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TWO REPRESENTATIVES BUT NO REPRESENTATION — AN ANALYSIS OF TWO CASES FROM ESTONIA

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ABSTRACT

The authors analyse why the institution of non-unionised employees' representatives (NER) is created if its functions overlap with those of the unions, including collective bargaining and information-consultation. We aim to find how NERs are created and what their role in comparison to unionised representatives is. The case study involves interviews with representatives and the managing director, as well as a survey of the employees in two companies. The results show that with a weak union, employers initiated the institution of NER in order to involve the whole

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workforce in the collective agreement. NER was elected by employees even though the institution was initiated by employer. The roles of the two representatives do not differ much, the main function for both being collective bargaining with minor provision for information and consultation.

Key words: Participation, industrial relations, trade unions, work councils

JEL code: J53, J83, K31, M12, M54

INTRODUCTION

The CEE countries have brought additional diversity into the industrial relations systems of the European Union members. The current paper aims to analyse specific cases in the Estonian system, where both union and non-union trustees exist in the company at the same time. Both have similar rights to represent workers in the processes of bargaining and information-consultation. This situation deserves to be analysed as it is rare in the European context that non-union and union employees have separate representatives in the same company for exactly the same purposes. This situation is about to change with the transfer of the EU framework directive for informing and consulting employees (2002/14/EC), with which the functions of bargaining and participation are planned to distinguish and assign to different representatives. This change would bring the Estonian situation closer to the traditional dual-channel system of representation with a more clearly defined division of tasks between the representatives. Thus, this is a unique possibility to analyse a social experiment-like situation.

After their transition to market economy, the CEE countries had to thoroughly modify their system of workers' representation. In Estonia, this resulted in the legal grounding (since 1993) for two kinds of representatives with the same functions. One channel is the unions, the other, a trustee elected by the general meeting of non-unionised workers. Both representatives can sign the collective agreement. Even though according to law, if there is a union, it is the union who enters into the agreement, in practice both representatives have simultaneously signed the agreement as shown by the two cases considered. This does not impose problems as long as unions do not fight against it, which they have not done in the cases involved. Also, the rights for information and consultation are similar for both representatives. It is interesting to see what if any are the differences in the functions of the two kinds of representatives in these circumstances.

In a situation where a non-union trustee has the same rights and very cursory election rules, employers could use it for concluding a collective contract that guarantees industrial peace, and is favourable to the employer, paying no heed to the employees' opinion.

To reflect these concerns, our focus is on studying by whom and how the non-union representative institution was created, and what the rationale and effects of this institution are.

While a union representative has organisational backing as well as a clear mandate, these parameters are not so clear for a non-union representative, especially if he/she is the so-called management agent. If non-union representation is created by employers, then it should reflect in the effectiveness of work. In order to address this question, we will analyse whether the functions of non-union representatives are less clear and their role less valued by employees than those of union representatives. Also, the relations between different representatives will be analysed to find out whether they are more like competitors or co-workers.

In short, the research questions we address are the following: *How and why in the current circumstances was the representation created?* and *What are the roles of different representatives like?* As the research questions include mainly how and why, we adopt the case study approach. Moreover, in the Estonian situation where very few companies have employees' representatives, it would have been difficult to proceed with a representative sample. In the current paper we analyse two companies which have both union and non-union representatives in the company. In order to incorporate the opinions of all parties, the case studies involved interviews with employees' representatives and chief executive officers (CEOs) as well as a random sample questionnaire survey among employees. The methodological approach sets its limitations to the conclusions that cannot be generalised. However, we can bring out some aspects that indicate how the role of representatives might be formed in Estonian-like specific circumstances and what might be the implications for potentially similar systems elsewhere, in an environment where the unions' capacity is small and participative culture has not spread.

The article proceeds so that first we give some background from other research, indicating the potential trends for the specific Estonian circumstances, then the Estonian legislative situation and general picture of representation is given. Next part of the paper presents method that is followed by results of the case study analysis.

SOME CONSIDERATIONS ON THE DIVISION OF LABOUR AND THE EFFECTIVENESS OF THE TWO REPRESENTATIVES

Employees are involved in designing their working life through overlapping instruments: participation and collective bargaining. Several authors (e.g. Terry 1999, Knudsen 1995) have discussed the stages of workers' involvement in their company's decision-making process, the general view being that collective bargaining and participation should be treated as different processes.

