

1980

Codetermination and the New Austrian Labor Code: A Multi-Channel System of Employee Participation

Joan Traub

Recommended Citation

Joan Traub, *Codetermination and the New Austrian Labor Code: A Multi-Channel System of Employee Participation*, 14 INT'L L. 613 (1980)

<https://scholar.smu.edu/til/vol14/iss4/3>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Codetermination and the New Austrian Labor Code: A Multi-Channel System of Employee Participation

Introduction

This article will examine employee participation in Austrian industry as codified in Austria's new Labor Code¹ which became effective on July 1, 1976. Employee participation in Austria is based on a system of "codetermination"² which, in turn, has its theoretical roots in a "social partnership" between the relevant economic interests, a social partnership that reflects the historical, social and institutional framework unique to Austria.

Social partnership in Austria is closely related to the operation of Austria's wage and price policy. This policy should be of particular interest to American readers because it is based on a system of voluntary controls and because it has been an impressively successful system. The complex historical, social and political processes that have shaped that system are not central to this article, but where the details are relevant, they will be discussed.

I. Codetermination in General

Before analyzing the details of codetermination as it is currently practiced in Austria, the general principles of codetermination should be outlined.³

*Ms. Traub practices law in Salt Lake City.

¹The provisions of the Austrian Labor Code (Arbeitsverfassungsgesetz) (1976) are cited: ArbVG.

²"Codetermination" is a term without exact definition. In German it is *Mitbestimmung*, which is a theoretical concept of shared decision making. Schoenbaum and Lieser, in *Reform of the Structure of the American Corporation & The "Two-Tier" Boardmodel*, 62 Ky. L.J. 91, 100 n. 54 (1976) state:

It is unfortunate that the concrete and dynamic German word "Mitbestimmung" is translated into English by use of the abstract and static word "codetermination." *Mitbestimmung* in German carries the connotation of active participation in the process of decisionmaking; this is absent from the English term.

³The form that codetermination takes in Germany is the one that is most widely known, and in

Typically, codetermination has the following elements:

1. A theoretical and political development which allows corporate decision-making to be shared by employees and employers.
2. A corporate management structure which is divided into two Boards: a Management Board whose function is the everyday running of the Company (similar to the officers of an American company); and a Supervisory Board whose functions correspond roughly to those of an American Board of Directors.
3. The selection by employees of their representatives to sit on the Supervisory Board. In Germany (whose codetermination system is the one most familiar to American readers and businessmen) employee representatives constitute 50 percent of the Supervisory Board, but such representation is limited to a relatively narrow range of corporations. In Austria, almost all business entities are included, but employees' representatives are limited to one-third of the Supervisory Board's members. As will be seen, the Austrian system incorporates one other significant feature, *i.e.*, employees' representatives are selected through each plant and the union is not formally involved. In Germany, on the other hand, employee representatives may be selected only by the union and may (and frequently do) come from outside the plant.

II. Codetermination in Austria

In Austria, codetermination means more than just having employees' representatives on a company's board of directors. It is a system of total integration of all social and economic interests and is more appropriately known as "social partnership".⁴ This partnership will be examined in some detail, but it should be noted here that the overall result has been "that the organisations representing the economic partners are integrated to a considerable extent in the whole process of national policy formulation."⁵ In other words, codetermination in Austria is only one part of a program which involves the various economic interests and allows employees significant input at every level of decision making. The remarkable feature of this program is the degree and spirit of cooperativeness with which it is carried out, a cooperativeness that has been noted by virtually every writer who has examined the Austrian system.⁶

In order to provide a context for understanding the operation of the Labor Code, some examination of Austria's institutional framework is in order. In

some ways it has provided the model for the Austrian system. However, Austria has modified the legal and structural basis of its system in important ways. Therefore, it is important to understand that the resulting system is quite different in Austria from what it is in Germany.

⁴AUSTRIAN FEDERAL PRESS SERVICE, *THE RATIONAL APPROACH TO LABOUR AND INDUSTRY* 17.

⁵*Id.* at 18.

⁶See *e.g.*, text *infra* at 28-29.

Austria, a network of organizations share in national economic planning; their participation is integrated with the conventional governmental and political institutions. Thus, there is legal machinery provided for a close coordination between the highest executive level of government, the related ministries (e.g., finance, trade, interior, social welfare), those organizations in which membership is compulsory (e.g., the Chambers of Labor and Commerce), and those in which membership is voluntary (e.g., the Trade Union Federation and the Federation of Austrian Industry).⁷

There is one other important ingredient of the Austrian economic scene which should be noted here. Since the end of World War II, a significant portion of Austrian industry has been nationalized, and Austria's social partnership cannot be properly understood without an appreciation of this fact. By means of a national holding company (the ÖIAG)⁸ and in combination with the Ministries of Finance, of Trade, and of Transport, the government holds controlling shares⁹ in the steel and non-ferrous metals industries, and in the electrical industry (both generation of electricity¹⁰ and electrical products) as well as in the automotive, chemical and coal industries.¹¹ In addition, the three main banks are nationalized directly under the ÖIAG and therefore, through the holdings of these banks, nationalization extends indirectly into many levels of the Austrian economy.

Of the almost 650,000 people working in Austrian industry, some 110,000 are employed directly by nationalized industry (ÖIAG subsidiaries).¹² Further, while estimates vary as to the extent of employment, productivity and capital investment in those industries which are indirectly controlled through the nationalized banks, some estimates range as high as an additional fifty percent.¹³

Thus it is clear that the government, acting as a shareholder, has an extensive and direct impact on the operations of Austrian industry. The internal board structure of the ÖIAG duplicates that of the individual companies, and therefore, the role of employees' representatives is magnified in those negotiations which take place in the nationalized industries.

⁷Suppanz, *The Institutional Framework in PRICES AND INCOMES POLICY, THE AUSTRIAN EXPERIENCE, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT*, 9 (1972) [hereinafter cited as Suppanz].

⁸*Österreichische Industrieverwaltungs Aktiengesellschaft*.

⁹There is an important distinction to be made between the technique of nationalization by which the ÖIAG holds shares in companies and the more conventional mechanism by which the railways, postal and communications industries for example, are nationalized. The latter are public bodies (*Bundesbetriebe*) and are more or less integrated into the public administration. Their employees are civil servants.

¹⁰The generation of electricity is done by nationalized industries, owned jointly by the government and the provinces. The distribution of electricity is handled by nine provincially owned companies, one in each of the nine provinces.

¹¹This list is not exhaustive, but does indicate the areas of major government holdings. To various extents, government interests extend also to the oil industry, (production and refining), transport and mining (other than coal).

¹²Interview with Oskar Grünwald, Director, ÖIAG, in Vienna (May 1978).

¹³Suppanz, *supra* note 7 at 11.

