



Edited by Tindara Addabbo · Edoardo Ales ·
Ylenia Curzi · Tommaso Fabbri ·
Olga Rymkevich · Iacopo Senatori

The Collective Dimensions of Employment Relations

Interdisciplinary
Perspectives on Workers'
Voices and Changing
Workplace Patterns

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1

Introduction

Olga Rymkevich and Iacopo Senatori

This book is the third editorial initiative¹ of an ongoing research project managed by the Marco Biagi Foundation (University of Modena and Reggio Emilia, Italy), seeking to cast light on the new challenges and trends in the world of work accelerated by the advent of digital technologies. The present volume is focused on the implications of the societal and technological changes for the “collective dimensions” of employment, a plural expression that intends to encompass the collective identity of workers, the institutional representation of their interests and the regulatory framework built around it, emphasising the complex characterization of all these factors in the modern society.

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From a methodological perspective, the combination of an interdisciplinary and multidisciplinary approach represents an original feature of this book, allowing to analyse in a comprehensive way a number of multifaceted and controversial issues linked to the collective dimensions of employment relations and the impact generated by digitalization and workplace “fissurisation”. Furthermore, the use of the comparative method offers a wide geographical spread providing an original insight on different national experiences in the countries of Western, Northern, Southern and Eastern Europe, China, Russia and Australia.

The structures of collective representation of workers have always been a crucial tool to advance regulation of employment relations, to grant high levels of protection and to achieve a fair balance between the social and economic needs in society. However, the existence of these structures is now seriously threatened by many factors.

The list of those threatening factors includes: declining union density and collective bargaining coverage, governmental policies, legislative restrictions, austerity measures, uncertain development of transnational union networks in the face of a stronger role played by multinational corporations, enlargement of the sectors of the working population that are not entitled to collective representation, either because of their employment status or due to their contingent position in the company (such as dependent self-employed and workers employed in value chains).

In addition, a disaffection for the collective representation rights is increasingly evident in the institutional framework. At the national level, the action of lawmakers and governments is often accompanied by arguments in favour of “disintermediation”, in the sense that the State should deal with employment regulation autonomously, with no need or entitlement for social dialogue to intervene in the drafting or implementation of the legislative process. At the supranational and international levels, the instruments typically envisioned in industrial relations to empower employees and engage them in the drafting and enforcement of employment regulations, i.e. collective bargaining and industrial action, are trumped by the economic rights and freedoms of the enterprise, thus undermining the collective defence of employees’ interests. This is clearly

the case in the European Union, although arguments aimed at challenging the established status of collective rights have also been put forward within the ILO, with particular reference to the right to strike.

The institutional framework reveals a mismatch between regulatory provisions and the demand for fair working conditions in relation to the emerging economic and social phenomena. The digital revolution gives rise to new organizational arrangements in the workplace, and new ways to perform work that often fail to meet the traditional criteria for the classification of employees. As a result, trade unions and representative bodies face a challenge to their capacity (and legal entitlement) to mobilize collective interests, linked to “virtual” workplaces where in many cases workers are denied minimum employment rights and protection. The digital, “platform” or “gig” economy also calls into question the role of unions in overseeing and influencing employment conditions in relation to key issues such as the measurement, monitoring, assessment and remuneration of the work performance, the protection of work-life balance against the growing intrusiveness of work in private life enabled by mobile devices (“time porosity”), the impact of new technologies on health and safety, the adaptation of occupational skills to new work processes, and the responses to the digital restructuring of undertakings entailing redundancies or the relocation of production.

The “fissured workplace” mentioned above has a negative impact on collective solidarity not only in relation to the classification of individual employment relationships, but also with regard to supply chains, in which large groups of workers are denied the power to influence decisions taken by the lead enterprise, that is the final beneficiary of the production process. In both cases, legal constraints may prevent the collective mediation of interests, given the possible conflict between collective bargaining, competition law and entrepreneurial freedom, as the European experience shows.

