Additional Forms of Employee Representation in Australia

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Introduction

Additional forms of employee representation (AFER) may be defined as any representative mechanism which exists alongside or instead of trade unions, which historically have been the most common form of employee representation in Australia. AFER are frequently referred to as 'alternative forms of employee representation', which reflects one pattern of usage of these structures. However, since they also may be, and commonly are, utilised as a complement to union forms of representation, we have chosen the more neutral term 'additional' throughout this paper.

It is apparent from existing research in Australia that little is known about how additional forms of employee representation (AFER) are composed, their independence from managerial influence, the 'representativeness' of such bodies, and their accountability. In addition, little has been documented about the impact of such structures on either the managerial objective of securing consent to organisational change or the employee objective of influencing managerial decisions. This paper will attempt to address these issues by examining AFER structures in Australia.

Since the early 1900s the Australian industrial relations system has been regulated predominantly through a structure of compulsory conciliation and arbitration tribunals producing detailed occupational or industry-based 'awards' to determine pay and workplace conditions. This system deliberately privileged trade unions as employee representatives. In this context, AFER have played a minimal role until recently, with limited legal regulation of their structure or governance.[2]

However, in the last decade the system of industrial relations has been deregulated to a considerable extent, and union membership density in Australia has declined to 28 per cent of the workforce, and even less in the private sector. Consequently, increasing numbers of employees may not be covered by any form of representative structure in the workplace. The demise of trade unions has left a void in terms of 'voice mechanisms' available to employees. The shift towards greater non-union employee relations in Australia has meant that, if employees are to have a 'voice' in the workplace, there needs to be additional institutional arrangements. These circumstances have prompted the current interest in AFER structures.

Some Australian managers have adopted the non-union employee relations participation models developed by companies such as Hewlett-Packard, IBM and Proctor and Gamble. Individualism and direct communication between management and employees are the hallmarks of these non-union firms. It is the expectation of many managers that this 'voice' will provide suggestions and solutions to increase productivity in the workplace. As David Packard, founder of Hewlett-Packard, has

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[2] There are formal requirements that health and safety committees be established in unionised and non-union workplaces. Beginning with the *NSW Industrial Relations Act 1991* a number of State and federal jurisdictions have also legislated to provide for non-union representation in negotiation of certified enterprise agreements, but the regulations are minimal and only envisage short term arrangements.

argued, "If an organisation is to work effectively, the communication should be through the most effective channel regardless of the organisation chart".

Recent evidence from a study of non-union and lightly unionised workplaces by Gollan and Campling (1999) suggests that satisfaction with management and employee commitment are improved by greater participation and involvement of employees. However, the research noted that the lack of a readily defined collective structure in non and lightly unionised workplaces place a greater focus on management's ability to implement change processes. This may involve a considerable investment of management time and resources to create and develop an organisational culture that provides a foundation for positive organisational change.

The study also reveals that there is a range of strategies and tactics being used in non-unionised workplaces to achieve desired levels of productivity and performance. Whilst some organisations have adopted a sophisticated human resources approach characterised by direct communication with employees and individualised reward structures and appraisal systems linked to individual performance, others have retained collectivist mechanisms to achieve their objectives, removing the need for a union and providing an opportunity for companies to introduce cultural change consistent with their corporate strategy. Some employers have a strategy of selecting people with a negative or an ambivalent attitude towards trade unions.

Governments of all political complexions seem to have been influenced by the neo-economic agenda, enacting legislation and promoting labour market policies that are designed to 'loosen' the workplace influence of trade unions. However, no assessment has been undertaken on the impact of such changes on employee relations, the processes involved or the likely outcomes in an union-free environment. Some commentators have referred to this as the 'black hole' of employee relations. With declining union density a 'representation gap' (Freeman, Richard B. and Joel Rogers 1993, p. 14; Towers, 1997) has been created and greater focus has been placed on the effectiveness of management initiatives in filling the void when the union has gone.

However, the argument for AFER is by no means confined to their role as an alternative to unions. A strong argument exists for the role as a complement to union representation for employees. Whereas unions tend to focus upon industry or occupation-wide regulation of wages and conditions, AFER are based entirely upon the workplace and/or enterprises levels. European experience suggests that there may be considerable advantages for management, employees and unions in maintaining this division of roles, especially if it allows the removal of wage determination from the consultative process over organisational change and efficiency maximisation at the enterprise level. In this way employers would not compete on the basis of wage levels, thus facilitating employee commitment to the process of workplace change, and encouraging employers to explore a greater range of efficiency options. Furthermore, whilst AFER may benefit from union logistical support because of the unions' independence from management and greater resources, unions themselves may also derive advantages from reciprocal relations with AFER through which they can influence the entire workforce, including non-union members, at the workplace level (see Rogers and Streeck 1995, chs. 1-3, 11; Markey and Monat 1997: 2-3, 8-12, 417-19). Survey evidence from the EU and Australia strongly indicates that all forms

of employee participation are strengthened by union involvement (EPOC 1997: 204; Morehead et al. 1997: ch.9).

Drawing on qualitative and quantitative evidence the paper examines recent developments in AFER structures with a focus on six interconnected themes - their presence, level, structure, process, agenda and outcomes. The paper first highlights the definitional problems involved in researching AFER structures, identifies gaps in current research, and examines the concept of industrial democracy. Secondly, diverse models in employee participation and their interaction are examined within current trends. Thirdly, recent evidence on organisational outcomes and AFER is presented. Fourthly, the role of the State and the influence of legislation is examined., Fifthly, the conceptual issues underpinning AFER structures are assessed, focusing on the objectives and outcomes of AFER forms. Sixthly, the environmental context is described, highlighting the institutional framework, historical development, external influences and legal developments in Australia. Seventhly, the way in which AFER structures have operated in a range of organisations is examined. In particular, the paper explores the outcomes and processes of AFER forms through survey data in Australia. Finally, a review and conclusions are drawn from the evidence presented, offering a synthesis of the major findings.

