

# L: LABOUR AND PARTICIPATION

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Since its origins, work co-operation has represented a type of work relationship that is different from the employer/employee relationship associated with a market economy. The difference in the work co-operation relationship is due to the fact that the work of the employee members is structurally embedded into an enterprise, that of the co-operative, which is different from a capitalist one.

The intertwining of the work relationship with the operating of the enterprise and with the power of its members to democratically take major business decisions is an essential characteristic of the co-operative formula. This can already be seen in the first experiences in the 19th century, set up by small groups, mostly workers or craftsmen who worked on a small scale, often to overcome economic and social difficulties. With time, the formula has evolved on an economic, organizational and institutional level. A production and social model has been set up which has spread beyond its original areas and marginal sectors and is capable of competing in modern domestic and global markets. The economic and organizational characteristics that have contributed to this development and to the good performance of the co-operative system, also in employment, are outlined in other parts of this book. Here I will examine the main aspects of how the employee member relationship is regulated and the forms of employee member participation in co-operative enterprises.

The rules of work co-operation respond to widely recognized principles drafted over a period of time by the co-operative movement in various countries and at international level. The 2005 International Co-operative Alliance Statement is particularly important. Similar principles have been imposed by the ILO with recommendation no. 193 (2002) and are partly covered by the European Directive on the European Co-operative Society (2003/72/EC) and regulation 1435/2003 (see chapter U).

These rules are transposed in different ways at national level, sometimes with specific laws, as in Italy and Spain, and, in any case, with references to the regulations of the co-operatives themselves as recognition by the legislator of their regulatory autonomy. The main aim of such regulation is to establish a balance between legal positions, rights and obligations of this relationship. On one side the members make their work available to the co-operative. On the other side the employers as owners of the collective



property of the enterprise have the power to jointly decide how it should be managed.

This balance is not always easy and has given rise to controversy because there is a need for the workers to rectify situations which are normally contrasting in a capitalist enterprise; on the one hand, joining a company as an employee who is subject to directive and disciplinary powers and, on the other, the right to make corporate decisions and the right to a share of profits.

This dual nature of relationships affects the content of both. It modifies the nature of the capitalist enterprise with the introduction of elements of participatory democracy by the workers as well as a form of shared ownership; changes the relationship of the employee member, which is different both from that of a conventional employee who is normally not involved in enterprise management and work organization and from that of a self-employed worker who individually manages his own company.

In traditional companies, forms of worker involvement of varying degrees of intensity have also been introduced, mainly under the pressure of the trade-union movement including, rights to information and consultation on major company decisions and the right to be a part of company institutional bodies. These forms of involvement are governed both by national regulations and European standards (Directives 2009/38 on the EWCs, 2001/86 and Reg. 2157 on the European Co-operative Society). However, these rights imply forms of employee participation which do not involve corporate governance. Even in Germanic-type co-management, they are minority rights compared with the powers of the company owners/shareholders, which are decisive; in co-operatives, the owners democratically exert the main powers of governance of the joint undertaking by electing administrative bodies according to the 'one member one vote' principle.

The balance between the positions of member and employee has been modified over the years. In a traditional set-up, the position of member was considered more important than that of employee to the point that work was considered a fulfilment of the membership contract. This set-up has gradually been modified as co-operatives have expanded and because of the need to guarantee that employee members are treated and protected in the same way as normal employees. A guarantee in this sense is now acknowledged by the international principles and by the rules mentioned above which recommend compliance with the main conventions of the ILO on labour in relations with employee members. Moreover, these sources recommend that the best personnel-management practices are applied to employee members.



The need to apply regulations that are valid for conventional forms of employment based on an employer/employee relationship is outlined in various national legislations: in Italy the main law is Act no. 142 of 30 April 2001, which contains a general regulatory framework; the co-operatives are governed by Act no. 381 of 1991; in Spain, Act no. 4 of 24 March 1997 on the *sociedades laborales* is particularly relevant.

The coexistence of two relations regarding employee members, and to a certain extent, the dependence of the work relationship on the associative one, have meant that several modifications have had to be made to the rules and practices that apply to standard employment in a traditional company.

Pay tends to be aligned, also as a result of competition, to that applied in the sector and markets in which the co-operative operates. Indeed, co-operative associations regularly draw up collective agreements with trade-union organisations representing all employees. However, employee members may be affected by the economic conditions of the joint undertaking and be asked to accept reductions in pay if there is a financial crisis. On the other hand, normal contractual payment may be increased as the result of a budget surplus refund approved by the general assembly.

