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INTRODUCTION

The economic unification of Europe scheduled for the end of 1991 will be an economic and social milestone. The European Community (EC or Community) is the United States' largest trading partner and the EC's economic unification should create increased opportunities for economic interaction.[1] The dramatic shifts which have occurred over the past two years in eastern Europe add even greater significance to the EC's coming economic unification, particularly as various eastern European countries seek associate membership in the EC.[2] Indeed, the unification of Germany, which occurred on October 3, 1990, automatically made East Germany a member of the EC. Moreover, various Scandanavian and other countries have recently developed formal links with the EC through the formation of a European Free Trade Area.[3] While the EC's population is currently about 340 million and is expected to grow, it may not reflect the Community's actual economic clout.

The industrial and labor relations implications of the coming economic unification of the EC are considerable. Indeed, the "social dimension" or social and labor regulation aspects of EC 1992 have been among its most controversial.[4] Former British

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[1] *See generally Europe Without Frontiers: A Lawyer's Guide* (A. Winter et al. eds., 1989).

[2] *See* Anthony Robinson, *The Signs are Encouraging*, FIN. TIMES (London) Oct. 30, 1991, at 1, sec. 3.

[3] *See* Alan Riding, *Europeans in Accord to Create Vastly Expanded Trading Bloc*, N.Y. TIMES, Oct. 23, 1991, at 1.

[4] *See, e.g., Europe's Social Insecurity*, ECONOMIST, June 23, 1990, at 13; *Workers Want Their Piece of Europe Inc.*, BUS. WK., Oct. 29, 1990, at 46.

Prime Minister Margaret Thatcher's strident opposition to various aspects of the proposed social dimension[5] played a role in forcing her resignation. Nevertheless, the current British government has continued its opposition to these reforms, with Prime Minister John Major stating that the proposed social charter would render the EC less competitive in the global marketplace.[6]

In contrast, the unified German government and the German trade unions have played a highly active role in supporting the social dimension proposals.[7] Through social dimension proposals, Germany has been attempting to apply its industrial relations system, including its model of worker participation, throughout the EC.[8] An examination of the worker participation aspects of the European Company Statute, for example, shows clear evidence of German footprints.[9]

This Article analyzes the social dimension proposals of EC 1992, primarily from a worker participation perspective. Part I provides a political and historical overview of worker participation in European business decisionmaking. Part II discusses German legislation which requires that workers be allowed a role in business decisionmaking. Part III discusses EC initiatives to expand the role of workers in business decisionmaking. Part IV discusses the Community's proposed European Company Statute and the development of a worker participation scheme throughout Europe. Part V contrasts the U.S. approach to worker participation and other aspects of industrial relations to the EC proposals. The Article concludes that these proposals already have had, and will continue to have, significant implications for U.S. labor-management relations, especially in terms of increasing the likelihood of congressional reform of the National Labor Relations Act (NLRA).

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[5] *See* Craig Forman et al., *EC Leaders Reach a Milestone Accord on Currency, Defense, Foreign Affairs*,WALL ST. J., Dec. 11, 1991, at A3.

[6] *See id.* Indeed in the Treaty of Maastricht agreed to by the European Community in December 1991, Great Britain was permitted to formally opt out of the "social dimension" requirements of the 1992 European Unification. *See* Scott Sullivan, *European Takes a Giant Step*, NEWSWEEK, Dec. 23, 1991, at 36; *see also* U.S. NEWS & WORLD REP., Dec. 23, 1991, at 13.

[7] *See* Timothy M. Devinney, *Big New Europe Is Bad News For Free Trade*, WALL ST. J., Nov. 4, 1991, at A18.

[8] *See infra* notes 17–20 and accompanying text.

[9] *See infra* notes 53–58 and accompanying text.

