ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

OECD OCDE

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Employee Participation on the Company Board: The Swedish Experience

by

Professor Anders Victorin
Faculty of Law
Stockholm University

Company Law Reform in OECD Countries
A Comparative Outlook of Current Trends

Stockholm, Sweden
7-8 December 2000

1 Introduction—legal regulation of employee board representation

Employee participation on company boards was introduced in 1973 in Sweden by way of legislation. Current legislation was enacted in 1988 and is a consolidation of the 1973 Acts with certain amendments.

The current Act provides for minority board representation in stock companies, banks, mortgage institutions, insurance enterprises and cooperatives, provided the enterprise has a minimum of 25 employees. In such a case the local branches of the trade unions representing the employees and which have a collective agreement relationship with the employer, have a right to appoint two board members. If the number of employees is 1000 or more, the number of board members is increased to three. Normally, the board members are appointed by the trade union branches for workers on one side and for white-collar workers on the other. Other methods of appointing the board members exist, such as elections.

The board members should be employees of the enterprise or of some other enterprise in a group of companies. They are appointed for a certain period of time, not exceeding four years. The local branch also appoints deputy members who are entitled to be present and to speak at the meetings. In principle, the employee board members are regarded as full board members with the same duties and responsibilities as the other members, who normally are appointed by the owners.

They also have a right to participate in any group of board members charged with the task of preparing an issue later to be decided by the board itself. The branch trade unions decide which of the employee board members is to participate in such a group, and if they cannot agree, the organisation representing the largest number employees decides. However, the employee members are barred from participating in the board's deliberations and decisions concerning matters of collective agreements, industrial actions or any other issue, where they may be disqualified because of conflict of interests between the trade union and the enterprise. Furthermore, they are barred from participating in the board's work on issues concerning such religious, scientific, artistic or similar goals that the enterprise may have, also including cooperative, trade unionist, political or publishing (moulding of public opinion) goals. Thus, the employee representatives of a newspaper have no right to interfere with the editorial section of the newspaper, to give a somewhat simplified example.

The committee of board representation, a government agency, may also grants exceptions from the provisions of the Act, should employee board representation cause considerable inconvenience for the enterprise in cases where the composition of the board reflects matters of political strength or other interested parties or groups of interest mentioned in the corporate bye-laws, or evident in some other way. Also, exceptions may be granted when the articles of association prescribe a particular majority of votes for the decision of the board (in general or on a particular issue).

It should be added that there are systems for employee participation on the boards of government agencies and organisations, and also for participation in municipal boards. Public employee participation will, however, not be discussed in this context.

2 The context of employee board representation— some words on the system of industrial democracy in Sweden

In distinction e.g. from the German system of *Mitbestimmung* board representation by no means forms the focal point of the Swedish system of industrial democracy. Nor do works councils, which existed during some 10 years from 1966 to 1977 in Sweden. The Swedish system is rather based on negotiations, information and collective bargaining. According to the provisions in the so-called Act on Co-determination of 1978 the employer has extensive duties to inform the trade unions with which he has a collective agreement relationship. He has also a duty to negotiate with them whenever he is about to decide on changes of any kind that might affect the employees in any way. To put it simply—it is in such negotiations that important conflicts of inter-

est in the area of employer prerogatives between the trade union branches and the employer are to be resolved, not in board meetings.

Therefore I shall say a few words on the main provisions of the Swedish Act on Co-determination regulating industrial democracy. First, the Act makes a fundamental distinction between conflicts of interest and conflicts of rights. It is based on the notion that a peace obligation applies when a collective agreement is in force between the trade union and the employer. Neither side may resort to industrial action concerning matters covered by the collective agreement. According to the doctrine of the Swedish Labour Court, such collective agreements normally (with exceptions regulated by sec. 32 of the Act) include as an open or hidden clause a provision guaranteeing the employer his prerogative to run the enterprise and to give orders to employees. Thus, in such matters the peace obligation prevails, and the trade unions may not resort to industrial conflict, but must respect such rights and if a conflict occurs it has to be resolved in court or by arbitration (of which there is very little in the Swedish labour market). Very little is to be expected from such proceedings from the viewpoint of the trade union.

Secondly, the system of industrial democracy is based on this doctrine in the sense that the peace obligation still prevails, but the employer is obliged to inform and to negotiate. Therefore, according to sec. 19 of the Act, the employer is continuously to inform the trade union branch (hereinafter referred to as the union) informed as to how the enterprise develops, in terms of economy and production as well as in terms of personnel policy. The employer must also give the union an opportunity to go through the books and other documents concerning his activities. He must also assist the union in any survey concerning his activities "to the extent the needs of the organisation so require in order to protect the common interests of the employees in relation to the employer". Such information is to be given regularly, e.g. at certain intervals or whenever need warrants it.