Nonetheless, it is possible to detect signs of resilience of the institutions of collective representation, that may result in a renewal, instead of a descent, of the role of those institutions in the regulation and management of the workplace. For instance, in the field of the “gig-economy”, in several Western countries and regions an increasing number of initiatives have been undertaken by collective actors, bringing together traditional

representation structures and spontaneous grass-roots movements. At times, lawmakers attempt to promote the activation of collective representation and collective bargaining by means of legal and economic incentives, often encouraging social partners to address specific issues linked to productivity and technological development. In the background stands the idea of searching new alliances between traditional and new players, like trade unions and other non-governmental or civil organizations, to pursue combined or joint efforts.

Furthermore, a different characterization of collective employment relations has been attracting increasing attention in recent times: the so-called collective-relational dimension, that identifies the web of relations established among workers belonging to the same workplace, other than the formal representation structures. Such “third” dimension does not constitute a means to achieve countervailing power, but rather a phenomenon inherent in the employment relationship itself. This perspective assumes that conceptualizing the workplace relationship merely in an individual and atomized perspective is likely to be insufficient. On the contrary, it can be argued that, along with situations related to the single binding relationship between employer and employee, different situations will be envisaged, that assume a legal significance only in the perspective of the unitary consideration of the relationships that take place in the organizational community. This emerges clearly from the appreciation of the importance of the organization in the context of the employment relationship, especially in the light of the implementation of new technologies in production processes and in the management of its impact on the workplace patterns. It is evident that the interest of the employer in the organization, as outlined above, cannot be limited to the individual level but necessarily extends to the collective dimension where multiple occupational skills are represented and need to be organized, coordinated and managed.

Against such background, the book aims at putting together under the same conceptual framework the old and new “collective dimensions” of employment, and to offer to the readers a renewed theoretical perspective (and justification) on the role that the dialogue between workers and companies could play in an increasingly complex world of work, where the massive change of well-established interpretative categories is coupled

by a substantial continuity of the interests and aspirations expressed by the actors of the employment relationship.

The book is divided into three thematic sections. **The first one** intends to provide a general contextualization of the book by introducing the three “basic” collective dimensions of employment relations: trade unions, workers’ representation bodies, the workplace, meant as an organizational community. The aim is to recap the state of the art and provide the analytical elements to stimulate a twofold reflection: on the one hand, how the traditional representational institutions can be revitalized, and on the other hand how they can interact with new concepts and instruments, with a view to reaffirming an updated role of collective relations as a tool to regulate and manage the workplace.

The chapter by **Manfred Weiss** provides a broad overview of the evolution and main challenges for the employee representation and participation structures in the light of the analysis of the relevant European and international legislation. Particular attention is paid to the role of employee in management decision-making through the prism of fundamental human rights and industrial democracy. In the author’s view, the idea of employees’ participation as a democratic and human rights principle should be promoted everywhere as it represents a powerful tool to counteract to the progressive erosion and fissurization of the workplace and increasing employee disempowerment in the context of the uncertain consequences of digital and technological revolution.

Filip Dorssemont in his contribution proposes a comparative legal and historical analysis of the development of employee and employer organizations at the European and international level and of the role of international legal instruments and essential means in this regard. In particular, he examines certain legal concepts such as the legal definition and status of the main actors involved in representation (trade unions and employers’ associations), the notion of representativeness and the complex and controversial nature of their interrelations in the light of fundamental human rights principles. The chapter concludes with a provocative antithesis, *i.e.* how labour law could operate without social partners organizations.

The chapter by **Tommaso Fabbri** and **Ylenia Curzi** presents a conceptual framework, derived from the processual theory of organization, for

the analysis of the “third” dimension of work relationships, additional to the individual one, regulated by the contract and to the collective one, regulated by industrial relations settlements. The authors move from the unsolved tension, inside labour law, between contractualist and institutionalist perspectives and claims that the tension is rooted in mainstream, socio-technical theory of organization, where the organizational work system is rationally and thoroughly set before the worker comes into play, either as an executor or a discretionary agent. Conversely, processual theory of organization sheds light on workers autonomous regulatory contribution to the overall work organization, so providing original analytical insights on the dynamics of work relations and, consequently, for their regulation.