Definitional Problems

Significantly, the latest workplace surveys indicated an increase in both direct and indirect forms of employee participation and involvement in Australian workplaces (e.g. see Morehead et al. 1997: ch. 9). Direct methods of employee involvement tend to be oriented around an employee's tasks and focus on improving individual work performance. Indirect involvement occurs when employees participate through representatives at the workplace. In particular, involvement through representation provides a mechanism for both employees and employers to express their opinions, views, interests and concerns about the operation of the workplace and the decision-making processes of the organisation

Part of AFER debate has centred on the concept of industrial democracy in AFER plans. Industrial democracy can be defined as 'structures and institutional mechanisms that give workers and their representatives the opportunity to influence organisational decision-making in their places of employment' (Hammer 1997, p. 3). However, Hammer (1997) has questioned whether mere worker involvement or participation in decision-making at the workplace is a sufficient condition for industrial democracy, or whether joint decision-making or power sharing between workers and management is necessary before democracy at the workplace can really be achieved. Moreover, labour voice through AFER forms can differ in the scope of decisions, the amount of power workers can exercise over management, and the organisational level at which the decisions are made. This results in some forms being purposefully designed to give workers a very modest role in decision-making, while others are intended to give the workforce a substantial amount of power in organisational governance (Hammer 1997, p. 3).

The precise structure and level of the AFER can vary considerably (Gollan, 1999). They may take the form of safety committees, works councils, consultative councils/committees (CCs) or joint consultative committees (JCCs). In addition, the

official terminology varies (i.e. CCs and JCCs) between jurisdictions and even among research surveys. But in reality the variations in terminology do not equate to differences of form or function. Importantly such structures represent all employees[3] at the establishment or workplace. Some structures may have management representation (often as chair) and involve union representatives[4]. Due to the complexity of and the variations in AFER, precise definitions are problematical. However, four elements can be identified:

- First, only employees at the organisation can be members of the representative body.

- Second, there is no or only limited formal linkage to outside trade unions or external employee representative bodies.

- Thirdly, a degree of resources is supplied by the organisation in which the employee representative body is based.

- Fourthly, there is a representation of employees interests or agency function, as opposed to more direct forms of individual participation and involvement[5].

In addition, the range of issues considered by a non-union form of representation varies considerably, and is often dependent to some extent on its level and structure in the organisation (i.e. ranging from workplace/work zone safety committees to company-wide joint industrial councils - see Taras 1997).

Why research AFER?

Evaluations and generalisations about the impact of AFER are problematic, which raises a number of questions over their structure, decision-making capacity, issues covered and discussed and impact of outcomes. The rationale for a representative agency function – union or non-union - in the workplace can be classified into a number of productivity and equity functions. These include: improved communication and information sharing; effective dispute resolution; enhanced employee bargaining power; fair and just decision-making; and improved morale and social cohesion. The Australian Workplace Industrial Relations Survey (AWIRS 1995) indicated that employers commonly had multiple motives for the introduction of JCCs, but improvement of communication and improvement of workplace efficiency or

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[3] These structures may include union members where present.
[4] The lack of common terminology associated with AFER structures may be caused by the lack of prescriptive legal requirements and definitions associated with AFER structures in Australian workplaces.
[5] Other forms of direct participation may include TQM teams, self-managed work teams and quality circles. Importantly, these forms of direct participation are not representational in nature as they ~~are~~ often include every worker in the work group. Recent research from the European Works Council Study Group has suggested that direct employee involvement is lower in organisations with formal representative structures. This may imply that direct and indirect employee involvement are to some extent acting as substitutes (Fenton-O'Creevy, Wood and Callerot 1998, p. 24). However, on the other hand, the EPOC survey showed the opposite: that direct participation was enhanced in terms of establishment and effectiveness, where representative participation was also in place (EPOC 1997: 204).

productivity ranked highest, and facilitation of technological change ranked surprisingly lowly in terms of the frequency of reasons selected (Morehead et al. 1997: 193).

Freeman and Medoff (1984) have argued, that while unions can provide an effective method of collective employee 'voice', there may be an incentive for employers to provide some alternative voice mechanism where workplace union organisation is weak or absent[6]. The academic literature has identified the important role of unions in giving employees a 'voice'- enabling them to express dissatisfaction with the working environment without fear of management retaliation. Thus, it is suggested, where unions are weak or non-existent this voice effect will be absent, or alternatively an employee may exercise 'voice' through the exit option, although Freeman and Medoff also argue that the exit option may be a less than optimal amount of voice since employees may be restrained or inhibited to fully express their views (Freeman and Medoff 1984)[7].

Other commentators have argued that the positive aspects of union voice are counterbalanced by a union's ability to extract a disproportionate share of the total income, decreasing an organisation's ability to raise or maintain profits, thereby reducing the public good aspects of increased employment.

The question remains whether AFER forms may approximate 'voice' as identified by traditional union structures[8]. Interestingly, as Freeman and Medoff noted, the efficacy of voice depends on the way in which labour and management interact, rather than whether unions exist or not (Sako 1998; Freeman and Medoff 1984). As such, commentators have argued that from a social perspective the role of AFER as bargaining agents (thus similar to traditional trade union forms) may be desirable for power equality or ethical industrial democracy reasons, where unions do not exist. Advocates state that this can only be achieved by legal enactment, for example mandated works councils, because employers will be reluctant to introduce bodies which challenge managerial prerogative and potentially reduce profit due to the additional costs involved.

However, this proposition is dependent on the wider institutional context. Organisations may create such bodies for the purposes of bargaining to reduce the likelihood of outside involvement by trade unions in organisational decision-making, thus ensuring that bargaining processes are contained within the organisation. This

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[6] This view has been challenged because for many employers it is not important whether AFER structures can approximate unions as part of the collective bargaining process, since this may not be the objective or desired outcome.

[7] However, his may also be inefficient for both employers and employees. Employers may have cost associated with the loss of experienced workers and added job replacement, and employees face costs associated with finding alternative work and loss of service based benefits.