I. POLITICAL AND HISTORICAL OVERVIEW

Historically, industrial relations in western Europe have differed considerably from the typical labor-management relationship in the United States.[10] One of the distinctive features of western European industrial relations has been its inherent class consciousness. In Europe, industrial strife is often seen as "a conflict between two classes, almost two distinct orders of mankind, separated from each other by a wide and impossible gulf of habits, attitudes, and material conditions."[11]

This European class consciousness has led workers to become very active in the political process. In Europe, union members and their leaders have been more likely to align themselves closely with a political party than their U.S. counterparts. Great Britain, for example, has a distinct and powerful labor political party. In addition, some European unions have actually evolved from political labor parties.[12]

Workers in Europe, especially in Germany, have used their political clout to achieve what U.S. unions have traditionally pursued at the bargaining table.[13] By flexing their political muscle, European unions have brought about comprehensive protective social legislation not duplicated in the United States. For example, European workers generally enjoy paid vacations, disability wages, protection from unjust discharge, and various other benefits by virtue of national statute. U.S. workers generally receive these benefits only by way of collective bargaining contracts or other formal employer-employee arrangements.[14]

Given the wide scope of labor's legislative power in some EC Member States, formal collective bargaining is often rather unimportant. Moreover, the collective bargaining which does take place often occurs on a highly centralized basis.[15] Employers frequently bargain through industry associations and union power

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[10] *See* Derek C. Bok, *Reflections on the Distinctive Character of American Labor Law*, 84 HARV. L. REV. 1394, 1397–1400 (1971).

[11] ROBERT W. SMUTS, EUROPEAN IMPRESSIONS OF THE AMERICAN WORKER 2 (1953).

[12] *See id.* at 4.

[13] *See* Benjamin Aaron, *Labor Relations Law in the United States from a Comparative Perspective*, 39 WASH. & LEE L. REV. 1247, 1251 (1982).

[14] *See generally* Rae Sedel, *Europe 1992: HR Implications of the European Unification*, PERSONNEL, Oct. 1989, at 19, 22.

[15] *See* Bok, *supra* note 10, at 1404–09.

is similarly centralized at the national level. In Germany, for example, collective agreements typically establish national wage patterns for certain industries and serve as important instruments of national economic planning.[16] Worker input at the local level is, however, facilitated by way of various types of statutorily-mandated worker participation schemes. The German worker participation approach is a particularly important and instructive paradigm because in many respects it serves as a model for various social dimension proposals.

II. THE GERMAN WORKER PARTICIPATION MODEL

A politically active worker and union movement has clearly affected industrial relations in Germany. Indeed, the nation's main trade union federation, the DGB, has proclaimed as its goal a "radical change of society."[17] To this end, German workers and unions have successfully sought and obtained legislation mandating worker participation in management. The two major statutes are the Co-determination Act and the Works Councils Act.

The present German co-determination law was enacted in 1976 and essentially mandates equal employee/employer representation on company supervisory boards for all companies with more than 2,000 employees.[18] But while employee representation on policy-making supervisory boards may foster a sense of "worker participation," in practice it does little for the individual worker with a complaint. Germany has, however, addressed the issue of day-to-day worker input at the "plant-floor" level in the Works Councils Act.[19] This law enables workers in German enterprises employing *five* or more employees to establish works councils or plant-wide organizations composed of elected worker representatives. The law assigns certain clear areas of responsibility to the works councils, and requires employers to inform and consult with them on a wide range of issues. The works councils are institutionally separate from German unions, although some

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[16] *See generally* J. Bauz Bonanno, Note, *Employee Codetermination: Origins in Germany, Present Practice in Europe, and Applicability to the United States*, 14 HARV. J. ON LEGIS. 947, 947–66 (1976–77).

[17] Folke Schmidt, *Industrial Action: The Role of Trade Unions and Employers' Associations, in* INDUSTRIAL CONFLICT 39 (Benjamin Aaron and K. W. Wedderburn eds., 1972).

[18] German Co-determination Act, 1976 BGBl. I 1115.

[19] German Works Council Act, 1972 BGBl. I 13.

council members are also union members, and the councils perform some functions similar to those of local unions in the United States.[20]

III. WORKER PARTICIPATION IN EC 1992

A. *The Community Charter*

On September 27, 1989, the European Commission (Commission) issued a draft Community Charter of Fundamental Social Rights (Community Charter).[21] This document states that a critical part of the economic unification of the EC is the promotion of "improved living and working conditions for workers."[22] Accordingly, the Community Charter enunciates various principles concerning increased worker freedom of movement, improved opportunities for worker training, improved workplace health and safety, and increased protections for the disabled and elderly.[23]

The Community Charter sets forth guidelines regarding proposals on "information, consultation and participation for workers."[24] These guidelines, however, are vague. In addition, the Community Charter explicitly states that in developing the forementioned proposals, the Commission must take into account "the practices in force in the various Member States."[25] Thus, while stating a general desire to standardize worker participation throughout the EC, the Community Charter also avoids pushing the matter too forcefully. The EC Action Programme,[26] which the Commission adopted on November 29, 1989, develops the principles announced in the Community Charter in more detail.

