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# The Netherlands: From Paternalism to Representation

Jelle Visser

## 4.1 Introduction

There are three main reasons why the Dutch works council presents a case of comparative interest. First, we can study three different councils in the same country. Like Italy, the Netherlands displays discontinuity in the tasks, function, and organization of employee representation in firms. The mandatory works council of 1950 was designed as a channel of communication between employer and employees and was embedded in a paternalistic view of labor-management relations. The law of 1971 gave the works council a dual role: representation of employee interests was added to the task of contributing to the optimal functioning of the firm. The reform of 1979, finally, removed the employer from the council's chair. Advisory and co-determination rights were broadened, and a larger array of legal instruments was placed in the council's hands. In short, the Dutch case presents us with an opportunity to study the effects of institutional reform within the relatively invariant structural, institutional, and cultural context of one country.

The second reason for a closer inspection of the Dutch case is that it allows us to evaluate the impact of institutional intervention under adverse economic conditions. The 1979 reform came on the eve of what became the worst economic and employment crisis since 1945. How did the new "employee-only" works council assert itself? What was its contribution in defining and defending employee interests? How did the new council affect the performance of Dutch businesses?

A third point of interest derives from the contrast with Germany. In their current forms, works councils in the two countries are rather similar in their strong institutionalization and legal facilitation. The systems of industrial rela-

tions in the two countries are also quite comparable. Collective agreements are negotiated between trade unions and employers' associations at the level of industrial branches and take precedence over local (firm-level) agreements, though there are now more exceptions to this situation in the multinational firm sector in the Netherlands. But unlike the German union movement after 1945, Dutch unions did not overcome their ideological and religious divisions, and in most firms and industries we find three or more unions. Moreover, since the decline in overall union density from nearly 40 percent in the mid-1970s to 25 percent at the end of the 1980s, the Netherlands constitutes a case of weakening unionism, if not union weakness. In particular, in manufacturing, where the German density rate is double the Dutch rate, we should be able to evaluate the differential impact of weak and divided unionism on the functioning and effectiveness of what is otherwise a similar institution.

In addition, the coincidence of the council reform of 1979 and the severe decline in unionization invites a closer inspection of crowding-out effects. Do statutory works councils, by offering publicly available, free protection, replace trade unions as private associations of workers? Does voting for union candidates in works councils substitute, in the minds of workers, for membership in trade unions? Does management try to substitute unions for councils? Are there examples of unions that, by having access to mandatory works councils, find it easier to organize particular groups of workers?

I start with an overview of the legal and organizational aspects and then, after a brief historical digression, proceed with an analysis of the changing relationship between councils and employers. Next, I focus on variations in influence among works councils and discuss the "logic of exchange" between management and council. This is followed by a closer look at the organizational and contextual variables explaining these differences. Additional attention is given to the interaction with trade unions. The question of whether the role of the council in collective bargaining has been enhanced in the context of decentralized industrial relations and human resource management will be addressed next. The final section is devoted to an evaluation of the costs and benefits of works councils for employees, management, trade unions, and society.

## 4.2 Tasks, Rights, and Organization of the Council

### 4.2.1 Consultation, Co-determination, and Monitoring

Under the Works Council Act of 1979 (*Wet op de Ondernemingsraden*),<sup>1</sup> works councils have three main rights: consultation, co-determination, and

1. I follow the latest available English edition: Ministerie van Sociale Zaken en Werkgelegenheid (SZW—Ministry of Social Affairs and Employment), *Works Council Act* (The Hague, May 1990).

monitoring. When and how these rights apply, and how conflicts must be resolved, is carefully specified. The main rights of the council read as follows:

#### *Consultation (Section 25)*

“The entrepreneur shall give the works council the opportunity to tender advice on any proposed decision” in the case of transfer of control of (parts of) the enterprise; control, mergers, or takeovers of other enterprises; termination of operations or plant closure; significant reduction, expansion, or change of activities; major changes in the organization or division of powers within the enterprise; change in the location of production; employment or lease of temporary staff; major investments; major capital loans; and assignments given to outside consultants or experts on any of the above issues. Council advice is also needed on proposals concerning the dismissal or appointment of members of the board of supervisors. The right of consultation in case of mergers, takeovers, and use of outside consultants does not apply if one of the firms involved is located outside the Netherlands.

#### *Co-determination (Section 27)*

“The entrepreneur shall require the approval of the works council for every proposed decision by him to lay down, amend, or withdraw” a regulation as referred to in article 1636j of the Civil Code;<sup>2</sup> pension insurance, profit-sharing, or savings schemes; arrangements of working hours and holidays; job assessment; health, safety, and welfare at work; rules concerning hiring, firing, and promotion; staff training; staff assessment; industrial social work; job consultation; grievance handling; and the position of young workers. The obligation to ask approval “shall not apply if and insofar as the substance of the matter in question has been regulated for the enterprise in a collective agreement.”

#### *Monitoring (Section 28)*

“The council oversees the compliance with the regulations, by collective agreement, public statute or otherwise” concerning the terms of employment and the health, safety, and welfare of workers. The council is also required to oversee the implementation of the law and to promote general public policy objectives with respect to job consultation, employee involvement, prevention of discrimination, equal treatment of men and women, and integration of handicapped persons in the enterprise.

### 4.2.2 Consultation Procedures, Information, and Sanctions

In 1979, while removing the employer from the council's chair, the legislative officials took great care to specify proper consultation procedures between

2. This refers to general rules of conduct for employees and to terms of the contract of employment not covered by collective agreement.

employer and council in order to prevent a radicalizing impact on labor-management relations. Accepting the council's main function of representing employee interests, the law clearly discourages overt expression of conflict and promotes a *problem-solving approach* through improved communication and mutual accommodation of interests.

Employer and council must meet within two weeks if either party so demands. A minimum of six consultations (*overleg-vergaderingen*) is required every year. The council is not allowed to publish its advice or disapproval without prior consultation with the employer. Neither must the employer reject the council's advice, objection, counterproposal, or initiative without discussion with the council. Council and employer will together determine the agenda and decide who will chair the joint meeting. The law further prescribes that the employer, or the board of directors, will designate a permanent and fully mandated representative for these consultations (the so-called *overleg-bestuurder*).

Under section 31, "the entrepreneur is obliged to provide, in good time, the works council and its committees with all the information that they reasonably require in order to perform their work," in particular, at least twice a year, with data on the firm's financial and economic position, its long-term strategies, and its social and personnel policies. The council may engage an outside expert at the firm's expense to check financial statements or develop counterproposals. In the case of major changes involving matters under section 25, the employer must seek the council's advice "at a time which will allow it to have a significant impact on the decision," and the council "shall be furnished with a list of reasons for the decision, its expected consequences for the employees of the enterprise, and the measures proposed in response" to these. This information shall be given in writing.

If there is disagreement, the law wants to ensure that all avenues for conflict avoidance are exhausted. At least one consultation meeting between the council and the employer must take place before a conflict can be taken to external authorities. In particular, if the council wants to advise against a proposed decision covered by section 25, or wants to withhold approval under section 27, it may do so only after the matter has been discussed in a formal meeting with the entrepreneur. The works council must specify its reasons in writing.

In the case of council objection, the employer "shall be obliged to postpone implementation of his decision with one month" unless the council agrees to a shorter delay. In the meantime, the council may lodge an appeal with the Company Law Chamber of the Court of Appeal in Amsterdam, "on the grounds that the entrepreneur in weighing the interests involved could not in all reasonable-ness have arrived at his decision." The court can order the employer to rescind his decision and may prohibit the entrepreneur from carrying it out. In the case of a co-determination issue under section 27, the council's position is stronger, although the legislation has stopped short of giving the council a right of veto. Decisions that have not been given council approval are invalid, but the employer may appeal to a cantonal court. The court can grant permission if it

deems the council's refusal "unreasonable" or if the proposed decision "is based on important organizational, economic, or social considerations."