Collective bargaining is a process of negotiations between the employer and employees that leads to signing a collective contract, or in the case of disagreement, to an industrial conflict (strikes or lockouts). Participation (information, consultation, and co-decision) differs from collective bargaining mainly by the fact that in this process there is no right to use industrial conflict for influencing the other party. At the workplace level, participation is practiced only if both parties see some potential gains arising from it. Even though employers and employees are in opposing positions, they still have interdependence and therefore also common interests (Knudsen 1995). It is not likely that collective bargaining can lead to employees' commitment to their company and its goals as it is based on the notion that parties have opposing interests and threaten each other with industrial conflict as a pressure instrument.

Participation and collective bargaining compete with each other on the one hand, and complement each other on the other. The latter emerges if workplace participation fulfils a higher level agreement with the company's specific issues. Competition between participation and collective bargaining arises as unions prefer a collective contract to consultation and co-decision because of the fear that participation might be manipulated by the management and the good of the company might become more important than the collective interests (Knudsen 1995). The relationship between the two processes could be the grounding for either cooperation or competition between the two kinds of representatives.

Even though, theoretically, bargaining and participation can be distinguished as, for example, done by Terry (1999), in practice, due to the ambiguous relationship between the two, it has been understood differently as to who is or should be the partner to the management in fulfilling these functions. The functions could be distributed between different employees representing bodies that are fully or partly assigned to a monolithic representation body or, alternatively, several bodies could deal with both functions simultaneously (Knudsen 1995). Usually, tasks are divided between unions and works councils so that collective bargaining is in the hands of unions. In the case of a single channel system, it is the unions' matter of internal decision how the information and consultation functions are separated from bargaining; in the case of a dual channel system, works councils are usually legally barred from collective bargaining and calling a strike. However, in several countries works councils are permitted to conclude the so-called plant agreements in order to regulate the issues not covered by the sectoral collective agreement (Industrial relations... 2004: 23). Also, there are exceptions where works councils are permitted to bargain on plant level if the union is missing. The usual European industrial relations system involves sectoral level bargaining as the main level and plant-level contracts are not so common. Therefore, there is a need to have a works council type institution on the company level. Thus, in general a works council type representation should be created in a company for the purpose of undertaking the information and consultation functions, or, if the bargaining level is higher than the company level, then also for bargaining purposes. Against this background it is difficult to see how the tasks should be divided if the main bargaining level is the plant and there is no sector-level bargaining, as it is common in the CEE countries.

Some research suggests that non-union representation (such as works councils or joint consultation committees that are often the partner for participation) is less effective than union representation as it is often criticised by the employees it is supposed to represent; nor is it taken seriously by the management (Bonner, Gollan 2005, Dundon *et al* 2005, Terry 1999, Worker... 2002). The reasons for this may be the representatives' lack of training and lack of sanctions (possessed by unions in the collective bargaining pro-

cess). Neither do these representatives have any backing structures that would provide guidance and know-how for dealing with managerial decisions and would actually enforce action and outcomes, if needed (Bonner, Gollan 2005).

Non-union representatives' problems may also stem from their lack of autonomy. On the one hand, these structures are often 'employer-sponsored' and, thus, controlled by the management, having minimal power and assigned to discuss only trivial matters (Butler 2005, Dundon *et al* 2005). As it happens, this is no secret for potential representatives, which makes it difficult to find able and willing employee representatives in the first place. On the other hand, if representatives in contrast fully participate in making the strategic and tactical decisions of a company (e.g., in the joint council with the management), they will soon adopt the managerial interpretation of subtle issues and, as a consequence, will not fulfil the initial aim of representing employees either (*ibid.* 2005). When this is the case, such representation structures have been found to deserve as starting-points for union recognition (Terry 1999, Bonner, Gollan 2005). Terry (1999) holds a view that non-union representation is effective at good times, but is likely to collapse when the company comes under strain. It has been shown (Bryson 2004) that non-union representatives are the least effective when they are appointed rather than elected; hence, the bottom-up approach is essential.

There is some theoretical grounding to consider union representation to be more effective than non-union representation. At the same time, there are also circumstances where non-union representation could be necessary, as for example, in cases where union representation does not exist. In any case, effective participation assumes mutual recognition of divergent interests and trust between the parties. It must be mentioned that effectiveness of participation that has different content in different studies is in this paper a subjective term that has no specific indicator; it comprises self-evaluations of the representatives, and employers and workers' opinions about the representatives' work.

Several CEE Countries have mixed systems of representation which conform precisely to neither the single nor the dual-channel system. For example, a works council can only be formed if there

is no union present in the workplace (e.g., the Czech Republic, Lithuania, Malta) (Tóth, Ghellab 2003: 24). The Estonian system is neither a single-channel system, as there are two kinds of representatives (one for unionised, the other for non-unionised workers), nor a dual channel system, as both representatives have the same role in the companies. This set-up raises even more acutely the question of substituting non-union representatives for unions. The problem of substitution is more profound in those countries where the role of sector or industry-level bargaining is minimal, and the most significant level is the company as it used to be in Hungary, for example (Kisgyörgy and Vámos, 2001), and is in most CEE countries. In this case, the roles of unions and works councils overlap in companies.