A. The Institutional Framework

1. POLITICAL PARTIES

From the end of World War II until 1966, Austria had a coalition government formed by the Socialist Party of Austria (SPÖ) and the Austrian People's Party (ÖVP). These two parties still represent eighty to ninety percent of the total electorate, although the Socialist Party today, by a close majority, dominates the government.¹⁴

The SPÖ draws its support mainly from employees.¹⁵ Officials of the labor organizations are, for the most part, members of the SPÖ and play an important part in the Socialist Party.

The ÖVP derives its primary support from employers and from the rural farm population. What support it has among employees comes mainly from civil servants and salary earners in private industry.

The origin of the coalition government which followed World War II was crucial to the development of social partnership in Austria. Between the two World Wars the social classes and the political parties which represented them were bitterly hostile, and in 1934 civil war broke out. However, following the *Anschluss* in 1938, which placed Austria under German domination, leaders of the middle class democratic parties and of the workers' movement were imprisoned together in the same concentration camps. Out of that shared experience grew the decision to make a cooperative and productive effort to put aside old hostilities, to end as quickly as possible the postwar occupation by the Allies and to work together to create an effective government.¹⁶ The lessons learned from these experiences still seem to be effective and the apparent consensus is that this cooperative trend will persist into future generations.

2. VOLUNTARY ORGANIZATIONS

The Federation of Austrian Industrialists (VÖI)¹⁷ and the Trade Union Federation (ÖGB)¹⁸ are the two most significant voluntary organizations in terms of size of membership, participation in economic planning and representation of special interests.

The Federation of Austrian Industry is a powerful interest group whose membership is comprised of employers at every level of the economy. About 85 percent of all workers are employed by members of the Federation.¹⁹

¹⁴Since the special election in October 1971, called by the Socialists, ninety-three seats in the Parliament have been held by the Socialist Party. Eighty seats have been held by the People's Party, and the Freedom Party (a small right wing party) has held ten. The Communist Party has none. This seat distribution was maintained by the election of 1975. UNITED STATES DEPARTMENT OF STATE, BACKGROUND NOTES: AUSTRIA 4 (1976).

¹⁵Austrian law and custom divide "employees" into "wage earners" and salary earners," a distinction which is similar to that of "blue collar" and "white collar" workers.

¹⁶AUSTRIAN FEDERAL PRESS SERVICE, THE RATIONAL APPROACH TO LABOUR AND INDUSTRY, 2.

¹⁷*Vereinigung Österreichischer Industrieller.*

¹⁸*Österreichischer Gewerkschaftsbund.*

¹⁹Suppanz, *supra* note 7 at 10.

Thomas Oliva, a representative of the Federation, explained the historical context of this organization:

We correspond roughly to your National Association of Manufacturers, but the correspondence is not entirely exact. You must never forget that we have been a corporate state for some time, and we still are. This is a historical phenomenon. In the thirties, the country was run more or less not according to political parties but by the different groups of society, so we have a strong development of pressure groups in the largest sense—strong labor unions, strong farmers' unions and a strong league of industrialists.

We [The Federation] are legally empowered to be partners in the collective bargaining process, but by our agreements with the Chamber of Commerce we delegated our right to them; we don't exercise it. But we are legally entitled to negotiate for industry [*Kollektivvertragsfähig*] by Section 4.²⁰ We are not specifically named there, but the clauses are applicable to us.²¹

The Trade Union Federation is a voluntary organization composed of sixteen unions subdivided mainly by groups of industries²² and is

. . . further subdivided by region and trade down to plant level, but the Trade Union Headquarters are responsible for administration and financial control. Only one of the sixteen of its member Unions, the Private Employees' Union, covers all sectors of the economy (with the exception of the civil service and the liberal professions).²³

Membership covers roughly sixty-five percent of all workers (about 1.5 million members). Just as the Federation of Austrian Industry is closely associated with the Conservative Party and the Chamber of Commerce, the Trade Union Federation has close ties to the Socialist Party and the Chamber of Labor.

²⁰ArbVG Section 4 provides:

- (1) Those who may bargain collectively are the legal representatives of employers' and employees' interests who directly or indirectly have the responsibility for regulating working conditions and whose autonomy in representing employer or employee interests against each other is independent.
- (2) Those who may bargain collectively are the professional employer and employee associations which have a voluntary membership and which:
 1. make it their task, according to statute, to regulate working conditions within their area of influence (*Wirkungsbereiches*);
 2. in the course of representing the interests of employers or employees become active in the direction of technical and physical expansion;
 3. by reason of the number of members and the extent of activity, have a substantial economic significance;
 4. in their representation of the interests of the employer and employee against the opposite side, are independent.
- (3) With respect to labor contracts with associations which, because of their membership number, the extent of their activity, and the number of their employees, have a substantial influence, these may themselves bargain collectively provided that, with regard to labor contracts with certain firms and administration they do not belong to a collective bargaining entity of employers.

²¹Interview with Thomas Oliva, a representative of the Federation of Austrian Industry, in Vienna (June 1976).

²²Suppanz, *supra* note 7 at 11.

²³*Id.*

On the employees' side, almost all collective agreements are concluded by the Trade Union Federation. "Wage negotiations can also be conducted by subordinate trade union bodies, but agreements must be signed by the appropriate trade union as the bodies duly authorized by the Federation."²⁴ Thus, a high degree of centralized control is maintained by the Trade Union Federation.

3. COMPULSORY ORGANIZATIONS

In Austria, employers and employees join the Federation of Austrian Industry and the Trade Union Federation on a voluntary basis. On the other hand, membership in the Chamber of Commerce and the Chamber of Labor is compulsory.

The Chamber of Commerce²⁵ is the principal representative of industry in collective bargaining. Its membership is defined legally as "all physical and legal persons authorized to operate an independent enterprise in commerce (foreign or domestic), industry, finance, credit or insurance."²⁶ The Chambers are organized along provincial lines²⁷ but a federal Chamber of Commerce oversees them all. At both the provincial and federal levels, the Chambers are divided into sections for banking and insurance, tourism, trade, transportation, manufacturing and small business. Officials are elected by secret voting in each province and thus, through an indirect system of representation, to the federal Chamber. Lists of candidates are proposed by employers' organizations which for the most part are closely aligned with the People's (Conservative) Party, so the majority of members in all official bodies of the Chamber of Commerce, at both provincial and federal levels, are members of that party.²⁸

In a second role, the Chamber of Commerce provides for close communication and flow of information between policy-makers and individual entrepreneurs and industries. Further, it has specific governmental functions; for example, foreign trade is run by the foreign branch of the Chamber of Commerce rather than by the Ministry for Foreign Affairs.²⁹

Membership in the Chamber of Labor³⁰ is compulsory for wage earners

²⁴*Id.*

²⁵The Austrian title for this Chamber is *Bundeskammer für Handel und Wirtschaft* which is variously translated as "Chamber of the Economy" and as "Chamber for Trade and Industry." In interviews in English it was always called the "Chamber of Commerce," and that term has been used here because of its common usage by Austrian informants. The American reader should, however, be aware of the very different nature of a "Chamber" in Austria, where it has legal and governmental significance.