Finally, the council does not have to wait until the employer asks its advice. Under section 23 of the law, the council may take the initiative and "submit proposals on which it considers consultation desirable." The employer is obliged to consider the proposal in a formal consultation meeting. Oddly, the law does not specify sanctions if the firm ignores a council initiative.

#### 4.2.3 Further Legislation Regulating Dutch Firms

Several other laws should be mentioned to describe the legal and institutional context in which Dutch firms operate (for a full treatment of Dutch business law see Schuit et al. 1988). Under Dutch company law, a limited liability company above a certain size must have a board of supervisors. Board members are appointed by the shareholders through a system of "controlled co-optation." Unlike German workers, Dutch workers have no representation on the supervisory board. However, the works council is entitled to give its advice on any appointment, may veto a proposed appointee, and may suggest alternative candidates. Company staff and union officials are excluded from positions on the board. The board's main power is the appointment and dismissal of the board of directors, which is the actual management of the firm and the firm's legal agent.

A typical feature of the Collective Dismissal Notification Act of 1975, the nonstatutory Code of Conduct for firms of the same year, and certain sections of the Civil Code is the role given to the unions in addition to the rights vested in works councils. The firm must notify the union of collective dismissals affecting 20 or more employees. To encourage negotiations and the development of a "social plan," the director of the Regional Manpower Service must wait at least one month before granting permission for the dismissal, unless unions and management agree otherwise. Unions may, but need not, involve the works council in these negotiations. The Code of Conduct concerning company mergers was developed by the tripartite Social Economic Council and is supervised by one of its committees. Trade unions are to receive prior information, under conditions of secrecy, and must be involved in the drafting of a social plan. They will also help define the involvement of the works council, as required under section 25. Trade unions can also appeal to the Company Law Chamber for an independent audit of the firm's finances, condition, and operations if they have legitimate reasons to suspect gross misconduct and other remedies have failed.

The latest piece of relevant legislation, increasing the council's monitoring tasks, is the Health, Safety and Welfare at Work Act, which was phased in between 1981 and 1990. The act specifies certain requirements for working conditions that must be met in the workplace. Dutch works councils are functionally comprehensive, and monitoring adherence to health, safety, and welfare regulations is among their tasks. They may, however, transfer rights in this

area to special committees, except the right to start legal proceedings. According to a survey of the largest private sector union, the *Industriebond FNV* (IB FNV), there are some 700 health and safety committees in the about 1,000 industrial firms with 50 or more employees that the union organizes (IB FNV 1990). Their main task is to draw attention to hazards at work and find methods of prevention. Dutch works councils, or health and safety committees, have no authority to stop dangerous work processes. This decision can only be taken by the state's labor inspectors, following a request from the works council. It remains to be seen whether the law will be effectively enforced, but one may expect legal effectiveness to increase through the involvement of the councils and health and safety committees, given the advantages of a customized and negotiated application of general norms. Union and firm training of health and safety committee members has increased in recent years.

#### 4.2.4 Domain and Coverage

The Works Council Act applies to all firms with 100 or more employees. In 1981 a new law regarding worker participation in small firms was enacted, extending the obligation to create works councils, but with restricted rights,<sup>3</sup> to all firms with between 35 and 99 employees working at least one-third of a full-time working week. Also, this Small Enterprise Participation Act places employers with very small firms, between 10 and 34 employees, under the obligation to organize at least an annual consultative meeting. These laws apply to the private sector, including subsidized activities or activities under public control (e.g., railways or hospitals). The sizes of the domains of the various laws is shown in table 4.1. The General Civil Servants Statute regulates the participation rights of civil servants and public employees, including the election of departmental committees in local and central public administration and public utilities, with special statutes for the police, the military, and educational institutions.

This chapter is only concerned with the "hundred-plus" councils, in firms and establishments with 100 and more employees. Even so, variation in size and organization is large, from 100 employees to the around 90,000 employees of the largest private firm in the Netherlands, the Post and Telecommunications Office (PTT). In 1990, the hundred-plus councils covered 55 percent of all employees in the private sector, accounted for 55 percent of national output, and represented 50 percent of the value added of all private businesses (Economisch Instituut voor het Midden- en Kleinbedrijf [EIM] 1990). Of the 4,500 hundred-plus firms in which works councils are mandatory, almost one-third are in manufacturing, accounting for about two-thirds of total manufacturing employment.

3. E.g., the right of advice is restricted to decisions on major changes in location, organization, or employment that affect at least one-quarter of the workforce. No obligation exists for the employer to delay decisions for at least one month in case of disagreement.

Table 4.1 Works Council Laws and Firms Covered

Law	Firm Size (number of employees)	Number of Firms	Number of Employees	Percentage of Employees
1971/1979	100+	4,500	2,500,000	55
1982	35-99	11,000	750,000	18
1982	10-34	31,000	700,000	17
None	1-9	205,000	550,000	16
None	0	305,000	-	-
Total		560,000	4,500,000	100

Sources: Centraal Bureau voor Statistiek (CBS—Central Bureau of Statistics), *Statistisch Zakboek 1992* (The Hague, 1992); and data provided by the EIM.

Note: Table reports rounded figures (January 1991) for private sector excluding agriculture. Employees are those working a minimum of 15 hours per week.

#### 4.2.5 Coverage

Under Dutch law, employers must set up a council, and no prior initiative of employees, trade unions, or third parties is required. The employer may, however, ask for an exemption, which can be granted for a maximum of five years after hearing the trade union(s) as representative(s) of the workers. Law enforcement is a task of the state and is entrusted to a Labor Inspectorate. Looise (1989) calculates that works councils exist in 83 percent of the hundred-plus firms and for 87 percent of the employees in firms of this size. In firms with 35 to 100 employees, coverage has risen from 20 percent in 1981, when works councils were still voluntary in such firms, to 41 percent of the firms and 45 percent of the employees in 1985. Coverage in the small-firm sector has since stagnated at around 50 percent (Van der Heijden 1991). In our survey, conducted in May 1991, 19 percent of the workers in small establishments (those with fewer than 35 employees) reported the existence of consultation meetings or councils, compared with 82 percent of the workers in larger establishments. Coverage increases with establishment size, reaching 95 percent of employees in establishments with 1,000 or more employees (van de Putte, Visser, and van Rij 1991). Least covered in small and large firms are employees in commercial and financial services (Teulings 1981; Huiskamp and Risseeuw 1988); within the small-firm sector, coverage is lowest in construction, in family firms, and in services employing mainly low-skilled workers (Dekkers, Calhoen, and Andriessen 1989).

Since we are dealing only with hundred-plus firms, firm size cannot be the only explanation for the differences in council coverage shown in table 4.2. Teulings (1981) found a large difference in council coverage between firms (91 percent) and establishments (31 percent). This difference is most clearly present in financial institutions.



**Table 4.2** Employees and Works Councils by Sector for Firms with 100 or More Employees

Sector	Share of Employment (%)	Share of Councils (%)	Councils per 10,000 Employees	Employees per Council
Manufacturing	38	43	25	400
Construction	5	7	29	340
Transport	4	4	23	430
Commerce	24	21	19	540
Finance	16	4	9	1,120
Health, etc.	18	19	23	430
All	100	100	22	452

Sources: Labour Inspectorate, *Registratie enquête instelling ondernemingsraden 1984* (The Hague: SZW, mimeograph); author's calculations.

Note: Figures are for private sector excluding agriculture.  $N = 3,627$ .

#### 4.2.6 Multiplant Firms and Council Organization: Some Examples

The law is flexible as to whether firms with several plants should set up more than one council. Before the latest amendment to the law, in April 1990, the minister was to decide in case of disagreement. Current law encourages self-regulation with the possibility of taking matters to court. As a rule, council organization follows the structure of the firm. If the firm is centralized, one works council with an extensive committee structure may suffice;<sup>4</sup> in a decentralized or multidivisional company, or in a holding company, each establishment usually has its own works council. Together they elect the divisional councils, from which a central works council is elected. Between 10 and 15 percent of all works councils in the Netherlands are group or central works councils.