In conclusion of this section, the chapter by **Edoardo Ales** aims at demonstrating the existence of several collective dimensions within the employment relationship to be tracked back both to the trade unions’ and to the works councils’ model. The “agentification” that characterizes each model is likely to jeopardize the enhancement of the interrelational element the most advance organizational theory looks at as main feature of the collective dimension of the employment relationship. The essay tries to make some proposals on which, from a juridical point of view one can reconcile the individual nature of the contractual relationship with the “processual regulation” option inspired by the collective self-coordination of performances within the work community

Considering that digitalization and all the major social and economic transformations that affect the modern world of work have their heart at the workplace, the chapters collected in the **second section** provide a reflection on the role of the company as a specific and autonomous regulatory forum and the responsiveness of the existing employee representation structures to the effects of multiple transformations generated by globalization and digitalization such as workplace fissurization, employees precarization and company disintegration.

In this way, the chapter by **Roberto Albano, Ylenia Curzi and Tania Parisi** is aimed to identify prevalent trends in control and surveillance in industry since 1990 to present, focusing in particular on the differences between highly digitalized and traditional workers. The authors elaborate three ideal-types of management control, namely controlled autonomy,

new-Tayloristic and Panopticon control. Then, they analyse data from the 1991 to 2015 European Working Conditions Survey. Their findings show a growing trend towards forms of control approaching the ideal-type of controlled autonomy, particularly among digital workers. Highly digitalized industrial work practices offer greater opportunities for workers to develop new skills and exercise their autonomy. In contrast to the expectations, however, findings show that this hardly occurs through the involvement in a group or team that has common tasks and can autonomously plan its work. This suggests that the autonomy that workers are allowed to exercise in today's digital work settings has an individual rather than a collective character. In addition, their autonomy does not concern strategic organizational objectives and goes along with work intensification. At least in the countries, sectors and period considered in the analysis, digital workers have no opportunities to participate in decision-making processes regarding the organization's objectives and it seems that they are not able to get out of a growing loneliness, to raise the level of social conflict and to oppose real autonomy to management. These findings contribute to the line of critical research on new post-Fordist work practices, which today gain new momentum thanks to the digital transformation of work.

Julia Tomasetti examines a thought-provoking neoliberal concept which regards an individual as an independent economic agent or neoliberal agent managing his/her human capital portfolio where working time and other working arrangements become mere human capital assets with certain implications for labour and social security law. She focuses on *SuperShuttle* DFW decision where labour rights were denied to airport shuttle drivers who were considered independent business contractors for themselves. She illustrates the dichotomy between employee rights and property-like entrepreneurial prerogatives reflecting upon liberal conceptualization as opposed to the neoliberal reconceptualization of such notions as firm, entrepreneurialism, productive activity and models of profit generation which as a more extreme implication "transform the living in doing business" and conflates worker discretion with autonomy. The author argues that platforms often adhere to such a neoliberal concept while designing their work modalities. This practice helps them

to avoid applying statutory protections to platform workers who are considered neoliberal agents.

Helena Ysàs Molinero highlights significant inconsistencies between the existing employee representation structure and the corresponding company structure in Spain. In her opinion, national regulations often lag behind main economic and social developments related to workplace fissurization, workforce precarization and company disintegration which resulted in progressive weakening of employee representation structures. The author argues that the legislation should provide better opportunities to be fairly represented to all categories of workers, including employees of a “fissured company”, small establishments and independent workers.

