

WHAT'S SO SPECIAL ABOUT A 'WORKS COUNCIL'?

by Philip J. Moss

Just recently, the United Auto Workers lost a union representation election at Volkswagen's manufacturing plant in Chattanooga, Tennessee by a vote of 712 to 626. If just 44 more workers (about 3½%) had voted "yes," the union would have won the election.ⁱ There were several interesting things about this election, including the fact that VW remained neutral throughout the pre-election campaign. In fact, the company agreed to allow union representatives to speak to workers inside the plant, in exchange for the union's promise not to visit workers at their homes. Neutrality agreements are not unknown in the U.S., but according to stories published in the media, VW's position was shaped by its successful experience with work councils in Germany.ⁱⁱ Under U.S. law, the company could not simply establish a works council to represent employees at its Chattanooga plant: the union first had to prove that it represented a majority of employees there in an appropriate bargaining unit.ⁱⁱⁱ

What's so special about a works council?

In the early 1990s, Harvard labor law expert Paul C. Weiler interviewed managers about why they valued works councils. One representative executive told him:

There are three major advantages of councils. You're forced to consider in your decision making process the effect on the employees in advance...this avoids costly mistakes. Second, works councils will in the final run support the company. They will take into account the pressing needs of the company more than a trade union can, on the outside. And third, works councils explain and defend certain decisions of the company towards the employees. Once decisions are made, they are easier to implement.^{iv}

However, there are certain disadvantages to a works council, as it exists under German law, that would probably make it unpalatable to most employers in this country.^v In truth, the advantages described by the executive to Professor Weiler can also be realized in a productive relationship with a union in this country. Journalist Adam Davidson cited Harley Davidson as an example of this, in his article, "Building A Harley Faster."^{vi}

Why are some employers and unions able to forge a productive relationship while others can't? To put it another way, does the relationship between labor and management have to be an adversarial one? Or can it be a cooperative one?^{vii} Compare the experience of Harley Davidson and its machinists union that Adam Davidson described in his article with the experience of the Bakery & Confectionary Workers union at Stella D'oro Biscuit Company, described by Ian Frazier in his article, "Out Of The Bronx: Private Equity And The Cookie Factory."^{viii} There, a series of miscalculations and bad decisions by both labor and management resulted in the demise of a business that as recently as 1991 had employed 575 people. At Harley Davidson, by contrast, the company and the union collaborated to save another storied American brand from extinction.

The climate for American businesses and labor unions is very different now than it was forty years ago. Foreign competition is far greater now; union membership as a percentage of the private sector workforce is down to about 6.5%, and public sector unions are under assault.^{ix}

The moral of the Harley Davidson story seems to be that labor and management both benefit when they recognize that they share a common interest in the success of the business and work together to find ways in which each employee can add value that deserves to share in the success of the enterprise. When stated so simply, it seems like an obvious conclusion, but if it were as easy to accomplish as it is to articulate there would be far more stories like Harley Davidson and far fewer like Stella D'oro.

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ⁱ The union has filed an objection to the election with the National Labor Relations Board, alleging that threats by state and federal politicians of dire consequences if the union were to win interfered with the vote.

ⁱⁱ See “Why Volkswagen Is Helping A Union Organize Its Own Plant,” Lydia DePillis, *The Washington Post*, February 10, 2014. <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/02/10/why-volkswagen-is-helping-a-union-organize-its-own-plant/>

ⁱⁱⁱ *National Labor Relations Board v. Cabot Carbon Co.*, 360 U.S. 203 (1959).

^{iv} “Why Volkswagen Is Helping A Union Organize Its Own Plant,” fn. 1, above.

^v See, e.g., <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Germany/Workplace-Representation>

^{vi} *The New York Times*, January 28, 2014. http://www.nytimes.com/2014/02/02/magazine/building-a-harley-faster.html?_r=0

^{vii} Consider the “tit for tat” strategy in game theory described by Professor Robert Axelrod in “The Evolution of Cooperation,” <http://www.amazon.com/The-Evolution-Cooperation-Revised-Edition/dp/0465005640> .

^{viii} “Out Of The Bronx: Private Equity And The Cookie Factory,” *The New Yorker*, February 6, 2012.

^{ix} Steven Greenhouse, “Wisconsin’s Legacy For Unions,” *The New York Times*, February 22, 2014.