Examples of a very elaborate council structure are found at PTT and at multinational firms like Philips, Unilever, and AKZO.<sup>5</sup> Many large banks, insur-

4. One difference between a works council and a committee is that the council can be a legal party and sue the employer.

5. PTT was privatized in 1989. It has a holding company structure with five subsidiaries, of which the Post Office, with 60,000 employees in 5 districts, and Royal Dutch Telecom, with 30,000 employees in 13 districts, are the most important. In 1991 PTT had 22 works councils (one for each district, one for each of the three smaller subsidiaries, and one for the holding company), supported by an extensive committee structure. There were two group works councils, one for Telecom and one for the Post Office, elected by and from the works councils. Together with the works councils of the other subsidiaries and the council of the holding company, they elect the central works council. The result is that individuals may be member of three councils. The central works council meets every week and meets with management every two weeks, and also meets in a number of study groups. Members of the central works council spend most of their working time on council business. In total, works councils at PTT involved some 1,500 members, or one councillor for every 63 employees. Philips, which currently employs about 45,000 employees in the Netherlands, had in the late 1980s 80 works councils in its Dutch establishments, 10 divisional councils, and one central works council.

ance companies, the Dutch railways, and the national airline, KLM, have only a works council at headquarters. In April 1990, demands to decentralize council organization at the Amsterdam-Rotterdam Bank (with 11,000 employees and two councils) and at the railways (28,000 employees and one council) were rejected by the employers. In his last decision on the matter, the minister supported the employers' point of view. Of the major multinational firms, Philips is most critical of indirect elections of the central works council since voting alliances of union members in the works councils at the establishment level tend to produce a union majority in the central councils. In the 1992 works council elections Philips will implement its plan to abolish the divisional councils, and the members of the central works council will be chosen in direct elections.

Another bone of contention is the separation of national and international activities. Employees working in the international departments at Philips headquarters in Eindhoven are not represented by the central works council. They have a works council of their own with almost no union representation. The central works council argues that this denies it access to the strategic center of the firm and that it must deal with managers of Philips Holland, who have insufficient authority. Management argues that if it included the international division under the central works council, it would have to apply a similar council structure to its Belgian, German, Italian, and other employees. After its short-lived and unhappy experiment with an international works council in the early 1970s, Philips is adamant in its opposition to European works councils. Other Dutch multinationals appear to share this view (e.g., Unilever) and have also rejected European councils (Visser and Ebbinghaus 1992).

#### 4.2.7 Works Council Elections

Regular elections of their members by and from the workforce is an important source of strength for councils. As a rule, elections take place every three years, but since 1990 council and employer may agree that elections are to be held every two or every four years. All mandates are renewable. Unlike in France, Spain, and Germany, works council elections in the Netherlands are not synchronized and are scheduled differently in each firm. Hence the public visibility of these elections is small.

Turnout averages about 75 percent (Koene and Slomp 1990), but the average conceals considerable variation among firms. Teulings (1981) found that in 40 percent of the council elections turnout had been 90 percent and more, in 30 percent between 70 and 90 percent, and in 30 percent less than 70 percent. Huiskamp and Risseuw (1988) report that in half of the 444 councils in their survey, conducted in 1988, turnout had been over 77 percent. In our survey of May 1991, 55 percent of all "permanent" employees in the private sector said that they had voted in the "most recent elections," 26 percent had not voted, 16 percent said that there had been no elections (because of lack of candidates), and 4 percent had not (yet) been eligible to vote. This translates into a turnout

of 68 percent of the eligible workforce, excluding the firms with no elections but including elections in smaller firms with 35 to 99 employees.

Dutch works councils are categorically encompassing and include blue-collar workers as well as clerical, technical, and managerial staff. There are no guaranteed seats for any functional group, but elections are frequently organized on a departmental or functional basis. The franchise extends to all employees who have worked in the firm for at least six months; council and management may agree to include employees who work for the firm but are not directly hired by it. Council members must have worked at least one year with the firm. The size of the council increases with employment, from 7 council members in firms with 100 to 199 employees, to 9 for up to 399 employees, 11 for up to 599 employees, 13 for up to 999 employees, and 2 more with each 1,000 additional employees until a maximum of 25 members is reached. Larger numbers are possible by mutual agreement. The average Dutch works council has between 9 and 10 members (Teulings 1981; Heijink 1986; Koene and Slomp 1990).

The Dutch works council is a firm and not a union institution. Among the firm's permanent employees, union and nonunion members have the same rights. However, with respect to electing council members, the law gives recognized trade unions a slight advantage. A "union list" of council candidates is automatically recognized. Members of nonrecognized unions or nonunionized workers must collect a minimum of 30 signatures from among the firm's employees before they can present a list of candidates. Recognition is automatic for any union affiliated with one of the major confederations, but nonaffiliated unions may be recognized in certain industries or firms.

#### 4.2.8 Facilities and Rights of Council Members

Protection of council members, exmembers, and candidates is another major source of council independence. The employer must ask special permission from the cantonal court if he wants to dismiss any of the above, and protection is given for two years after membership on the council. Council members are granted paid leave for meetings, training, and preparation. The number of hours and the amount of other facilities, such as office space and secretarial assistance, are to be arranged between council and employer. The council is entitled to hire experts at the employer's expense and may have a budget of its own. The council can constitute itself as a legal party, represented through its elected president, and may sue the employer. Legal expenses are to be paid by the employer, within negotiated limits and only after prior notification. Works councils cannot be held liable for the costs of legal proceedings.

The law guarantees a minimum of 60 paid working hours or five days of time off per year per council member. A representative survey of works councils in the mid-1980s showed that the average council member used 27 hours per month for council activities (Looise and Heijink 1986; Looise and de Lange 1987). About half of these were working hours paid by the employer. Council

presidents spend 37 hours on average, of which half are compensated, though in larger firms with over 500 employees it is not unusual to find a full-time council president. The average council meets 10 to 11 times per year; in addition, it consults seven times per year with the employer. Just over half of the councils had office space and the support of a typist; one-third had also the support of a staff secretary and their own budget, averaging 30,000 guilders (\$18,000) per year in 1985; one-fourth had an additional budget for hiring experts, though fewer councils had actually engaged expert advisers. Three out of four councils received regular training, about five days per year, organized and paid through the Joint Training Board for Works Councils, which is funded by employers. It goes without saying that these averages may be misleading since we are dealing with firms having from 100 to 90,000 employees, though measured by establishment the variation is smaller.

### **4.3 Changing Relations with Employers**

In 1979 the legislature found it hard to disown the Dutch legacy of vertical corporatism in which the employer, as "head of the enterprise," was also chairman of the works council. After years of preparation and political horse trading, a compromise was found in which the emancipation of the council was tightly knit into a tissue of consultation. The employee-only council, with increased rights and authority, became firmly embedded in a highly formalized set of rules which privilege compromise and problem solving over bargaining and articulation of conflict. A brief historical overview will help explain the complexities of current law and practices.

#### **4.3.1 Paternalistic Councils**

The works councils of 1950 satisfied in all but one aspect the ideal type of the paternalistic council as defined by Rogers and Streeck (chap. 1 in this volume). They were not designed to encourage the independent expression of worker interests, but "to contribute, with due recognition of the autonomous function of the employer, to the best functioning of the enterprise" (Act of May 4, 1950). A representative role for the council elected members on behalf of their constituency was excluded because representation was seen as the sole prerogative of trade unions, and because it would have contradicted the view of the firm as a community.

The 1950 works councils legislation did not, however, result from employer or state initiatives to forestall union organization in the workplace, even though it did have that effect. The act was part and parcel of an institutional framework of organized consultation with which labor and capital tried to break with the prewar past. From the viewpoint of organized labor it was the least important ingredient of the postwar compromise, the basic component of which was the recognition of trade unions as a legitimate party at all levels of decision making above the firm, in exchange for unions' acceptance of management's right to

manage and an undertaking to refrain from union activity in the firm (Windmuller 1969; Visser 1992a).