Thus, there are circumstances where unions' and works councils' roles overlap. It is especially relevant when the main bargaining level is the company and no division of roles is specified by laws, Estonia being a case in point. Also, in the case of overlapping roles of unions and non-union representatives in the same company, the question of the efficiency of different representatives should be especially relevant. The division of the roles of different representatives is the focus of the case studies we conducted.

REGULATORY FRAMEWORK AND THE BACKGROUND FOR THE TWO REPRESENTATIVES IN ESTONIA

Currently Estonian laws stipulate the possibility for the existence of two kinds of workers' representatives (Employees Representatives Act — TUIS): the union representatives and the representatives elected by the non-unionised workers' general meeting (non-union employees' representation — NER). Both representatives have the right to engage in collective negotiations, as on the workers' side a collective agreement can be concluded by a union, federation or an authorised representative of employees (Collective Agreements Act — KLS). Since both representatives can conclude

a collective agreement, they can also lead workers to a strike in case of disagreements over collective industrial relations (Collective Labour Dispute Resolution Act). However, if there is a union in the company, then the agreement must be signed by the union (KLS). Thus a non-union representative can sign the agreement only if the union is missing, which in practice is effectuated only if the union demands this right.

Concerning the information and consultation rights, the non-union trustees are in a slightly worse situation, as the Trade Unions Act grants wider information and consultation rights to union trustees. The rights to non-union trustees are specified in TUIS and are more general. Concerning the guarantees for the representation (guarantee against dismissal, paid hours for representation work, etc) the two have the same rights.

In practice, if there are two representatives, the union's prerogative for concluding a collective agreement does not always work as the negotiations are held simultaneously with both representatives and, as shown by the two cases studied below, the agreement is signed by both, too. The unions have a prerogative for signing the agreement but they do not demand it; the employer is not interested in having the agreement with the union only, and this results in having two representatives with the same functions at the same time in the company.

Thus, differently from the general division of functions in the case of a dual-channel system, both representatives practise bargaining in Estonia and can also lead the company to a strike. The rationale of the dual-channel system is that every worker has the right for information and consultation regardless of union membership (Industrial Relations... 2004: 21). This is the reasoning behind the separation of bargaining and information-consultation practices in the company. In Estonia, however, all workers are entitled to bargain irrespective of union membership. It is interesting to study what are the reasons for electing the non-union representative in such a situation. If the creation of unions is not very complicated (time, high costs, etc), workers should prefer union representation due to its explicit mandate and sanctions.

The main difference between the two representatives in Estonia is the organisational support to a union, which NER lack, but which, according to different studies, is an important determinant of effective work. Union representatives are elected by union members, and the rules for the election must be set in the union statutes. Thus the mandate for union representatives is quite clear. At the same time, non-union representatives must be elected by the general meeting of workers, and there are no more specific regulations. This can result in an unclear mandate for non-union representatives. Empirical findings from different countries pointing to unclear mandates of non-union representations are reinforced in Estonia with legal acts. As there is neither a backing organisation to nor legal regulation of the obligations of the non-union representatives, they might not work effectively in representing workers as is suggested by several authors (Bonner, Gollan 2005; Dundon *et al.* 2005; Terry 1999; Worker... 2002).

The Estonian labour market is very small; there are in total about 600,000 employees, the employment rate is 64%, the unemployment rate is currently (2006) less than 7%. Estonia is also characterised by very high economic growth (the average growth rate in 2000-2005 was 7.6%). In 2005, the real GDP growth was 9.8% and the real wage growth about 11%. These facts indicate that the positions of trade unions are not very strong in the negotiation process. So far, union membership has steadily declined, reaching 8.5% of employees in 2005 (Estonian Labour Force Survey 2005).

In Estonia the main level of bargaining is the plant level. There are few sector-level contracts. This accentuates the competition between union and non-union representations. Low union membership is accompanied in Estonia by the low importance of collective agreements coverage (estimates vary between 21–30%² (Industrial Relations in Europe 2004)). Thus, union representation does not appear to be an effective channel for extending the social dialogue practice in Estonian companies, and there is also a need for other information and consultation channels.

² In practice there are no adequate data for estimation; the estimates are based on expert opinions derived through indirect data.