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[20] *See generally* Michael Kaplan, Comment, *Is Labor a Widget: A Comparative Study*, 59 TUL. L. REV. 1517, 1540–41 (1985).

[21] Draft Community Charter of Fundamental Social Rights, COM(89)471 final [hereinafter Charter]. At a meeting of the European Council in Strasbourg, France on December 8 and 9, 1989, the Heads of State and Government of 11 Members States adopted the Charter. BULL. EC 22–1989, point 2.1.104.

[22] Charter, *supra* note 21, at 1.

[23] *See, e.g., id.* at § § 1, 2, 3, 15, 19, 24, 25 & 26.

[24] *Id.* at § § 17 & 18.

[25] *Id.* at § 17.

[26] *See* Communication from the Commission Concerning its Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers, COM(89)568 final [hereinafter Action Programme].

B. *The Action Progamme*

1. Overview

The Action Progamme builds on various EC Directives pertaining to worker information, consultation, and participation.[27] The Action Progamme points out, however, that the internal European market created by EC 1992 "will accelerate mutations and restructuring of a large number of European industries."[28] The Action Progamme also acknowledges diversity on these subjects among Member States, but claims that eventual standardization is considered "necessary" within the Community. It further announces plans for appropriate legislative instruments to accomplish a consistent application of worker participation principles.[29] Thus, despite existing Directives, the general debate on the subject of worker participation clearly has been reopened. For example, the Action Progamme's proposals for Community and Commission legislation have sparked an intense and important debate on worker information, consultation, participation, equity-sharing, and other financial participation at European-scale undertakings.[30]

2. Commission Instrument on Worker Participation

Individual Member State laws and policies on worker information and consultation naturally do not control the conduct of businesses beyond national boundaries. Therefore, multinational companies in the EC may find that policy decisions made at corporate headquarters result in unequal treatment of employees company-wide.[31] Worker participation procedures mandated by law in one nation may not suit the complex structure of corporations that operate in more than one Member State.[32] The Commission intends to deal with these issues by imposing a system of labor regulation on the entire EC.

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[27] *See id.* at 17 (citing Directive 77/187 on worker rights in event of transfer of firms, Directive 75/129 on collective redundancies, and Directive 80/987 on insolvency of employers).

[28] *Id.* at 31.

[29] *Id.*

[30] *See generally* Leonard Bierman & Gerald Keim, *On the Economic Realities of the European Social Charter and the "Social Dimension" of EC 1992*, 2 DUKE J. COMP. & INT'L LAW, (forthcoming 1992) (manuscript on file with author).

[31] *See* Action Programme, *supra* note 26, at 32.

[32] *Id.*

In the Action Progamme, the Commission elaborates on its legislative plan for labor standardization. It identifies the following as key principles: (1) establishment of equivalent systems of worker representation in all European multinational enterprises; (2) periodic, scheduled provision of information to workers about the development of the enterprise and how it affects them; (3) employee involvement and consultation in decisions of serious consequence to employees, including closures, transfers, curtailment of activities, long-term cooperation with other undertakings, and substantial changes in corporate structure; and (4) corporate responsibility to provide affiliates and subsidiaries with the information employees and their affiliates need.[33]

The Action Progamme is relatively specific on these issues compared to the Community Charter, but by normal business standards, its worker participation proposals are still extremely vague. For example, the Action Program does not explain what is meant by "equivalent systems of worker representation," a point which will obviously require careful development. Similarly, the precise parameters of required employee involvement and consultation in employer decisionmaking will have to be more specifically defined.

3. Commission Instrument on Worker Participation in Financial Decisionmaking

The Action Progamme definitely envisions that "worker participation" involves the development of work rules and other management decisions with a direct impact on employees. It also anticipates worker participation in corporate financial decisionmaking. As the Commission has noted previously, worker participation in financial decisionmaking promotes "greater justice in the distribution of wealth" and a "means for attaining an adequate level of non-inflationary growth."[34] The Commission thus intends to develop proposals dealing with financial participation by workers.[35] By "financial participation," the Commission means employees sharing in the profits, the capital growth or the capital of firms. It may also mean an actual redistribution of profits or capital to the salaried worker, in a form to be negotiated.[36]

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[33] *Id.* at 33.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 33–34.