The idea of social partnership was embodied in the joint Foundation of Labor, which was pivotal in the execution of statutory wage policy between 1945 and 1963. Pessimism about the viability of European economies and of democracy abounded, and there was widespread distrust of conflict and market solutions. The works councils of 1950 were only the third layer in a neocorporatist framework, at the top of which stood the tripartite Social-Economic Council, and in the middle a bipartite industry board, or product board, in each industry. The unions believed that this arrangement, a compromise inspired by Catholic social thought, would give them sufficient influence in socioeconomic decision making. In their view, *überbetriebliche Mitbestimmung*, to use the German expression, exercised through representative organizations of employees would make interest representation at the firm level redundant. Moreover, the unions were anxious to defend their newly gained right to collective bargaining. If indeed the council of 1950 was an embodiment of paternalist ideology, unions were part of this ideology.

It is characteristic of the spirit of the 1950 legislation that it placed all firms with more than 25 employees under an obligation to set up a works council without ever mentioning sanctions against employers who did not comply. The philosophy behind this striking omission was that cooperation with unwilling employers would be useless (Fase 1969, 28). The fact of the matter is that until the early 1960s few employers felt a need to install works councils. The unions kept complaining about lack of cooperation of employers but suffered equally from lack of enthusiasm among their members, in spite of large educational campaigns (Smid, Sprenger, and Visser 1979). In the course of the 1960s more councils were established, but now the unions began to worry about "wildcat cooperation" between council and management. The variable best explaining the presence of a works councils was the existence of a modern personnel or labor relations department, which at the time were proliferating in Dutch industry (Buitendam 1979). As might be expected, firm size was the contingency that explained most of this variation (Drenth and van der Pijl 1966; Lammers 1968). Predictably, the factor highlighted in later studies was the age of the council itself: the longer it had existed, the more established its position, the more active and sophisticated its use of rights (Hövels and Nas 1975; Andriessen, Drenth, and Lammers 1984).

In neglecting the firm as an arena of interest representation the unions had miscalculated, though it took almost two decades before this became evident. With the exception of a few sectors—agriculture, retail, catering, and food production being the most prominent—the industry boards remained insignificant. But increased international activities, vertical integration, and horizontal mergers of firms followed the opening of European markets with the creation of the European Economic Community in 1958, and decisions on capital investment, mergers, takeovers, and firm location were increasingly taken

by management and owners of capital without any input from workers. This became painfully clear in the merger wave of the mid- and late 1960s, which was followed by an upsurge in plant closures. To check tendencies of wildcat cooperation among the councils, as well as in response to growing criticism from an increasingly radical membership, trade unions in metal engineering began to organize networks of "trusted members" in the firm, similar to the *Vertrauensleute* in West German industry. The unions also encouraged the practice, emerging in these years, of organizing so-called preparatory sessions of elected works council members prior to the official works council meeting chaired by the employer.

#### 4.3.2 Dual Councils

The new Works Council Act of 1971 did little but adjust the law to reality. It raised the threshold for councils to firms of 100 or more employees and recognized the preparatory sessions of the worker members of the council. But it also left the employer in the council's chair. Works councils were now given a dual mission: they were to "organize consultation with and representation of the firm's employees . . . in the interest of the optimal functioning of the firm" (Works Council Act of 1971). The consultation rights of councils were strengthened, and council members gained protection against dismissal and were offered training and other facilities to be paid for by the employers out of a common, industrywide fund. Employers who ignored or curtailed the council's rights had to face legal sanctions. The number of councils rose rapidly: from 48 percent of all hundred-plus firms in 1972, to 75 percent in 1974, to 85 percent in 1975, more or less the percentage today (all figures based on Labor Inspectorate reports).

From the start the new dual councils, paternalist and representative at the same time, came under pressure. In 1973, during a major strike in the metal industry over narrowing the pay differential between white- and blue-collar workers, a number of works councils, as well as union members on the councils, had attempted to play a conciliatory role between union and management, just as their dual mission seemed to demand. It was against this background that the more radical unions started to press for reform and began to play with the idea of shop steward representation and the replacement of works councils with union plant committees. This antagonized employers and put pressure on the government to reform the works council into a body of employee representation.

First proposals for a council without the employer were drafted in 1976, when the Labour party was still the major party in a center-left coalition government. Council reform was one of the initiatives meant to attract support for the government's policy of wage restraint (Flanagan, Soskice, and Ulman 1983). However, the proposals encountered heavy resistance from the right while not arousing much enthusiasm from the union left. Employers' organizations and a lobby of major multinational firms warned the government not to

proceed with its plan to create an independent works council. In 1977 the government fell, a new center-right coalition government was formed, and after no more than two years Parliament voted the 1979 reform into law.

#### 4.3.3 Representative Councils

The 1979 reform was a compromise between those who wanted to keep the employer in the council, though not necessarily as its chairman, and those who envisaged the works council as an instrument subject to worker control. The first position was defended by the employers' federations, major multinational firms, and the Christian Federation of Trade Unions (Christelijke Nationaal Vakverbond [CNV]). The CNV and employers disagreed, however, on enlarging the council's co-determination rights and on parity representation on the board of supervisors. The largest union federation, the Federation of Dutch Trade Unions (Federatie Nederlandse Vakbeweging [FNV]), and in particular its affiliate in the chemical, metal, and textile industries, the IB FNV, wanted stronger worker rights, though not necessarily through the statutory works council, which was sometimes portrayed as a competitor to the union. Employers remained set against the reform until the last minute, predicting a radicalization and polarization of Dutch industrial relations.

From the point of view of its intended effects the 1979 reform was a success. Research based on surveys, case studies, and interviews is univocal in showing that the works councils have become an established institution, that council-employer relations have become more professional, and that there was no polarization of interests, or much less than had been expected (Teulings 1981, 1985; van Vuuren and Koopman 1986; Looise and Heijink 1986; Looise and de Lange 1987; Pool et al. 1988; Pool, Koopman, and Mijs 1991). In short, fears that the independent council would radicalize Dutch labor relations at the workplace proved unwarranted. Today, many employers see the works council as a necessary and in some cases useful platform without which the restructuring of work organization—the major issue of the 1980s—would probably have been less easy. With few exceptions and some reservations management has discovered that it can live with the current law (Interviews with managers from major multinational firms and with staff at the Ministry of Social Affairs and Employment).

Of the main multinational firms in the Netherlands (Shell, Unilever, AKZO, and DSM Chemicals), Philips is clearly the most unhappy with current legislation. In a report in 1988 its director of industrial relations complained that works council members lacked expertise, indulged in unnecessary procedures, and were insufficiently representative. They also attracted unwelcome and negative press attention, and too much time and energy was wasted on meetings. Philips has never hidden its preference for a return to the situation before 1979 or even 1971, when the council was mainly a tool of management. Works council members at Philips, on the other hand, complain that local works councils are confronted with plant managers who have no authority and lack sufficient

information on strategic decisions. According to union representatives, this problem is also felt in other large multiplant companies, especially in subsidiaries of foreign firms. It must be added that unions at Philips are weak and represent only between 15 and 20 percent of the employees. Management prefers to deal with full-time union officials, does not want an internal role for the union, and strongly resists a unionized works council.

#### 4.3.4 As Works Councils Mature

It is safe to say that the position of the works council has strengthened with regard to agenda setting, information rights, use of independent expertise, and legal redress in conflict. It is interesting in this respect to compare the results of two representative surveys, one conducted two years after the 1971 act (Hövels and Nas 1976) and the other six years after the 1979 reform (Heijink and Looise 1986; Looise and de Lange 1987). The 1973 survey showed the employer in full control. As chairman of the council he determined its agenda, often refusing to discuss issues prepared by the elected members. The latter depended almost exclusively on information released by the employer during the meeting. In 1985, by comparison, it was found that in just 1 percent of the cases the agenda of consultation meetings was unilaterally set by the employer, in 19 percent by the works council without apparent employer influence, and in 80 percent by a bilateral committee or in informal meetings between the president of the council and the director designated to represent the firm.