Informing and consulting workers via representatives is not a common practice in Estonia. This is so partly because of a low share of workers who have representatives, but equally because of a high share of small and medium-sized companies where the need for representatives has never emerged. There are no adequate data to describe the spread of NER, but it is very likely that it is even less common than the spread of union representatives.

Low membership is accompanied by the poor reputation of unions among workers and managers of companies. In 2005, according to Working Life Barometer only 35% of workers trusted their union representatives, while 20% did not trust them and 45% of workers could not say whether they trusted them or had not heard of such an institution (Tööelu Baromeeter 2005). Additionally, workers' representation is not a widely used channel for informing and consulting practices in companies (see e.g., Kallaste and Jaakson 2005; EBS 2004). Thus, it is evident that the two channels for employees' representation are not working as widespread information and consultation channels of workers.

METHOD

In order to investigate the co-existence of two kinds of representatives, we conducted case studies in two companies³. Each case included semi-structured interviews with workers' representatives (one with a union representative and the other with a NER) and the CEO of the company, as well as a random sample questionnaire survey among workers. The survey was based on a self-filled questionnaire that was distributed to designated employees and collected in sealed envelopes by the personnel department. The field-work was carried out in the spring and summer of 2005.

³ The case studies were part of a bigger research which included eight cases in total. Out of these, four had unions and union representatives, two had no representative and two had both union and non-union representatives. In the current paper we concentrate on two cases which included both kinds of representatives. For longer discussions, see Kallaste and Jaakson 2005.

The two cases were chosen so that both would have union and non-union representative in the company and that the companies would have at least 100 employees. This arbitrary level was drawn because relatively small companies have no need for separate arrangements of workers involvement in management, and much bigger companies would be extreme cases for Estonia.

It should be mentioned that it was difficult to find companies having NER. Several companies confused the ordinary management hierarchy with workers' representation and thus had actually no representatives. In addition, some companies mistook a mandatory representative on work environment issues for a NER. This is an indication of insufficient understanding of the idea of social dialogue and workers' representation in Estonia.

The two cases that were studied involved a roughly similar number of employees (see Table 1). The economic activity of the companies is different: one company manufactures construction materials, and the other company provides logistical services. The first company had a higher turnover, profits and remuneration per employee. Both companies are in private foreign ownership and form subunits of a bigger EU-wide corporation. The CEOs of both companies are Estonians. Both companies have their main office in Tallinn and branches in other parts of Estonia.

Table 1. Overview of the two companies

Case ID	Number of employees	Turnover (million kroons, 2003)	Average remuneration per month (2003, kroons)	Survey sample size (response rate)	Economic activity	Ownership
1	~140	345 (profit 78)	13 000	74 (73%)	Manufacturing	Private (foreign)
2	~190	88 (profit 13)	9 200	67 (63%)	Courier and dispatch services	Private (foreign)

In the first company, the workers have a bit higher educational level than in the second company, which might mean that in the first company there are more able and interested workers to use their possibilities in designing their everyday working life. This is because participation could make one's job more meaningful, increasing the sense of responsibility for one's actions, self-fulfilment and self-respect (Alexander 1984), and this is more important for people with higher education.

The working schedule (daily, shifts, etc) is broadly similar in the companies, which implies similar possibilities for meeting their workers' representatives and the preconditions for involving them in the information and consultation practice.

FOUNDATION OF REPRESENTATIVES

Both companies have a relatively small union: in the first case, union members form 22% of the workforce, and in the second case around 10% of the workforce according to the workers' survey. In the first company, there were five NER and two union representatives, while in the second case there were three NER and one union representative at the time under discussion.

The knowledge of the existence of representatives is not self-evident in either company. In the first company, around a quarter of the employees were unaware of the existence of a union in their company, and even more were unaware of the existence of NER (43%). In the second company, around half of the workers knew nothing about the existence of either the union or NER.

In the first company, the union was transferred together with the transfer of the enterprise. But in the first place (in the buyout company) it had been created at the will of the foreign owner. Half of the union members who responded to the questionnaire had participated in the election of the representative. The NER were created on the initiative of the management for concluding a collective contract. While the union represents such a small share of workers, it was decided to include NER's voice in the process of

negotiating over the contract. The election of non-union representatives was initiated by the management, but according to the CEO, the candidates were nominated and also elected by the workers. 80% of those who later knew about the existence of NER had participated in the election. The NER were elected so that there was one representative from each unit of the company. Conclusion of the collective contract was initiated by the management who drafted the contract and convened the meetings with the representatives to discuss it. The union did not draft the collective contract, even though the management left the task in their care at the beginning of the process.