IV. THE PROPOSED EUROPEAN COMPANY STATUTE

A. *Overview*

The notion of creating a genuine "European company," a "Societas Europeae," subject to a new EC company law rather than the company laws of the Member States, was initially raised shortly after the Treaty of Rome established the Community.[37] The idea of supra-national European companies gained greater momentum over the next decade. In June 1970, the European Commission produced a massive draft regulation on the subject, comprising 284 articles and four annexes.[38] A final version of this proposal incorporating the amendments of the European Assembly—the predecessor of the present European Parliament—was transmitted to the Council of Ministers on June 30, 1975.[39]

Further progress on the issue lagged until the Commission issued a White Paper on June 14, 1985 that recommended "completing the internal market."[40] On June 8, 1988, the Commission issued a memorandum proposing a European Company Statute, and in May 1989, the Commission formally proposed a draft statute.[41] The draft European Company Statute has two components: (1) a "Regulation" addressing the technical, legal, and procedural aspects of creating a European Company; and (2) a "Directive" addressing employee involvement and participation issues.[42]

Worker participation has always been a key provision in prior drafts of the European Company Statute.[43] In many respects, this issue has been a major obstacle to enactment of such a statute.[44] The Commission's current proposed European Company Statute

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[37] *See* Dominique Carreau & William L. Lee, *Towards A European Company Law*, 8 Nw. J. INT'L L. & BUS. 501, 501 (1989).

[38] *Id.* at 502.

[39] *Id.*

[40] *See* Completing the Internal Market: White Paper from the Commission to the European Council, COM(85)310 final.

[41] *See* Statute for a European Company, BULL. EUR. COMM. 5/89 at 37 [hereinafter Statute for a European Company].

[42] *Id.*

[43] *See* Carreau & Lee, *supra* note 37, at 508.

[44] Great Britain, in particular, has continually opposed the concept of "worker participation" in the European Company Statute. *See* FIN. TIMES (London) Dec. 17, 1988, at 14.

recognizes the extremely controversial nature of the worker participation provisions.

By breaking the proposed statute into two components, the Regulation and the Directive, the Commission hopes to segregate the potentially explosive issue of worker participation without damaging the heart of the proposed legislation.[45] The Commission's efforts to segregate the issue of worker participation from the rest of the European Company Statute with artful drafting, however, have not been completely successful. The Regulation component addresses several employee involvement issues.[46] For example, the Regulation would require employers seeking to establish a European company to discuss with their employees' representatives "the legal, economic and employment implications" of the company's formation.[47] The Regulation also imposes on the company's managing board an obligation to consider employee interests as they carry out their duties,[48] and authorizes employee representatives to bring proceedings to dismiss members of a company's board.[49] Other sections of the Regulation address employee ownership and involvement in management.[50] It thus seems highly unlikely that the two-part structure of the proposed statute will shield the Commission, the European Parliament, or the Council of Ministers from the firestorm of debate over worker participation proposals.

B. *The Worker Participation Approach of the European Company Statute*

The European Company Statute's worker participation Directive proposes three models, each of which is designed to recognize employees' involvement in the European company, and "to make them feel that the business of the firm is their business."[51] The Directive's Preamble elaborates on this theme, stating that in order to promote the Community's economic and social objectives, employees must "participate in the supervision and strategic

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[45] This attempt, however, has not been very successful. *See infra* notes 48–52 and accompanying text.

[46] *See* Statute for a European Company, *supra* note 41, at 45, 47, 55.

[47] *Id.* at 45.

[48] *Id.* at 55.

[49] *Id.*

[50] *Id.* at 47.

[51] *Id.* at 33.

development" of the European company.[52] Due to the "great diversity of rules and practices" concerning worker participation in Member States, however, the Commission cannot impose uniform rules on employee involvement in the European company. Consequently, Member States have the discretion under the Directive to adopt any or all of the three models in their jurisdictions, and companies may follow any of the models approved in the host nation.

