

SOME REFLECTIONS ON DEVELOPMENTS IN GERMAN EMPLOYEE CODETERMINATION SINCE 1976

by B.J. DIVE*

INTRODUCTION

The latest German law on the codetermination of Supervisory Boards came into effect in July 1976. In one sense it was a major advance in the development of codetermination which some argue began 128 years previously when in 1848 the Constitutional National Assembly first established factory committees with certain rights of worker participation. It was also a compromise result of intensive political discussion and activity particularly in the period after Willy Brandt declared in 1973 that codetermination would be one of the 'main tasks' of his government.

Germany industry has had a two-tier Board system since the 1880s. Under the provisions of the 1976 Act companies with more than 2,000 employees (481 enterprises in 1980) must have a Supervisory Board ('Aufsichtsrat') with equal representation for labour and capital, and an Executive Board ('Vorstand'). Under previous legislation (1952, 1972) the labour representation on the Supervisory Boards of joint stock companies (AG) had been limited to one third. The duties of the Supervisory Board include the appointment of the members of the Executive Board, one of whom must be a Labour Director ('Arbeitsdirektor').

HISTORY

Codetermination emerged in post war West Germany as the result of a compromise between the British and American members of the Allied Military Government. The aim was to prevent the reformation of the vast iron, steel and coal cartels which had enabled the Nazis to make war. The British (Labour) Government favoured nationalisation while the Americans insisted upon free enterprise. The necessary compromise gave rise to the 'Monster' of codetermination. It should not be overlooked that this new system worked initially not because of its inherent excellence but rather because of the special and unique circumstances in which it was set up. A spirit of co-operation and limited conflict was essential given the urgent need to rebuild the German economy and society. It could be argued that any industrial relations system would have flourished in that situation.

The precise meaning of codetermination is Joint Regulation. 'Codetermination' is simply a transliteration of German 'Mitbestimmung'. But the German conveys more than 'to determine with'. It also connotes an element of co-operation and coresponsibility and it is this aspect of responsibility

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which is overlooked in the English. Joint regulation, would be a better translation.

The DGB (German Trade Union Federation) applies codetermination to four separate levels —

- codetermination on the job.
- codetermination throughout the firm.
- codetermination in entrepreneurial policy.
- codetermination throughout the economy.

Under the first Codetermination Act of 1951 equal numbers of employee and shareholder representatives were appointed to the Supervisory Boards of all AG companies producing coal, iron and steel with a permanent labour force of 1000 or more. These Boards normally consisted of 11 members — five nominated by the employees and five nominated by the shareholders, the eleventh member being the so-called neutral or independent, acceptable to both sides. Two of the five employee representatives had to be employees, two full time trade union officials and the fifth, an independent, nominated by the trade unions. The Labour Director could not be elected against a majority of employee representative votes. This has led in practice to Labour Directors in this industry being trade unionists and some have argued that this practice has led to a consequent lowering of the standards of personnel management compared to the rest of German industry.

The German unions have always insisted that the iron, coal and steel model of codetermination (with its parity of representation) should be extended to the whole of German industry. The 1951 Act was equally popular with the shareholders. In 1945 they had been totally dispossessed of their ownership rights. Codetermination gave them back at least half of something they had otherwise lost. (This is in stark contrast to German shareholders' attitudes in 1974, when a Social Democrat/Liberal codetermination bill was seen to take away some existing rights and further erode their control over their own property.)

THE PRACTICE OF CODETERMINATION

Codetermination has two meanings in German law: codetermination at the shop floor level and codetermination on the Supervisory Board.

Under the Works Constitution Laws (1952 and 1972 Works Councils have considerable rights of participation particularly in personnel matters. The Works Councillors are employees who are elected by all employees — with the exception of 'Leitende Angestellte' (executive employees) — of a plant. The Councillors do not have to be trade union members, although they usually are. The Trade Union (limited to one per industry) has no rights of codetermination itself in a plant or company. This Works Constitution Law has not changed since 1972.

Under the Codetermination Act 1976 the employee representatives on the Supervisory Board must be employees of the company but not necessarily members of the Works Council. They are elected by all employees of the company.