In the second case, the CEO of the company had an impression that there was no reason to speak about the union at all in his company as there were no real union members and he had no knowledge of the activities of the union. When he admitted the existence of the union, he emphasised that it was created on the initiative of an Estonian higher-level union. Specifically he stated:

“As usual, somebody from somewhere called, saying that you will be at the head of the union and let’s do it.”⁴”

Oxenbridge and Brown (2002) showed that the management perceive the role of a branch union’s activity differently: some prefer to communicate with the central union organisation because it is thought to be less demanding and having a “bigger picture”, while others see the central organisation as ignorant about the specifics of the company’s functioning and thus affecting it only negatively. Based on our case studies, the latter attitude describes the situation in the Estonian companies under discussion. In planned economy, trade unions played the role of an executive organ and supporter of state power, the state system of social insurance, and distribution of advantages. Even though the functions have now changed dramatically, the above perception is still deeply rooted in managers. A union representative describes

⁴ This is the pattern of union behaviour that was also described by the other company CEOs and is one of the problematic issues affecting the reputation of unions in Estonia.

the creation of the union as a response to wage negotiations, where the need to protect workers' rights emerged.

In the second case, the institution of NER has a similar history in the company to that of the first case, however, with some differences. The creation of NER, according to the words of the CEO, was a necessity as it was prescribed by law. By that he had in mind the Workers' Health and Safety Act passed in 1999, which prescribes the election of work environment representatives. Thus, the elections were again initiated by the management, but in order to comply with the legal regulations. At the same time, the NER brought out that the elections were held just before the start of collective negotiations and that the management wanted to have all the workers, not just union members, to be represented,. It is also noteworthy that according to the union representative, the non-union workers were not allowed to vote for the incumbent union representative at the time of the election. This accords with the law, but is not fair as the union representative explained. Hence, in the second case, the NER fulfil two representative functions: health and safety issues as well as general matters. The election results of an obligatory institution, i.e., work-environment council, were treated as automatic input for another institution, i.e., NER.

In both cases some of the NERs are middle managers. In the second case, the union representative believes that this is so because of the competence and personality of the supervisors. Concluding from the words of the CEO (second case), this is only natural as supervisors are more competent than low-level workers. Also, they are simply known by most of the workers and are therefore expected to have more influence in the eyes of the management due to their hierarchical position. However, this creates the problem that the supervisor is the same person as the representative and this double role might lead to a conflict of the roles. In the first case, the union representative specifically pointed to this problem. This was not directly expressed by any of the respondents in the second case, but comparing the responses of union representatives and NER, it appeared that the union representative was much more critical of the management, whereas the NER took a more neutral position. Thus the fact that the representatives tend to adopt a managerial position in some issues

as suggested by several authors (Butler 2005; Dundon 2005) has been confirmed in these two cases by the fact that the representatives themselves are managers.

While in the first case, the collective contract was the will of the management (in order to keep industrial peace), in the second case, it was initiated by the union. In the first case the management wanted the negotiating-partner to reflect the whole profile of employees; hence they initiated elections of the NER. In the second case, where the union pressed for the collective contract, the management also wanted to have the employees' side to be representative and initiated the election of NER. Thus the NER did not emerge as a bottom-up approach that is necessary for efficiency of their work as suggested Bryson (2004). It was not employees but employers who felt the need for them. Still the elections were held as a bottom-up approach, which means that NER are not appointed by the management but really have some electorate to represent.

In both cases it is evident that the creation of NER was associated with the concluding of a collective agreement regardless of who initiated it, and the management's wish to have all employees represented during the negotiations irrespective of their union membership. From the management's point of view, this was necessary because of low union membership. At the same time, it indicates that the information and consultation purposes are not seen as important issues and both representatives are brought to life for the same role — collective bargaining. Thus if the legal norms give a similar role to both representatives, in a situation where the union has a small membership, the employers are interested in bringing to life an alternative institution to the union with the same functions in order to have a binding contract with all employees.

Low membership, however, had a different background story in both companies. In the second case, the union had its inception due to the problems with remuneration in the company. The management had since taken several steps in order to hinder the growth of the union (including forcing people to leave the company) according to the words of the union representative and thus the

union did not enjoy wide support among the employees. Little awareness of the existence of the union among employees is also due to the management's policy not to inform newcomers about it (this explains why the knowledge about the representatives is limited). It is therefore likely that the existence of the institution of NER is inhibiting enlargement of the trade union in this particular company. But in the first case, the union has initially been created at the will of the foreign owner, and it had neither grown nor gained a wider membership afterwards. Thus in the first case, we cannot say whether the union would have been stronger or weaker without NER.