[8] This statement presupposes that voice provided by unions is an improvement over the non-union option. Some commentators have questioned such an assumption, arguing that union-based collective bargaining may have negative aspects, even from a general social and organisational point of view. It is often suggested that union leaders, who represent the union's voice to the firm, may have different agendas than the membership and thus the voice stated may not actually reflect the members' own interests, or accurately represent the views of the leadership. However, studies in the U.K. have suggested that legal procedural requirements of voting and the strict processes of balloting legislation have legitimised leadership opinions and action, with membership in some unions deplacing leadership on the basis on their moderate and accommodating views (Kelly and Heery 1994).

may be due to the perception that outside influence may distort internal processes and structures, impacting negatively on employee behaviour and organisational performance.

Others have argued that structures representing the interests of employees through collective bargaining (legally enforced or not) may give more legitimacy and efficacy to the decision-making process (Hyman 1997), ensuring greater organisational commitment. Some advocates suggest firms voluntarily introduce AFER structures, reflecting the culture and norms of a particular workplace. This approach is based on the assumption that by establishing and maintaining effective working employee and employer relationships, employees' rights will be recognised and respected, encouraging an alignment of interests and promoting mutual respect and responsibility (Walton 1985). This suggests that unions and AFER can play complementary roles.

Models of diversity and interaction[9]

An important question is to what extent non-union workplaces allow for an employee voice mechanism in the workplace? An analysis by Gollan and Campling (1999) indicates that around half of managers in non-union workplaces and about a third of managers in lightly unionised workplaces negotiated workplace change directly with employees. AWIRS 1995 indicated a much lower 15 per cent of non-union workplaces negotiated with groups of employees over workplace matters, although in unionised workplaces the figure rose to 28 per cent (Morehead et al. 1997: 196). Whether these negotiations constitute genuine employee involvement or 'voice' depends on the degree to which the processes adopted allow employees to be genuinely 'heard' and to influence the change process.

Studies have shown that employees have taken on increased responsibility at work, but that this has not resulted in a greater willingness by employers to trust or give employees more participation and involvement in organisational decision-making processes. Other findings suggest that negotiations in non-unionised workplaces are less likely than negotiations in highly unionised workplaces to make use of collective structures but more likely to involve 'employees acting on their own behalf'. That is, negotiations in non-unionised environments appear to make less use of formalised consultative mechanisms and more use of informal methods of communicating employee concerns to management. Yet, unionised workplaces in AWIRS 1995 were also more likely to generate individual negotiations and non-union negotiations with groups of employees, as well as union negotiations (e.g. Morehead et al. 1997: 193-94, 196). This suggests that unionisation is associated with an extension of employee voice in all forms.

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[9] For more detail of this debate see 'Conclusions: Models of diversity and interaction' by Paul Gollan and Raymond Markey (2001) in Markey, R, Chouraqui, A., Gollan, P., Hodgkinson, A. and Veersma, U. (eds), *Models of Employee Participation in a Changing Global Environment: Diversity and Interaction.*

As one senior manager of large communications company stated in the Gollan and Campling (1999:37) study, 'If you *accreditate* your communication on the basis that all managers should be communicating to all staff, what we don't want is to inadvertently exclude people from that communications process. As far as we are concerned representation-type structures do exclude people. It is naive to think the person that is so-called representing the group is going to be representing everyone in the group because by definition not everyone is going to have the same opinion'.

However, this would indicate that employee involvement in the non-union workplace is often structured in a way that minimises the ability of employees to exert a significant influence on organisational decision-making and broader managerial decisions regarding the introduction of change. That is, employee 'voice' in non-unionised organisations tends not to function as an exact equivalent of employee 'voice' in unionised companies. AWIRS 1995 reported that whereas 63 per cent of employers consulted employees who were affected by organisational change in formal meetings, only 13 per cent indicated that the changes were negotiated with union representatives and dependent upon their agreement (Morehead et al. 1997: 244-46). But therein lies a note of caution for employers - this does not mean that employees in non-unionised workplaces have no impact on the introduction of change. According to AWIRS 1995, some 13 per cent of managers in non-union workplaces indicated that employees directly affected by change were either resistant or strongly resistant to such change (Morehead et al. 1997: 545). In addition, AWIRS 1995 reported that 21 per cent of managers in unionised workplaces and 15 per cent of managers in all workplaces stated employee and/or union resistance was a barrier to change (Morehead et al. 1997: 255-56). On the other hand, an Illawarra version of the AWIRS 1995 indicated a close correlation between organisational change and unionisation (Hodgkinson 2001). These mixed trends suggest that management should use a wide range of forme of employee participation to effectively facilitate organisational change, rather than rely on one particular form over another.

The case studies from the Gollan and Campling (1999) study reveal that management uses a variety of ways to communicate with their employees. Nearly all the cases in the study had weekly and/or monthly newsletters and magazines. Half of the organisations used consultative committees or focus groups as a form of communication. Similar patterns of the multiplicity of forms of communication were evident in AWIRS 1995 (Morehead et al. 1997: ch. 9).

Management in those organisations that did not have a consultative committee structure in the Gollan and Campling (1999) study, believed that it was counter-productive as all managers should be communicating to all staff and not excluding people from the communications process. Central to this is the emphasis on individual communication with employees and a deep suspicion and disinclination towards any forms of collective consultation. These firms tend to be concentrated in the high technology sectors, such as electronics, computing and telecommunications, and in 'greenfield' sites or new companies. For example, a commercial television broadcasting company has developed a variety of communication techniques, including internal television to deliver occasional addresses, e-mail and monthly newsletters in an attempt to build a 'consultative enterprise'. This contrasts with a construction company, which established a highly developed employee committee structure, acting as a forum for setting goals, measuring performance and addressing a

wide range of workplace issues including quality control and training. The effectiveness of the process became evident from a company questionnaire, which revealed that most employees believed the JCC provided a 'voice' for their opinions and concerns.

AFER and organisational outcomes

Since, in the Australian context, such structures are initiated by management in a majority of cases (54 per cent by management initiative, but 24 per cent as a result of agreements, and only 1 per cent because of union initiative, Morehead et al. 1997: 193), is it worth the effort and resources? This is predicated on the idea that allowing workers a 'voice' provides a mechanism for the early detection of problems and for their participation in decisions that could have a potentially positive impact on productivity and quality.