The two types of codetermination therefore have a different legal basis with different rights. Theoretically they should be kept apart in the company. In

practice the employee representative functions at both levels are discharged by the same person(s). Thus, as far as personnel policy is concerned, codetermination at both levels should be regarded as a single entity.

For example, in the Lever Sunlicht Company the Chairman of the Mannheim factory Works Council is at the same time:

- Chairman of the company Works Council
- Employee Representative on the Vice Chairman of the Company Supervisory Board
- Member of the Land Executive Committee of the Chemical, Paper and Ceramic Workers' Union, and finally
- Vice Chairman of the Concern Works Council of the German Unilever group.

CODETERMINATION OF THE SUPERVISORY BOARD

In German law, as opposed to Anglo-Saxon legal systems, management (the 'Executive Board') and policy making (the 'Supervisory Board') are separated. The Executive Board alone is responsible for the day to day running of the business.

As far as the duties of the Supervisory Board are concerned, it is important to distinguish between that of a joint stock company (AG) and that of a limited liability company (GmbH). The duties of a Supervisory Board in an AG include:

- appointment of the members of the Executive Board
- supervision of the Executive Board.

The legislator has not explicitly stated what is to be understood by supervising the Executive Board. Practice differs generally in individual companies.

In the case of GmbH companies, only the shareholders have the right to appoint the Directors of the Executive Board. Hence the status and influence of GmbH Supervisory Board is different to that of an AG.

The Supervisory Board of the AG has the right to receive to report by the Executive Board on important business matters and events. The Supervisory Board cannot give binding instructions to the Executive Board, even if the management of the company by the Executive Board is unsatisfactory. However the Supervisory Board can legally enforce its will by dismissing Executive Board members who might claim unfair dismissal.

Since 1976 three different types of employee codetermination of Supervisory Boards have existed. These are as follows:

- a) Parity codetermination for companies producing iron, coal and steel and a neutral chairman.
- b) The one third: two thirds Supervisory Board of the Works Constitution Laws. This applies to companies with 500-2000 employees.
- c) The codetermined Supervisory Board in large companies with more than 2000 employees. The law stipulates parity representation and provides for varying sizes of Supervisory Boards taking into account companies of different size.

I will deal in detail here with only the type (c) Supervisory board. These super-

visory Boards generally meet four times a year at which they are informed by the Executive Board of important business matters which might typically include:

- entry into new lines of business and/or discontinuation of existing ones.
- closures.
- major investments.
- economic progress of the business.
- policies and plans.
- personnel changes in top positions.

The employee and trade union representatives on the Supervisory Board are elected by the employees of the company in a very complicated and time consuming election procedure. The representatives of capital are appointed by the shareholders.

The Supervisory Board elects from its midst a Chairman and Vice-Chairman on a two-thirds majority. If such a majority is not forthcoming then a second round is held in which the shareholder members elect the Chairman and the employee members elect the Vice Chairman, a simple majority of votes being necessary in each case.

Resolutions can be adopted only if at least half the members take part in the voting. If there is a stalemate of actual votes cast, the Chairman has the option of a casting vote. The labour and shareholder benches each tend to present one voice at these meetings since both sides usually conduct preliminary discussions before the Supervisory Board meetings.

Usually the employees' Supervisory Board members are experienced, well-informed works Councillors and trade unionists. The DGB does not view the labour representatives as 'over managers'. It is not their task to outdo management and individual shareholders in mercantile ingenuity or technical creativity. Conversely the decisive criterion for the appointment of the shareholders' representatives alongside business qualifications is practical experience in personnel management and some familiarity with the views and methods of Works Councillors and trade unions.

One member of the Executive Board must be appointed 'Labour Director'. This term ('Arbeitsdirektor') was copied from the 1951 Act on the Coal, Iron and Steel Industry. But in the 1976 Act the term is misleading, since the previous requirement of labour representatives' approval does not apply. The 'Labour Director' is in fact the Personnel Director, and not the trade unionist worker director sought by the unions. Indeed his status in no way differs from that of the other members of the Executive Board. In practice a Labour Director will hardly ever be appointed if the employee representatives are strongly opposed.

THE SUPREME COURT DECISION ON THE 1976 CODETERMINATION ACT

The Act's validity was challenged by nine companies and 29 employers' associations. Essentially the plaintiffs hoped that the Court would set limits to codetermination by employees. This was understandable since the unions made no secret of seeking absolute parity on the Supervisory Boards. In their

view the 1976 Act was a beginning towards that goal.