THE ROLE OF REPRESENTATIVES

The role of representatives is vastly dependent on the rights that they have to participate in the company with the mandate given to them by the employees and management. As Knudsen (1995) puts it, the role of representatives depends on the level of involvement (information vs. co-decision) and the importance of the questions discussed. The creation of NER was justified by the low representation of unions, but as the two cases show, the representatives are nonetheless given any significant role in the company. One of the reasons for this is the poor reputation of the representatives in the eyes of the management, but also among workers.

In analysing the roles of union and non-union trustees we found that there is not much difference between them. Their main functions are collective negotiations and information exchange between the workers and management. The general picture of information and consultation in the companies that were analysed is that the representatives have a minor importance compared to other channels (official hierarchy in the company, direct participation via meetings, etc). Their role probably engages a specific narrow niche for issues that cannot be channelled otherwise and that concern very specific problems of employees.

As shown by the employees survey, both non-union and union representatives represent union as well as non-union workers. In

general, both representatives have the support and satisfaction of over half of the workers who know about their existence. The union's and NER's work is assessed similarly. In both companies, the employees were slightly more satisfied with the work of the NER than the work of the trade union (see Table 2). This, however, can be due to the fact that more was expected from a union representative than from a NER. For example, the role of an ideal NER did not involve solving employees' problems to the same extent as that of an ideal union representative. In the case of one company, it was also clear that significantly fewer employees had turned to the NER than to the union representative.

Table 2. Awareness of and satisfaction with the NER and the trade union (TU) representatives

Company	Aware of existence of NER	Satisfied with the work of NER		Aware of existence of TU	Satisfied with the work of TU rep	
		Employees	Top or middle managers		Employees	Top or middle managers
1	57%	80%	83%	76%	58%	0%
2	52%	63%	33%	43%	62%	No response

Table 2 also shows that the management is far more content with the work of NER than with that of the union representatives (83% versus 0% in the first case and 33% versus no response in the second case).

Both representatives in both companies admit that the roles of a union and NER are similar. Their main functions are collective bargaining and information exchange, and there is no division of tasks with regard to these issues. In the second company, legal questions (especially individual labour disputes) were left to the union representative due to the central organisation's support and his own competence in this field. That indicates a need for backing structures that NER lack.

In both cases the representatives did not cooperate much in their representation; nor was there any competition among them. Only

one union representative mentioned that the duplicate functions were to some extent problematic. The representatives refer to somewhat different angles of representation, but in reality, they lack the time for representation work and therefore take no interest in what their colleagues are dealing with. Practically, the only time when the representatives meet is prior to the negotiations over a collective agreement. Hence, insignificant as their role currently is, there is no competition between them.

The reasons for a minor role in the company's information and consultation processes are twofold. First, neither had the representatives realised the possibilities of representation nor had the management given them any essential functions. The understanding of their role in the firm was related only to the conclusion of a collective agreement. Also, they simply had not enough time to deal with their role as representatives. Thus, the theoretical construction suggesting that there is competition between the two representatives as both serve the same functions, while the main level of collective bargaining is the plant level, does not hold in practice.

The minor role of the representatives and the lack of competition between them indicate that we cannot conclude that the existence of non-union representatives significantly inhibits the activities of unions as we do not know whether the role of union representatives would have been greater if there were no NER. In the context of a general lack of social dialogue culture, and the low interest of the workers and management in it, the role of union representation would probably not be more important even in the absence of NER in these companies. Also, we see that the fact that collective bargaining is both representatives' main function leaves no space for other types of participation. No systems have been created in companies for information and consultation via employees' representatives.

REPUTATION OF REPRESENTATIVES

With different arguments in both cases the CEO of the company expressed an opinion that union representatives and NER are not working properly. Generally, the management has a feeling that the union is a passive organisation that has from time to time been interested in participating more in decision making, but has actually never taken any concrete steps for it and has not provided any value added. Also, almost all the CEOs who were interviewed in the context of wider research (altogether eight companies) and who had only union representation and no employees' representation in their companies shared the view of unions as institutions with a negative reputation. This was so with the exception of one CEO, who was not Estonian.

The CEO of the first company suggested that the union would be stronger and more useful if it represented the majority of the workers. At the same time, a union representative was of the opinion that small membership was no problem, as according to law there are no minimum requirements prescribed for membership. The CEO expressed the view that unions are not fair in representing workers (there had been a case where the union protected a fraudulent worker). Also, he felt that the union did practically nothing, because the CEO had asked for information on minutes of their meetings, but had never got any response. The CEO of the second company expressed the negative attitude towards unions with the following words⁵:

“Union members are usually lazy. --- Unions are formed by simple workers whose competence is limited. --- Unions are based on the principle of striking and demanding more money.”