Finally, the **third section** casts light on various forms and systems of employees’ representation and collective action for the defence of workers’ interests, in consideration of the increasing number of spontaneous initiatives undertaken by collective players. Moreover, it draws up an original mixture of traditional and innovative practices that involve old and new actors of the collective dimensions. In this perspective the chapters collected in this section are aimed to explore the collective dimensions of labour relations in the context of a range of new business models and examine the ability of the unions and alternative workers representation bodies to represent workers engaged through gig platforms, supply chains, as well as the role and attitude of employers’ organizations.

The first chapter of this section by **Federico Fusco** focuses on the compliance with the international provisions (in particular with the ILO and ECHR standards) of the recent changes in the Swedish legislation aimed to restrict the right to strike of those trade unions that are not bound by the collective agreement signed by the employer. The author illustrates controversial global effect of the reform especially if it is placed together with other Swedish legislative provisions. By recognizing the rationale behind the reform, the author however calls for a more weighted case by case approach in order to prevent collateral and potentially dangerous consequences for many conflicting interests at stake. In the author’s view, the reform risks to undermine the principle of freedom

of association as it limits trade unions regardless of the level of their representativeness to defend working conditions of their members. It may also discourage both the workers to join such unions and the employers to sign the respective collective agreements.

The chapter by **Anthony Forsyth** examines the challenges for collective worker representation posed by new business models in Australia and Italy and assesses the effectiveness of responses from trade unions and emerging worker representative groups in the era of “platform capitalism”. By comparing approaches in the two countries and examining the reasons of successful and less successful outcomes of the efforts undertaken by workers representatives (cases of Foodora, Uber, Amazon, Bologna Charter, etc.) the author demonstrates that a new form of solidarity aimed to respond to the new business models challenging the established notions of work is emerging. While providing a critical assessment of the role of collective regulation of platform and other types of fissured work, the author argues that new opportunities for the development of different expressions of collectivism are arising. At the same time, he argues that the involvement of established trade unions using multi-pronged strategy including public campaigning, litigation of individual or group and grass-roots organizing provides better chances for success.

Marius Kalanta in his analysis argues that a lack of the positive impact of European and national policy measures aimed at strengthening social dialogue in CEE countries, particularly, social dialogue institution building via political interventions and the Europeanization through capacity building and dissemination of social standards, can be linked to incomplete assumptions they have been grounded on. These assumptions have overestimated the power of European and national political actors to establish strong and functioning social dialogue and underestimated the role of social partners’ motivation to be engaged in it. The chapter focuses on structurally shaped motivation of enterprises to be involved in social dialogue in the Baltic countries. It finds that the Baltic growth regime has recently become strongly export-driven suggesting that coordinated wage-setting could have also become increasingly compatible with the enterprises’ interests to improve the competitiveness of exports. However, it is not a component of the current

business strategies of Baltic manufacturing enterprises. Instead, enterprises rely on “price taker” strategies that take advantage of favourable market opportunities but not of competitiveness improvements via cooperation and coordination at the intra- or inter-sectorial level. Therefore, in the author’s view, these strategies are not complementary with social dialogue institutions.

The chapter by **Olga Rymkevich** and **Ronald Brown** compares the situation of platform workers engaged in ride-hailing and food delivery service in Russia and China. These countries share communist experience, similar trajectory of trade unionism development and have witnessed rapid growth of platform work in the last two decades. The lack of labour rights and benefits for gig workers is a global issue. It is complicated by the diversity of gig workers who generally vary from self-employed, independent contractors, part-timers, irregular workers, etc. However, the facts are becoming clear that platform entrepreneurialism is a business model designed to cut costs by shifting labour costs to the workers. It is particularly true for workers who work for one employer upon whom they are dependent on for their livelihood. Some countries have protected this group of “dependent employees”. Stirrings in China and Russia are beginning to call for that recognition. The problem of granting them the status of “employee” thus entitling these workers to an employment contract and eligibility for labour rights and benefits and the right to become members of unions has gained increasing attention both in China and in Russia albeit to a different extent and with different success. In the meantime, the frustrations of these workers sometimes result in public protests. The paper focuses on the experience of Russia and China in relation to ride-hailing and food delivery services. After an overview of the general trends of the development of gig work in these countries the paper analyses the approaches to the problem of legal classification of these workers and trade unions responses.

