring of many companies do seem to lead to somewhat more division between employee and stockholder representatives.

Some companies, outside of coal and steel, try to avoid having any national union officials serve on their boards, preferring instead company employees. The German Federation of Trade Unions fears that not having a union official on the board can lead to too much "plant-only" concentrated labor relations patterns. (In Germany, collective agreements were usually negotiated at the industry level, nationally, or regionally, depending on the industry.)

United States. In contrast with the legal foundation supporting employee board membership in Germany, such membership in the United States is very much a product of the recent "concession era" of collective bargaining. A number of companies accept employee board representation, or are pressed by unions to do so, as a tradeoff for concessions made by unions and workers to companies in economic distress.

In some cases, the American employees owe their positions on the board to Employee Stock Ownership Plans under which they could name representatives to the company boards (as well as become stockholders). Without union pressure, it was pointed out, Employee Stock Ownership Plans often do not provide for employee board membership. German participants were surprised to learn how widespread and growing Employee Stock Ownership Plans were in the United States. One U.S. union participant indicated that Employee Stock Ownership Plans had become one of the accepted tools his union was prepared to use when faced with the prospect of plant (or company) closures. Of course, the national union

Everett M. Kassalow is visiting professor of Industrial Relations, University of the District of Columbia. Sylvia D. Kassalow assisted in the preparation of this report.

insisted local unions proceed with caution to plants or companies that were beyond saving.

Generally speaking, U.S. employee representation on boards appears limited to one to three members—a modest minority. An exception would be at Weirton Steel (two of whose board members participated) where employees now own all of the stock (under an Employee Stock Ownership Plan buyout). There is provision for eventual full nomination of the board by employee stockholders. (The company's precarious position at the time of the employees' purchase included provision for board representation for creditors, suppliers, and several outsiders, as well as a minority of union nominees.)

A few U.S. airlines, in which a number of craft unions have collective bargaining representation, have gained board representation in return for economic concessions. In these cases, seats are provided to several unions, or one rotating seat is provided for the unions. On occasion, there have been sharply different positions taken on critical issues by the different unions, and this has weakened their influence.

For the most part, U.S. participants have not found great disadvantages in their relatively small representation on boards. The economic distress of many of the companies involved has led their board members and managers to rely on employee board members to help enlist greater cooperation from all the employees when dealing with such issues as concessions, work rule changes, and so forth. In any event, access to board membership provided large amounts of information, and this in itself was considered an important gain to employee representatives. One union participant noted that in one company, the union negotiated a collective agreement which established many employee/management committees, scattered across several plants. The purpose of these joint committees was to improve the quality of work, productivity, employee involvement, and so forth. However, in his experience, the agreement did not provide as much access to company information and top-level policies as did a board seat.

One U.S. participant, however, stated that he had served on boards in which the company chief officer, who was also chairperson of the board, packed that board with his own appointees (who in turn, always voted with the chair); used board subcommittees to bring matters before the whole board which, in effect, had already been decided; and took other steps as well to isolate the employee board member. But this seemed to be the exception, so far as U.S. employee participants at this meeting were concerned. (The individual who cited that case had more favorable experiences on a couple of other boards on which he was serving as union-appointed employee representative.)

Other differences

In the U.S.board representation system, the chief operating officer of a company is almost always a board member and sometimes, its chairperson. In the German systems, top operating management is clearly separate, having no seat on the board. However, top management must be approved by the board. This seems to allow greater independence for the board.

While no absolutely clear policies had been enunciated by the U.S. Teamsters and the Steelworkers unions (representatives named to boards by both these unions were present), it did appear that these two organizations preferred to name sympathetic "outsiders," rather than active trade unionists to boards of directors. This position is taken to avoid possible confusion of management and union roles, and possibly to avoid any legal problems arising out of charges of collusion or antitrust violation. Still, a couple of current officials of the Steelworkers union are serving on boards of directors. (One such employee director was appointed at the company's insistence, when it was in the throes of some difficult restructuring. In this case, the union-nominated "outside" board members also insisted that the director serve.) However, most unions operating in the airline industry tended to appoint active unionists to board positions, when they had nominating rights.