Also the NER admitted a negative attitude towards the union in the second company.

⁵ This and following expressions are translated by the authors of the article. Interviews were conducted in Estonian.

Controversially, the management had initiated the election of NER, who, however, have no better position in the eyes of the CEOs than unions. The CEO of the second case said that NER had no power, no decision-making rights nor competence to actually represent workers. According to the words of the CEO of the first case, NER have low importance because there is no organisation behind them and no real power for representation. They have no right to call a workers' meeting; they are not effective in sharing or collecting information. The CEO said with regret:

“Since I have not elected those representatives, I cannot make them work.”

The representatives themselves admitted that few contacts with workers were the main problem of representation: one of the reasons was limited time left for representation-work. The CEO of the second case stated as a conclusion for the effectiveness of NER:

„I don't think they are necessary at all. Why would a small company actually need representatives? They don't have any influence or decision power. None whatsoever. A nonsensical body. We worked before and will work after, nothing has changed. These representatives, they are weak, too – they don't know how to do their work. Somebody would need to train them, but I don't know what institution could do that.”

Thus the reasons for the low reputation and low effectiveness of NER include several reasons brought out by other research (e.g., Bonner and Gollan 2005, Dundon *et al* 2005, etc). It is a peculiar situation where the management has initiated the election of NER in order to involve all workers in a collective contract, but finds this institution to be worthless. This partly shows that we are not dealing here with the so-called yellow trade unions, workers' representations initiated and controlled by managers. Also the management is aware that NER have fewer possibilities than unions to enforce a collective contract in the case of disagreement: this is evident from expressions such as. NER have no power to call a workers' meeting, they have no organisation behind them, they are not trained, etc. This situation could not be unknown to

the CEOs at the time of initiating elections for NER. It thus indicates the indirect purpose of concluding a collective contract that is more favourable to the employer through the creation of a new institution of representatives. The previously described situation has been possible due to the overlapping roles allowed for different representatives in the legal acts and low knowledge or will of union representatives to demand their rights.

CONCLUSIONS

On the basis of two case studies in two Estonian companies, the current paper analyses the incentives for electing NER, and the roles of unions and NER if the two have similar legal rights. Estonian laws allow for two types of representatives to function in companies, one representing unionised and the other one non-unionised workers. Both representatives have similar rights, including the right to be informed and consulted and to bargain a collective contract. According to the laws, unions are in a more favourable position for concluding collective contracts, but in practice it happens that both representatives fulfil the same functions as regards collective contracts. As the election procedures for NER are very cursory, it might create incentives for the management to appoint their own agent as a non-unionised employees' representative. If both representatives with overlapping roles are introduced in the company and the main bargaining level in Estonia is plant level, it could bring about competition between the two as both are implementing the same tasks. On the basis of other researchers' work, in these circumstances we could expect NER to be less effective than union representatives in representing workers. This means that their functions are less clearly defined and their role is less valued by workers than that of union representatives. In contrast, the management could view NER much more favourably.

In order to analyse the practical implications of such a situation and test our hypotheses, two case studies were conducted in companies that had both kinds of representatives. Both companies had a small union. The results show that in both cases the management had initiated the elections of NER with the purpose of incorporating non-union workers into the collective contract. This was necessary as the unions were very small in both cases and would have represented the interests of only a small fraction of workers, but the management was interested in concluding an agreement in order to guarantee industrial peace.

Thus the direct purpose for NER in these companies was to bargain, which in the European model is the prerogative of unions.

As in the Estonian industrial relations system the main level of bargaining is that of company, the role of NER is exactly the same as that of unions. The similarity of the functions is also evident from the analysis of the information and consultation roles, which, however, have minor significance in both companies.

However, the similar roles of NER and union representatives do not cause fierce competition between the two. Both representatives represent the interests of union and non-union workers. At the same time, the survey of workers and interviews with the parties indicate that their role in general information and consultation practice in companies is minor by comparison with other channels. In neither of the companies have the unions gained any wider membership or importance, and it is not clear whether they would have gained them in the absence of the NER. Currently, the only conclusive result is that the role of both is minor.

There are signs that NER are less efficient in their work because of their dual role and the lack of a central organisation to support them. In both companies NER are also middle managers. Also, despite the fact that the institution of NER was initiated by the management, they regard the current institution as non-workable and relatively useless. Also, the unions have a very bad reputation among the company directors and therefore they are not given more rights to participate on the side of the management.