Changes in the type of issues handled by councils are another indicator of the increased importance of works councils after 1979. In 1973 less than half of the councils assigned importance to financial information or issues related to the firm's internal organization (sec. 25 subjects on which consultation with the council is now required). In 1985, 90 percent of the councils attached importance to such issues. This does not mean that council members are satisfied with their influence in these matters. Nearly half the works councils indicated that information on economic, financial, and technical issues is obtained only after management has made its decision. Late involvement and insufficient information is also reported for social and personnel issues; here one out of every four councils complain about management's failure to provide sufficient information.

Teulings (1985) has emphasized that the reform of 1979 has professionalized the works councils and promoted the development of a small "works council industry" with its own journals, information and training services, experts, and organizational consultants. The supply of resources outside the firm, partly maintained through public intervention, has reduced the councils' dependence on management. This may well be related to the declining propensity of councils to employ "radical" methods of action, as reported by Teulings (1989). Fewer councils apply "unionist" power instruments, like demonstrations during lunchtime, sit-ins, work-to-rule, or work stoppages. Instead, more councils tend to use "milder," "internal" forms of protests, for instance, appeal



to an "authoritative" third party, such as an industry board, a court, or a public official, rather than mobilizing workers. Councils also voice protests in a staff paper, rather than in a newspaper.

This deradicalization may reflect several developments: the onslaught of the economic recession in the early 1980s, the weakening of the unions, fatigue among council members and workers, but also a process of learning and more skillful use of bargaining sanctions by the stronger and previously more militant councils. The latter explanation appears to be favored by Teulings (1989, 94) who interprets the instrumental rather than expressive use of sanctions as a sign of the advancement of a "fairly rational, calculative approach" among leading works councils. Once established, these councils tend to prefer bargaining over recourse to third parties, whereas for councils still fighting for recognition and attention, appeal to outside support, through the law or via extralegal action, remains important. This view is consistent with the finding that in recent years a growing number of works councils have negotiated a "covenant," which regulates individual employment contracts. According to Van der Heijden (1991) this can be taken as an indicator of the maturation of the works councils, with the latter emerging as players in their own right.

Comparing the results of their 1985 survey with the *Industrial Democracy in Europe (IDE)* study of 1976 (*IDE* 1981; Andriessen et al. 1984), Looise and de Lange (1987, 268) conclude that "the level of influence of the works councils has increased in all areas of decision making." But they also note the existence of a "participation paradox": involvement in decision making is strongest toward the end of the decision-making process, in the implementation stage, when the probability of impact on the outcome is smallest. This had also been one of the main findings in 1976. Ten years later a majority of managers and council presidents agree that the council is only involved in the last stages of decision making. Ten to 20 percent agreed that the council is involved in all stages, and about the same number responded that the council is not involved in any part of the decision-making process at all.

It is generally acknowledged that late council involvement diminishes the chance for councils to influence decisions, as well as for beneficial outcomes such as job security, legitimacy for the decision itself, speedy implementation, and employee satisfaction. Late involvement is also associated with longer waiting times for the council to present its advice or approval (Looise and de Lange 1987; van Vuuren and Koopman 1986; Heller et al. 1988). However, in a replication of their 1976 study a decade later, the *IDE* researchers also found that the role of the works council in strategic decisions, especially in firm or plant restructuring, had increased. Does this indicate that the participation paradox is receding?

#### 4.4 A New Logic of Exchange

The first half of the 1980s were difficult years. Plants closed, unemployment soared, union membership declined, real wages fell, social benefits were low-

ered, and eligibility rules tightened (Visser 1990). A conservative political and cultural climate emphasized the virtues of a “no-nonsense” management of cost efficiency, competitiveness, and rewards for efforts. Organizational change seemed driven by its own logic, fueled by market forces, international competition, and technological innovation. In the light of these developments, it may seem surprising that works councils increased their influence over some aspects of management behavior. How do we explain this “growth against the tide” (Looise 1989)?

#### 4.4.1 The Weight of Formal Institutions

Law matters. Contrary to their initial hypothesis that the current economic, political, and technological climate would diminish the role of works councils, the *IDE* researchers found that in the mid-1980s the “relative weight of the formal institutions had increased” (Pool et al. 1988, 54). This was best visible in the area of strategic decision making, and more true for metal engineering than for the service sector, such as hospitals and insurance (Pool et al. 1991). Apparently, the strengthening of consultation rights under section 25 had made management seek to involve the council earlier, especially where the council could delay the implementation of decisions. This is most clearly the case with firm and plant restructuring, followed by work planning and the arrangement of working hours—which must be negotiated under section 27, with the council having something close to a veto right. More than half of management requests for advice were related to organizational adjustments and layoffs. Two out of five requests for council approval were related to changes in working hours, following a major central agreement between unions and employers in late 1982 (Visser 1989).

Some works councils succeed in using their stronger position on operational decisions in the human resources area as leverage to gain access to earlier and more strategic stages of management decision making. The main sanction against noncooperative employers is to cause delay, for instance, by lodging a court appeal. Teulings has compared the ability of councils to delay the labor process of management with the unions’ ability to interrupt the labor process of workers. Councils may trade their consent to speedy implementation of operational decisions for earlier information and some degree of influence on strategic decisions.

This logic of exchange, based on “conflictual cooperation,” is present in only a minority of councils. In less than 10 percent of all cases, management and works council representatives agree that the council plays a significant role in strategic decisions. Table 4.3 shows that only a minority of councils lodge a formal protest if management fails to consult the council; most limit themselves to symbolic protest. Teulings (1989) reports a similar finding in his survey of 63 works councils in 1986. Two-thirds of the councils had never put forward an initiative, and less than 20 percent claimed to have obtained full information. Councils are more inclined to insist on their information rights on social and personnel than on economic and financial issues, just as manage-

**Table 4.3** Response of Works Councils to Employer Refusal to Heed Council Advice (%)

Response	Advice		
	Consultation (Section 30)	Co-determination (Section 27)	Initiative (Section 23)
No reaction	15	10	22
Expression of regret	72	45	55
Threat of action	5	16	15
Appeal to third party	7	22	8
Formal legal steps	1	7	0

Source: Adapted from Looise and de Lange (1987, 15).

ment is more forthcoming with information on the former than on the latter kinds of subjects. Clearly, the tougher sanctions under section 27 elicit more caution and cooperation from management.

The council's ability to delay the labor process of management in restructuring contrasts with its much weaker position on new technology. To begin with, section 25 does not mention technology and automation as an issue on which consultation and information is mandatory. Moreover, the link between technological choice and the redesign of work organization is often vague and may be traceable only *ex post facto*. The *IDE* researchers observe that in technology decisions the legal position of the council is ambiguous, that expertise is often lacking, and that management is reluctant to involve the council in this kind of strategic choice (Pool et al. 1988). Indeed, explicit reference to automation and technology in section 25 is one of the proposals for legal reform that have been considered by the Social Economic Council in the past two years. Divisions between employers and unions have prevented a unanimous opinion, and new legislation is therefore unlikely. The weaker position of the council on technological and major financial decisions is also reflected in worker opinion. Workers assign more influence to works councils on issues like "job security" and "fair treatment" than on "automation" or "financial decisions" and are also much more positive about the council's contribution in the first two cases (van de Putte et al. 1991).

#### 4.4.2 The Council's Role in Reorganization: Some Examples

Some of the councils that have advanced into strategic decision making are found at major manufacturing firms, for instance, at NedCar, a joint venture of Volvo and Mitsubishi, at Daf Trucks, and at Hoogovens, a steel manufacturer. These firms underwent major organizational changes in the 1980s. At NedCar the works council was able to trade its agreement to a new *kanban* organization for early information on strategic business plans and the appointment of a "trusted member" to the firm's board of supervisors. In the recent case of the Dasa (in effect, Daimler Benz) takeover of the aircraft manufacturer Fokker,

the central works council played a prominent role at all stages of the negotiation process and succeeded in obtaining guarantees for airplane production and employment remaining in Holland. It is significant that management informed the central works council the day after Fokker and Dasa had signed their "operational agreement," before the minister of economic affairs, who is the main shareholder of Fokker, and before the unions. Three days later the council presented management with its counterproposals. In the three weeks that followed before the definite takeover decision, the council closely cooperated with the unions and the chairman of the parliamentary committee for economic affairs. The council met twice with the minister and strengthened his hand in the negotiations (*Nieuwe Rotterdamse Courant-Handelsblad*, September 4, 1992; Interviews).

