Chapter Fourteen

An employer response to workplace democracy: A North American perspective

Greg Patmore

This chapter examines the issue of whether employers can unilaterally initiate schemes of employee representation that genuinely give workers a voice in the governance of the workplace. What are the implications of such schemes for trade unions? Are they a union avoidance strategy and can they be used as a platform for union membership? The chapter argues, through a focus on the history of Employee Representation Plans (ERPs) in the United States of America, that any contemporary efforts to democratise the workplace through schemes such as work councils require legislative intervention and recognition of trade unions as an independent voice of workers' concerns. It is not enough to rely on the goodwill of employers. Their enthusiasm for worker involvement may vary according to the economic climate and the presence of sympathetic individuals in management's ranks.

While ERPs reached their peak in the US during the 1930s, there has been a revival of interest in their fortunes in contemporary debates as US trade union density has declined to 13.5 per cent in 2000 and concerns about the representation of unorganized workers has grown. In 1935, US Congress passed the National Labor Relations Act (NRLA), which through Section 8 (a) (2) banned ERPs. They were viewed as attempts to deny workers the rights to independent representation of their own choosing. The legislation also had the longer-term implication of banning other types of representation, such as European-style works councils.

An argument developed in the 1990s that Section 8 (a) (2) should be reconsidered to allow industrial democracy to thrive, particularly in the non-union sector. The US Commission on the

Future of Worker-Management Relations recommended in December 1994 that while the bans on company unions established by employers for the purpose of frustrating independent labour organisation remain, non-union employee participation programs should not be unlawful. Reformers argued that employee participation programmes could deliver greater productivity and job satisfaction in the unorganised sector. There was a minority report by a labour representative who argued that 'real industrial democracy' was not possible without an independent trade union movement. While the Clinton administration did not act upon the recommendations, a coalition of Republication and conservative Democrats introduced legislation known as the 'TEAM Act', which significantly weakened Section 8 (a) (2) by allowing employees in non-union firms to meet with management to discuss issues of mutual interest. While this legislation was passed by both houses of Congress in 1996, it was vetoed by President Clinton (Department of Labor, 1994, pp. 8-9, 13; Kaufman and Taras, 2000, p. 4).

Several US academics such as David Fairris and Bruce Kaufman have reinforced the majority recommendation of the Commission and drawn heavily upon a historical re-examination of the period prior to the NRLA when ERPs were legal (Fairris, 1995; Kaufman, 2000b). Fairris (p. 524) argued that these schemes 'marked a definite improvement for the worker as well as the firm' in the 1920s by reducing labour turnover, fostering worker loyalty and allowing workers a voice in determining shopfloor conditions. Kaufman (2000b, 55) claimed that ERPs were on 'net, a constructive positive development for improved industrial relations'.

Concepts and issues

While the contemporary re-assessments note the benefits of ERPs for the company and its employees, there were arguments for and against them. The following section reviews some of these arguments and examines the origins and constitution of ERPs.

A major impetus for developing the ERPs was the 'Rockefeller Plan'. This plan involved employees directly electing their own representatives to committees to discuss employment issues without union involvement. The Rockefeller family had a substantial number of shares in the Colorado Fuel and Iron Company (CFI), which owned coalmines and the Pueblo steel plant in Colorado.

J D Rockefeller Jr. (JDR Jr.) developed the plan after a strike at the Company's coalmines. The company established the plan at its mines in October 1915 and at the Pueblo steelworks in 1916. The plan formed the foundation of a movement that spread throughout the US to a range of industries and covered 2,500,000 workers by 1935 (Hogle, 1992, 310; Kaufman, 2000a, 22-29).