Massimo Resce and **Enrico Sestili** focus their attention on the policies of supporting collective bargaining in Italy by means of legislative and economic incentives. The chapter provides a quantitative and qualitative assessment of the collective bargaining enacted in response to such legislation. In particular, it investigates upon the main characteristics of the measures adopted for the growth of productivity in decentralized

bargaining and their integration at local level and by company size and industry. Moreover, it deals with the problems of measurability of performance increases and the choices made by the companies in terms of objectives and growth indicators. Finally, it provides a summary of the main emerging evidence, also through company profiling, with respect to the choices in adopting the tax incentives.

Note

1. *Working in Digital and Smart Organizations. Legal Economic and Organisational Perspectives on the Digitalisation of Labour Relations*, E. Ales, Y. Curzi, T. Fabbri, O. Rymkevich, I. Senatori, G. Solinas (eds.), Palgrave Macmillan, 2018 and *Performance Appraisal in Modern Employment Relations. An Interdisciplinary Approach*, T. Addabbo E. Ales, Y. Curzi, T. Fabbri, O. Rymkevich, I. Senatori (eds.), Palgrave Macmillan, 2020.

Part I

The Collective Dimensions of Employment: A Taxonomy



2

Challenges for Workers' Participation

Manfred Weiss

Introduction

Employees are not supposed to be mere objects of management's decisions but must participate in management's decision-making in order to live up to human dignity and to establish a democratic workplace. This insight by the founding fathers of labour law (Sinzheimer 1927) is as valid today as it was in the formative era of labour law. Such continuation has recently been confirmed in Europe by Art. 27 of the Charter of Fundamental Rights of the EU (CFREU) and by the 8th Principle of the European Pillar of Social Rights. The question is whether and how labour law has lived up to this goal so far and whether in the future it will be possible to establish a satisfying structure to meet this ambitious goal.

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Starting from a sketchy description of the variety of patterns of workers participation within the company and of the advantages of such systems this contribution tries to highlight the approach of the European Union towards workers participation and tries to reflect on the challenges for workers participation in view of modern working patterns, particularly those implied by digitalization.

The Variety of Systems of Workers Participation

Institutionalized patterns of workers' participation exist in many countries. However, there are big differences from country to country. These differences refer to

- the degree of participation, ranging from information and consultation via veto rights up to co-determination where management and workers' representatives are on the same footing in decision-making for a whole range of topics.
- the level of participation, ranging from the shop-floor level up to the headquarters of companies or groups of companies. Some countries even know employee representation in company boards where again the differences are tremendous, in particular as the percentage of seats are concerned.
- the composition of bodies of workers' participation which is different from country to country. In some countries exclusively employees, in others chaired by management side.
- the relationship between bodies of workers' representation and trade unions, thereby, of course also to the relationship between workers' participation and collective bargaining (Biagi and Tiraboschi 2007, p. 503).

There is one common deficiency of the different systems of workers' participation: they only very seldom are implemented in small companies. And often the threshold established by law does not necessarily correspond with implementation—as for example in Germany—where

small establishments of at least 5 employees are included in the works council law but by far not implemented in actual practice.

In view of the variety of the systems of workers participation, it is important to stress that they all are embedded in the cultural tradition and overall institutional framework of the respective country in which they are established. Therefore, the institutional arrangements cannot be transferred elsewhere. But, of course, the idea of workers' participation can be spread everywhere.