Actually, according to a study undertaken by one of my doctoral students, the information is in the view of the employee side the most appreciated part of the Swedish system.[1] However, in saying so, you have to take into account that the most important source of information is negotiations, to which we now turn.

According to sec. 11 of the Act, the employer must on his own motion negotiate with the union before his decides on any important change in his activities, so-called primary negotiations. The point is that such negotiations must precede actual decision-making. The duty to negotiate, however, does not apply until the employer is able to present a concrete proposal to the union. As already indicated the actual wording of the statute has been construed by the Labour Court to mean that the duty to negotiate includes any issue in which the union has an interest to negotiate. The focal point is of case law is appointments of managing directors—such appointments can hardly be said to constitute an important change in the activities of the employer, but still fall within the ambit of this provision.

Furthermore, according to sec. 12 of the Act the employer is obliged to negotiate with the union in any other case of employer prerogatives, whenever the trade union so requests.

[1] Uday Dokras, The MBL, an Efficacy Study, Academic Dissertation, Stockholm 1990.

The employer is also, according to sec. 13 of the Act, obliged to negotiate with trade unions, which do not have a collective agreement relationship with him, whenever an issue concerns their members in particular.

The duty to negotiate also applies in relation to the national organisation, should the negotiations at the local level reach an impasse. Negotiations with the national organisations are, however, unusual. One has to keep in mind that the employer prerogative remains and that the final decision is the employer's, should the negotiations end in disagreement.

The rights of the unions may be extended by means of collective agreements on industrial democracy and most of the Swedish labour market is covered by such agreements. This is, however, not the place to give an account of those.

Now, you may ask yourself what is the meaning of having negotiations when the decision-making power remains with the employer and where the union normally does not have access to judicial resort. As a matter of fact this point has been widely discussed. At one point of time, the entire Act was called the Horn-clanking Act. All the employer had to do was to clank his horn before "running over the union". (I know this may not make perfect sense in English, but I think you realise the meaning of the underlying pun in Swedish.)

Let me tell you about my personal experiences as one time director of the Stockholm University law department. I am not going to be politically correct at all, but being an academic, this is a luxury I can afford.

As newly appointed professor and director of the law department in 1980 the task of conducting primary negotiations and giving information concerning the law department was delegated to me from the rector (or the vice-chancellor, as the English term goes). I quickly realised that such negotiations have to be viewed as a matter of psychology.—First you are dealing with the employees of your own university or even of your own department. This means that you have to be well prepared. It is absolutely devastating to come to such a meeting without such basic preparations as a proper proposal and a decent and coherent motivation. This may sound elementary, but the fact that you have to motivate your proposals for change in relation to a suspicious and somewhat hostile partner forces you to think hard. In a way such intellectual exercises make you a better managing director or whatever your position may be.

Secondly, mere psychology forces you to think in terms of solutions that take the interests of the employees into account. At the same time the conflict of interests between the owners and the employees is clarified. Many decisions have to be made where the interests of the employees must be sacrificed for various reasons, e.g. in the university context, budget restrictions, the interest of proper legal training or the student interest in general. The system of negotiations requires of you to make this clear.

Thirdly, the psychology of a slightly adversary situation provides a great benefit to the employer. Information and "primary negotiations" can be turned into a continuous seminar on the conditions of the enterprise and of business in general in the existing socio-economic context. This effect is enhanced by the fact that unions

provide their negotiators with training in matters of economics and organisation in order for them better to match their adversaries. Eventually, in spite of the conflict of interest, both parties will speak the same language and they will discuss the issues in the light of a common understanding of the problems.

To expand on my personal experience—picture yourself as the director of the law department of Stockholm University, a middle-sized "enterprise" with some 120 employees and some 2 500 students. Because of legal regulations you now have the representatives of the sourly secretaries and the never-to-be-professors lecturers in front of you in a discussion where you always have the last word and they cannot leave the meeting, because they are there to "negotiate" with you. This is a gift, valuable beyond compare. Now you may talk and talk and they *have to listen*.

This system of co-determination (or joint decision-making, as some people call it) has been working for almost a quarter of a century. Hundreds of thousands of people have gone through training and participated in negotiations under this system, as well as taken part in local collective bargaining.[2] In my mind there is no doubt that this process inevitably has affected the relationship between labour and management. All in all, the situation today in Sweden is very different from that some 25 years ago. Much of the change, I submit, is due to the system of industrial democracy. The continuous seminar has had its effects.

Let me end this section by making it perfectly clear that trade unions wanted this system themselves. It was never been imposed on them. And trade unions do a good job now too, although under somewhat different circumstances. The allocation of tasks between the public sector and private enterprise has been defined more clearly. We live under market conditions, governments are the ones to turn to when jobs are scarce, unemployment can be mitigated by better benefits and change is inevitable in a world that grows smaller by the hour.