How many councils exploit their opportunities for bargaining in this way is not known. The Fokker case is probably exceptional and reflects the technological, political, and symbolic importance of the country's only airplane manufacturer. The downsizing of another industrial champion, Hoogovens, has attracted similar attention. In September 1992, the firm proposed to lay off 2,500 workers, including for the first time since 1945 involuntary dismissals. While accepting the need for further cost cutting and downsizing, unavoidable in the face of cheap imports from Eastern Europe and the European Community's ban on public subsidies, the unions and the central works council were quick to reject the proposal and vetoed any forced dismissals. The next step will be a compromise with further cost-cutting reorganization, an extensive social plan cushioning layoffs, and no or very few forced separations.

In this context, developments at Philips should also be mentioned. As part of its "Operation Centaur," intended to refocus the firm on its core activities and develop a leaner and more market-driven organization, Philips has in recent years reduced its workforce in the Netherlands from 70,000 to 45,000, partly by selling some divisions and business units and partly by restructuring and layoffs. Within the constraints of the law, management has worked mainly with the unions and kept the central and local works councils at bay. An important factor is that the company has always been able to avoid forced dismissals. For access to an unorganized and intimidated workforce, management has increased its use of "direct communication," with televised speeches by the director-general and feedback discussion groups.

A case with interesting implications, especially for the application of Dutch law to foreign-based multinational firms, is the closure of the Amsterdam plant of the British-American Tobacco Corporation. Batco Amsterdam is a small and very modern facility with between 200 and 300 employees, profitable, with an active works council and a comparatively high level of union organization. In the late 1970s Batco International, based in London, decided to close the plant in Amsterdam and relocate production to its plant in Brussels. After an appeal lodged by the trade unions, the Company Law Chamber, in a rare "audit procedure," ruled that this decision was unjustified. The court argued that as a result

of failing to consult properly with the unions and the works councils, management had not given sufficient weight to social as compared to economic interests. The verdict sent a shock through the Dutch business community; some argued that the judges had placed themselves in the chair of the entrepreneur. Batco rescinded its decision and even built a new, though smaller, production facility in Amsterdam.

In 1989, however, Batco International decided for a second time that the Amsterdam plant must be closed and work relocated to Brussels. Council and unions were doing everything possible to keep the plant open. Failing other efforts, the council lodged another appeal with the Company Law Chamber arguing that, according to expert opinion, there were no sound economic reasons for the decision and that consultation had been insufficient. This time, however, the court let management have its way, stating that consultations had taken place and that in the final analysis it was not the council but management that is responsible for weighing social against business interests. According to legal experts, the new verdict indicated not only that Batco had learned how to discharge its obligation to consult but also a shift in legal doctrine (Koning 1991). In another case, in 1985, the court had ruled that while a foreign multinational firm is fully entitled to direct its subsidiary, this cannot take away rights and obligations under Dutch law. In the 1989 Batco case, however, the court took a different view, observing that a Dutch subsidiary is bound by the business strategies of its proprietor firm unless this constitutes an unreasonable infringement of rights under Dutch law.

#### 4.4.3 Variations across Firms

The 1979 reform increased the resources and the overall influence of works councils, but its equalizing impact remains to be seen. Works councils differ very much in their level of activity, use of legal rights, readiness to protest and appeal employer decisions, and propensity to engage in extralegal or militant action. A persistent finding in all surveys of the 1980s is that about one-third of all councils make full use of their legal possibilities, meet frequently with management, employ bargaining tactics, and do not shy away from reliance on legal sanctions or pressure tactics if need be. An equally large proportion rarely invoke their rights. Management failure to consult and perfunctory council discussions are a frequently observed phenomenon (Teulings 1989).

Strong councils have made better use of the possibilities of the 1979 reform than weak councils and have increased their lead over the latter. In the early 1980s, some councils were quick to perceive and make use of the new opportunities, while others behaved as if no change had occurred or made at best ritualistic use of their newly acquired rights (Teulings 1985). This is probably the best explanation why the works councils grew apart, in terms of their levels of activity and their effectiveness. Learning by imitation should increase the equalizing effects of the law in the future.

According to Teulings, the main determinant of council effectiveness was

support from the union and, in particular, a council majority of FNV members. Councils with an FNV majority—about one-third of all councils—made more use of their legal and extralegal opportunities. FNV-dominated councils were more likely to be found in manufacturing, construction, and transport than in public or private services, more in large than in small firms, and more in establishments with production workers than in offices or white-collar environments. In the larger manufacturing firms it is not uncommon that the main FNV union organizes a union plant committee that monitors the works council (see section 4.5.3 below). Effectiveness was measured by the degree to which the council evaluated its influence on management decisions as “considerable,” enabling it to achieve a different outcome than originally proposed or intended by management. This included the possibility of management anticipating council opposition.

Looise and de Lange reject the claim that union organization or a particular majority corresponds with more active use of legal rights and greater influence on management. Like Pool et al. (1988), they stress firm size, the existence of a personnel department, the age of the council, and its relations with its constituency and external union officials as the main causes of differences in council performance. The first and last of these factors correlate with the level of unionization and the presence of a union plant committee. Unfortunately, the number of cases are too small to estimate the impact of unions while holding some of these factors constant.

What is at stake in these debates is the dynamics of power and exchange between management and the works council. Teulings argues that the council’s ability to delay decision making is decisive for bringing about a process of “political bargaining” in which management trades information and consultation for cooperation with and legitimation of its decisions. The *IDE* researchers argue that retreat to a legalistic position is the main management response to radical or militant councils: information is of poor quality, and consultation takes place only if it is enforceable under the law (Pool et al. 1988, 53); a case in point is Philips. Looise and de Lange (1987, 268–69) also argue that cooperative councils have a better chance of gaining access to the early and more important stages of decision making, whereas councils that insist on formal rights are confined to dealing with the implementation of decisions. As early as the 1960s, Dutch organization sociologists argued that cooperative councils were more effective and had more influence than conflictual councils (Lammers 1968).

But why would management “give away power” if not under pressure? De Man and Koopman (1984) argue that management cooperation can be explained by management’s desire to increase worker commitment, as well as its need to gain acceptance for decisions. The works council, then, serves as a “sounding board” for preparing major strategic shifts, with communication through the council making it unnecessary for management to reach each individual worker through line managers. Also, communication through the coun-

cil may inspire greater confidence among workers. For this contribution the council may receive compensation in terms of earlier involvement in management choice. My own view is that the cases of works councils that seem influential without ever having applied sanctions and without any trace of union support—as observed in the software sector, at IBM, or in certain financial institutions—are explained by high and stable profit levels, high public visibility, and resulting needs for legitimation, as well as management desire to keep the firm union free. “Cooperation without conflict” may well end if a drop in profitability requires a revision of the firm’s employment policy.

## 4.5 Unions and Councils: Friends or Foes?

### 4.5.1 Absence of a Tradition

To understand the relationship between trade unions and the works council in the Netherlands, we need to recall some historical facts about Dutch trade unions. The first point is the absence of a craft tradition in a union movement that emerged late in the nineteenth century. With few exceptions Dutch unions originated outside the firm and were relatively centralized. The division of the Dutch labor movement in three ideological and religious currents (socialist, Catholic, and Calvinist), each enveloped in emergent political movements striving for full political citizenship, promoted further centralization (Harmsen and Reinalda 1975).

Second, unlike Germany there was no council tradition in the Netherlands. Neither in the upheaval following the First World War, in which the Netherlands remained neutral, nor in the years after the Second World War was there a council movement among workers. Nor had there been a council organization in the 1870s when the first groups of (skilled) workers began to organize trade unions. In 1874 a Calvinist brewer organized his employees into a “factory council”—or “core committee” as it was then called—but few if any Dutch employers appear to have imitated this high-minded example of what seems to have been benevolent paternalism (van Haren 1985).