The Italian Act no. 142 lays down precise rules on both fronts. The co-operatives must pay their members a general wage that is in proportion to the quantity and quality of the work and, in any case, not lower than the minimum levels established by the national collective employment contracts for similar types of work. The meaning of the Act, which has long been controversial, has been conventionally defined (as well as with the Ministerial Circular 10/2004) as including all fixed wage elements including additional monthly payments, increases and other legal remuneration (working hours, holidays, severance pay (TFR)); but margins of flexibility are recognized for variable elements of pay regulated by collective contracts (e.g., overtime pay). Social security contributions for employee members were gradually aligned, in 2010, with those of normal employees. The same Act no. 142 establishes that the refunds approved by the assembly must be limited to 30% of the salary and any pay increases agreed upon in a collective agreement.

Another aspect of the law on employee members concerns the termination of the work relationship. Act no. 142 states that the work relationship ends with resignation or with exclusion of the member (Art. 5.2). This rule, which indicates that the work relationship depends on the associative one, derogates from employment law on dismissals. However, derogation is compensated for by a rule which states that exclusion of members must be approved by the directors or, if requested, by the assembly. The member is therefore safeguarded by the fact that the reasons for his/her



exclusion are assessed by social bodies who express the common will and not unilaterally by the employer, as is the case when ordinary employees are dismissed.

The unique position of members is acknowledged by Italian legislation in aspects as well. As far as court decisions are concerned, disputes concerning 'exchanges between members' are attributed to an ordinary court and not a labour court (Article 5 b paragraph 2). The prevailing interpretation of this act, which is not without ambiguities, tends to assign issues concerned with the rights and obligations of work to the labour court, whereas issues regarding the social rights and obligations of the worker are assigned to the ordinary court.

A controversial issue involves the exercise of trade-union rights and freedoms of members. According to Act 142, amended by Act no. 30/2003, these rights can be exercised only according to agreements between national co-operative associations and trade unions which are comparatively more representative. This condition is justified by the need to reconcile the antagonist nature of trade-union relations with the associative nature of member relationships which involve members in company management, both on a pro rata basis, and with the limits derived from a managerial approach to running the enterprise, especially in large co-operatives. Contractual regulation of this issue has been difficult or only partial. Due to their constitutional origin, the courts tend to recognize trade-union rights for employee members even if collective agreements have not been made. Indeed, the exercising of these rights is widely acknowledged, especially in large co-operatives. What is more, the major co-operative confederations, AGCI, Confcooperative and Legacoop, have agreed with the major trade union confederations of workers to transpose the statute of the European co-operative society. This demonstrates the willingness of the co-operative world to adopt trade-union relations which not only respect the rights of employee members but also have a specific participatory content. The involvement of employee members is an essential part of the co-operative movement, but can take on various forms. Employee members, in addition to participating in company meetings and electing administrative bodies, can also benefit from various participatory forms provided for employees in many countries and mentioned in European regulations, especially those on the European co-operative society, as well as those on collective bargaining (information, consultation, organic participation). These collective bargaining rights for members in their capacity as employees are applied in the largest co-operatives, as a result of agreements with the trade unions, often in wider terms than



those specified in the general legislation.

The presence of trade-union organisations is widespread in co-operatives and trade-union membership is often higher than the sector average. Relations between the company trade-union representatives elected by all the employees and the employee member representatives in the company's governing bodies is a delicate issue. The potentially critical nature of these relations, as outlined in the international documents of the Italian Co-operative Alliance, reflects the dual nature of the employee members' position and can only be overcome by making a clear distinction between the functions of the two forms of representation. In some countries, this distinction has led to a dual channel of representation, one with strictly trade-union functions and the other with participatory functions.

The co-operative associations regularly sign collective agreements with the most representative trade unions. The co-operative organizations have agreed with the main trade-union confederations general rules on work and industrial relations. Those are adaptations to the co-operative sector of framework agreements signed in recent years (from 1993 to 2014) between the confederations themselves and the employers' associations for traditional workers. These agreements have at times been strained, especially with the CGIL (the largest Italian trade union). Recently, there has been a gradual rapprochement between the three main co-operative associations, which has led to the formation of a single co-operative union, the Italian Co-operative Alliance (see chapter A).

The economic content of collective bargaining is generally aligned with that of comparable private companies, often with improvements being negotiated with the companies by the individual co-operatives. These include, for example, level of jobs classification which are often higher than in private companies, improved management of apprenticeships and part-time employment and more attention paid to job stability. The participatory nature of labour relations can also be seen in the dissemination of bilateral practices, with the establishment of joint funds and bodies for vocational training and, more recently, support for the retraining and relocation of workers who benefit from social 'safety net' systems.

A commitment which the co-operative movement shares with the trade unions involves opposition to the phenomenon of contractual dumping effected by fake co-operatives which are widespread in the cleaning and social co-operation sectors. For this purpose, an agreement has been reached with the government which has undertaken to consolidate and extend its inspections to the entire sector, including enterprises which are not associated with the co-operative unions.



## References

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