The Advantages of Workers' Participation

The positive effects of the system of employees' involvement in management's decision-making are well documented by many empirical studies.¹ To just mention the most important of them:

- They lead to a change of focus from shareholder value to stakeholder value and tends to promote sustainability instead of short-term effects at the stock markets.
- They have a big advantage compared to unilateral decision-making by the mere fact that management, who has to justify towards workers' representatives what it wants to do and why it wants to do it, tends to prepare the decisions much more carefully than it would be the case without this obligation. This leads evidently to better decision-making.
- The consciousness that workers' representatives are involved in management's decision-making and that workers' interests are taken into account tends to increase the employees' motivation and thereby the company's productivity.
- Last not least the permanent dialogue between management and workers' representatives leads to mutual trust, changes the attitudes of both sides, employers and workers representatives—and absorbs conflicts.

These findings correspond with Marco Biagi's and Michele Tiraboschi's expectations when they wrote that "employee representation

has to fulfil a trust building function” and that “representation must guarantee the legitimacy of management decisions, enhanced by their joint nature, with a favourable impact on their execution” (Biagi and Tiraboschi 2007, p. 554).

The Approach of the European Union

The EU from the very beginning not only was confronted with the diversity of the Member States’ systems on workers’ participation but particularly with the split between Member States with a tradition of participation and cooperation between business and labour and Member States with a tradition of conflict and antagonism. Instead of leaving this situation as it was the EU opted for participation and cooperation, having in mind the indicated advantages of systems of workers’ participation. This approach found its expression in a whole set of Directives, starting in the seventies of last century with Directives referring to specific issues,² ending up in the first decade of the new century with a Directive on a general framework on information and consultation.³ In addition, systems of workers’ participation for transnationally operating companies were developed. Most important in this context are the Directive on European Works Councils which after long and controversial debates could be passed in 1994⁴ and the Directive on Employee Involvement in the European Company of 2001.⁵ The pattern established in the latter Directive has become a model for further Directives as for example the Directive on transnational mergers. Nowadays the set of these Directives can be seen as a success story and as the core of the so-called European Social model.

There is no longer any doubt that the promotion of employees’ involvement in company’s decision-making has become an essential part of the EU’s mainstreaming strategy in its social policy agenda. It has transgressed definitely the “point of no return”. This policy is in line with the already mentioned Art. 27 CFREU. This has an important implication: countries with a tradition of exclusively antagonistic structures have no longer a choice but to restructure their systems towards a concept of partnership and cooperation.

Of course, the Directives sketched above have their weaknesses: they are unnecessarily complicated, not always consistent and above all very vague in their terminology. The Directive supplementing the Statute of the European Company as well as the Directive on a national framework for information and consultation has been watered down during the legislative process: the result is a real minimum consent. However, in assessing the importance of these measures for the future of industrial relations in the EU these deficiencies should not be overstated. The decisive element is the fact that these instruments, taken as a whole, force all actors involved—trade unions and workers' representatives, employers' associations, employers and employees—to discuss and reflect on the potential of employees' information and consultation and in the case of the Directive supplementing the Statute on the European Company even on the potential of workers' participation in company boards.

There is another aspect worth to be mentioned. The EU has proved to be a learning system. In the beginning there were illusions of harmonization (Weiss 2019, p. 181), of establishing the same system for all the Member States. Such a strategy would have underestimated the strength of national culture and tradition. Therefore, it is important to stress that the EU's approach no longer is focussing on introducing specific institutional patterns but simply stimulates and initiates procedures for the promotion of the idea of employees' involvement in management's decision-making. This is to be considered as an important step towards the establishment of industrial democracy as a basic feature of the already mentioned European social model. This strategy is based on the assumption that workers' involvement in management's decision-making—as indicated above—is favourable not only for the employees but also for the companies' economic performance.

Even if workers' participation mainly has become a trademark of the EU, it should not be ignored that some Transnational Corporations based in Europe even went further and concluded agreements with Global Union Federations to establish World Works Councils covering all subsidiaries of the globe.

However, so far, the means of these bodies of workers' representation to promote employees' interests worldwide in transnationally operating