It is true that there were attempts to lure workers into employer-dominated councils after unions had organized and became more aggressive in asking for collective agreements. In 1907 the metalworkers union brandished the “core committees” as “obstacles to the development of worker organizations . . . against the interests of the workers.” The union warned its members “not to take part in elections or to join such bodies” (van der Berg 1924, 58–59). The attempts to head off the development of true union representation with paternalistic works councils were, however, bound to fail. After the establishment of collective agreements around the First World War, employer-initiated works councils were no longer a threat to unions, and employers lost interest. Some hundred factory councils, of little relevance, appear to have lingered on into the 1920s (van Haren 1985; Hueting, de Jong Edz, and Ney 1985).

#### 4.5.2 Union Ambiguity

After 1945, Dutch unions conceded the workplace to the employer. Not that unions had much influence in the workplace when they made this concession, given the absence of a craft tradition. Windmuller (1969, 402) was probably right when he wrote that "the neglect of the plant as a place of activity was also very much the result of a sober appraisal of the power distribution between management and labor." Moreover, the social democratic union movement in particular held a deeply felt conviction that works councils would fuel *Betriebssegoismus*, to use the German expression, and become the springboard for company- rather than industry-based forms of solidarity, undermining sectoral multiemployer agreements and ultimately jeopardizing the equalizing logic of action of the industrial union. In the first decade after the war, competition with nonrecognized communist unions, which did particularly well in the first works council elections in the metal and shipbuilding industries in Amsterdam and Rotterdam, added to the sense of uneasiness (Harmsen and Reinalda 1975; Huetting et al. 1985).

Starting in the metal industry, unions began to organize a network of plant representatives in the late 1960s, and a decade later similar initiatives were taken in the service sector. Originally, this overlapped with the organization of preparatory meetings of elected council members. In the union that most actively pursued the new strategy, the *Industriebond NVV* (now *IB FNV*), the plant committee had the task of monitoring the behavior of elected council members and screening the union list of council candidates. This was resented by council members and created many tensions in the union. In the course of the 1970s the union became more radical and favored a workers' control strategy, which met with hostility from employers and with skepticism by most other unions.

In quantitative terms, the new approach seemed successful. By the end of the decade the *IB FNV* reported that it had organized 574 plant committees, compared to around 1,000 works councils in its domain. These committees covered about half of all establishments where the union had at least 25 members (*IB FNV* 1979). However, the quality of these committees was often very poor. Only one-third or one-fourth of these committees were really active; their protection against employer retaliation was modest as many employers refused to grant recognition; they were highly dependent on, and often abandoned by, union district officials; and in most cases they sought in vain for a role that was not yet occupied by external union officials or, indeed, by the works councils (van Vliet 1979). Also, the union was never fully committed to a workers' control strategy and never contemplated a devolution of power over collective bargaining or strikes, which remained firmly in the hands of union officials supervised by the union's central office. Still, the development and radicalism of the plant committees did contribute to the 1979 reform insofar as it rallied conservative support in Parliament for a stronger works council as the lesser evil.



Soon after the reform, the unions adjusted their strategy. In 1980, the IB FNV announced that "under the present circumstances, the works councils seem to offer more possibilities than union action through the plant committees or the district officials" (IB FNV 1980). Especially in the recession of the early 1980s, with its plant closures, restructurings, and layoffs, the plant committees had a difficult time. Left alone by district officials who were fully absorbed by negotiations over layoffs and social plans, leading members resigned or sought refuge in the works council. With its enhanced powers, the council seemed to have at least a legal grip on the problem, if only because it had access to information on business plans, mergers and takeovers, reorganization, and relocation of firm activities. Not least, its members had protection against dismissal and were entitled to basic facilities.

A bill to offer some protection and facilities to union plant representatives was presented in 1981, but a few years later was shelved and has recently been withdrawn. The unions never made it an important issue. Currently, most collective agreements provide some guarantees to union representatives in the workplace, but always less than the protection and support which council members are assured. In the late 1980s IB FNV restated its policy that plant committees should play a supportive role for the works council. There are even more committees than in 1979, but still only one in four is truly active (IB FNV 1988), and fewer still have a true role in decentralized bargaining (van Rhijn and Huiskamp 1989).

In conclusion, partly in response to the institutional strengthening of the works council and partly under pressure from the shift from sectoral to firm-level decision making among employers, Dutch unions have adopted the works council as an additional instrument for the defense of worker interests. In this section I have highlighted the turns in the policies of the IB FNV because it is the leading union in the field, had considerable influence on legislation, and had to make the largest adjustment after the reform of 1979. Christian and white-collar unions always had a more positive attitude toward the works council, and unions outside the manufacturing industry had been slower to start plant committees.

#### 4.5.3 Weak and Divided Unionism

Between 1945 and 1975 the overall level of unionization in the Netherlands averaged a stable 40 percent of all wage and salary earners. In the 1980s aggregate union density dropped by more than 10 percentage points—from about 37 percent in 1979 to 25 percent in 1989—partly reflecting a wider definition of employment, including part-time jobs held mainly by women. The decline signifies a substantial weakening of the union presence in nearly all occupations and industries. Private sector density is currently down to about 18 percent; even in manufacturing only one in four workers is member of a union, and in financial and commercial services fewer than one in ten. Within Western Europe, the Netherlands now has one of the lowest union density rates, after France and Spain (Visser 1991b).

The union decline has multiple causes. Unemployment reached double digits in the first half of the 1980s; employment in manufacturing and construction and among blue-collar workers contracted sharply. Between 1982 and 1986 unions had to accept a substantial loss in real wages. Social security benefits were cut. When the center-right government pulled away from customary incomes policies and employers shifted their attention to the firm, the highly centralized Dutch unions were left to their own devices and suffered (Visser 1990). Generally well staffed, though mainly specialized in participation in macroeconomic and social security policy networks at the national level, the main federations and private sector unions have been forced to lay off staff and restructure their internal organizations. Traditionally, unions have been poor in servicing members in firms.

The power of Dutch unions is further impaired by ideological divisions. Historically, Dutch unions were divided into a social democratic, a Catholic, and a Protestant union movement, with a syndicalist (later communist) and a liberal fringe. After 1945, in spite of the failure to reunify the union movement, there was a high degree of interunion cooperation. In the 1970s a new attempt to unify all currents failed and led to increased tensions between the FNV, which combined the social democratic and Catholic unions, and the remaining Protestant center, the CNV, which attracted the membership of a number of Catholic public sector unions. A third federation, MHP, was formed in 1974 of white-collar unions and staff associations. FNV and CNV unions organize on an industry basis, often combining several industries in one union in order to obtain economies of scale. FNV unions represent about 60 percent of all union members, CNV unions some 20 percent. In the Netherlands there exists no doctrine of "exclusive jurisdiction." Unions that are affiliated to the FNV, the CNV, or the MHP are automatically granted recognition at the industry or firm level, irrespective of actual membership. Of course, membership levels and union strike capacity do carry weight in bargaining with employers.

The consequences of union pluralism are several: interunion competition, especially over objectives and policies (member poaching is rare), diminished bargaining power and fragile strike coalitions, competition over works council representation, and attention to the needs of the marginal rather than the median worker. In the context of this paper it should be stressed that multiunionism makes it unlikely that works councils, even where they are highly unionized, will become the extended arm of a union.

#### 4.5.4 Social Profile and Unionization of Works Councils

The social profile of works councils members in the Netherlands is traditional: male (83 percent), standard employment contract, full-time job, long job tenure (15 years on average), and skilled (49 percent, compared with 18 percent unskilled or semiskilled, and 33 percent supervisory and technical staff). The comparative figures for the labor force are 67 percent male, 5 to 10 percent in flexible employment, 20 to 30 percent in part-time jobs (of which 80 percent are held by women), 8 to 10 years of job tenure, 40 percent un-

skilled and semiskilled, 40 percent skilled, and 20 percent supervisory and technical staff. As can be expected, works council members are also on average older and have more years of general education or vocational training. The social profile of union membership lies somewhere between that of council members and of the workforce as a whole.<sup>6</sup> I do not know of data on the representation of ethnic minorities and immigrant workers.