Fernie and Metcalf's (1995) analysis in the UK of the 1990 Workplace Industrial Relations Survey (WIRS3) suggests that where JCCs exist voluntarily, 'there is not a single unfavourable association between the presence of a JCC and workplace performance' (Fernie and Metcalf, 1995:397-398). Moreover, they argue that there are weak favourable associations between the existence of a JCC and both increased productivity and a positive employee relations climate. They state that the consultation process implied by the existence of the JCC makes it easier to change working practices and introduce new technology, leading to faster productivity growth both in unionised and non-union workplaces (Fernie and Metcalf 1995, p. 397).

Additional research in Britain and the United States (U.S.) also suggests that the adoption of a cluster of 'best practice' HR practices, which includes some level of indirect employee participation, can increase the stock market value of organisations by around 15 per cent (Fenton-O'Creevy, Wood and Callerot 1998, p. 9). Fernie and Metcalf (1995) cite Denny and Nickell's (1991) research, which shows that investment rates[10] are higher in both union and non-union workplaces with a JCC. Fernie and Metcalf also suggest that there are 'favourable associations between the existence of a JCC and both productivity growth and the climate of employee-management relations' (Fernie and Metcalf 1995, p. 397). They conclude that the provision of information and consultation appears to lead to more harmonious relations between employees and management than is the case where there is no JCC (Fernie and Metcalf 1995, p. 397).

In addition, recent research into the European car components industry has suggested that there is positive business performance for those companies adopting more participative employee practices (including representative participation). This has included improvements in quality, communication and the quality of decision-making (Sako 1998). In Australia AWIRS 1995 data also suggest that JCCs have a significant impact on workplace performance and communications between management and employees, as well as encouraging change at the workplace (Morehead *et al.* 1997, p. 511). Since AWIRS 1995 found that these were two of the main objectives of management in introducing JCCs, this indicates a high degree of achievement of objectives in forming them (Morehead et al. 1997: 192-95).

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[10] Such as the level of financial investment in technology or training.

Another study cited in research from the European Works Council Study Group into employee involvement within European multinationals by Addison, Siebert, Wagner and Wei examined the relationship between unionisation and the impact of consultative committees in the UK. Their findings suggested that consultative committees in unionised workplaces were associated with slightly lower productivity, whereas in non-union workplaces they were associated with higher productivity (Fenton-O'Creevy, Wood and Callerot 1998, p. 8). It was suggested that this conclusion was based on a tendency for committees in union workplaces to consult on minor or 'inappropriate' issues (Fenton-O'Creevy, Wood and Callerot 1998, p. 8). It could also be that unions in such workplaces wish to remain the predominant source of representation over substantive issues and view such committees as talking forums only. In addition, it could be argued that conflicting voice mechanisms may in fact generate conflict, although these findings are contrary to AWIRS 1995 (Morehead et al. 1997) and EPOC (1997) data.

Analysis by Guest and Peccei (1998) of partnership and performance in the UK indicates that high levels of direct and representative participation, especially representative participation in policy decisions, have a significantly positive impact on employee commitment to the organisation and the positive state of the psychological contract between employees and employers. In other words, there was a consistent finding that high levels of employee influence have a positive impact on employee attitudes and behaviour (Guest and Peccei 1998, pp. 36-38).

In addition, evidence from the Australian Office of the Employment Advocate (OEA) regarding consultative processes leading to individual agreements, or Australian Workplace Agreements (AWAs), suggests that productive outcomes from more collective forms of employee involvement. A recent Office of Employment Advocate Report reviewing evidence from 688 organisations with approved AWAs stated, 'Contrary to management perceptions over the effectiveness of the various methods of communicating information about AWAs, initial results would suggest that more collective participation mechanisms *may* yield greater organisational outcomes ... employers who made use of JCCs or works committees were significantly more likely to have had an improvement in labour productivity.' (Gollan, 2000: 23).

More specifically, the report also suggested that the improvement in management and employee relations outcomes were associated with the use of JCCs (or works committees) and elected non-union representatives. The ability to implement change was also considered to be influenced by JCCs (or works committees), and lower employee turnover may also be influenced by the use of JCCs or works committees, and the use of task forces (Gollan, 2000:23).

The reports concludes by stating that '... while regular formal meetings between managers and employees, and individual employee discussions are the most frequently used channels of communication ...when supplemented with other forms of communication they were even more likely to achieve greater improvement in a range of organisation outcomes' (Gollan, 2000:25). This confirms findings in the EU (EPOC 1997).

The role of the state

Another dimension in the debate is that of state imposed, in contrast to privately sponsored AFER structures. In many continental European countries, AFER take the form of works councils elected by all employees, and sanctioned by law. These enjoy statutory co-decision rights on certain issues as well as rights to information and consultation. They function within a broader framework of organisational resources, shaping the process of consultation. In the German and Dutch ('Rhineland') model of a dual structure of interest representation for employees, the separate jurisdictions of works councils to deal with domestic labour relations in the enterprise and unions involved in industry or regional level collective bargaining are strictly maintained by law. In the mainly English speaking countries such as Australia, JCCs exist on the voluntary basis of agreement with unions, or by unilateral instigation of management (Markey and Monat 1997: 412-14).

Hammer (1997) has suggested that in the absence of legislation that legitimises AFER, the effectiveness of such programs is dependent on 'the good will, trust, and power relationship between the parties. She argues, 'trust is a brittle property of any relationship, easily broken and difficult to rebuild' (Hammer 1997, p. 9). Or in other words, such a relationship based on pure voluntarism is inherently insecure. To reinforce this point, research suggests that trust in the outcomes of non-union participation structures can be substantial when employees have their group interests protected by general worker rights legislation (Hammer 1997; Hammer, Ingebrigtsen, Karlsen, and Svarva 1994 as cited in Hammer 1997). As Hammer argues, company specific idiosyncratic representational forms work very well as long as workers believe that the general legislation is sufficient to deter the management from making decisions that can hurt worker interests (Hammer 1997, p. 10).