On 1 March 1979, the German Supreme Court pronounced its verdict and laid down guidelines on how to interpret the Act. The Court refused to be drawn into considering future implications. It determined that the law, in its present form, is compatible with the German Constitution. The lawsuit made the following claims:

- a) The Act would lead to parity codetermination in reality and an unacceptable increase in power for the employee representatives.

The Court decided to the contrary arguing that the law gives the shareholders the greater control primarily via the mechanism of the Chairman's casting vote which in effect enables the shareholders to keep control over management selection and thereby control of the enterprise.

- b) The most important of the plaintiffs' arguments was that the Act violated the property rights of shareholders sanctioned by the Constitution ('Grundgesetz') and that the legal and potential predominance of the employee representatives severely restricted the shareholders' inalienable rights of disposal and control.

The Court's view, following from (a) above, was that there could be no such restrictions on the shareholders given they hold the upper hand via the legal provisions.

In fact after this objection was raised at the parliamentary hearing of the bill in October 1975, the Bonn Coalition Parties (SDP & FDP) hammered out changes to the draft in December 1975 allotting the casting vote to the Chairman of the Supervisory Board who cannot be elected against the will of the shareholders.

Mr HO Vetter, President of DGB, also argued 'that . . . parity codetermination does not contravene the constitutional right to property . . . It leaves to ownership half the controlling power over the enterprise and does not put its profitability to question'.

- c) The third important reason put forward in the case against the Act was that it impaired employer autonomy in collective bargaining, another axiom of the Constitution.

It was maintained that the Labour Director could hardly be considered impartial since he would normally be selected with the help of the employee representatives' votes.

The Court held, somewhat unconvincingly it might be said, that this argument was not completely invalid but it was not decisive in the Court's opinion.

- d) Finally it was argued that the specific function of the Labour Director and his election is not clear and that the law does not describe his responsibilities in any way.

The Court held that the law is sufficiently clear in this regard.

The Labour Director must be in charge of the Personnel, Social and Welfare matters of the Company. His nomination follows the same procedure as any member of the Board and his rights and duties are the same as the other Board members in this general respect. The shareholders (via the casting vote) can appoint the Labour Director of their choice if necessary.

REACTIONS TO THE SUPREME COURT'S DECISION

THE UNIONS

The German Trade Unions (DGB) initially resented having to define this case on the grounds that firstly, there was the possibility of the employers winning their case and thereby virtually putting an end to any worthwhile form of extended codetermination. Secondly, they argued that the 1976 Act was an employers' Act since the trade union's model had been set out in the 1974 bill which was subsequently amended by the Social Democrats (SDP) after political pressure was exerted by their coalition partners, the Liberals (FDP).

However when the decision of the Court was made known, the trade unionists were quite happy since the employers had lost their case! After opposing the existence of the Act the employers had been forced to accept it. A number of trade unions are now confident that the 1976 Act is but a further step along the path to inevitable total codetermination.

The DGB is now intent upon marshalling its resources to see its members are properly trained and organised to ensure the new Act operates effectively at the workplace. Much thought and effort is being aimed at achieving a closer working liaison between employee representatives on Supervisory Boards and members of corresponding Works Councils. It is working hard to make sure as many trade unionists as possible occupy the available positions on Supervisory Boards and Works Councils.

This will be a major logistical task for the D.G.B. in the next few years and while it is preoccupied making the 1976 Act work there is little likelihood of it sponsoring any major legal developments during that period.

THE EMPLOYERS

Despite their challenge in the Courts, the Employer Associations (BDA) are also reasonably happy with the outcome of the case. The decision clarifies a number of points.

It establishes quite clearly that the 1976 Act does not provide for parity of codetermination for the employees, merely parity of representation. It unequivocally gives the shareholders the upper hand. It underlines the predominance of the shareholders and their ability to keep control of management selection. It clarifies the role and status of the Arbeitsdirektor, now clearly recognised as the Personnel Director. The shareholders furthermore have the ultimate say in the appointment as the much disputed selection of Ford's national Personnel Director illustrates.

