

Winning and Losing with Employee Participation

Ellis Boal

Follow this and additional works at: <http://scholarship.law.cornell.edu/cjlp>

 Part of the [Law Commons](#)

Recommended Citation

Boal, Ellis (1994) "Winning and Losing with Employee Participation," *Cornell Journal of Law and Public Policy*: Vol. 4: Iss. 1, Article 5.
Available at: <http://scholarship.law.cornell.edu/cjlp/vol4/iss1/5>

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Journal of Law and Public Policy by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

WINNING AND LOSING WITH EMPLOYEE PARTICIPATION

Ellis Boal[†]

INTRODUCTION

Established in 1993 by the Secretaries of Labor and Commerce, the Commission on the Future of Worker-Management Relations (the "Commission") investigated the current state of worker-management relations in the United States with an eye to recommending new methods or institutions to enhance workplace productivity.¹ The Commission concluded in its initial Fact Finding Report that employee participation plans ("EPPs") may be the key to America's competitiveness and standard of living:

Where employee participation is sustained over time and integrated with other organization policies and practices, the evidence suggests it generally improves economic performance. If more widely diffused and sustained over time, employee participation and labor management cooperation may contribute to the nation's competitiveness and standards of living.²

[†] A.B. Bowdoin College, 1966; J.D. Wayne State University, 1972. Many of the ideas set out here first were developed by staff and collaborators at LABOR NOTES, particularly Mike Parker and Jane Slaughter.

¹ See COMM'N ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS, U.S. DEPT' OF LABOR AND U.S. DEPT' OF COMMERCE, FACT FINDING REPORT xi (1994) [hereinafter FACT FINDING REPORT]. The Commission was directed to report back to the Secretaries in response to the following questions:

1. What (if any) new methods or institutions should be encouraged, or required, to enhance work-place productivity through labor-management cooperation and employee participation? 2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay? 3. What (if anything) should be done to increase the extent to which work-place problems are directly resolved by the parties themselves, rather than through recourse to state and federal court and government regulatory bodies?

Id.

² *Id.* at 56.

The Commission's conclusion relied on two premises. The first is that EPPs enhance worker rights by providing workers with a measure of empowerment or democracy. Implicit in the words and ideology of employment participation is a promise that workers play a role in making workplace decisions that usually are reserved to management. The second premise is that EPPs result in higher productivity. Accepting these premises, proponents of participation plans concur with the Commission's conclusion and endorse EPPs as the "win-win" solution to problems of labor unrest and lagging productivity.

I challenge these premises. Modern participation plans neither enhance worker rights nor increase productivity. The Commission's conclusion that EPPs may contribute to our nation's competitiveness and standard of living is contradictory and weak. Rather, the primary effects of employment participation plans are the tightening of management control, the erosion of worker rights, and the disorganization of unions. Corporate America's plea that unions make sacrifices to accommodate EPPs is disingenuous; employers implement participation plans precisely in order to retain control over their workers.

Part I of this essay traces the history of employee participation programs. Part II examines the productivity claims made with respect to adoption of EPPs and urges workers to reject them and organize independently. Part III argues that workers should reject EPPs and organize independently in order to protect their rights. The best way for workers to protect their interests is not to plead with business or government to adopt pro-worker policies. Until workers organize, and do so in large numbers, genuine improvement of their lot will not occur.

I. FROM THE 1890s TO CURRENT PRACTICE: A BRIEF HISTORY OF EMPLOYEE PARTICIPATION

Employers' concerns with productivity dictated worker participation in the late 1800s. Pointing to the growing disparity of labor costs between the United States and its competitors in England and Germany, industrial engineers of the 1890s began to experiment with various methods of reducing unit cost. The most famous of these methods was a wage-incentive scheme developed by Frederick W. Taylor. Under Taylor's scheme, production standards and work methods were dictated by the laws of science, and science left no room for bargaining. Taylor promoted his system as a solution to labor unrest and productivity problems. He argued that scientific management would so

increase the economic pie that it would be unnecessary for workers and management to quarrel over how to divide the surplus.³ This has a familiar ring today.

Not surprisingly, trade unions were hostile to Taylor's scheme. Strikes often accompanied the introduction of Taylorist theories into unionized shops.⁴ The resulting upheaval sparked experiments in union-management cooperation, and during the 1920s there were high hopes that structured, cooperative programs might resolve problems of poor labor relations. However, most of these experiments were short-lived; they buckled under the weight of the Great Depression, membership opposition, or assertions of managerial prerogatives.⁵

It was not until the late 1970s that the topic of union-management cooperation reemerged. "Quality of Work Life" programs were the first to surface. The idea behind these programs was that if management improved working conditions, worker absenteeism would decline, quality would improve, and productivity would increase. However, the focus in the 1970s was on improving work-life; productivity was merely a welcome by-product.⁶

With the recession of the early 1980s, "Quality of Work Life" programs were phased out, and new regimes, dubbed "Employee Participation Plans," were introduced.⁷ The idea behind the new regimes was to move away from the expectation that the focus of the cooperation programs should be on improving worker conditions. Instead, the focus of EPPs in the 1980s

³ See Sanford M. Jacoby, *Union-Management Cooperation in the United States: Lessons from the 1920s*, 37 INDUS. & LAB. REL. REV. 18, 19 (1983) (outlining the basics of Taylor's wage-incentive production scheme).

