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THE EC VS. NAFTA: LEVELLING UP VS. SOCIAL DUMPING

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Though ratification is uncertain, if the nations of the European Community ratify and implement the agreements reached at Maastricht, including the social protocol, the long-run implications for labor law, collective bargaining and the rest of what is commonly referred to as the "social dimension" of European economic and political integration will likely be enormous. The industrial relations system, including labor law, will not be the only aspect of life in the Community to escape major change.

The level of detail at which regulations and directives currently are being promulgated Community-wide is well illustrated in the following humorous tidbit:

> In their enthusiasm to establish a single currency and standardize products for the Economic Community, the European Commission has run into problems determining a standard size for condoms. All the countries involved have agreed on a length (152 millimeters), but deciding on a width has been more difficult. The Economist reports that the Italians maintain that 54 millimeters is sufficient, while the commission is insisting that the condoms be 55 millimeters in diameter.[1]

In a less humorous vein, though the road has been bumpy of late, the nations of the European Community still purport to be travelling toward a common currency that will be controlled by a single European Central Bank. If and when they get there, can the advent of Community-wide collective bargaining be far behind? Monetary union, if it is achieved, will for better or worse force a much higher degree of economic and social convergence among and between the EC nations than has been achieved to date. In the opinion of at least some experts, such convergence will open the door, at the very least, to further "Europeanization" of trade union activity, creating pressure eventually for Europe-wide collective bargaining.[2]

Europe-wide collective bargaining could emerge as a trade union objective at large companies which operate in two or more countries of the

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1. *The Short Run*, DOLLARS & SENSE, Mar., 1992.

2. *See, e.g.*, Peter Coldrick, *A Labor View of European Labor Markets*, EUROPEAN AND AMERICAN LABOR MARKETS: DIFFERENT MODELS AND DIFFERENT RESULTS (1991).

EC. It could also emerge from negotiations between the European Trade Union Confederation, (ETUC), and UNICE, the employers' association, around the implementation of basic minimum standards in areas such as those addressed by the EC's Social Charter. At a minimum, economic and political union will enable trade unionists to improve co-ordination of their efforts to achieve mutual collective bargaining goals, such as the shortening of standard working hours to 35 hours per week. Employers will resist, but come monetary and political union, the forces operating in the direction of EC-wide collective bargaining will be formidable.

Professor Von Maydell suggests that the weakness of trade union institutions at the EC-level currently retards development of EC-wide collective bargaining, with the result that there is little pressure for adoption of EC-wide labor laws. While it is true that the locus of power in the European trade union movement remains at the national level, there is reason to believe that Professor Von Maydell's point about the weakness of EC-level trade union institutions is greatly overstated.

There has been substantial and rapid development of the ETUC. Its resources and staff continue to increase, despite difficult times financially for the labor movement in much of Europe as elsewhere. ETUC now has 45 million workers under its umbrella, including 39 national trade union confederations in 21 European countries. Its affiliates represent 40% of all of the workers of Europe, including 95% of those that are unionized. As of 1990, ETUC had 15 European industry-level committees. These industry committees seek to foster the kind of international cooperation between trade unionists in different European countries that may lay the foundation for collective bargaining with multi-national corporations Europe-wide.

Already, a number of trade union committees have been established to represent workers at major multi-national corporations operating in two or more countries of Europe. These committees bring together representatives of the workers at those companies from different countries, so they can exchange information, and begin to coordinate their strategies. European company-wide trade union councils are in various stages of formation at Siemens, Airbus, Unilever, Rhone Poulenc, Elf Aquitaine, and elsewhere. At the auto companies including GM and Ford of Europe and Volkswagen, meetings of trade unionists from all across Europe have been occurring for some time.

Professor Von Maydell's contention that the social dimension of European integration was no more than an afterthought to the primary goal of economic union also seems quite overstated. Early in the process of

economic integration, trade unionists raised concerns about "social dumping" and the need to protect workers in all nations of the Community from being pitted by their employers against one another, thereby driving down wages and undermining social protections. While the degree of progress achieved in preventing social dumping and in raising social protections can be debated, there is little question that from a U.S. perspective the progress has been substantial.

An example of that progress is an EC directive adopted as early as 1975, dealing with the subject of mass layoffs. That directive required EC employers to consult with representatives of their workers, to seek ways to avoid layoffs, minimize the number of layoffs that will be required, and mitigate the resulting harm to the affected workers. A 1977 EC directive dealing with corporate mergers and acquisitions guaranteed workers the right to continue working for their company's new owner; dismissals may not occur solely as a result of a merger or acquisition. With regard to employer bankruptcies, a 1980 EC directive set forth important worker rights and protections. In all three of these areas, mass layoffs, corporate mergers and acquisitions, and employer bankruptcies, EC directives set forth minimum standards which must be adhered to by every nation of the Community which go well beyond the legal protections that are provided to workers in the United States.