Thus, in such situations where there is a minor union and different representatives have the right to both bargaining and information and consultation, the main bargaining level is the plant; NER are created with the purpose of bargaining. Information and consultation purposes are not viewed as important. In order to avoid the use of the institution of NER for bargaining, and to allow and stimulate informing and consulting all workers, which is not an essential practice beside collective bargaining, the two roles (bargaining, and informing and consulting) should be separated.

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KOKKUVÕTE

Kaks esindajat aga esindust pole – kahe Eesti ettevõtte analüüs

Eestis on nüüdseks mitu aastat vaieldud töötajate kaasamise seaduste muutmise vajaduse ja vormi üle. Praegusel hetkel on Eestis võimalik valida ettevõttes kaks samade funktsioonidega töötajate esindajat. Üks neist esindab ametiühingusse kuuluvaid töötajaid ja teine ametiühingusse mitte-kuuluvaid töötajaid. Olu-kord, kus kahel esindajal on samaaegselt nii informeerimise ja konsulteerimise kui kollektiivsete läbirääkimiste roll, on ebatavaline EL-i teiste riikide taustal. Harilikult on kas üks esindaja (ametiühing) mõlema rolli täitmiseks või on ametiühingute roll kollektiivsed läbirääkimised ja informeerimise ning konsulteerimise eesmärgil on kõikidele töötajatele, sõltumata ametiühingu kuuluvusest, eraldi esindaja.

Käesolevas artiklis vaadeldakse kahe ettevõtte näitel, miks ettevõtetes, kus on olemas ametiühingu esindaja, on loodud lisaks ametiühinguvälise töötajate esindaja institutsioon. Küsimuseks on, kes kutsus sellise institutsiooni ellu ja kuidas esindajad valiti. Samuti vaadeldakse, millised on esindajate ülesanded ja kuidas need on erinevate esindajate vahel jaotatud. Juhtumiuuringu raames intervjueriti töötajate esindajaid ja tegevdirektorit. Lisaks viidi läbi juhuvalikul põhinev töötajate küsitlus, et oleks arvestatud kõikide poolte arvamusega.

Tulemused näitavad, et tööandja oli algatanud mõlemas ettevõttes ametiühingusse mittekuuluvate töötajate esindaja valimise selleks, et sõlmida kollektiivleping, mille töötajate pool hõlmaks suurema osa töötajate arvamusi, mitte ainult väheste ametiühingu liikmete oma. Vaatamata sellele, et ametiühinguvälise töötajate esindaja institutsioon oli algatatud tööandja poolt, seadsid kandidaadid üles ja valisid esindaja siiski töötajad. See näitab, et tegemist ei ole tööandja poolt määratud inimesega ja põhimõtteliselt võiks esindaja töötajate huve tõepoolest esindada.

Seega oli otsene eesmärk äü-välise esindaja loomiseks kollektiivsed läbirääkimised, mis Euroopa mudeli kohaselt on äü eelis-

õigus. Kuna Eestis on peamine kollektiivsete läbirääkimiste tasand ettevõtte, on mõlema esindaja roll täpselt sama. See paistab välja ka informeerimise ja konsulteerimise toimimise analüüsist, mille tähtsus on siiski mõlemas ettevõttes mõlema esindaja jaoks marginaalne. Vaatamata sellele, et esindajate rollid on samad, ei eksisteeri nende vahel olulist konkurentsi. See tuleneb asjaolust, et mõlema roll on vähetähtis. Ühelt poolt ei näe juhtkond esindajatele oluliselt muud rolli peale kollektiivsete läbirääkimiste, teiselt poolt ei ole esindajatel ei aega ega ka oskuseid endale täiendavaid funktsioone nõuda. Selleks puudub ka töötajatepoolne surve.

Uurimusest ilmnes, et ametiühinguväliste töötajate esindaja on vähem efektiivne oma esindaja töös. See tuleneb asjaolust, et esindaja oli samal ajal ka madalama taseme juht, mistõttu tal oli samal ajal täita kaks rolli. Lisaks puudub tal äü organisatsiooni toetus. Vaatamata sellele, et ametiühinguvälise esindaja institutsioon oli algatatud tööandja poolt, oli ta maine tööandja silmis väga madal. Ootuspäraselt oli äü esindaja maine madal.

Kokkuvõttes on loodud täiendav esindaja kollektiivsete läbirääkimiste jaoks ja informeerimist ning konsulteerimist peetakse vähetähtsaks. Selleks, et stimuleerida informeerimist ja konsulteerimist, mis on oluline kollektiivsetest läbirääkimistest erinev protsess tuleks need seadustes selgelt eristada ja määrata esindajate rollid mõlemas. Praegusel juhul ei täida kumbki esindusvorm töötajate esindamise ülesannet informeerimisel ja konsulteerimisel.