²⁶AUSTRIAN FEDERAL PRESS SERVICE, *THE RATIONAL APPROACH TO LABOUR AND INDUSTRY*, 6.

²⁷The nine provinces of Austria are: Wien (Vienna); Kärnten (Corinthia); Styria; Burgenland; Nieder Österreich (Lower Austria); Ober Österreich (Upper Austria); Arlberg; Tirol (Tyrol); and Salzburg.

²⁸AUSTRIAN PRESS SERVICE, *NEW LABOUR CODE*, 6 (1974).

²⁹Proksch, *The Austrian Joint Wage and Price Council*, 83 *INTERNATIONAL LABOUR REVIEW* 231.

³⁰The official title is *Kammer für Arbeiter und Angestellte* which is translated as "Chamber of

and salaried employees. There is no federal chamber, but there is a Chamber of Labor for each of the nine provinces, and the Chamber of Labor for the Province of Vienna represents the others in contacts with the federal government. Each provincial Chamber is organized into sections representing wage earners, salary earners and public employees.³¹

Unlike its counterpart Chamber of Commerce, the Chamber of Labor plays only a small role in collective bargaining,³² its main functions being educational and legal. Thus, it offers to workers training programs and legal advice, but it does not represent them in court action. This latter practice is not prohibited by law but is followed as a matter of policy. The Chamber of Labor serves as a major information and legislative action force. It negotiates extensively at the legislative level.³³

The Chamber of Labor is unique in Europe. No other country has such a formalized, legalized, institutionalized interest group representing employees. The unique thing in Austria is this legally established, self-administering, complete infra-structure of professionals.

As the membership of the Chambers is compulsory, they have to find a compromise between the interests of their members. In addition to the representation of the interests of their members, the Chambers also exercise certain central government functions, *e.g.*, they are members of the official Price Commission; they have the right to criticize draft legislation and regulations; and they sit on a large number of advisory boards.³⁴

4. THE PARITY COMMISSION

Thus far we have been dealing with those organizations which are legally empowered to function as interest groups within the Austrian economic and political system. In addition, a unique and interesting feature of Austria's system of economic planning is the role played by the Parity Commission.³⁵ This commission is an extra-legal body, not founded on any legislative act; it was formally approved by cabinet resolution in 1957, having been born out of an exchange of letters between Julius Raab, then president of the Chamber of Commerce and the then-president of the Trade Union Federation, Johann Böhm.³⁶

In theory, the commission's function is to combat inflation and "to evolve the joint national policy."³⁷ Toward those ends it brings together the repre-

Wage Earners and Salaried Employees" and as "Chamber of Workers". The term "Chamber of Labor" will be used here.

³¹Suppanz, *supra* note 7 at 10.

³²Austrian law gives the Chamber of Labor the right to bargain collectively, but the Chamber does not assert that right. Suppanz, *supra* note 7 at 10.

³³*Id.*

³⁴Interview with Raoul Kneucker, Rector of the College of Law of the University of Vienna, in Vienna (June 1976).

³⁵Suppanz, *supra* note 7 at 10.

³⁶AUSTRIAN FEDERAL PRESS SERVICE, THE RATIONAL APPROACH TO LABOUR AND INDUSTRY, 11.

³⁷Earlier efforts to create an Economic Directorate (composed of members of the government and the four major economic bodies, and the President of the National Bank) failed because the

sentatives of the appropriate organizations to deal with all major economic planning, wage and price questions, and allows the interested parties to share information and perspectives. Further, it allows the introduction of scientific data into the planning and decision-making process.³⁸ Since the Commission has no legal foundation, its membership is voluntary, and its decisions are not legally binding. However, the point is repeatedly made that the decisions of the Parity Commission are *de facto* binding, and parties cannot effectively ignore them without triggering the pressure, albeit unofficial, of other government bodies.³⁹ To date, no decision of the Parity Commission has been challenged legally.⁴⁰

The Parity Commission generally meets monthly. The federal Chancellor, or in his absence, the Minister of the Interior, serves as chairman. Two representatives from each of four interest groups (the Trade Union Federation, the Chamber of Agriculture, the Chamber of Labor and the Chamber of Commerce) are present, along with experts that serve as advisors. The same individuals also meet every three months for a "fundamental review" session when they are joined by the president and vice-president of the National Bank and by the director of the Austrian Institute for Economic Research. The Parity Commission deals with urgent economic problems at special sessions which are attended by additional representatives. Special sessions were held to discuss, for example, the revaluation of the Austrian schilling and the introduction of economic stabilization measures in November 1972.

Before negotiations of collective wage agreements begin, the individual union, via the Trade Union Federation, makes application to the Parity Commission's Subcommittee for Wages. The subcommittee is made up of representatives of employers and employees and is chaired alternately by the Chamber of Commerce and by the Trade Union Federation. Without the approval of this subcommittee, the union will not proceed.

Without exception, the unions accept the procedure as binding and negotiations on a new collective agreement are never held without the consent of the Parity Commission.⁴¹

The Subcommittee for Prices consists of representatives of the four group interest organizations, the Ministry of Finance and the Ministry of the Interior, with the chairmanship taken by a representative of the Federal Chamber

Court for the Protection of the Constitution ruled that such a body would be incompatible with ministerial responsibility. Suppanz, *supra* note 7 at 11. For an extensive history of the Parity Commission, see M. EDELMAN, *NATIONAL ECONOMIC PLANNING BY COLLECTIVE BARGAINING* (1954).

³⁸H. KOTRNOCH & W. SCHOENSTEIN, *FOREIGN INCOME PORTFOLIOS: BUSINESS OPERATIONS IN AUSTRIA*, A-13 (Tax Management Portfolio No. 222-4, 1977) [hereinafter cited as KOTRNOCH & SCHOENSTEIN].

³⁹The author was assured by several sources that if a legal challenge to a commission decision were presented to the Supreme Court, it would be dismissed.

⁴⁰Suppanz, *supra* note 7 at 21.

⁴¹AUSTRIAN FEDERAL PRESS SERVICE, *THE RATIONAL APPROACH TO LABOUR AND INDUSTRY* 11.

of Commerce. The principal role of the Subcommittee for Prices is to ensure that unavoidable price increases are distributed evenly (in terms of both extent and timing) and to keep the price front calm by preventing any group from exploiting a particular market situation.⁴² The employers' organizations have undertaken that their members will increase their prices only if the increases have been approved by the Parity Commission.

In addition to the Subcommittee for Wages and the Subcommittee for Prices, the Parity Commission uses an Advisory Committee for Economic and Social Questions. The primary purpose of this committee is to provide economic planning on a scientific and objective basis. Toward this end, it conducts studies into specific economic questions and makes appropriate recommendations. These recommendations must, before publication, be approved by the presidents of the group interest organizations.⁴³

It is through the Parity Commission that all the organizations discussed above are made to work together within an extra-legal structure that so far has been, politically and economically, highly effective.