Recent research into employee involvement within European multinationals by the European Works Council Study Group has suggested that 'the principal impact of legislation mandating employee involvement practices is on the channel used to inform and consult employees i.e. via trade union, representative committee or directly with employees' (Fenton-O'Creevy, Wood and Callerot 1998, p. 3). Moreover, the study also concludes that where limited law and regulation is applied on employee involvement, such as in the U.K., there is a greater diversity of employee involvement than in countries where employee involvement practices are required by law (Fenton-O'Creevy, Wood and Callerot 1998, p. 3).

In the Australian context McCallum has added to the debate in Australia by suggesting that, 'if the law does not mandate elected works councils, the coverage and importance of collective labour law will shrink. I venture to think that it is no longer possible for the trade unions to remain the sole repository of collective employee representation in our nation (McCallum 1997, p. 7).

Conceptual issues

The question arises whether management will choose to put in place additional structures to allow more effective communication of employee grievances and concerns or to encourage greater employee involvement as a substitute for traditional forms of collective representation through trade unions. Or alternatively, will

management introduce alternative structures as a complement to management structures? The objective of this would be to foster an alignment of employee and employer interests in the workplace.

The debate can be classified into two approaches: first, AFER structures are an inherent win-lose or zero sum game. This is based on the premise that an individual employee is inherently at a disadvantage in the employment relationship due to the monopoly power of the employer. Alternatively, AFER structures can be viewed as an instrument through which both sides realise a 'win-win' outcome in the employment relationship or positive sum game perspective, highlighting common interest between employers and employees other promoting a unitarist approached based on shared beliefs and goals, or pluralist 'mutual gains' approach based on cooperative system of employment relations[11]. This debate has centred on AFER as communication devices or mechanisms for employee involvement, whether they are a 'complement' to management decision-making or as some commentators have suggested, a 'substitute' for unions through the collective bargaining process (See Gollan, 1999).

One notion of a 'substitute' is that it serves in place of a union, which presupposes a win-lose employment relationship from an employer's view.[12] It assumes employers create an AFER which employees will prefer to 'union' forms of representation. An entirely different notion is that AFER make traditional union structures unnecessary, in the sense that they transform the employment relationship, with other high commitment practices, into a win-win relationship. This notion is based on the premise that employees do not desire or need a protective agency through traditional bargaining *per se* (since this emphasises the adversarial, distributive element of the employment relationship) because their basic interests are satisfied. In this approach the purpose of AFERs is to encourage and foster an alignment of interests between employer and employees.

Conceptually, the terms 'substitute' or 'union avoidance' suggest twin strategies: first, excluding a union by establishing an AFER structure to take its place; second, transforming the employment relationship from a traditional adversarial approach based on conflictual interest of 'win-lose' to a 'win-win' or mutual gains approach with an alignment of interest, undermining the very reason for a union (Gollan, 1999). This strategy can be described as high commitment management (HCM) (Walton 1985; Guest 1995; Storey 1992; Wood 1996).

An alternative strategy is evident when traditional trade union structures and AFER 'complement' each other, dovetailing in terms of form and function, as in the case of German works councils in the plant level co-determination process alongside industry-wide trade union bargaining. The former is focused on generating substantive and procedural norms through plant-level agreements, while the latter establishes

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[11] This perspective is encapsulated by human resource management (HRM) theorists advocating high commitment work practices and emphasising mutual gains in the enterprise (Kochan, Katz, and McKersie 1986; Walton 1985).

[12] However, unions often claim that both sides can be better off in such a relationship through increased voice benefits and through the union 'shock' effect of higher wages. In this situation firms focus on productivity rather than costs. In addition, advocates of the social partnership model (such as John Monks in the UK – General Secretary of the TUC) would strongly disagree that union presence presupposes a 'win-lose' relationship.

general conditions of employment and salary and wage levels. This dual system is defined and circumscribed by extensive juridification and legal process (Koch 1995, p. 146). Some commentators have highlighted the appropriateness of this separation of jurisdictions, with workplace issues being discussed by AFER and industry issues being discussed by trade unions, linking structure with the scope of issues. There are two approaches: one based on a European works council model with rights established by law, such as the right to information, the right of consultation in economic and financial matters, and the right of consent in social and personnel affairs. The second approach is through JCCs or labour-management committees more common in the mainly English speaking countries, which have more open-ended mandates to deal with issues of common interest to workers and management. They are rarely regulated by law and their power and role are more limited than these of works councils in the decision-making process.

These strategies seem to be confirmed in research by the European Works Council Study Group which identified significant differences between the UK and other European countries in the issues covered by employee involvement and representative practices. U.K. consultation issues focused on productivity and competitiveness while in other countries such as Germany, greater focus was placed on joint decision-making and negotiation, such as collective redundancies (Fenton-O'Creevy, Wood and Callerot 1998, p. 3). Parsons has recently stated, it is not the existence of a particular employee participation structure, but the objectives, strategies and choices within which it operates (Parsons 1997, p. 32).

Environmental context

To understand the role of AFER plans various dimensions of the environmental context of the Australian industrial relations system need to be considered. This section will examine the institutional context and historical evolution, the external factors influencing and legal developments underlying AFER forms in Australia.

Development of AFER

Australia's industrial relations system throughout this century has been strongly influenced by the centralised tribunal-based systems of compulsory State conciliation and arbitration. Arbitration systems in one form or another exist at federal level and in all six States of Australia[13]. Respective federal and State *Acts* of Parliament provide for the establishment of conciliation and arbitration tribunals, the registration and legal recognition of employer and employee associations (unions[14]), and detail the rights and obligations of the parties subject to some legislative limitations. The tribunals are empowered to handle industrial disputes and to set wages and conditions of employment embodied in awards.

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[13] In Victoria the AIRC exercises limited arbitral powers with respect to most Victorian employees: see Part XV of the *Workplace Relations Act 1996* (Cth). The Independent Report of the Victorian Industrial Relations Taskforce recommends the reestablishment of a limited form of State IR Tribunal for Victorian employees.