The European Company Statute's three worker participation models are set forth in Articles 4, 5, and 6 of the Statute's Directive. Under Article 4, which incorporates the German model, employees or their representatives have the right to appoint between one-third and one-half of their employer's supervisory or administrative board.[53] Employee board representatives under Article 4 of the European Company Statute have similar responsibilities as do employee board representatives under the 1976 German Co-determination Act.[54] Article 4 does not, however, contain any mandates regarding lower level worker participation such as those contained in the German Works Councils Act.[55]

Article 5 of the European Company Statute essentially incorporates the Franco-Italian worker participation systems, and provides for the establishment of the representative employee groups similar to the German works councils to represent a company's employees. Such representation is to occur in accordance with the host Member State's laws or practices.[56] Under this Article, these representative bodies of employees are provided with various specific rights including: (1) the right to quarterly information from the company's management or administrative board regarding the progress of the company's business and that of its affiliates and subsidiaries; (2) the right, where necessary for the performance of their duties, to demand specific financial or other information about the company's business; and (3) the right to be informed and consulted by management before major corporate decisions are implemented.[57] Article 5 also imposes a duty on employee representatives functioning pursuant to this Article

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[52] *Id.* at 69.

[53] *See id.* at 70.

[54] *See generally supra* note 18 and accompanying text.

[55] *See* Statute for a European Company, *supra* note 41, at 70.

[56] *Id.*

[57] *Id.*

to maintain the confidentiality of the business information provided by the employer.[58]

The final worker participation model, set forth in Article 6 of the European Company Statute, is a catch-all category inspired by the Swedish worker participation system. It provides that any other model may be established by agreement among the given parties.[59] In Sweden, the degree of worker participation in each company is essentially a contractual matter.[60] The collective bargaining agreement between the parties determines the extent of employee involvement. Article 6 does not give the parties complete freedom in formulating their own worker participation schemes. Any agreement must provide essentially the same rights to information and consultation mandated in the works council model of Article 5.[61] Employers must also finance the employee representative's negotiating costs for a worker participation agreement, including payment to their consultants or "experts."[62] If the parties fail to reach an agreement, they must adopt a standard model provided for by the law of the Member State and which assures employees basic informational and consultative rights.[63]

The proposed European Company Statute does not permit the formation of a European company unless the company has chosen to adopt one of the Directive's three worker participation models.[64] Member States retain only the discretion to restrict the choice and method of application of models for companies registered under the Statute in their territory.[65] Member States do *not* retain the authority to exempt such companies from participating in the European Company Statute's worker participation scheme.[66] Thus, Germany could specifically require that any European company registering in that country adopt the model set forth in the European Company Statute Directive Article 4. Germany, however, could not permit any such European company

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[58] *Id.*

[59] *Id.*

[60] *See* Alan C. Neal, Comment, *A New Era for Collective Labor Law in Sweden*, 26 AM. J. COMP. L. 609, 615 (1978).

[61] *See* Statute for a European Company, *supra* note 41, at 70–71; *see also id.* at 54.

[62] *Id.* at 71.

[63] *Id.*

[64] *Id.* at 70.

[65] *Id.*

[66] *Id.*

to completely opt out of the European Company Statute's worker participation requirements.

The three models for worker participation in the proposed European Company Statute illustrate the stark contrast in approach on employee involvement issues between the United States and the EC. The European Company Statute requires, for example, that management provide employee representatives "with such financial and material resources as to enable them to meet and perform their duties in an appropriate manner."[67] This provision is, of course, the direct antithesis of section 8(a)(2) of the U.S. NLRA,[68] which outright prohibits employers from providing financial or other support to employee labor groups.[69]

V. IMPLICATIONS OF SOCIAL DIMENSION PROPOSALS ON U.S. LABOR-MANAGEMENT RELATIONS

A. *Section 8(a)(2)*

As Professors John Dunlop and Derek Bok point out,[70] the U.S. labor movement traditionally has been extremely wary of strong "social activism" or political involvement. Despite some brief attempts during the nineteenth century, a U.S. labor political party has never emerged.[71] Rather than put its efforts into "social unionism," the U.S. labor movement has instead favored "business unionism"—seeking greater benefits and other protections at the bargaining table.[72] To this end, U.S. unions have traditionally eschewed worker participation and related employer-union schemes in favor of trying to gain greater bargaining clout.[73]

Section 8(a)(2) of the NLRA directly incorporates this theme of union-management separation or bifurcation. This provision states that it shall be an unfair labor practice for an employer to "dominate or interfere with the formation or administration of

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[67] *Id.* at 71.