Further progress came in the form of a Social Charter adopted in December 1989 by the European Council. Title I of the Charter spells out certain "Fundamental Social Right of Workers" throughout the Community, including rights to health and safety protections on the job; freedom of association and collective bargaining; rights to improved living and working conditions; adequate social protections, including social security benefits; equality of treatment for women; rights to information, consultation and participation for workers with respect to their employer; worker training; and protections for children, older workers and the disabled. A 47-point "Action Program"" was developed to implement these rights.[3]

Implementation of the Social Action Program has been slow, but an important procedural change reflected in the Maastricht Protocol makes substantial future progress on implementation virtually certain, assuming the new treaty is ratified. The change in question is the substitution of qualified majority voting for the pre-Maastricht requirement of unanim-

3. Greg Woodhead, *Workers Rights: EC92*, AFL-CIO REVIEWS THE ISSUES, Sept. 1991, Rep. No. 54.

ity among all member states, in order to approve any EC directive in the area of employment policy.

The pre-Maastricht unanimity requirement meant that a single member state could effectively veto implementation of any employment policy-related aspect of the Social Action Program with which its government disagreed. Typically, the veto was cast by the Conservative government of the UK. For example, until recently the UK government used its veto power to block a directive that will establish a minimum requirement of 16 weeks paid maternity leave throughout the EC. This directive has now won final approval, and will take effect in 1994.[4]

Under qualified majority voting, by contrast, the European Council will be able to make employment policy decisions without requiring unanimity. When decisions are taken by a qualified majority, France, Germany, Italy and the United Kingdom have ten votes each; Spain has eight votes; Belgium, Greece, the Netherlands and Portugal have five votes each; Denmark and Ireland have three votes each; and Luxembourg has two votes. Out of a total of 76 votes, 54 are needed to approve a Commission proposal and enact it into law. Under the compromise reflected in the Maastricht protocol, the UK will be able to opt out of social and employment policy directives with which its government disagrees, but will no longer be able to veto directives in these areas to which a qualified majority of the other eleven member states can agree.

It is unfortunate that Professor Von Maydell's paper did not include a more detailed analysis of the Maastricht Treaty, particularly its Social Protocol. In December 1991, eleven EC member states (all of them except the UK) initialed a separate protocol on social policy. The Protocol expands the scope of issues under the heading of the "social dimension" of European integration that will be subject to EC intervention.

Based on an ETUC-UNICE agreement, the Protocol also vests substantial new authority in national negotiations between union and employer federations in EC member states. Where the parties mutually agree, certain EC social and employment policy directives can be implemented at the national level by means of collective bargaining rather than legislation. Unlike collective bargaining in the United States, the results would be applicable to all workers and all employers, whether unionized or not.

If Maastricht is ratified, progress will be possible even on such controversial matters as a proposal to require the establishment of European

4. *European Community Adopts Directive Guaranteeing Women Paid Maternity Leave*, DAILY LAB. REP., Oct. 21, 1992, at A-1 to A-2.

works councils, which was approved in July 1991 by the European Parliament. Under this proposal, all firms that employ 1,000 or more workers, and operate two or more establishments with at least 100 workers each in two or more member states, would be required to establish European workers' councils, made up of representatives chosen by the workers or their unions. Employers would be required to disclose information to these councils, and to consult with them about important company decisions.

The European Commission's draft directive on working time is another good example of a controversial employment policy issue on which progress may now be possible if the Maastricht treaty is ratified. This directive would set forth minimum standards with respect to daily rest periods, days off per week and yearly vacation time for workers throughout the Community.

Another important dimension of European economic and political integration has been the establishment of large Community-wide structural and social funds. The purpose of the social funds is to promote employment, raise living standards and facilitate adjustment to industrial change throughout the EC. The purpose of the structural funds is to develop the Community's least-favored regions, thereby increasing social and economic cohesion.

These funds are quite sizeable in relation to the GDPs of poorer EC member states, and the budget for them is projected to double between 1987 and 1993, amounting to 25% of the EC's total budget. The structural and social funds represent a substantial commitment by the EC and its member states to ease the burdens on workers resulting from dislocations associated with economic integration, and to assure that the harmonization of social standards and protections throughout the Community is in an upward rather than downward direction.

The priority given to the social dimension of economic integration in Europe stands in marked contrast to the approach to economic integration reflected in the North American Free Trade Agreement (NAFTA) recently negotiated between the United States, Mexico and Canada by the Bush, Salinas and Mulroney administrations. Quite unlike the approach being followed in the EC, the NAFTA blueprint for economic integration is silent or, at best, ineffective by design on the critical issues of labor standards, workers' rights, and health, safety and environmental protections. There is even a serious risk that the agreement will undermine existing federal and state protections in these and other areas. In contrast to the care which has been taken in the EC to undertake eco-

nomic integration in a manner which avoids "social dumping," NAFTA will be an open invitation to continue and intensify this already rampant practice.[5]

It is possible to conceive of a far more positive model of economic integration than NAFTA one in which harmonization of workers' rights and labor, health, safety and environmental standards would be upward, not downward. The model for this is the European Community, where economic integration has been accompanied by massive "social funds" and a social charter that intends to provide a framework for upward harmonization, and guard against the kind of "social dumping" that NAFTA will exacerbate.

5. Sheldon Friedman, *NAFTA as Social Dumping*, CHALLENGE MAG., Sept.-Oct. 1992, at 27-32.