The question as to the fees employee board directors receive elicited a range of responses. In the German case, a large part of the fees received by unionists are turned over to the German Federation of Trade Union's Böckler Foundation for research and education. In the U.S. case, the situations vary. For example, the "outside" board members receive regular company board member fees, one or two unionists serve without compensation, and so forth.

Relations with unions

Employee board members expressed widely varying views on the kinds of relationships they had with their respective unions. In the German case, the basic local employee organization is the works council. Under German law, every private workplace with five employees or more can elect representatives to serve on a works council. In practice, all larger companies and a great majority of middle-sized companies elect work councils, but a number of very small companies do not. Members of the German Federation of Trade Unions win a large majority of the seats in these elections. They also win a great majority of company board seats in elections among employees.

All of the German participants insisted that their role as board members would not be truly effective without close contact with their counterpart works councils. When questioned about whether there was a possibility of endangering the legal, confidentiality obligation they had as board members, they expressed that the confidentiality issue could be exaggerated. None personally had any experience of being challenged on this issue. Moreover, they indicated that in many cases, the chairperson of the local works councils is usually a member of the company board, with the same access they had to board meetings and information. All board and works council members are, in any event, entitled to participate, with voice, at general stockholder meetings. (Of course, there are some matters in which sensitive information affecting a company's competitive position had to be treated specially.) The German participants in-

sisted that unless their positions and actions were closely linked to what the works councils wanted and understood, their board roles would not have much meaning.

On the U.S. side, participants expressed differences of opinion on the relationship between employee board members and union officials. Some took the position that U.S. law (which seems to be stricter than German law in its insistence that boards are *strictly* responsible for the *interests* of the company's *stockholders*) makes it difficult, if not impossible, to have any substantial contact—such as reporting—with local union officials. They considered their roles as sympathetic but "neutral" outsiders. One such employee argued that if other board members believed he was consulting with the local union, they would isolate him, take him off key committees, and he would lose his influence.

By contrast, two active union officials, serving on boards, said they could not imagine not having an exchange with local union officers (not on the board). The purpose of their bringing employee views to the board dictates this. Of course, when it was "secret" information in which disclosure could hurt the company's competitive position, they were cautious, but generally, they believed they could not serve unless they had close contact with the local union.

One "outside" employee representative maintained it was wrong not to accept the fact that employee representatives serve in some capacity as labor representatives. Without good contact with the local union, he would not be able to serve his purpose, and indeed would not be of any special use to the nonemployee board representatives, let alone to the union. He believed board law in cases like these was evolving, and that it was appropriate to push the matter of confidentiality to the limit. He too, was sensitive to disclosure of anything that might jeopardize the company's competitive position.

In practice, some of the actual experience on these matters cut across these U.S. participants' general philosophical views. Several of the participants' companies were caught up, at one time or another, in takeover or merger situations. Under these circumstances, it was essential for the entire board to have some knowledge of the union's views and reactions (in one instance, the national union and in other cases, the local unions) on these proposals. While these were delicate matters, and disclosure to the public could have been fatal to the proposals, no confidentiality was breached.

In one U.S. company where a major change in bargaining structure practice had become essential in the eyes of the management and the board, the outside "employee" board representative was the intermediary who explored this matter with the national union involved, before any action was taken.

Generally, the U.S. participants tend to stay out of collective bargaining operations, believing that this was not their function as board members. (Of course, with several companies in a precarious economic position, it was sometimes difficult to keep the board and bargaining functions separate.)

Some key areas of influence

It was agreed by participants from both countries that one important value of employee board representatives came from their ability to have a voice and possible influence on such matters as full or partial establishment closures. In one U.S. case, an employee board member was able to persuade a company to keep open a department in an old operation by inducing the company to invest in new technology there, rather than open a new plant elsewhere. In a German case, a company was preparing to close an old operation and the employee board members persuaded it to branch into a new line of manufacture, retrain employees, and maintain employment in the old location.