Although the 1976 Act does not conflict with the constitution because of the current legal dominance of the shareholders, it is felt by the employers that this implicitly rules out any possibility of the unions ever achieving full parity. Any extension would remove this power from the shareholders which would then be unconstitutional. Thus even though the Court did not explicitly say 'this far and no further' the employers feel the effect of this judgement will nevertheless mean that in practice. They are confident that the thrust towards the more radical parity of decision making has been successfully parried. The resultant parity in numbers on the Supervisory Board will be workable since it

will not undermine or erode shareholder control as exercised by either the Supervisory or the Executive Board.

Finally employers have noted that although the Court refrained from passing judgement on codetermination beyond what currently exists in the 1976 Act, it repeatedly mentioned in its 113 page submission that the legislature should make amendments to the law should it prove to have lasting adverse effects on the functioning of companies. This could prove to be most significant in future, should the employers feel constrained to return to the Court on this issue. Thus, not surprisingly given Germany's post war history of social partnership, both parties are satisfied with the outcome of this case. More importantly they are now intent upon successfully implementing the new legislation.

THE FUTURE

There seems to be a common view in Germany that the tone of future industrial relations will depend very much upon the success or otherwise of the economy during the 1980s. In saying this, Germans are very much aware of the problems which Sweden, for example, is currently experiencing on the socio-industrial front as a result of its economic difficulties. Other issues include projections of unemployment, the numbers of immigrant workers ('gastarbeiters'), the likely impact of micro processors and the international financial role being thrust upon West Germany as the major bulwark of the key western economies. These are new problems for the Germans, especially the last factor. Left to themselves the Germans could predictably be expected to limit imports as a means of shoring up their own economy. Such a loss of imports would prove disastrous for the Netherlands, Sweden and a number of other developed economies. Consequently NATO, the USA and Japan are constraining West Germany to adopt an international posture which will inevitably place considerable strain upon the domestic workings of the union-employer organisations which are likely to have different views and priorities to those of their federal government. Three important influences are worth exploring as affecting future developments.

TRI-PARTISM

One of the great strengths of West Germany's industrial relations is the lack of involvement of the Government. This is in stark contrast to NZ, Australia, the UK and even Sweden where politicians have become enmeshed in the workings of industrial relations machinery. By limiting the Government to the legal and economic domains the Germans have succeeded more in depolarising the emotions underpinning their industrial disputes.

For some years now the Government has appointed 'five wise men' (economic experts, usually University Professors) to produce an annual white paper on the state of the economy prior to the next collective bargaining round. Outlining its economic assumptions their paper typically outlines various scenarios given different hypothetical wage settlements and corresponding growth rates. Politicians, industrialists and unionists then usually debate the wisdom, accuracy and conclusions of the 'five wise men'. In this way the Government cleverly sets up an a-political forum in which the key economic

issues of the day are aired and evaluated. This naturally has in indirect bearing upon the ensuing negotiations.

A further stage in this 'tri-partite' process is the concerted action policy which is a consultative forum on economic and social issues set up by the Ministry of Economic Affairs in 1966. This forum which has an equal number of employer and union representatives tends to meet three or four times a year under the chairmanship of the Minister to enable the two sides to give the Government their opinions on the state of the economy and their advice on the necessary measures. A second instrument of this policy is the Social Policy Discussion, a further consultative body consisting not only of representatives from both sides of industry but also from a number of institutions dealing with consumer and social affairs.

Since the employers took their case to the Supreme Court the DGB has withdrawn from these various tri-partite forums. Now that the case has been settled there seems to be some optimism which indicates the discussions may be re-convened possibly without the various consumer-social institutions.

MICRO-PROCESSORS

Clearly one of the great issues already on the industrial horizon is the probable impact of micro-processors upon the economy in general and jobs in particular.

The comparison to certain attitudes of the FOL, TUC, ACTU and that of the DGB is both enlightening and enlightened. The German trade unions see these developments as inevitable — their own research already indicates some 11 million jobs could be affected by the micro-chip during the next 10 years or so. Rather than bury their heads in the sand they are demanding quite reasonably that industrialists and government provide more information, funds and research to help prepare for potential problems of re-training, redundancy and relocation of jobs. Although the prospects and present statistics look extremely daunting there seems to be a realisation that these problems can best be tackled by positive planning.