⁴ *Id.* at 19.

⁵ *Id.* at 18.

⁶ See MIKE PARKER AND JANE SLAUGHTER, *WORKING SMART, A UNION GUIDE TO PARTICIPATION PROGRAMS AND REENGINEERING* 1-8 (1994).

⁷ Schemes today have dozens of different names: Autonomous Work Groups, Call Manufacturing, Continuous Quality Improvement, Continuous Improvement, Constant Improvement, Deming Method, Diversity Training, Employee Ownership, Employee Participation Plan, Employee Involvement, Gain Sharing, High-Performance Workplace, Japanese Management, Post-Fordism, Quality Function Deployment, Quality Circles, Quality of Work Life, Return On Quality, Self-Managed Work Teams, Task Forces, Team Concept, Teams, Total Quality Control, Total Quality Management, Work Teams, Worker-Management Partnerships, Worker-Management Cooperation, Workplace Democracy, Workplace Innovations, World Class Manufacturing, and Zero Defects.

was on "teamwork." Management wanted to have employees actively participate in work decisions for the primary purpose of increasing productivity.⁸

Ideas about workers' roles with respect to decisions traditionally reserved to management thus have come full circle. In the 1980s, the focus of participation plans remained on productivity. Workers' roles in the 1990s, however, are diminishing drastically. Today, systems of "total quality management" allow employers to set the course for organizing and controlling the workplace. Modern EPPs are used as a vehicle for aligning employee activity with production goals.⁹

II. EMPLOYEE PARTICIPATION, PRODUCTIVITY, AND WORKER SOLIDARITY

Modern employment participation plans neither enhance worker rights nor contribute to productivity. By allowing management to control workplace decisions, EPPs naturally undermine unions' efforts to secure worker participation. Unions are workers' natural allies; they represent the most zealous advocacy of workers' rights. By undercutting union activity, modern plans erode workers' rights.¹⁰ Employee participation plans cannot be justified on the grounds that they enhance workers' quality of life.

Similarly, EPPs cannot be justified on the grounds that they enhance productivity. The Commission erroneously concluded that employee participation plans may be the key to U.S. competitiveness. This conclusion is based on three studies, each of which found that increased economic productivity ensued when participation was combined with changes in employment practices, manufacturing policies, and decision-making procedure.¹¹

⁸ See PARKER & SLAUGHTER *supra* note 6 (noting that the 1980s was an era in which management encouraged workers to take responsibility for production increases and to pressure fellow workers for not pulling their load).

⁹ *Id.* (explaining that total quality management places emphasis on top management's setting the course and organizing the workplace so that decisions "cascade down").

¹⁰ See *infra* notes 18-20 and accompanying text.

¹¹ See FACT FINDING REPORT, *supra* note 1, at 46 (citing studies examining systematic forms of workplace changes at Xerox, in an international sample of auto assembly plants, and in a sample of plants in the steel industry, in support of the conclusion that the more systematic the involvement efforts, the greater the economic benefits); see also *infra* notes 12-15 and accompanying

The first of these studies occurred at a Xerox plant in which Xerox recognized the union without resistance and gave workers a no-layoffs guarantee.¹² The second study surveyed automobile plants in seventeen countries and concluded that a commitment to employment security or an absolute "no-layoff" policy probably is essential for productivity to increase.¹³ The third study the Commission cited in reference to its conclusion that employment participation plans enhance economic productivity reviewed fifteen human resource practices in the steel industry.¹⁴ It found that the firms with the highest performing practices are unionized.¹⁵

None of these studies supports the conclusion that employment participation plans necessarily enhance productivity. The Commission buried its recognition of this fact in the Report.¹⁶ The Report states that productivity increased in "some cases" and that the empirical studies showed "mixed results".¹⁷ Given the paucity of evidence that EPPs directly enhance productivity, and the fact that they erode workers' rights, endorsing EPPs as the "win-win" solution to problems of labor unrest and lagging productivity simply makes no sense.

III. WORKERS SHOULD REJECT EPPS AND ORGANIZE INDEPENDENTLY

The interests of workers and management are adverse. Workers desire good wages, short working days, and comfortable working conditions. Management's primary interest is profit.

text.