The promoters of ERPs viewed them as alternatives to both individual contracts and independent trade unions. The Rockefeller Plan involved workers from a particular mine or workshop electing representatives to a district conference, where they met with senior representatives of the company at least three times a year. The district conferences elected joint committees on employment issues, which consisted of three representatives of the employees and three representatives of the company. The joint committee on industrial co-operation and conciliation dealt with issues such as wages and conditions. There could also be joint committees on safety and accidents, sanitation, health and housing. Workers could appeal to various levels of company management and there was even a provision for appeal to an external court if mediation failed. The company paid for all costs associated with the plan, including reimbursement for the loss of work time by employee representatives. While there was no place for unions in the plan, the original Rockefeller Plan prohibited discrimination against employees on the grounds of union membership (Rockefeller, 1916, p. 22-6).

The supporters of ERPs claimed that they were more effective than trade unions in raising employee grievances and contributing to firm productivity. The plans countered the growing gap between senior management and workers in large-scale enterprises. They provided a communication link through which workers could bring minor grievances to management's attention, and management could make workers realise that improved working standards depended upon reducing overheads and increasing efficiency. Trade unions were 'outside organisations', which were antagonistic to the firm and did not have as their primary interest the good of the company (Hicks, 1941, p. 87-88; Holger and Greiner, 1992, p. 33; Rockefeller, 1916, p. 13-14). Since the membership of ERPs was limited to the firm, one commentator noted that employees developed 'an interest in and a loyalty to that organisation which tend to increase efficiency' (Seager, 1923, p. 5).

The critics of the ERPs argued that they did not provide an independent voice for workers as employers established and managed the plans. The company generally had the right of veto over shop floor initiatives in ERPs. Workers and their representatives were unwilling to raise grievances as they could lose their jobs. The plans generally dealt with minor matters and did not include the general scale of wages. Without trade unions workers were deprived of expert outside advice and sympathetic labour support in putting their case and conducting their negotiations. As the plan only covered a particular plant or company, the workers' knowledge of outside wages and conditions was limited (Douglas, 1921, pp. 91-98; Seager, 1923, pp. 5-11).

Against the background of the debates concerning the value of ERPs for employers and employees and their relationship to trade unions, this paper now examines the US experience. The next section charts the fluctuating fortunes of employee representation from the establishment of the Rockefeller Plan at CFI in 1915 and assesses the impact of the NLRA.

ERPs in the US

While there were earlier examples of ERPs in the US, the Rockefeller Plan of October 1915 is the watershed in their development. Colorado Fuel and Iron established the plan in the wake of the April 1914 Ludlow massacre in Colorado, which involved the deaths of striking coalminers and their families following a confrontation with the Colorado National Guard. There was public outrage against CFI and the Rockefeller family, which had the largest shareholdings in the company. As it was possible that President Woodrow Wilson would intervene and establish grievance procedures to settle disputes, JDR Jr. recruited W L Mackenzie King, a former Canadian Minister for Labor, to help him frame the plan (Gitelman, 1988, chaps. 1-4; Hogle, 1992, chaps. 3- 4; Kaufman, 2000a, p. 22; Selekman and Van Kleeck, 1924, chap. 2).

The Rockefeller Plan spread to other companies. In the decade after the Colorado strike, JDR Jr. promoted his plan through publications and public addresses. He also encouraged the extension of the plan to companies where the Rockefeller family had substantial interests, such as Standard Oil, which had a major strike at its Bayonne Refinery in 1915. The Standard Oil plan was part of an elaborate program of personnel management that

included extensive company welfare benefits and the assumption of many of the supervisors" powers by industrial relations specialists (Fosdick, 1956, chap ix; Hicks, 1941, 52-59; Holger and Greiner, 1992, 37-9; Nelson, 1993, 376).