[14] In Australia the legal regulation of trade unions is essential to arbitration and conciliation and confers corporate status protection against discrimination, and security and protection against competing unions covering the same industry or occupation. The AIRC also needs to be satisfied that 'the association is free from control by or improper influence from, an employer, or an association or organisation of employers' *(Workplace Relations Act 1996* s189 (aa)).

Historically, employer and employee associations together with the industrial tribunals have dominated the wage setting and dispute-resolution processes. Employees have only been able to access this system through being represented by trade unions. Although union density has declined dramatically in recent years, workplace relations involving non-unionised establishments have also been dominated by the centralised system, as awards cover union and non-union employees alike, accounting for about 90 per cent of the workforce. In the State systems, which have jurisdiction over a significant proportion of the total national workforce, common rules extend award coverage to all employees in a given occupation or industry. Furthermore, until the 1980s tribunals, supported by the courts, traditionally treated managerial prerogative as sacrosanct in areas outside a narrow perception of 'industrial issues' (essentially wages and hours). Issues such as technological and organisational change and issues associated with it, training, and the structure of the workforce, all of which would be the subject of consultation (and even co-determination) in European works councils, were thus effectively excluded from the jurisdiction of the Australian industrial relations system until the mid-1980s (see Markey 1987).

As Markey and Reglar (1997) state, employee participation or industrial democracy has been slow to gain acceptance in Australian industry. They argue that 'Australian managers have traditionally been wary of any whittling away at their managerial prerogative … Unions were also traditionally suspicious of employee participation schemes as a management plot. For its part, the national level of government had lacked the will or the constitutional authority to implement a widespread system of industry democracy' (Markey and Reglar 1997, p. 358).

During the 1980s a dramatic twofold shift occurred in the Australian system. First, tribunals (supported by the High Court) broadened the scope of issues considered to be suitable for consultation from the early 1980s (Markey 1987). Secondly, from the mid-1980s a major trend towards decentralised arrangements has emerged under wage fixing principles determined by the Australian Industrial Relations Commission (AIRC). As part of this process, the AIRC required enterprises to establish appropriate mechanisms for consultation and negotiation on matters affecting the organisation's efficiency and productivity, when it adopted the 'structural efficiency principle' relating to award restructuring in 1988 (Dabscheck 1995: 30-33, 51-63). The spread of JCCs in Australian firms date from that time. However, it was not until the Keating government introduced further reforms to extend enterprise bargaining in to the non-union sector under the *Industrial Relations Reform Act 1993*, that AFER became a widespread national topic of discussion and debate, although there had been a precursor in the 1991 NSW Act (Morehead et al. 1997: 188-89). The 1993 federal legislation gave a renewed focus to non-union workplace relations, in particular the nature and extent of workplace decision-making outside the centralised industrial relations framework, including the influence and role of non-union forms of employee representation. The non-union agreements (or Enterprise Flexibility Agreements) then catered for were collective in nature and required a high degree of consultation between employees and management in making the agreement.

In 1997, a new phase of industrial relations reform began with the introduction of the Commonwealth *Workplace Relations Act 1996*, which repealed and replaced the

previous federal industrial relations legislation. The new legislation enabled employers to enter into either a non-union collective agreement or non-union individual contracts with their employees, known as Australian Workplace Agreements (AWAs). While these agreements are individually signed, an employer or employee may appoint a person to be his or her bargaining agent in relation to the making, approval, variation or termination of the AWA (CCH 1998, p. 11), potentially giving AFER a role in negotiating AWAs.

External influences

Australian industry has long had a high proportion of multinationals amongst its firms, especially from the UK and US. More recently corporations from Japan and other Asia-Pacific based firms have set-up workplaces in Australia. However, the influence of overseas firms on the Australian industrial relations environment ~~has~~ appears to have been limited, largely due to the strong influence and role of tribunals and prescriptive industrial relations legislation (see discussion above).

The centralised industrial relations system has reduced the effect of American-style non-union HRM approaches to employee representation. While *ad hoc* developments have occurred in a few multinational organisations no predominant form of AFER has developed in Australia. However, more recently certain US multinationals have sought to apply non-union approaches to the Australian context with varying degrees of success (see the case study discussion of The Toys Company below). It has been suggested that recent changes to federal industrial relations legislation have increased the potential for the introduction of more HRM and 'mutual gains' approaches in the future. Australia's exposure to such outside influences provides a potential mix and diversity of industrial relations structures, creating a fertile ground for the development of AFER forms in the future (Gollan, Pickersgill and Sullivan 1996, p. 36).

Legal developments

Australia has not had national or State legislation to support the development of works councils or any other form of AFER structures along the lines which have been established in many European countries (Gardner and Palmer 1997, p. 344). Legally, one of the relatively few examples of institutionalised employee participation in management decision-making processes has been the establishment of safety and health committees in organisations with a certain number of employees determined by State occupational health and safety statutes[15].

In some Australian States, such as New South Wales, some experimentation of AFER structures has occurred. In the 1991 *Industrial Relations Act (NSW)* provisions allowing 'works committees' were introduced to facilitate State-based enterprise bargaining. Under s119 of the 1991 *Act,* enterprise agreements could be made between an enterprise employer and a works committee to represent persons employed in the enterprise. The *Act* stated that before a works committee could become a party to an enterprise agreement, the proposed agreement must have been

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[15] See, e.g., Occupational Health and Safety Act 1983 (NSW) ss 23-25; and Occupational Health and Safety Act 1985 (Vic) 37.

approved in a secret ballot by not less than 65 per cent of employees in the enterprise. Their role was to represent persons employed at the establishment in negotiating, making, varying and terminating of enterprise agreements.[16]

Nationally, new consultation requirements were introduced in 1993 as part of the Commonwealth *Industrial Relations Reform Act (the Reform Act)*. In particular the provisions relating to non-union agreements or 'EFAs' stated that for an agreement to be approved it was necessary that during the negotiations 'reasonable steps' had been taken to 'consult' and 'inform' employees about the agreement and its terms. In addition these terms needed to be 'explained' and employees 'advised' before the agreement was approved (Mitchell, Naughton and Sorensen 1997, p. 203).