B. *The Works Councils*

The institutional structure of the Austrian economy as it has been discussed thus far presents some unique features, but essentially what has been described is a system of labor management relations that is highly integrated with a system of national policy formulation that operates from the top level down, with some input flowing in the opposite direction. A second separate system of worker participation also exists, though—the works council system. It is through the works councils that Austrian law provides for a separate stream of worker representation. The system is codified by the new Labor Code (*Arbeitsverfassungsgesetz*) which became effective July 1, 1976,⁴⁴ and it is this system which is reflected in the term “codetermination.”

1. STATUTORY PROVISIONS

Under the Code, any firm which employs five or more people must elect a worker representative,⁴⁵ and if the firm employs a minimum of five wage earners and five salary earners, each group may select a representative.⁴⁶ It is also possible to elect joint representatives to form a joint committee on which either wage or salary earners may serve.⁴⁷ In larger firms, the election of more than one worker representative results in the formation of a works council.⁴⁸ The proportion of representatives to employees varies as follows: for firms

⁴²*Id.* at 13.

⁴³*Id.*

⁴⁴*Id.* at 15.

⁴⁵ArbVG § 40(1).

⁴⁶ArbVG § 40(2).

⁴⁷ArbVG § 40(3).

⁴⁸ArbVG § 40(4).

with nine or fewer employees, one representative; for nineteen employees, two representatives; for 19-50 employees, three representatives; one additional representative for each additional one hundred employees. If more than a thousand people are employed by a firm, an additional representative is allowed for each five hundred employees.⁴⁹

Representatives are elected for three year terms⁵⁰ by a secret, written ballot.⁵¹ Candidates may be independent, or they may be representatives of a subsection of the union;⁵² but it is unusual for unions to nominate candidates.⁵³ In some cases, the works council may request that any or all of its members be released from work with pay. This may be granted for one member in firms with more than 150 employees, for two in firms of over 700, and three for over 3,000, with an additional member allowed off for each additional three thousand workers. The law provides that representatives thus released from work to safeguard the interests of their fellow employees must not suffer any disadvantage as to payment or promotion.⁵⁴

During the course of a three year term of office, a representative may request release from work in order to attend training courses for up to two weeks, and if the firm employs more than twenty employees, such a representative will receive full pay.⁵⁵ If the firm employs more than 200 people, release may be for up to a year, but without pay.⁵⁶

These arrangements are designed to ensure that the workers' representative has the opportunity to acquire the kind of knowledge which will enable him to carry out his responsibilities. Labour organisations provide a wide range of training courses designed to meet his need.⁵⁷

The council elects a chairman from among its members, and he represents the council in negotiations with outside parties and calls meetings of the council at least monthly. Generally, in larger firms, the chairman is a representative who has been released from work.⁵⁸

Welfare and training programs for employees and their families may be established by the works council, and in many cases contribution to such programs is, by individual agreement, made by employers. The law also gives to works councils the right to participate in any such programs maintained by the firm.⁵⁹

The rights of the works councils with respect to certain social, economic and personnel matters are carefully spelled out. Councils have the right to

⁴⁹ArbVG § 50(1).

⁵⁰ArbVG § 61(1).

⁵¹ArbVG § 51.

⁵²ArbVG § 53.

⁵³FEDERAL PRESS SERVICE, NEW LABOUR CODE 10 (1974).

⁵⁴ArbVG § 117.

⁵⁵ArbVG §§ 111, 118.

⁵⁶ArbVG § 119.

⁵⁷FEDERAL PRESS SERVICE, NEW LABOUR CODE 12 (1974).

⁵⁸*Id.*

⁵⁹*Id.* at 13.

ensure that collective agreements are observed, and therefore, they have the right to inspect wage and salary lists; if personal files are kept, and the employer consents, the council may consult these also.⁶⁰

The employer must keep the works council informed on any matters concerning employees' economic, social, health or cultural interests, and four times a year he must meet with the council to discuss current matters, general principles concerning personnel or social, economic or technological aspects of management and labor-management relations, and any major company issues. These meetings may be held every month if the employer wishes.⁶¹

The agreement of the works council is mandatory on any employer measure concerning a disciplinary code, a filing of personal information (beyond that required to establish employment qualifications), any supervisory measures which might violate "human dignity"⁶² and any piecework systems not already established by the collective agreement.

As to personnel policy, the employer has a duty to inform the works council⁶³ and, if the council requests, to consult with it concerning any measures involving career planning, the hiring of new employees and allocation of work accommodations, and plans concerning any form of promotion.⁶⁴ The council's consent is required for any such motion or the imposition of disciplinary measures.⁶⁵

In the matter of dismissal:

[t]he works council enjoys a particularly strong position in the event of an employee being given notice. The employer has to give the council prior warning of his intention and the workers' representatives then have a certain period within which they can lodge a protest with the Conciliation Board, an independent arbitration body designed to settle labour disputes.

The council's protest is accepted if it is found that an employee is to be dismissed because of his activities with either the trade union or the works council or that the dismissal is socially unjustifiable

. . . .

In view of the rights of the works council in connection with dismissals, it is usual for the employer to contact the council at an early stage and to discuss the issue thoroughly. Special attention is paid to possible ways of minimising social hardship arising from measures which are not to be avoided. . . . The strict legal provisions concerning dismissal, combined with the sense of responsibility felt by Austrian employers for the security of their workers' jobs have meant that major cuts in personnel occur only occasionally.⁶⁶

Austrian law gives the works council the right to participate in the firm's economic policy planning and to be provided by the employer with appropri-

⁶⁰ArbVG § 89.

⁶¹ArbVG § 92.

⁶²"Human dignity" is a concept similar in Austrian law to the "right of privacy" under American law. However, the idea is not as developed under Austrian law. *Cf.* note 72 *infra*.

⁶³ArbVG § 98.

⁶⁴ArbVG § 99.

⁶⁵ArbVG § 102.

⁶⁶FEDERAL PRESS SERVICE, NEW LABOUR CODE 14-15 (1974).

ate information concerning sales, production and investments.⁶⁷ In medium and large firms the right to be informed extends to financial statements and information concerning structural changes including restrictions on or total discontinuance of the firm's activities, mergers, major production changes, new technology, major rationalization or automation measures, and changes in the firm's ownership or legal status. In firms employing more than twenty persons, such arrangements may be made subject to agreement. "The works council may present proposals designed to lessen the harmful consequences of such developments for the workers, but its representatives also have to take into account the economic necessities facing the management."⁶⁸

The new Labor Code makes certain provisions to protect works council representatives from arbitrary dismissal, requiring approval by the Conciliation Board which may consent only if it finds that the representative is no longer capable of doing his job, persistently neglects his job, or if it finds that changes in the firm's structure have eliminated the representative's job, and he cannot be placed in any other capacity.⁶⁹ In the case of staff cuts, the workers' representative is the last to go.⁷⁰

The Code further provides⁷¹ for the rights of both employers' and workers' representatives to demand agreement on the following matters:

1. general rules concerning the conduct of employees on the firm's premises;
2. fixed working times, including the length and timing of breaks and the distribution of working hours throughout the week;
3. the method of payment, in particular the place and time;
4. the nature and extent of the works council's participation in the administration of training or social services run by the firm; and
5. measures to ensure that facilities or funds belonging to the firm are used in a mutually acceptable manner.⁷²

If negotiations do not lead to agreement, either side may refer the matter to an arbitration board made up of equal numbers of employers' and employees' representatives.⁷³

⁶⁷ArbVG § 108.