The US entry into the First World War in April 1917 assisted the spread of ERPs. War production and a decline in net immigration led to labour shortages. There was labour unrest due to inflation and a deterioration of shop floor conditions. Labour turnover doubled and strikes dramatically increased. Union membership grew from 2,716,900 in 1914 to 5,110,800 in 1920, with the American Federation of Labor (AFL) undertaking major organising drives. President Wilson established the National War Labor Board (WLB) in 1918 to settle industrial disputes that could hamper war production. It upheld the right of workers to organise trade unions without interference from employers. However, it only compelled management to negotiate with shop committees consisting of company employees and not independent trade unions. Of the 225 plans surveyed in 1919 by the National Industrial Conference, 120 were created through the intervention of the federal government and companies voluntarily introduced 125 (Eggert, 1981, pp. 108-9; Fairris, 1995, pp. 505-7; Holger and Greiner, 1992, pp. 29-31, 36-39; Kaufman, 2000a, p. 23; Slichter, 1929, pp. 395-6).

While the number of companies with plans declined in the late 1920s, the number of employees covered by the plans continued to increase during the 1920s. There was a radical shift in the relative strength of the plans compared to trade unions. Plan employee coverage as a percentage of trade union membership grew from 10 per cent in 1919 to 45 per cent in 1928. Alongside this there was also a greater interest in more sophisticated personnel management practices to improve worker commitment, morale and productivity (Bernstein, 1960, pp. 147, 156-7; Fairris, 1995, pp. 510-511; Freeman and Rogers, 2000, p. 58; Gitelman, 1992, pp. 26-8; Kaufman, 2000a, pp. 36-42; McCartin, 1993, pp. 81-2; Nelson, 1993, p. 380).

What did these ERPs do? One study of an unidentified 'large manufacturing company' for the years 1918-1925 noted there were 2,664 items for discussion. The most frequent items were employment and working conditions (24 per cent), wages (23 per cent) and safety (14 per cent). This plan settled two-thirds of grievances in favour of the employee. The plans played a significant role in dealing with grievances particularly in regard to supervisors.

At the Bethlehem Steel Co. the plan settled 1,682 out of 2,316 grievances in favour of the employee. While there may be examples of grievance procedures that favoured workers, in most cases representatives and managers were unwilling to challenge the decisions of supervisors. Management rarely allowed the representatives to meet on their own and restricted what they could discuss with the company (Jacoby, 1985, pp. 187-9; Kaufman, 2000a, pp. 31-2; Selekman, 1924, pp. 18-21; Slichter, 1929, pp. 401-2, 414).

ERPs had mixed fortunes during the 1930s. Between 1928 and 1932 there was an 18 per cent decline in the number of workers covered by the plans as the economic depression hit and employers abandoned the plans to cut costs. However, the stimulus provided for the economy by President Roosevelt's National Industrial Recovery Act of June 1933 encouraged a resurgence of plans. Section 7(a) of the Act 'primed the pump' by recognising that workers had the right to bargain and organise collectively through their own representatives without employer interference. Unionism took off and employers rushed to set up plans to stop unions organising in their workplaces. The number of workers covered by these plans grew from 1.8 million in 1934 to 2.5 million in 1935. Critics condemned these plans as 'sham organisations' that impeded economic recovery and they were outlawed in the 1935 NLRA. The National Labor Relations Board (NLRB), the agency of the Act, moved against the company unions after the Supreme Court upheld the legislation in 1937. In 1939 the Board won a major case against the Newport News Shipbuilding and Dry Dock when the US Supreme Court ruled that a plan in existence since 1927 was illegal. The decision spelt the effective end of the movement inspired by the Rockefeller Plan (Kaufman, 2000a, pp. 24-6).

The next section examines the implications of the US experience with ERPs for workplace democracy. It highlights the importance of economic climate, the role of management sponsors, ERPs as union avoidance strategies and the possibility that ERPs may be used as a platform for union organizing.

What are the lessons of history?

There are several lessons that we can learn from the US experience. First, the survival of employer-initiated schemes of employee representation such as ERP can depend on the economic prosperity

of the enterprise. When the economic climate is favourable management may introduce ERPs to reduce labour turnover and militancy. If the economic climate deteriorates, as during the 1930s Depression, then management may dismantle the schemes on the basis of cost and a less militant workforce.