However, these provisions did not prescribe the means (structure or processes) through which such consultation was to occur (Mitchell, Naughton and Sorensen 1997, p. 203). The provisions stated that as a precondition to approval, the agreement should establish a process for the parties 'to consult each other about matters involving changes to the organisation or performance of work in any place of work to which the agreement relates' unless 'the parties have agreed that it is not appropriate for the agreement to provide' such a process.[17] Importantly, the *Act* only required the establishment of a 'process' rather than a 'mechanism' or 'structure', and therefore did not necessarily envisage a permanent representative body[18]. Nor did the legislation state how employees were to be represented in this process.

Whatever possibility the legislation created for AFER forms, the recent *Workplace Relations Act 1996* limited this potential. The requirements in the new legislation are limited to ensuring employee 'access' to the agreements (up to fourteen days prior to approval), and that the employer took reasonable steps to explain the agreement to employees (PartVIB s170LR (2)(a)(b)). Importantly, the legislation did not prescribe a structure or body for consultation.

Survey evidence

The Australian federal government's Green Paper *Industrial Democracy and Employee Participation* published in 1986 found 'little evidence of the widespread application of employee participation and only a few examples of genuine worker influence on major decision-making' in Australian workplaces both in unionised and non-union environments (1986, p. 65). However, Marchington's analysis of the Australian Workplace Industrial Relations Survey (AWIRS)[19] data reveals a growth in the number of formal joint consultative mechanisms in the latter part of the 1980s, and that generally they were perceived by management to be quite successful (Marchington 1992, p. 530; Morehead et al. 1997: 194-94).

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[16] The purpose of an enterprise agreement is to regulate (wholly or partly) the conditions of employment of employees in a single enterprise.

[17] No equivalent provisions to section 170NC(1)(f) appear in the recently enacted *Workplace Relations Act*.

[18] Nor did the *Act* require make any reference to the frequency and make-up of this 'process' (Mitchell, Naughton and Sorensen 1997, p. 204).

[19] A national survey in 1990 covering more than 2,000 workplaces and 19,000 employees.

However, while a large proportion of Australian workplaces reported the existence of various types of employee involvement schemes, there were relatively few cases where involvement took the form of representative participation with a genuine opportunity to influence decision-making at work. It was found that JCCs existed in only 14 per cent of workplaces, although such arrangements covered 30 per cent of Australian employees (Mitchell, Naughton and Sorensen 1997, p. 200; Callus, Morehead, Cully and Buchanan 1991). As in the U.K., an analysis of unpublished data from AWIRS suggested that AFER structures were most common in unionised workplaces (Campling and Gollan 1999).

The release of the latest AWIRS 1995 data indicates an increasing trend towards AFER plans. The 1995 incidence of JCCs was more than double that of 1990, increasing from 14 to 33 per cent of workplaces. The increase for more temporary, specific purpose task forces or *ad hoc* committees was also substantial, up from 25 to 38 per cent (Morehead *et al*. 1997, p. 188). Morehead *et al*. (1997) state that much of this increase may have come about because of legislative requirements relating to enterprise bargaining or making organisational change initiatives as smooth as possible (Morehead *et al*. 1997, pp.189-190).

Judging from this survey evidence two qualifications should be made regarding the non-union environment. First, the data indicates that the most common impetus for the introduction of AFER plans was management at the workplace. Second, as suggested in the previous AWIRS data and UK evidence, AFER forms are more likely to occur at unionised workplaces (48 per cent), particularly those with an active union presence, compared to workplaces with no union (13 per cent)(Morehead *et al*. 1997, pp.193-4).

This trend was confirmed by research into employee participation of non-union EFAs by Mitchell, Naughton and Sorensen (1997)[20], which revealed that despite additional legislative requirements for consultation in EFAs under the *Industrial Relations Reform Act 1993 (the Reform Act)*, there was a poor outcome with only 59 per cent of EFAs containing AFER such as consultative committees (CCs)[21] (Mitchell, Naughton and Sorensen 1997, p. 205). In a further analysis, 64 per cent of EFAs which included CCs did not indicate a fixed number of meetings and in 56 per cent of EFAs there was no reference to meetings at all (Mitchell, Naughton and Sorensen 1997, p. 211). In addition, few EFAs which had established AFER plans, indicated how committees were to be appointed, or stated the committee's jurisdiction (Mitchell, Naughton and Sorensen 1997, p. 213). All this indicates limited effectiveness.

In the non-union sector recent research undertaken in Australia by Campling and Gollan (1999) reveals that there is little incentive for most non-union workplaces to establish any NER structure due to the traditionally centralised nature of Australian industrial relations (see previous discussion on history and legal structures). It can be argued that this is not a failure of NER *per se*, as bargaining is not the main purpose of these representative forms. However, further research by Campling and Gollan (1999) suggests that even where there have been collective agreements, these have

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[20] All EFAs approved by the AIRC between 1 April 1994 and 6 September 1995 (109 agreements in total)

[21] This calls into question the effectiveness of the legislation, which requires a process but does not state the 'mechanism' or 'structure' by which this should take place.

been made without any genuine bargaining or consultation with employees. In addition, management was usually the party that determined whether a more collective relationship was established (Campling and Gollan 1999).

Additional case study research into JCCs as part of the enterprise bargaining process suggested that many of the committees are limited by management to trivial issues or what McGraw and Palmer term the three T's – Tea, Towels and Toilets (McGraw and Palmer 1994). They argue that many AFER forms have a short life with many issues left unresolved due to limited provision of resources to implement recommendations and inadequate training to facilitate effective participation (McGraw and Palmer 1994, pp. 98-101).

Review and discussion

The evidence suggests that there are a range of strategies and tactics being utilised in lightly and non-unionised workplaces to achieve desired levels of productivity and performance. Whilst some organisations have adopted a human resources approach, characterised by direct communication with employees and individualised reward structures, others have retained collectivist mechanisms to achieve their objectives.

Overall, the available evidence suggests that where organisations have greater employee participation and involvement, it has been good for business in terms of improved performance and productivity. Furthermore, the evidence also suggests that the lack of employee involvement, especially representative participation or legitimate worker 'voice', could help to explain low levels of commitment among workers.