⁶⁸FEDERAL PRESS SERVICE, NEW LABOUR CODE 16 (1974).

⁶⁹ArbVG § 121.

⁷⁰FEDERAL PRESS SERVICE, NEW LABOUR CODE 17 (1974).

⁷¹ArbVG § 97(1) (1-6).

⁷²In addition, another group of matters on which agreement may be voluntarily reached and then made binding includes:

- (1) guidelines for workers' housing owned by the firm;
- (2) measures to ensure that working conditions in no way offend human dignity (*Cf.* note 62 *supra*; "human dignity" as it is used here has an apparently broader meaning);
- (3) a suggestions system;
- (4) a profit-sharing system;
- (5) pensions and severance pay;
- (6) a complaints service.

⁷³ArbVG § 97.

The Labor Code does not regulate voluntary agreements, but in principle the employer and the works council may negotiate concerning individual work contracts, which generally affect wage arrangements and frequently fix a higher wage scale than that provided for in the collective agreement or provide for additional payments over the actual wage.

In firms with more than two hundred employees, the works council can raise an objection with the employer about any changes in the running of the firm which may have an adverse effect on the employees. This may lead . . . to a closure of a firm being delayed for four weeks. If direct negotiations between workers' representatives and management lead to no agreement on the planned measures, then a conciliation board may be called in. The board can only make a binding decision . . . if both conflicting parties agree beforehand to accept its decision.

In firms with more than four hundred workers a further appeal can be made, if the conciliation board's efforts come to nothing, via the Austrian Trade Union Federation, to the State Economic Commission, which consists of the federal government as well as representatives of employees and employers. Their task too is to attempt to mediate between the conflicting parties and to suggest ways towards an agreement. If agreement still cannot be reached, the employer has to provide the commission with all details related to the matter at hand. The commission then draws up a report on whether or not the employees' original objection was justified.⁷⁴

2. CODETERMINATION: EMPLOYEE REPRESENTATION ON THE SUPERVISORY BOARD

For joint stock companies,⁷⁵ irrespective of the number of people employed, Austrian Corporation Law provides for a two-tier system of boards: a Management Board and a Supervisory Board.⁷⁶ The Labor Code gives the works council the right to appoint one-third⁷⁷ of the members of the Supervisory Board from among its own members.⁷⁸ This means that such representatives will be employees of the firm and will be representing fellow employees and *not* the union.⁷⁹ While such board members have the same rights and obligations as those members of the board who represent shareholders, there is one important difference: in electing the chairman of the board or his deputy, such chairman must be elected not only by a majority of the board, but also by a majority of the shareholder members.⁸⁰

⁷⁴FEDERAL PRESS SERVICE, NEW LABOUR CODE 21-22.

⁷⁵Austrian businesses affected by the Labor Code are of three kinds: the joint stock company (*Aktiengesellschaft*, or AG); the limited liability company (*Gesellschaft mit beschränkter Haftung* or GmbH); and the cooperative society.

⁷⁶KASTNER, CORPORATION LAW, F.

⁷⁷It is interesting to compare the German Codetermination Law which provides for one-half board membership by employees' representatives. The Austrian law is modelled to some extent on the German law, and Austrian labor leaders anticipate that employee representation on the Supervisory Board eventually will be one-half.

⁷⁸ArbVG § 110.

⁷⁹This is, of course, a theoretical nicety; as will be seen, the unions exert considerable influence on employee representation on the board.

⁸⁰FEDERAL PRESS SERVICE, NEW LABOUR CODE 20.

Any two or more workers' representatives on the board may demand at any time a report on company affairs, including the relationship of the firm with any other firm with which it is linked.⁸¹

In limited liability companies, the provision concerning worker representatives on the board applies only if the firm employs more than 300 people, or, in the case of cooperative societies, if the society employs more than forty people.

These rulings have in the past been the subject matter of major controversy but they now represent a considerable increase in the degree of worker participation in Austrian companies. Previously there had only been provision for two representatives of the works council to belong to a joint stock company board and no provision was made at all in the case of other types of companies. *Austrian trade unions do not seek worker participation in the companies' managing boards.*⁸²

The rights of the works council have been extended to such a degree that in practice, it becomes vital for the employer to work towards effective cooperation. The law allows the workers' representatives to exert their influence in such a variety of individual fields that little progress would be made in a firm where there were constant differences between labour representatives and management.

Yet the far reaching opportunities which present themselves to the workers' representatives and the consequent necessity for cooperation between labour and management do not mean that the works council enjoys privileges only. It also has obligations. Its right to co-determination also represents a major responsibility, a responsibility not just towards the employees who have elected the councils and whose interests it represents.⁸³ (Emphasis added above.)

C. Interaction between the Unions and the Works Councils

There are, then, two streams provided by the Austrian system for participation by workers. One of these is provided by the unions⁸⁴ which have the exclusive right to bargain collectively for wage agreements. These are generally concluded industrywide and, although subordinate trade union bodies may also conduct wage negotiations, only the appropriate Trade Union, as authorized by the Federation, may sign them.⁸⁵ Thus, while elections and information flow may provide input from the lower levels upward, actual bargaining and the final authority remain at a broader, national level.

The works council system, on the other hand, provides a structure for worker participation within an individual company. The council's activities, which may in a restricted sense include wage negotiations,⁸⁶ are separate from

⁸¹*Id.*

⁸²*Id.* at 21.

⁸³*Id.* at 23.

⁸⁴Rudolf Strasser, the draftsman of the Labor Code, pointed out, in an interview in Linz (June 1976) that "the unions" should properly be understood to be only one union.

⁸⁵Suppanz, *supra* note 7 at 11.

⁸⁶Works councils may begin wage negotiations within an individual firm at the base level established by union collective agreement, but they may not go below that level.

that of the unions. However, it should be clear that there is close cooperation between the unions and the works councils. In practice and under rights granted by the Labor Code, the unions maintain considerable impact on the formation and operation of the works councils, and there is no question that the works councils are an effective form of union representation within the individual firm.