There is also a definite recognition that this can really only succeed if businesses remain competitive both at home and abroad. Once again the German social partnership of unions and employers appears to be emphasising the ongoing creation of wealth as the necessary prelude to its subsequent redistribution rather than the other way round. This is one of the key differences between the German socialists and those of many other western democracies.

PROFIT SHARING

It is now felt there will be little further legislative advance of codetermination during the 1980s following the intense debate of the 1970s. However, one issue which may come more to the fore during the next decade is that of profit sharing. A number of trade unionists now favour the type of profit sharing propounded in 1975 by the Swedish trade union economist, Meidner. According to his plan workers should be allocated a share of profits but not for their own im-

mediate benefit as in France. Rather these shares should be pooled in central funds to be controlled by the unions. The unions could then embark upon a programme of selective purchase of company shares such that by the turn of the century they would be the capitalists in control of industry. By then they would control both the shareholder and employee representatives on Supervisory Boards and as a result the question of parity would have become irrelevant.

FORMS OF WORKER INVOLVEMENT

There are four different forms of worker involvement recognisable in Western Europe.

- i) Communication - A two-way flow of information where management continues to make the decisions.
- ii) Consultation - Involvement in decision making processes but management still the ultimate decision maker
- iii) Collective bargaining - A series of power plays where mutual agreement is aimed for, but where employee objectives can be forced upon management if necessary.
- iv) Codetermination - A statutory requirement specifying employee agreement and responsibility for specific decisions

Germany has the most complete system and the greatest experience with these various types of worker involvement. The value of this experience should not be under-rated, since Supervisory Boards and Works Councils are not simply post-war phenomena in Germany. It was one of the factors neglected in the Majority Report of the UK Bullock Committee in 1977. One senior German executive likened that committee's recommendations for Worker Directors to trying to learn to swim by diving into an empty pool!

German Works Councils have the right to:

- information on the company's financial results, mergers, rationalisations.
- consultation in certain aspects of personnel management such as recruitment, training and reorganisation.

German trade unions have a right to:

- collective bargaining, usually with an employer association.

The Works Councils have a right to:

codetermination in all social matters such as work rules, hours of work, methods of payment, safety, health and dismissal. In addition the Supervisory Boards have codetermination rights concerning the appointment, payment and dismissal of Executive Directors as well as supervising their overall activities.

CONDITIONS FOR CODETERMINATION

Observation of the German system of codetermination leads one to the conclusion that the following conditions are essential for ensuring its success:

- a) There is a general consensus in society about the economic order needed to guarantee the future well-being of the nation. Thus during the second half of

1970s when the British (Diamond Commission), the French (Sudreau Report) and the Dutch were entangled in debates about income differentials, Willy Brandt ridiculed talk about income redistribution (ahead of generation of wealth) as a subject best suited to the playgrounds of kindergartens. In short the Germans see little point in arguing about how to divide the cake until one is certain the cake exists.

- b) There is a general consensus about the role of the company in that economic order. As already indicated above, there is an emerging debate in Germany over how profit should be dispersed in society. But the starting point accepted by both parties to the debate is the company's legitimate and necessary claim, to make profit. In fact some of Germany's best run private enterprises are offshoots of the DGB.
- c) There is a deep-seated willingness on both sides of German industry for an ongoing dialogue. Hence the central organisations are known as social partners. No doubt this has stemmed in large measure from the common need following the war to rebuild the country. This in turn has generated a certain custom, even habit, of co-operation. It has also enabled the Germans to largely avoid the self-destructing class warfare syndrome which still preoccupies other national union movements. This is not to imply that German unionists and employers never have serious disagreements as their recent steel strike proves. The case before the Supreme Court which has just been discussed is another clear example of a serious dispute. But the main significance of that case may really be the way in which both parties have accepted the Court's decision and now appear to be concentrating upon making the new legislation work.
- d) Those employees with codetermination rights do not negotiate their own wages. The unions negotiate these rates but unions do not have a formal voice on either Supervisory Boards or Works Councils. Thus employees are not given the contradictory and nonsensical task of bargaining with themselves. Yet this is precisely the brand of industrial relations nihilism favoured by Bullock and most other advocates of Worker Directors operating through the single channel of the unions. The union penetration of only some 30% of the German workforce is no doubt another important factor in this context.
- e) The formula of one union to one plant greatly facilitates the system of codetermination. Each German company's employees are automatically aligned to one of the 17 national industrial unions depending upon the nature of the company's business. Thus an employee of Unilever Germany working for, say, the Frozen Foods company of Langnese-Iglo transferring to the detergents company of Lever Sunlicht, would change unions. In this way companies and factories are spared the nonsense of demarcation disputes which can paralyse a New Zealand company with about 20 unions common to one site. In Germany it is impossible for example for a handful of boilermen or whatever, to shut down a plant of 500 or 5,000 employees without the consent of their colleagues.
- f) Finally, since the German Federal Government has no direct role to play in industrial relations, issues and grievances are not clouded by political considerations. Disputes remain a-political to be resolved by the central organisa-