Nevertheless, the fact remains that the new co-operative tendencies do not eliminate the adversarial element in organisations, but channel it instead. The pattern of tensions can be shifted due to changing expectations of employees and the interpretation of these expectations by their representatives. These dangers are apparent for companies in actively seeking a more direct approach. In a Consultancy Group company in the Campling and Gollan (1999) study, the Executive Chairman wanted to avoid the bureaucratic and indirect communication structures that he had been accustomed to as a senior manager in a large Australian commercial bank. Management communication and special activities had a distinctly individual focus rather than a collective group orientation.

However, the consultation process was challenged by the morale problems among both office and professional staff. According to a senior manager, the morale problems resulted from the lack of promotional opportunities and the absence of team building culture required in a project based industry due to a highly individualised and often discretionary approach to employee relations in the company. This direct management-employee communication style resulted in outcomes which were frequently concealed from other employees (eg salary levels, magnitude of bonus payments, training), rather than open collective dialogue with staff where differences could have been acknowledged and discussed and solutions found. As a result there has been growing employee and management support for more formalised policies, increased openness, and human resources practices based on equitable and more collective processes, especially in relation to remuneration decisions. Even News

International in the UK has recognised the benefits of collective representative structures by establishing a staff association with negotiation and bargaining rights.

Conclusion

In recent years lower trade union presence has led to the development of a 'representation gap' in many organisations. As a consequence there has been considerable discussion in the literature on the effectiveness of AFER structures as communication devices and mechanisms for employee involvement, or as some commentators have suggested, as a substitute for unions in the collective bargaining process. The underlying debate centres on whether AFER make trade unions unnecessary, or whether AFER have a different but complementary role to that of unions at the workplace.

To examine these two approaches the research has addressed a number of questions. First, can AFER act as substitutes for trade unions? Drawing on qualitative and quantitative evidence this paper presents the case that AFER in Australia have been essentially ineffective as substitutes for union representation, due to the very limited role AFER structures play in the bargaining process. This has restricted the ability of AFER to represent employees' interests in the areas of pay and conditions. The evidence also reveals that employee involvement in non-union workplaces was often structured in a way that minimised the ability of employees to have a significant influence on how and in what form change was introduced.

Therefore, what role do AFER have and how effective have they been? The evidence suggests that AFER can be very effective in developing greater overall workplace consultation and involvement of employees. In particular, the evidence indicates that in organisations where greater employee participation has been introduced (especially indirect representative participation), it has been good for business in terms of improved performance and productivity. In addition, it has been suggested that, while the influence of AFER structures over policy and strategic issues is limited, where they have influence over such issues, greater organisational outcomes have resulted with higher employee commitment and more positive employee attitudes and behaviour towards the organisation.

Moreover, the cases examined in this paper indicate increasing adoption of innovative AFER structures as part of sophisticated HRM approaches, which emphasise communication and consultation. However, further analysis questions the longevity of these innovative AFER in Australian workplaces. Evidence suggests that traditional adversarial industrial relations re-emerged when raised worker expectations were not met because AFER failed to deliver the desired outcomes, resulting in low morale and dissatisfaction.

The preceding review would suggest that it is not the formal existence of AFER which is associated with greater effectiveness and positive performance outcomes. Rather, the nature of the relationship, management style and culture, and trust developed in AFER structures, and the degree to which influence over managerial decisions is ceded through such forums, are the most important factors (Fenton-O'Creevy, Wood and Callerot 1998, p. 27). The evidence demonstrates that, only by establishing mechanisms that allow employees to have legitimate voice and allow

differences to emerge will managers be able to channel such differences into more productive outcomes. The clear message from the research is that high quality communication and consultation between management and employees at the workplace is essential for achieving performance and employee commitment.

The evidence raises a number of other important points. First, generally these AFER structures have limited access to resources (eg training) for establishing independence, thus reducing their ability to effectively evaluate the issues discussed at meetings and represent the views of employees. Second, most AFER bodies are structured on a mixed basis of employee elected representatives and appointed management delegates, with the latter occupying the most senior position of chair. The case study evidence also suggests that management was usually the party that controls the structure and agenda at meetings. While the election of employee representatives could give the impression of legitimacy to decisions, in reality this must be questioned. Third, most bodies are only given powers of recommendation to management or the chair has the right of veto over decisions. Fourth, unlike unions, few committees have negotiation and bargaining rights, while consultation issues often lack financial, investment or strategic data. Finally, few of these bodies in practice fulfil the traditional trade union activities of grievance handling and conflict resolution, with such issues being dealt with by local managers or internal dispute resolution mechanisms. This evidence suggests that most AFER are used as devices for consultation and communication rather than acting as bargaining agents. While it can be argued that consultation, not bargaining, may indeed be their objective, it nevertheless questions the legitimacy of such bodies as true alternatives to unions. Rather, they should be seen as additional forms of employee representation in most cases.

These points highlight an important issue for policy makers, whether in a climate of declining union density, should countries seek to redress this decline and close the widening representation gap through supportive union regulation and policies. Or alternatively, if this decline is inevitable or at least if the decline is not likely to be reversed in the short-term, is there a role for AFER in the workplace to represent and enforce the rights of full citizenship in society, encouraged by supportive laws and policies. As a third alternative, should both forms of employee participation be encouraged, since they seem to perform different roles?

In conclusion, while AFER can be used as mechanisms for more effective means of communication and consultation, the evidence suggests that their effectiveness as bodies representing the interests of employees in filling the lack of representation is questionable. This presents the issue of whether state-sponsored AFER with provisions for resources and training could improve the effectiveness of AFER in representing employees' interests at the workplace. For as Terry (1997) notes, 'with no reference to the external agencies of law or trade unions for support, they are perceived - rightly - as managerial emanations subject to managerial whim'. In a climate of falling union density, more individualised approaches are likely to increase, however, to suggest that there will be an inexorable shift away from more collectivist employee relations would be to underestimate the complexity of the world of work. In fact, both management and employees in non-union workplaces could well rediscover that there is an important and enduring role for collective representation at the workplace.

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