It is almost always the case that the people elected to the works council are union members. When they are elected to the works council they automatically, under the statutes of the Trade Union Federation, become the main representatives in that firm of their particular union. "This means in practical terms that the elections to the works councils form the initial stage in the system of indirect elections which lead via local, regional and provincial levels to the appointment of senior officials at a national level."⁸⁷

If a works council has not been elected in a particular firm, the union may, in certain circumstances, arrange for a works assembly in order to elect such a council.⁸⁸

The Labor Code allows works councils to invite union officials to participate in any of their deliberations and, with notice to the employer, access to the premises is guaranteed. This right, at the invitation of the works council, extends to the council's regular meetings with management, and the Code further provides that workers' representatives should have full approval of their unions in the conduct of their affairs.⁸⁹

In their task of workers' interest representation, the staff officers [works council] should act in harmony with the Workers' Chambers [Chamber of Labor] and the trade unions. It is clearly expressed in the law, however, that the dispositions of the new Labour Constitution Law [the Labor Code] should finally lead up to an adjustment of the interests *for the benefit of the workers and the enterprise; therefore, it is essential that the employer and the staff council should cooperate.*⁹⁰ (Emphasis added.)

D. Other Participatory Arrangements

In addition to providing the "social partnership" framework discussed thus far, social legislation provides an additional channel for employee participation. Also, to a limited extent, participatory arrangements such as profit-sharing plans, also exist. It is not the purpose of this article to examine extensively social legislation and profit-sharing plans in Austria, but they will be noted briefly here in order to provide a context for understanding employee participation in general.

⁸⁷FEDERAL PRESS SERVICE, NEW LABOUR CODE 18.

⁸⁸*Id.*

⁸⁹*Id.* at 17.

⁹⁰FEDERATION OF AUSTRIAN INDUSTRIALISTS, EXTENDED CO-DETERMINATION BASED ON THE LABOUR CONSTITUTION LAW, FOR THE INTERNATIONAL ORGANISATION OF EMPLOYERS COMMITTEE OF EXPERTS ON PARTICIPATION (Dr. U1/20 (Tr.)) 2.

1. SOCIAL LEGISLATION

Working hours. The Working Hours Law⁹¹ established (as of 1975) a normal work week of forty hours. Overtime work is limited to five hours per week and sixty hours per year with extra pay provisions for overtime and night work. A Shop Closing-hour Law⁹² and additional provincial ordinances regulate the business hours of retail shops.

Holidays and Vacations. A Workers' Vacation Law⁹³ provides for full pay for three legal holidays and all Sundays, and by agreement between the Trade Union Federation and the Chamber of Commerce, workers and clerks are entitled to paid vacations in accordance with a specified schedule. Collective and plant level agreements also usually provide for vacation and Christmas bonuses.

Social Costs. Employers in Austria must estimate social costs at about seventy-five percent of payroll. Social costs include: vacation and Christmas bonuses, paid vacations, sick leave, voluntary social expenses, employer contributions to social security insurance and family burdens' equalization funds and a payroll tax.⁹⁴

All employees (workers and clerks) are covered by compulsory social insurance (old-age, disability, unemployment, health and accident). Further benefits are granted by family and housing subsidies. Both social insurance and benefits are financed mainly by employers and employees.⁹⁵

Pensions. The General Social Insurance Law⁹⁶ regulates social insurance pensions, but large private concerns, including all banking and insurance companies, provide private pensions in addition to, or sometimes independent of those provided by law.

The usual pension level amounts to eighty percent of pay conditioned on thirty to forty years of service. Pensions are usually granted as old-age pensions for retirees above a certain age, as temporary or permanent disability pensions or as pensions to widows and orphans. There are usually additional pension amounts paid for dependent children.

Workers normally do not contribute to plant pension funds or, if they do, only pay insignificant amounts. As a rule, pension payments by the firms are strictly voluntary, so that they can be revoked any time. In addition, pension commitments exist, and also employees with higher standing may have contractual rights to pensions. Outside insurance companies are normally not utilised in the pension field.⁹⁷

2. PROFIT SHARING PLANS

Profit sharing plans in various forms are of growing interest in all devel-

⁹¹KOTRNOCH & SCHOENSTEIN, *supra* note 38, at A-12 n.55 (Tax Management Portfolio No. 222-4, 1977).

⁹²*Id.* at A-12 n.56.

⁹³*Id.* at A-12 n.57.

⁹⁴*Id.* at A-12.

⁹⁵*Id.*

⁹⁶*Id.* at A-12 n.59.

⁹⁷*Id.* at A-12.

oped countries, particularly in those which, like Austria, are developing a prices and incomes policy.⁹⁸ To date, no such plan is in widespread use in Austria, but that is not to say that there is no interest on the part of the unions or employers.⁹⁹

An analysis of negotiated participatory plans¹⁰⁰ shows that such plans may take the form of wages in excess of a base wage, either as a deferred wage or as direct wages based on either a share of profits already earned by the enterprise or on a system of calculating the worker's individual contribution to those profits. Or, it may be in the form of shares of investment capital returned to the enterprise. Another form is as participation in a retirement fund or as control of a severance pay fund paid for by the enterprise. Such plans may be legislatively designated, negotiated for by unions or works councils, or they may be initiated by the enterprise itself.¹⁰¹ In Yugoslavia, for example, wages have been determined solely as shares of the profits in some enterprises since 1961, with works councils determining the share to be paid as wages and the share to be returned to capital.¹⁰²

No systematic plan along any of these lines as yet exists in Austria, although some firms have experimented with profit sharing in the form of additional wages calculated either as shares of profits or as return for worker input. In addition, there has been some pressure on the part of the Trade Union Federation to establish control by the union of the severance pay funds which are statutorily required of all enterprises.¹⁰³

According to an OECD Report of a Management Seminar, despite the recognition of the value of workers having "some financial stake" in the enterprise, there is strong opposition to vesting a substantial degree of ownership in a central fund which, in effect, comes under the control of the trade unions.¹⁰⁴ One employer¹⁰⁵ who reported on his attempt to develop a profit sharing plan in his business found that employees were resistant to participation in a plan which involved a division of profits between wages and a return into the enterprise. Further, he indicated that as the interests of workers and management came closer to each other through increased worker participa-

⁹⁸ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, WORKERS' NEGOTIATED SAVINGS PLANS FOR CAPITAL FORMATION, REGIONAL TRADE UNION SEMINAR, FLORENCE, 23RD-24TH MAY, 1967 at 7 (1970) [hereinafter, WORKERS' NEGOTIATED SAVINGS PLANS].

⁹⁹ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, JOINT WORKING PARTY ON INTERNAL INDUSTRIAL ENVIRONMENT, WORKERS PARTICIPATION SEMINAR, 5TH-8TH MARCH, 1975 at 4.

¹⁰⁰WORKERS' NEGOTIATED SAVINGS PLANS, note 98 *supra*.

¹⁰¹WORKERS' NEGOTIATED SAVINGS PLANS 9-12, note 98 *supra*.

¹⁰²H. WACHTEL, WORKERS' MANAGEMENT AND WORKERS' WAGES IN YUGOSLAVIA, 99 (1973).

¹⁰³Interview with Tom Lachs, Finance Director, Konsum, in Vienna (June 1976).