tions of employers and unions on regional or national bases as appropriate. If they are unsuccessful the dispute is then resolved by due process of law with the Federal Constitution as the final point of reference. The recent case over the 1976 Codetermination Act is one example. Thus the Federal Government, it is argued, can avoid the pitfalls of politically dangerous actions such as the incomes policies which unseated respective British Governments in 1974 and 1979. There is no need or scope for the German government to deregister recalcitrant unions.

The political links of union federations such as the LO (Blue Collar) with the Social Democrats in Sweden is seen by many Germans as one reason for that country's difficulties, especially since the Social Democrats ceased to be the government in 1976.

Most Germans seem to accept that the State's role in industrial relations is one of an enabling influence. It should create a climate enabling market forces to work successfully both at home and abroad. This of course has been not so difficult during Germany's last three expansionary decades. Should the 1980s become a time of real recession in Germany it will be interesting to see whether the role of Federal Government in industrial relations remains non-interventionist.

It is also conceivable this situation could change if the Social Democrats ever obtained an absolute majority in the Federal House of Representatives ('Bundestag'). They currently share power with the Liberals and it is possible, although unlikely, the Social Democrats might sweep the board this year. Should that occur Schmidt may not be able to placate the radical, and increasingly more strident, left-wing of his party. After all it is clear that if the original codetermination bill put forward by the Social Democrats in 1975 had become law, it would have severely polarised German industrial relations.

The possible future scenario of the Social Democrats controlling the Bundestag and the national economy in recession might trigger off unprecedented industrial upheaval for post-war Germany. This would seem to be the severest test the system of codetermination could expect to face.¹

IMPLICATIONS FOR NEW ZEALAND

The conditions underlying successful codetermination as outlined in the previous section do not exist in New Zealand. It is clear then that the German model of worker involvement would not work in New Zealand. Indeed given the smallness of the average New Zealand business such a formal approach to worker involvement hardly seems necessary. Yet notwithstanding the fact that probably only a dozen or so New Zealand firms would be large enough to be affected by a German style Codetermination Act there are a number of aspects of the German approach to industrial relations worthy of emulation.

- a) Any steps to depoliticise New Zealand's industrial relations should be encouraged. The intrusion of politicians rarely adds significant competence. The use in Germany of the 'five wise men' to produce an annual discussion paper as an objective basis for debate over the various options available could be copied in some way. The numbers involved would be less important than the fact that those chosen should be acknowledged experts without any obvious political bias. Ideally there should be a system of rotation, as in Germany where these experts are usually Professors of Economics.