Second, the survival and significance of an employer-initiated scheme of industrial democracy is linked to the corporate fortunes of its management sponsor inside the company. If the senior executive supporting the scheme is demoted, fired or resigns then the scheme may collapse or be adversely modified. JDR Jr. initiated the ERP at CFI and monitored closely the operations of the employee representation plan after its implementation by the company.

Third, while employers may have a genuine desire to bridge the gap between management and workers in larger companies through employee participation, such schemes can be a union avoidance strategy. US employers saw ERPs as a welcome substitute for collective bargaining with unions. Midvale Steel introduced its plan after the International Association of Machinists began organising its employees in April 1918. Although state intervention in US industrial relations was wound back and the trade union challenge diminished with an economic downturn in 1920-1, employers continued to see ERPs as a valuable union avoidance device. The Open Shop Campaign or the American Plan, particularly during the early 1920's, used patriotism to target the weakened labour movement and advocated ERPs as a substitute for unions (Eggert, 1981, pp. 103-127).

Fourth, unions can use employer-sponsored schemes of employee representation as a platform for organising only in exceptional circumstances, such as a favourable legislative climate and workplace activism. After the passage of the NRLA in the US, various ERPs collapsed or were absorbed by trade unions. In 1936 the Steel Workers' Organising Committee (SWOC) explicitly targeted plan representatives to organise union members through 'friendly contact'. At the Duquesne plant of the Carnegie-Illinois Company, Elmer Maloy, an in-plant organiser, won a seat on the representative committee and tried to force changes in the plan's rules. He chaired a meeting of employee representatives from 42 steel plants at Pittsburgh in December 1936 that declared support for unionism and called on representatives to use their influence

to enrol steelworkers. This campaign ultimately led to US Steel recognising SWOC on 2 March 1937 (Holger and Greiner, 1992, pp. 50-55).

Conclusion

The concern about representation for unorganised workers has prompted a re-examination of the ERPs in the US prior to the NRLA. Some employers may have seen the plans as a way of improving communications with employees and heightening worker commitment to the firm. The major motivation for most US employers was the avoidance of unions and state intervention in the internal affairs of their companies. While the Rockefeller Plan did not discriminate against union members, CFI and other enterprises saw the plans as a union substitute.

For employees, however, the plans did not provide an alternative to unions as workers were denied an independent voice. Management exercised a veto over the decisions of the committees and had the power to disregard protests of the committee. The plans also tended to be found in large-scale industries with continuous or mass production, where communication problems were intensified and strategic groups of workers could create bottlenecks in the production process if alienated. ERPs generally did not provide a long-term alternative to trade unions. The employer's commitment to plans generally depended on the economic climate. The plans may be tied to the fortunes of particular individuals within management, such as JDR Jr. in the case of CFI.

Can ERPs be a platform for trade union organisation? The evidence suggests that this is very difficult, except in peculiar circumstances. The Union requires both a well-resourced organising campaign and a favourable political and legal climate. Steelworkers in the US in the late 1930s successfully used the plans as springboard for unionisation. There was the determined campaign of the SWOC and the NRLB underpinned the organisation of US Steel.

What are the implications of the US experience with ERPs for contemporary debates concerning industrial democracy? It is not sufficient to rely on employers to introduce schemes for employee involvement. Without a legislative framework the survival of any employer-initiated programmes will depend upon the firm's

economic performance and the fate of its management backers. Workers have to be convinced that the scheme is going to be a permanent forum where they can discuss issues without fear of victimisation. While Australian union membership has declined in recent years, unions provide an independent voice for workers that protects them against victimisation. To win union support for any scheme, legislation has to protect freedom of association and ensure that unions have oversight. Where there is a union presence in the workplace, union representation through delegates or officers should be encouraged.

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Chapter Fourteen

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Chapter Fifteen

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