[68] 29 U.S.C. § 158(a)(2) (1982).

[69] *See generally* JULIUS GETMAN & JOHN D. BLACKBURN, LABOR RELATIONS: LAW, PRACTICE & POLICY 135–84 (1983).

[70] *See* DEREK C. BOK & JOHN DUNLOP, LABOR AND THE AMERICAN COMMUNITY 385–90 (1970).

[71] *See generally* HARRY C. KATZ & THOMAS A. KOCHAN, AN INTRODUCTION TO COLLECTIVE BARGAINING AND INDUSTRIAL RELATIONS 142 (1992).

[72] *See id.* at 39, 142.

[73] *See* AFL-CIO *Am. Fed.* Oct. 1977, at 15 (statement of Lane Kirkland).

any labor organization or contribute financial or other support to it."[74] Traditionally, the courts have interpreted this language quite literally, prohibiting any form of employer support by an organization that in any way resembles a "labor organization."[75]

In recent years, however, section 8(a)(2) has come under increasing attack. For example, in the prominent case of *Hertzka & Knowles v. NLRB*, the U.S. Court of Appeals for the Ninth Circuit noted that almost any form of employer cooperation, however innocuous, could be deemed unlawful "support" or "interference" under section 8(a)(2).[76] The court added, however, that such a view was "myopic" and cut against the broader objectives of the NLRA.[77] This view was recently embraced by the U.S. Department of Labor in its highly controversial report entitled "Analysis of U.S. Labor Law and Future of Labor-Management Cooperation," the so-called "Schlossberg Report."[78] This report takes the position that strong support for labor-management cooperation and a revised view of section 8(a)(2) are necessary if the United States is going to compete effectively in the world marketplace.[79]

Current developments in the EC related to worker-management cooperation could create pressure to change section 8(a)(2). This pressure will arise directly, as U.S. businesses compete with their European counterparts, and indirectly as the United States is exposed more to European worker participation models. Although the highly adversarial model of labor-management relations encapsulated in section 8(a)(2) may be somewhat anachronistic in today's global economy, some degree of labor-management separation and institutional autonomy is probably quite useful.[80] Nevertheless, developments in Europe will likely help spark increased interest in greater labor-management cooperation, and possible reform of section 8(a)(2) of the NLRA, in the United States.[81]

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[74] 29 U.S.C. § 158(a)(2) (1982).

[75] *See, e.g.*, Kaiser Foundation Hosp. Inc., 223 N.L.R.B. 332 (1976).

[76] 503 F.2d 625, 630 (9th Cir. 1974).

[77] *Id.*

[78] *See Analysis of U.S. Labor Law and Future of Labor-Management Cooperation*, Daily Lab. Rep. (BNA) No. 116, at D-1, D-8–9 (June 17, 1986) [hereinafter Schlossberg Report].

[79] *Id.*

[80] *See* Note, *Collective Bargaining as an Industrial System: An Argument Against Judicial Revision of Section 8(a)(2) of the National Labor Relations Act*, 96 HARV. L. REV. 1662 (1983).

[81] For a good discussion of overall labor market cooperation in Europe see PAUL TEAGUE, THE EUROPEAN COMMUNITY: THE SOCIAL DIMENSION (1989).

B. *Information Disclosure*

United States labor law requires both employers and unions to furnish certain information to each other in the context of both collective bargaining and contract grievance administration.[82] Although the NLRA is silent on the issue, the National Labor Relations Board (NLRB) and the courts have taken the position that the duty to furnish information is a corollary of the statutory obligation of both parties to bargain in good faith.[83] As a result, the duty is actually quite limited in scope, especially when compared to the proposals being set forth as part of the social dimension of EC 1992. Although courts have found union requests for wage and wage-related data to be presumptively relevant, unions have had a much more difficult time obtaining corporate information outside this area.[84]

The very broad information disclosure provisions contained in the EC 1992 social dimension proposals are likely to affect U.S. employers and unions in various ways. First, they are likely to renew calls made in the Schlossberg Report and by some scholars[85] for an increased scope of union-management information disclosure in this country. Given the current absence of explicit legislation on this subject, amendments to the NLRA mandating greater information exchange might be proposed. Second, it is quite possible that U.S. employers with EC operations might fall within the scope of the various proposed EC 1992 mandates in this regard.[86] Such employers would, of course, try to limit the scope of such disclosure to the maximum extent possible, likely arguing that the provisions apply only to the company's European subsidiaries, and *not* to the parent corporation. This situation portends a significant legal and policy battleground.