¹⁰⁴ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, JOINT WORKING PARTY ON INTERNAL INDUSTRIAL ENVIRONMENT, WORKERS' PARTICIPATING MANAGEMENT SEMINAR, 5TH-8TH MARCH, 1975 at 12.

¹⁰⁵Interview with Richard Lehrner, Herz Armaturen, AG, in Vienna (June 1976).

tion in such a plan, there was an undesirable blurring of the legitimately separate interests of both sides.

It is at this point that one comes uncomfortably close to the ideological strength and weakness of the entire concept of worker participation. In order to satisfy everyone, worker participation must allow the two sides to come close enough together to allow for social efficiency and yet must keep the two sides far enough apart to allow for separate social identity.

E. Overview

Social partnership in Austria has the following distinctive features:

1. It provides for two separate channels for employee participation. On a broad, industrywide level, primarily in the area of wages, the unions negotiate within a context of national policy planning. At the level of the individual company, through the works council directly and through the union indirectly, other negotiations take place, thus providing for more direct employee participation.
2. It provides for employee participation by an elective process within the individual firm and creates in the employee representatives selected a legal responsibility to the employees of that firm and not to the union. Union participation is only by invitation by the works council.
3. It provides that, as firm size increases, the employee representatives may be increasingly released from employment duties to take on specialized functions as employee representatives.
4. It provides for an extensive support structure in the form of training programs for employee representatives (run by the Chambers of Labor and by the unions) to make the representatives more knowledgeable about industrial and economic matters.
5. It provides that employee representatives on a board of directors are themselves employees of that firm and not outsiders, and have a responsibility to represent the interests of the employees who elected them, and not to the unions of which they may be members.

III. Analysis

By all accounts, the Austrian system must be regarded as successful. Murray Edelman, writing in 1954 of the early development in Austria of a prices and incomes policy-making system, described its goals:

. . . all economic sectors and all political groups seeking to win their support had some very strong objectives in common: (1) reconstruction and improvement of productive facilities; (2) securing foreign economic aid for this purpose and also maintenance of at least a subsistence standard of living for the entire Austrian population; (3) the prevention of runaway inflation; (4) minimal support for those in greatest economic need, including at various periods, pensioners, the lowest paid wage earners, and farmers.¹⁰⁶

¹⁰⁶M. EDELMAN, *NATIONAL ECONOMIC PLANNING BY COLLECTIVE BARGAINING* 21 (1954).

A. Economic Data

To what extent has Austria reached those goals? By 1967, the OECD, reporting on manpower problems in Europe, stated that during the postwar period, the Austrian growth rate had become the highest of all OECD countries¹⁰⁷ and at the same time included full employment.¹⁰⁸

As the Austrian competitive position in world markets is of fundamental importance for employment, the government has won the cooperation of the central labor and management organisation in efforts to avoid over-rapid wage and price increases following high employment levels.¹⁰⁹

The OECD, in its Economic Survey of Austria for 1971 suggested that Austria had been spared "stagflation" as experienced by the other OECD members:¹¹⁰

The orientation of monetary and fiscal policies appears to have been somewhat more expansionary during the last upswing than in earlier periods, reflecting the high priority the authorities attach to economic growth and rather successful operation of price/income policies within the framework of the 'Parity Commission.' During the 1969-1971 period, when many other countries were characterised by 'stagflation', Austria maintained full employment throughout and did not experience any dramatic acceleration of prices.¹¹¹

Furthermore, union restraint was supported by government policy on tax rates, customs tariffs, timing of price increases, trade liberalization and schilling revaluation.¹¹²

The report said in summary: "Given the present strength of the Austrian economy, and assuming further improvements in policy making, its performance should be better in the 1970s than in the 1960s."¹¹³

For an evaluation of the more recent economic scene in Austria, the following material is taken from the OECD Economic Surveys for Austria for 1976 and 1977.

Recession was the story for all the OECD countries during 1974-75, but in Austria the drop in output was considerably below the average. Furthermore, despite a negative growth in GNP during this period, the employment level remained remarkably stable compared with that of the 1967 recession and relative to other OECD countries. Unemployment remained at 2.0 percent (it had been 2.7 percent in 1967), despite an increase in the work force and a decrease in output.¹¹⁴

¹⁰⁷The other members of the Organisation for Economic Co-operation and Development are: Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

¹⁰⁸ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *MANPOWER PROBLEMS IN AUSTRIA* 9 (1967).

¹⁰⁹*Id.*

¹¹⁰ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *ECONOMIC SURVEY FOR AUSTRIA* 5 (1972).

¹¹¹*Id.* at 37.

¹¹²*Id.* at 39.

¹¹³*Id.* at 42.

¹¹⁴ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *ECONOMIC SURVEY FOR AUSTRIA* 16 (1976).

The effects of demographic developments on total labour supply were, however, significantly dampened by a decline in both participation rates (particularly those among women) and average working time. The shortening of the average working week was partly a result of a 5 per cent cut in contractual working time which became effective on 1st January, 1975, but also reflects conscious attempts by both sides of industry (encouraged by Government) to spread the burden of a sluggish demand evenly among the labour force by reducing overtime work.¹¹⁵

An important factor in reducing excess supply in the labor market was the drastic reduction in the foreign labor force. Work permits for foreign employees tended not to be renewed, and further recruitment of foreign workers was discontinued, thus reducing the number of foreign workers from a quarterly peak of 250,000 (7.5 percent of total employment in the 4th quarter of 1973) to about 180,000 in the fourth quarter of 1975. This was countered however by similar labor cuts in Switzerland and Germany which forced many Austrians in those countries to return home. Return migration accounted for about 15,000 added workers in 1975.¹¹⁶

The OECD report again cites the effectiveness of "moral suasion" as a tool of labor policies, seeking to increase mobility in the labor market by "improving the flow of information and job training."¹¹⁷

The Economic Survey for 1976 states in its summary:

Dependent employment remained stable and the monthly unemployment rate (seasonably adjusted) never exceeded 3 per cent. At the same time progress has been made toward lower inflation with increases in both nominal wages and consumer prices falling below the OECD average. Despite a steep decline in merchandise exports, the current external deficit was greatly reduced in 1975.¹¹⁸

The most recent OECD Economic Survey for Austria (for 1977) reports a quick recovery from the "relatively mild 1975 recession" and an "impressive" performance of the Austrian economy in terms of real income growth, employment and prices through 1977.¹¹⁹

However, in the face of growing stress in the areas of balance of payments, loss of foreign currency reserves, unacceptable federal deficits, and continued economic deterioration in major trading partner countries

. . . [M]onetary and fiscal policies have therefore been shifted towards restraining the growth of domestic demand and imports, and with continuing weak exports, economic growth in 1978 is likely to be modest, entailing a rise in unemployment.¹²⁰

Unemployment in 1977 fell to a low of 1.75 percent and, despite a slight tendency to rise since then, remains one of the lowest rates in an OECD country. At the same time, the rate of inflation has declined significantly.

¹¹⁵*Id.* at 17-18.