German participants indicated that they were increasingly pressing companies to provide new employment opportunities for their current employees whose jobs were threatened, and, whenever possible, to offer job opportunities to young persons in the labor market. While German law requires that companies planning to close operations provide a "Sozial Plan" for displaced employees (such plans usually provide for early retirement, retraining, and special severance benefits), employee board members sometimes used their influence to make the benefits of such "Sozial Plans" more expansive. The German Federation of Unions and its affiliated national unions, however, were increasingly pressing for companies to assume responsibility for new *employment* as a better alternative than other benefits when plant closings are planned. This was a fairly recent departure and had not yet shown widespread results.

As part of their concern for employment security, German board members often argued for greater reinvestment of company earnings in new plant and equipment, while stockholders more often argued for greater dividends.

Conclusion

The German participants with their long experience of board representation and codetermination generally believe they are part of an important institution. They believe "codetermination leads to a different kind of capitalism," one more sensitive and responsive to employee needs.

The American participants were careful to point out to their German counterparts that employee board participation is a very new and limited phenomenon in the United States, and one that is confined to relatively few companies, at least as yet. Moreover, there seemed to be no real prospect of legislation that would make such participation a widespread practice as in Germany.

Generally speaking however, the American participants were satisfied their roles had been useful to their companies and to the employees and unions who nominated them. A few of the U.S. participants were confident that management would increasingly see the usefulness of employee board representation to itself as well as to employees. □

Footnotes

[1] In Germany, these are called boards of supervisors or Aufsichstraat; hereafter the U.S. term, "board of directors" is used.

[2] For the U.S. participants, this meeting provided an opportunity to learn more of the German board experience, which is, of course, more

widespread than the U.S. case. Moreover, It also provided an opportunity for Americans, new to the phenomenon of sitting on company boards, to exchange experiences. (In 1988, one national union, the United Steelworkers, did convene a panel meeting of three of the employee board members for whose appointments it was responsible.)

The conference was jointly finance by the German Federation of Trade Union's Hans-Böckler Stiftung of Dusseldorf and the German Marshall Fund of the United States. It was held at Linden Hall (the education and research center of the United Steelworkers of America, just outside of Pittsburgh, PA), September 27–28, 1988. Recruitment of participants on the German side was left to the Böckler Foundation, with Gerhard Leminsky of that Foundation immediately responsible. On the U.S. side, participants were selected by the Carnegie Mellon University's Center for Studies, with Everett M. Kassalow (then on the faculty of CMU) immediately responsible.

Five members of German Federation of Trade Unions affiliated union bodies, with experience on a number of company boards (in a couple of cases, an individual had served on more than one board) were in attendance. Four of them were full-time staff officers of unions. One was an employee-nominated member of the top operating management—*Vorstand*—of a steel company; but he, of course, worked closely with the board of his company.

On the U.S. side, seven employee board members participated. Some of them were full-time union officials, local or national; but there were also several "outside" employee board members at the meetings. These are individuals who are not union officials, but have been nominated to serve on boards by unions, presumably because they are sympathetic to, and have an understanding of workers and union needs. (In one case, the outsider was a former, now retired, union official.)

On the German side, the steel and auto industries were represented, as well as one general holding company with plants in a variety of industries. The U.S. participants came from a general transportation company, as well as the steel and air transport industries.

In advance of the meeting, a brief survey of the German labor system including works councils and board representation systems (taken together these two are often called the codetermination systems of employee representation in Germany) was circulated to the U.S. participants. A short memo on the relevant aspects of the U.S. labor relations system, including a brief account of the recent "rise" of employee board representation, was provided in advance to the Böckler Foundation for circulation to the German participants. A series of possible questions and issues for discussion, as well as a tentative agenda, was prepared and distributed in advance to participants, more as a general guide, rather than as a strict agenda.

[3] The term "shareholders" is used in Germany, while "stockholders" is more common in the United States and will be used throughout this report.

A note on communications

The *Monthly Labor Review* welcomes communications that supplement, challenge, or expand on research published in its pages. To be considered for publication, communications should be factual and analytical, not polemical in tone. Communications should be addressed to the Editor-in-Chief, *Monthly Labor Review*, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC 20212.