3 Employee board representation in Sweden

Seen against the backdrop of the system of industrial democracy in Sweden, employee board representation has lost much of the drama it might have conferred upon labour and management. Confrontation normally does not occur in the boardroom. A recent survey[3] of the attitudes of managing directors and chairmen of the board towards employee board representation involving 737 people provides the following results:

Balancing of pros and cons for the enterprise of employee board representation

[2] The number of people involved in trade union activities in Sweden is staggering. It is estimated to be close to 500 000 individuals at any given time, i.e. approximately 12 percent of the total work force. Part of the reason is the high union density in Sweden. Even law professors are organised (some 90 percent, I believe).

[3] Klas Levinson, Anställdas representation i företagsstyrelser – en enkätundersökning av svenskt näringsliv, *Arbetsmarknad och arbetsliv*, 2000, pp. 73-84.

	Managing directors (411)	Chairmen (326)
Very positive	19 %	23 %
Rather positive	42 %	46 %
Equally positive as negative	30 %	26 %
Rather negative	8 %	5 %
Very negative	1 %	-

The results indicate that the majority is positive or very positive to employee board representation, a large minority is indifferent whereas very few are negative. Some of the reasons are obvious from the next table:

Experiences of managing directors and chairmen of employee board representation

	Managing directors	Chairmen
They contribute to a positive climate of co-operation	64 %	61 %
Board decisions are better received by employees	59 %	65 %
The implementation of hard decisions is improved	47 %	55 %
There is an increased risk of information leaks	40 %	37 %
Too many irrelevant issues are brought forth	17 %	17 %
Decision-making becomes more cumbersome	12 %	13 %
Risk of antagonism in the board	7 %	6 %

What is surprising here is the fact that about 40 percent of the respondents have mentioned the risk of information leaks. This figure is difficult to appreciate, but gives an indication that the owner representatives are careful with passing information to the employee representatives. In fact, the same rules on secrecy apply to both categories, although the situation of the employee representatives is somewhat different. They have a genuine need to discuss matters with the trade unions branch. There seems to have been only a few cases of indiscretion, however. Also, should a leak occur, it might be difficult to establish the source of it. Furthermore, the matter of making the employee representative liable in damages is delicate. First, political considerations have to be made and, secondly, it may be difficult to establish that there has been damage and that it was caused by the indiscretion.

In general employee board members are not particularly active in the work of the board. They do not interfere with strategic issues, but tend to be interested in personnel matters and other issues that concern the employees more directly, e.g. working environment or matters of re-organisation. Sometimes they are able to contribute to the work of the board by giving first hand information concerning the situation at the enterprise: the sentiments of the work force, the implementation of certain policies and decisions, etc. Particularly when the other board members have no other links to the enterprise this may give them an insight into the functioning of the enterprise which maybe even the managing director cannot give.

Employee board members tend to be recruited from the board of the trade union branch. Often the chairman of the union is appointed (60 percent of the representatives of the blue-collar workers are in fact chairmen of the trade union branch). This fact makes management's appreciation of employee board representation even more amazing. Curiously enough, in smaller enterprises the managing directors are most positive, whereas in larger companies the chairmen of the board are most positive.

Employee board members are also offered training by their trade unions. The training concern such matters as economics, organisation, law and accounting. Sometimes they are trained in foreign languages, since many boards use English as the official language. When improvements are discussed one often hears demands for more such training.

The survey referred to sums up the findings by referring to co-operative game theory—the parties have managed to turn employee board representation into a win-win situation. The employee board representatives are able to contribute to the work of the board in substantive ways without causing disruptions. They form a rather peripheral role when problems are posed and solutions are formed. The representatives of the owners and management have in fact retained the prerogative of problem formulation. However, this does not apply completely as far as matters of training, personnel, production and working environment and re-organisations. Such matters are important for the working situation and employment protection and in such matters the employee representatives are active. This tallies well with the experiences of negotiations and information in general under the Swedish system of industrial democracy.

The way I see developments, employee board representation is mainly a tool for information, which must be seen in the context of industrial democracy in general in Sweden. Board representation is a vital part of what I earlier called the on-going seminar on the conditions of the enterprise and of enterprising in general. Board representation and negotiations provide a means of two-way communications that can be used and is in fact used by employees as well as owners and management. Sooner or later a reaction is bound to occur, at least if you believe in Hegel's notions of thesis, anti-thesis and synthesis. It is nevertheless interesting to note that employee board representation has not only survived the recession of the early 1990ies with closures and dramatically increased unemployment and growing internationalisation of business as well as more aggressive leadership, it is even much appreciated by management.

Suggested themes for discussion

1. Is the "Swedish model" one that could be applied in other countries? If this is considered unrealistic, what are the reasons—cultural, the system of industrial democracy, the style of management or some other reason?
2. Which are the experiences of other systems of industrial democracy, e.g. Germany's in terms of creating common grounds for understanding and discussions between labour and management?

3. What are the experiences of employee board representation in relation to the new management style?