¹¹⁶*Id.* at 18.

¹¹⁷*Id.* at 34.

¹¹⁸*Id.* at 40.

¹¹⁹ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *ECONOMIC SURVEY FOR AUSTRIA 5* (1977).

¹²⁰*Id.*

Consumer prices rose by only 5.1 percent in 1977 versus 7.25 percent in 1976.¹²¹

The OECD report found that an analysis of wage bargaining strategy, in relation to the overall economy, demonstrates the success of social partnership and projects a moderation of wage increases in the next round of bargaining in 1978.¹²²

B. Strikes

Another measure of the effectiveness of Austria's social partnership may be found in the statistics concerning strikes. According to ÖGB strike statistics, the only strike in 1977 was a two-hour protest in which forty-three employees were involved. This means that for the entire year only eighty-six strike hours were registered. The strike that occurred in 1977, (without permission of the responsible trade union representative) was a strike by the private employees of a Vienna taxi dispatch service and was in protest against the dismissal of three women employees who had been employed for many years. Following a shutdown of the business for one afternoon, the dismissal notices were cancelled, and the conflict was settled.¹²³

Major strikes in 1977 which could have had significant impact on the Austrian economy, were averted through collective bargaining involving 220,000 metalworkers (in March) and 290,000 salaried employees in trade (in December). In 1976, 2352 striking workers and employees were involved in a total of 4711 strike hours. These figures represented (prior to 1977) the lowest number since the ÖGB began to maintain strike statistics in 1951.¹²⁴

The draftsman of the Austrian Labor Code, Rudolf Strasser, says that it is probably the belief of most Austrians that under Austrian law the worker has the right to strike, but he points out that in fact the Labor Code is silent as to strikes and lockouts.

We have no legislation for these phenomena. Our Parliament keeps a neutral attitude about economic weapons (*Arbeitskampf*). If our Parliament had the intention to legislate these things, the provisions would be in this law. But they don't want this.

But the real situation is that no employer would fire a worker because he has participated in a strike. It is still possible for the individual worker who goes on strike to be brought into court for civil damages because of his individual action which breaches his individual contract. Also, the legal situation is that he can be fired. Practically speaking, he wouldn't be. And we have no court decisions because nobody has reason to go to court.¹²⁵

¹²¹*Id.* at 7.

¹²²*Id.* at 16.

¹²³ARBEIT UND WIRTSCHAFT, Apr. 1978 at 13. (Publication of the Austrian Trade Union Federation [ÖGB]).

¹²⁴*Id.*

¹²⁵Interview with Rudolf Strasser in Linz (June 1976).

Whatever may be the fears of Austrian management concerning the political strength of workers in Austria, it is apparently a consensus that one of the powerful rewards this strength provides has been the absence of strikes. A spokesman for the Chamber of Commerce stated:

What does a strike cost? Maybe millions of schillings. So I think on the other side this system is very valuable in that we have social peace in Austria. And the unions are not attacking the market system itself. So this is the common basis for working together.¹²⁶

IV. Conclusion

"Working together" is probably the outstanding feature of the Austrian system. Virtually every writer and every individual interviewed by this author has remarked on the spirit of cooperativeness to be found in Austria's social partnership. In 1972, Derek Robinson wrote, in an analysis of Austria's prices and incomes policy:

The major contribution made by the Austrian experience is that it is possible for the social partners to agree on a broad framework of socio-economic policies which in turn can be the subject of discussion and consultation with government so that there emerges a broad consensus which receives wide support at least for its main outlines . . . the overriding factor is that the partners recognize the value of offsetting concessionary bargaining over a wide area of social and economic policy. This is the feature that can most profitably be imported from Austria.¹²⁷

It is not the purpose of this paper to predict the future of social partnership in Austria, but a final word on the significance of "attitude" is in order. Strasser says:

The system of social partnership will, in my opinion, continue to work because the basis is a mental one (*geistig*); it is in the spiritual set of the Austrian people. The Austrian is a totally other type of person from the German or Swiss or Italian, totally other in character and in attitude. One advantage is that the Austrian is not very eager to struggle and to bring every conflict to the highest point. He prefers not to make conflict if it is possible to bring it to an end as soon as possible.¹²⁸

V. Postscript

It may be argued that in the United States, the adversary relationship between management and labor is too rigidly established, politically and legally, to allow for useful transfer of any of the features of the Austrian system. However, if one chooses not to be imprisoned by history, and even better, has the capacity to learn from history, one may perhaps profitably consider some of the elements of this system. A useful example would be the specific issue of codetermination.

¹²⁶Interview with Martin Mayr, Chamber of Commerce representative, in Vienna (June 1976).

¹²⁷Robinson, *Evaluation of the Austrian System*, in *PRICES AND INCOMES POLICY, THE AUSTRIAN EXPERIENCE*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 63 (1972).

¹²⁸Interview with Rudolf Strasser in Linz (June 1976).

American writers who are interested in improved labor-management relations or in corporate reform have been studying the European systems with considerable interest. The concept of a two-tier board system which divides the functions of management and supervisors has definite appeal to those who see a need to interpose another layer between the shareholders and the management of the firm. The idea of employee members on a board of directors is seen by some as a productive method for increasing the flow of information in both directions. Although management may see precisely this point, that is, employee access to management information, as the strongest argument against any form of codetermination, there is a trend toward greater participation by employees in matters that affect their working lives. A system of codetermination is one way to arrive at what may be an inevitable result.

The Austrian model provides a legal mechanism by which such representation may be achieved without direct union participation.

However, unlike European labor management relations which grow out of a history of class warfare, American labor laws are a product of decisions in favor of collective bargaining conducted at arm's length. The statutes mandate an adversary relationship. Efforts to graft codetermination mechanisms onto American industrial practices run head-on into the labor laws and regulations, state corporation laws, and securities laws.

In addition, European-style codetermination raises problems of directors' fiduciary duties, access of unions to corporate records outside the scope of collective bargaining, conflicts of interest on all sides, unions' duties of representation to their electing units, union intrusion into managerial matters and union representatives as exclusive bargaining agents.

Solutions which have been suggested involve designating non-union members as employee representatives, requiring employee representatives to function as full-time directors without any other employee functions, isolating employee participation from the collective bargaining process, giving employee representatives non-voting status on the board, and providing for employee representative selection by a process wholly separate from union activity. However, none of these proposals is practically realistic or even feasible under existing law in the United States.

Barring a fundamental change in American economic philosophy and massive legislative reform, it is not foreseeable that real change in the direction of European practice is possible. Where the history and experience of nations are so different, it is probably impossible to lift out elements of one and graft them onto the other.

Nevertheless, some system of employee participation is becoming the way of life in a growing number of nations, and it should be worthwhile for American readers to become better informed about these systems. Many of the people with whom this author spoke said that despite differences in history, some form of codetermination eventually would come to the United States. In fact, some Austrians interviewed believed that their country's system points the way for all industrial societies.