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[82] *See generally* John Fanning, *The Obligation to Furnish Information During the Contract Term*, 9 GA. L. REV. 375 (1975).

[83] *See generally* NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956); NLRB v. Southland Cork Co., 342 F.2d 702, 706 (4th Cir. 1965).

[84] *See, e.g.*, Washington Materials, Inc. v. NLRB, 803 F.2d 1333 (4th Cir. 1986); International Wood Workers of Am. v. NLRB, 263 F.2d 483, 485 (D.C. Cir. 1959); General AniLine and Film Corp., 124 N.L.R.B. 1217, 1219–20 (1959).

[85] *See* Schlossberg Report, *supra* note 78, at D-9; *see also* Leslie Shedlin, *Regulation of Disclosure of Economic and Financial Data and the Impact on the American System of Labor Management Relations*, 41 OHIO ST. L.J. 441 (1980).

[86] *See generally The Kenneth Piper Lecture—Transnational Regulation of the Labor Relations of Multinational Enterprises*, 58 CHI.-KENT L. REV. 909, 931–35 (1982) (statement by panelist Richard H. Weise, Vice President and General Counsel, Motorola, Inc.).

C. *Union Representatives on Corporate Boards*

Union representation on U.S. corporate boards of directors has been quite limited to date, although the Schlossberg Report specifically called for increased representation of this kind.[87] Moreover, to the extent such representation exists it has generally come about through direct collective bargaining or other agreements between parties.[88] The European Company Statute and EC 1992 proposals, however, envision broad-scale union representation on company boards, a development likely to increase the impetus for such participation in the United States.

To the extent this representation is going to happen in the United States, however, Congress and the courts will have to rethink some of the legal strictures which currently make this country a less hospitable place for union company directors than many European countries. For example, the Landrum-Griffin Act places a strong fiduciary duty on any union official who joins a corporate board to act in the union membership's interest.[89] This duty, however, directly conflicts with the fiduciary duty of any corporate director to represent the interests of the corporation and its shareholders.[90] Moreover, U.S. antitrust law clearly prohibits a person from serving as a director in any two or more corporations at the same time if the corporations are competitors.[91] In short, if the notion of having union participation on corporate boards is going to take greater hold in the United States, some direct attention must be focused on current legal impediments to such an approach.[92]

D. *Worker Financial Participation*

Various EC 1992 social dimension proposals, especially the Action Progamme, clearly call for increased worker financial par-

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[87] Schlossberg Report, *supra* note 78, at D-10–11.

[88] *See generally* Douglas Fraser, *Worker Participation in Corporate Government the U.A.W.—Chrysler Experience*, 58 CHI.-KENT L. REV. 949 (1982).

[89] *See* 29 U.S.C. § 501(a) (1982).

[90] *See* 3 WILLIAM MEADE FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 838 (1965).

[91] *See* 15 U.S.C. § 19 (1982).

[92] *See generally* John Blackburn, *Worker Participation on Corporate Directorates: Is America Ready for Industrial Democracy?* 18 HOUS. L. REV. 349 (1981); Brian Hamer, Note, *Serving Two Masters: Union Representation on Corporate Boards of Directors*, 81 COLUM. L. REV. 639 (1981).

ticipation in firms. These proposals may create pressures for similar worker participation in U.S. firms. Over the past decade, Employee Stock Ownership Plans (ESOPs) and related employee ownership mechanisms have grown considerably in the United States.[93] A number of these plans have come about, however, as part of overall schemes to save distressed companies. Thus, for example, the creation of an ESOP at the Chrysler Corporation was an explicit condition in the 1979 "bailout" legislation Congress passed for the company.[94] At Pan American World Airways in the early 1980s, unions representing the company's hourly workers agreed to a 10 percent wage cut and a wage freeze in exchange for the creation of an ESOP which would give those employees at least 12 percent of the company's stock.[95] There may be significant productivity and other benefits from employee ownership plans even when a company is *not* facing financial hardship. If nothing else, the broad-scale proposals advanced by the EC as part of EC 1992 are likely to engender increased attention to the issue in the United States.