- b) Such a discussion paper could help mould an agenda for tri-partite discussions. It is noteworthy that the value of such discussions was also recognised by the TUC and CBI in Britain in their separate publications in February 1979. The New Zealand Employer's 'Balance in Bargaining' published last year largely echoed the same thoughts. Given this initiative the FOL's reactionary opposition was somewhat surprising and disappointing. The modern thinking of unions in the developed countries suggests such attitudes are outmoded. The tripartite forum is the obvious place to cope with future problems and opportunities which the micro-chip will inevitably pose for New Zealand. The realistic concern and attempt to plan and organise for the future by the DGB is in stark contrast to the Luddite-like opposition of many New Zealand unionists.
- c) Another feature of German industrial success is the small number of industrial unions. The useless proliferation of craft and general unions in New Zealand and the UK has been mentioned by other commentators almost ad nauseam. The TUC's constantly unsuccessful attempts at meaningful rationalisation highlights the problem of vested interests which also exist in New Zealand. Yet one country that has succeeded in this regard is Ireland. Today some 465,000 union members are represented by about 90 trade unions. Still too many unions of course, but quite an advance when compared with New Zealand's 300 or so for a slightly smaller number of unionists.
- Furthermore since 1970, Ireland has developed a system for collective bargaining not dissimilar to the Germans, known as the 'national wage agreement'. It is the product of negotiations between ICTU (Irish Congress of Trade Unions) and employer bodies. When the terms are announced the individual unions hold national ballots to determine acceptability. Employers' bodies undertake a similar process of consultation. It has led to more orderly collective bargaining and is likely to be more acceptable than the current less democratic wage fixing system in New Zealand.
- d) Another feature of the Germans' model of involvement has been the fact that it started from the bottom. The German experience with Works Councils proved to be a vital forerunner to the establishment of Worker Directors. The experience of British Steel has further illustrated the folly of working from the top down. It is also significant that the latest Swedish legislation is entitled 'Industrial Democracy at the Workplace' (1977) and that this followed general disillusionment over their experiments with Worker Directors.
- e) The German experience clearly demonstrates the invalidity of the single channel argument, viz. that in all forms of representative democracy only trade unionists should be involved. On the contrary the Germans have tended to insist that worker representatives must be first and foremost employees of the Company. Union membership is seen as somewhat incidental. This is a corollary of (d) above that workers would be more concerned about their workplace and immediate prospects whereas a union representative may be more inclined to subjugate the company's employee interests to those of the union. For a country like New Zealand where only about half the labour force is unionised the Germans' handling of this issue is most interesting.

CONCLUSION

Germans do not claim their system is perfect or ideal. They openly acknowledge the concepts of codetermination and industrial unions were thrust upon them by life's roulette. Obviously many features of modern West Germany result uniquely from the build-up to and disaster of World War II. Other institutions in that society are also singularly German; such as the educational and legal systems. It would be nonsensical to try to copy these culturally embedded aspects of the German industrial relations system.

The main advantage in studying the German approach is to understand how and why it works. The aim must never be an attempt to design a transplanted copy of codetermination. Nevertheless the Bullock Majority Report of 1977 illustrates just how foolhardy it is to completely ignore certain lessons of Germany's success in the context of industrial democracy.

This analysis has endeavoured to highlight the enabling conditions prevailing in the German industrial scene which could seemingly operate elsewhere. The focus upon the 1976 Codetermination Act and the subsequent events and reactions has hopefully helped to throw these factors into bolder relief.

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FOOTNOTES

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THE 1980 FEDERATION OF LABOUR CONFERENCE

R.J. Harbridge*

INTRODUCTION

The Forty-Third Annual Conference of the New Zealand Federation of Labour (FoL) was held in the Wellington Town Hall from 6 to 9 May 1980. The credentials committee of the conference reported that "there were 409 delegates attending and three National officers, which included 45 women delegates, exercising a total of 625 votes".

This conference was significant as a meeting of trade unionists for three reasons. First, as the first conference of the 80s, the opportunity existed for a look back at the late seventies — the chance to review gains and losses — and the chance to look forward to the early eighties, and to assess the difficulties and challenges that would face New Zealand's trade union movement. Second, this conference was significant in terms of leadership. This was the first annual conference for the newly elected President, Jim Knox, and the Secretary, Ken Douglas, and the progress of this new leadership team was an issue for some delegates — not to mention some politicians and some journalists. Third, a number of long term policy decisions were proposed — the effects of which would have deep significance for the future of the Union movement.

INTO THE EIGHTIES

The first conference of a new decade or a new century probably holds some form of psychological significance for conference delegates - whether that conference be a conference of unionists, a conference of educationalists or a conference of economists. Such a conference presents an opportunity for review and assessment, and the 1980 FoL Conference was no exception.

President Jim Knox in his opening address reviewed the difficulties facing the unions, and the kinds of strategies that would be necessary for the successful overturning of these problems. The first difficulty he raised was that of inflation and the fall of living standards for working people. He stated:

"One of the major problems in measuring living standards is that inflation has a different effect upon people at different levels of

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