¹² Joel Cutcher-Gershenfeld, *The Impact of Economic Performance on a Transformation in Workplace Practices*, 44 INDUS. & LAB. REL. REV. 241, 244-45, 258 (1991).

¹³ John Paul MacDuffie & John F. Krafik, *Integrating Technology and Human Resources for High-Performance Manufacturing: Evidence from the International Motor Vehicle Research Program*, in TRANSFORMING ORGANIZATIONS (Thomas A. Kochan & Michael Useem eds., 1992).

¹⁴ Casey Ichinoiski et al., *The Effects of Human Resource Management Practices on Productivity* (March 1994) (Unpublished Study, on file with Carnegie Mellon University).

¹⁵ *Id.*

¹⁶ See FACT FINDING REPORT, *supra* note 1, at 46 (noting that the studies showing the largest positive effects on economic performance involve a combination of workplace reforms).

¹⁷ See *id.*, at 45.

The National Labor Relations Act recognizes these competing interests¹⁸ and includes provisions that are tailored carefully to protect both workers and management. For example, in an effort to protect workers, section 8(a)(2) of the Act prohibits management from sitting on both sides of the bargaining table.¹⁹ To protect management, the Act prohibits a union from restraining or coercing an employer in choosing management representatives.²⁰ Given this adversarialism, workers' natural allies are not their employers, but other workers, including workers in competing and foreign companies. By organizing themselves internationally, workers can eliminate price competition based on differences in labor standards and thereby equalize wages and working conditions everywhere.²¹ The elimination of this competition increases the bargaining power of unions and thus promotes workers' rights.

Critics of unions argue that unions are *too* adversarial and propose that unions cooperate with management in an effort to enlarge the economic pie for all.²² It is true that unions are adversarial, but adversarialism is the hallmark of our society. Why should workplace relations be any different? Given the

¹⁸ The preamble to the National Labor Relations Act does not mention shared labor-management interests. 29 U.S.C. §151-69 (1988). Rather, the Act alludes to the competing interests of workers and management. The Supreme Court acknowledged that worker and management interests are diametrically opposed. See *N.L.R.B. v. Insurance Agents Union*, 361 U.S. 477, 488-89 (1980) (noting that such an antagonistic relationship is "part and parcel" of the system that the Act recognizes).

¹⁹ Section 8(a)(2) provides: "It shall be an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." 29 U.S.C. § 158(a)(2) (1988).

²⁰ Section 8(b)(1)(B) provides: "It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances." 29 U.S.C. § 158(b)(1)(B) (1988).

²¹ In *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940), the Supreme Court explained that, "successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards." *Id.* at 503.

²² Ford Motor Company's vice-president, Peter J. Pestillo, lamented the adversarial nature of union relations and called for what he contradictorily termed "the competitive view of collective bargaining." *Hearings Before the Comm'n on the Future of Worker-Management Relations* (March 28, 1993) (statement of Peter J. Pestillo).

overwhelming resurgence of corporations, and the recent decline of unions, workers must adopt a broad strategy of aggressively opposing cooperation with management; they must intensify the struggle for international labor solidarity.²³ This most certainly includes rejecting employee participation plans.

If a company demands that a union accept an EPP as a condition of keeping a plant open, the union should accommodate the EPP with great caution and only after consultation and discussion among its members. If a union decides to adopt an EPP, it should implement a program consistent with a two-sided bargaining model. The EPP should consist of employee-side members and management-side members. Employee-side members should be allowed to exercise their rights to caucus separately, hire their own facilitators and experts, and take issues back to the union for consultation or vote. Union officials must be vigilant in monitoring the activities of the EPP. Finally, as in all other collective bargaining, the union should demand that in the event of an impasse, it retains the right to strike or arbitrate. Limitations on EPPs are valuable guarantees of labor independence and should not be bargained away.

CONCLUSION

Access to influence on traditional management prerogatives is the bait floated by the Commission to unions in order to win union support for EPPs. However, management keeps for itself the final say in all of the plans. The EPPs enhance management control, not productivity. Workers and union officials become confused, worker ideology suffers, and working conditions deteriorate.

Employee participation, like all other games, has losers. It is an old game, so unions must respond as they always have. Unfortunately, their message is not well heard today, and the short term prospects for workers are bleak. Academics and attorneys cannot solve the problems. However, workers can be more optimistic in the long term, because organized worker discontent inevitably will rise again. When it does, we all, including the Commission, will see real participation directed to a workers' agenda.

²³ For support of the idea that workers should intensify their struggle for solidarity, see Wilson McLeod, *Labor-Management Cooperation: Competing Visions and Labor's Challenge*, 12 INDUS. REL. L.J. 233, 281-91 (1990).