E. *Employment-at-Will*

One of the most controversial issues in the field of industrial relations today is that of "employment-at-will."[96] Traditionally, employment in the United States has been "at will"—employees can quit their job at any time for any reason, while conversely, employers can discharge employees at any time and for any reason.[97] Recently in the EC, however, employment-at-will generally has not been the rule. Great Britain and other countries have enacted unjust dismissal laws which mandate that employees can only be discharged for "just cause."[98] The current EC 1992 social dimension proposals tend to strengthen worker rights by provid-

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[93] *See* Olson, *Union Experiences With Workers Ownership: Legal and Practical Issues Raised by ESOPS, TRASOPS, Stocks Purchases and Co-Operatives*, 1982 WISCONSIN L. REV. 729.

[94] *Id.* at 776–77.

[95] *Id.* at 778–79.

[96] *See* Leonard Bierman & Stuart A. Youngblood, *Employment-At-Will and the South Carolina Experiment*, 7 IND. REL. L.J. 28 (1985).

[97] *See* Lawrence E. Blades, *Employment at Will v. Individual Freedom: On Limiting the Abusive Exercise of Emplower Power*, 67 COLUM. L. REV. 1404, 1405–06 (1967).

[98] *See, e.g.*, Employment Protection (Consolidation) Act 1978, Part V (British law).

ing for employee consultation and involvement in job reductions and other decisions.[99]

A classic article published in 1976 by Professor Clyde W. Summers drew heavily on the European experience in advocating the enactment of an unjust dismissal statute in the United States.[100] In response to this article and other scholarly contributions,[101] various state courts began creating judicial exceptions to the employment-at-will doctrine.[102] For example, a number of state courts have held that an employee cannot be fired for serving on a jury or for other public policy reasons.[103] Moreover, the state of Montana has recently enacted a comprehensive statute prohibiting unjust dismissal.[104] The general increased protection in this regard contained in the EC 1992 proposals may well create further impetus for change in this area in the United States.

CONCLUSION

The coming economic unification of the EC is a milestone event, and the worker participation/social dimension elements of this unification are of considerable importance. Indeed, these elements of the unification have, at least to date, been some of its most controversial. These proposals have been part of not only the Commission's Community Charter and Action Progamme, but also of the proposed European Company Statute.

Regardless of how the battle over these proposals turns out in Europe, it is fair to say that they already have had, and will continue to have, significant implications for U.S. labor-management relations. If nothing else, they are likely to force renewed

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[99] *See supra* notes 32–34 and accompanying text.

[100] *See* Clyde W. Summers, *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 VA. L. REV. 481, 508–32 (1976).

[101] *See, e.g.*, Note, *Protecting At Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816 (1980); Note, *Protecting Employees Against Wrongful Discharge: The Public Policy Exception*, 96 HARV. L. REV. 1931 (1983); Richard J. Pratt, Comment, *Unilateral Modification of Employment Handbooks: Further Encroachments on the Employment-At-Will Doctrine*, 139 U. PA. L. REV. 198 (1990).

[102] *See, e.g.*, Hoffman-LaRoche, Inc. v. Campbell, 512 So.2d 725 (Ala. 1987); Cleary v. American Airlines, 168 Cal. Rptr. 722 (1980); Toussaint v. Blue Cross & Blue Shield of Michigan, 292 N.W.2d 880 (Mich. 1980).

[103] *See, e.g.*, Palmateer v. Int'l Harvester Co., 421 N.E.2d 876 (Ill. 1981); Reuther v. Fowler & Williams, Inc., 386 A.2d 119 (Pa. Super. 1978); Nees v. Hocks, 536 P.2d 512 (Or. 1975).

[104] *See* Mont. Code Ann. § 39-2-901–914 (1987).

attention to a whole host of issues raised by the Schlossberg Report, including possible reform of section 8(a)(2) of the NLRA, greater employer duties of information disclosure, increased union representation on company boards, and increased employee financial participation in firms. The EC proposals may also increase the pressure for greater statutory protections for workers.