In contrast with the sharp decline in union density in the 1980s, the unions maintained their position on the works councils (table 4.4). Two-thirds of all works council seats are occupied by union members. FNV members outnumber CNV members by a stable ratio of 3.5 to 1, which corresponds to their relative strength in private sector membership. The unionization rate of works council members, at 64 percent, exceeds that of employees in the private sector—18 percent—by a large margin. The most appropriate comparison, of course, is with the employees eligible to vote in works council elections in hundred-plus firms. In our 1991 survey, we measured a union density rate of 39 percent of employees in such establishments (van de Putte et al. 1991).

Among eligible workers, turnout is higher among union members. In our recent survey of FNV and CNV members, 72 percent indicated that they voted "always," 11 percent "usually," 3 percent "occasionally," and 14 percent "never." Eighty-six percent said they had voted in the last election (Klander-mans et al. 1992). The fact remains that a large number of nonmembers vote for union candidates, and an even larger proportion would do so if given a chance. In many firms, the absence of a sufficient number of union members prevents the presentation of a union list. Even among union members, 25 percent indicated that there had been no union list in their firm, and 16 percent said they could not tell since they had given their vote to personally known candidates irrespective of union membership (van de Putte et al. 1991).

One of every four councils experiences difficulties with finding candidates, and another 37 percent report problems, although less than 3 percent of seats remain vacant. Problems are most severe where unions are absent or scarcely visible, that is, in smaller establishments and firms, and in firms in commercial and financial services (Looise and de Lange 1987; Huiskamp and Risseeuw 1988). The problems include negative impact on prospects of promotion in the firm, lack of cooperation from the employer, and excessive demands on one's leisure time (Acampo, Kunst, and Soeters 1987). In a survey of council members commissioned by the CNV, 24 percent of members that had ended their council activities mentioned that membership had held up their career. But it was also found that council members tend to be longer with the firm and to have already exhausted their possibilities of internal promotion (CNV 1986).

Can we interpret the support for union candidates in works council elections as a vote of confidence for the unions, despite the declined propensity of work-

6. CBS, *Enquête beroepsbevolking* (Quarterly Labor Force Sample Survey) (The Hague, 1986); census data for 1985–86.

**Table 4.4** Union Density

Federation	All Employees			Private Sector			Works Councils		
	1980	1985	1990	1980	1985	1990	1980	1985	1991
FNV	21	17	15.5	19	15	13.5	43	40	41
CNV	6	5.5	5	4	3	2.5	7	10.5	11
Other	8	6	5	3	2.5	2.5	18	14	12
Total union	35	28.5	25.5	26	21.5	18.5	68	64.5	64

Sources: J. Visser, DUES database; calculated from Teulings (1981) and Looise and de Lange (1987); Visser (1991b).

ers to become members? Does the disparity indicate a free rider problem, in that voting for a union-backed council member, presumably making the council more effective while not making the voter share in the costs of union organization, is a rational response of calculating employees? In our survey we asked whether respondents thought that the works council made the union redundant and whether voting for a union list is a substitute for membership. An overwhelming majority rejects the first statement; less than one in ten respondents agreed strongly. Those that felt it was enough to vote for a union list were more numerous, 30 percent; but 55 percent disagreed with this proposition, and 14 percent were not sure. In short, some crowding-out does seem to occur. The real problem, however, is that Dutch unions, given their internal divisions and their long absence from the workplace, find it hard to activate mechanisms of social punishment for free riders privatizing public goods. The comparison with Belgium, where works councils were introduced later and have remained secondary to recognized union shop representatives (Visser 1991a), and Germany, where DGB unions hold a virtual monopoly of representation, is instructive.

#### 4.5.5 Union Politics on Works Councils

On about one-third of the councils the FNV has a majority. This has not changed much during the membership crisis of the 1980s (table 4.5). On the basis of their survey, Huiskamp and Risseuw (1988) found similar proportions in 1988. On about 25 percent of the works councils no FNV member is present, while on just under 20 percent there are neither FNV nor CNV representatives. An FNV majority is more likely in manufacturing, construction, and transport. In commercial services more than half of the works councils have a nonunion majority.

Surprisingly, the proportion of works councils with a nonunion majority has declined between 1980 and 1985, from 34 to 25 percent, in contrast to the trends in union membership. This probably reflects the lesser "staying power" of unorganized council members. Council members without the support of a union are less likely to complete their tenure on the council and are less likely

Table 4.5 Majorities by Union (% of councils)

Majority Federation	All Councils		Establishment Councils (3)	Central Works Councils (4)
	1980 (1)	1985 (2)		
FNV	35	35	35	47
CNV or other	7	13	13	5
Nonunion	34	25	36	16
No majority	26	25	17	32

Sources: Calculated from Teulings (1981) and Looise and de Lange (1987).

to run a second time. A survey among former council members in 1986, commissioned by the CNV, indicated that almost one in four council members did not complete their terms.

Table 4.5 (cols. [3] and [4]) also shows that the likelihood of a union majority, and an FNV majority in particular, increases on central works councils. This is the result of indirect elections with lower-level councils each choosing one delegate, who is likely to come from the largest group or the group that is most effective in coalition building. The 1980 works council election at Philips can serve as an illustration. On the 91 councils at the establishment level the FNV union gained 33 percent of the seats, in the 20 divisional councils its share rose to 40 percent, and on the central works council it achieved a majority of 52 percent. Unions representing managerial and technical staff are also overrepresented on central works councils; within the FNV, the skilled manual and white-collar component increases with council level. The reverse is true for women. Fifteen percent of the elected members of establishment works councils were women, and there were still 33 women among the 330 divisional council members; none, however, was left on the central works council. Non-union members occupied 44 percent of the seats on establishment councils, but only 11 percent on the central works council. This goes some way toward explaining the preference of management for direct election of the central works council.

Regular contact with its voters and with the external union contributes to the council's level of activity. Again, a picture of great variation emerges. About 40 percent of the councils organize regular meetings with their electorate or have office hours during which council members can be consulted. Another 40 percent limit themselves to providing information, through a staff paper or a bulletin or billboard, and 20 percent do not have any contact, active or passive, with their voters. Most works councils (79 percent) report "contact with the union," but the majority of these contacts are ad hoc. Forty-three percent report the existence of a union plant committee, but only 24 percent of the councils have regular contact with it (Looise and de Lange 1987). The presence of a union plant committee is most likely in manufacturing, and the likelihood in-

creases with the size of the establishment. Union plant committees exist in 60 percent of the largest firms (more than 1,000 employees); in manufacturing this proportion rises to 90 percent. The proportion of firms with a union plant committee is 50 percent among medium-sized firms (400 to 1,000 employees) and decreases to 28 percent in firms with fewer than 400 employees (van Rhijn and Huiskamp 1989).

Works councils with an organized constituency and structured contacts with the external union pursue and guard their rights more vigorously. This does not imply that they are more adversarial or reject a larger proportion of management proposals. They may rather be better prepared and behave in a prudent and calculating way, especially when they have regular contacts with union officials; or indeed management may behave differently toward them and involve them on a more regular basis. This would sustain the conclusion that works councils do not substitute for trade unions. If well organized, with good full-time staff and effective internal organization, unions can help create effective works councils. As a result, works councils may be rather ineffective when unions are ineffective, although in many firms this is yet to be tested.

#### 4.5.6 Works Councils and Collective Bargaining

In the 1980s virtually all Dutch businesses restructured their activities, often making accompanying heavy cutbacks in staff. The first motive was to restore cost efficiency and profitability; later, general demands for working-time reduction required new ways of organizing work teams and time schedules. In addition came new ideas about leaner organization and human resource management: flatter hierarchies, reintegration of staff and line functions, marketlike transactions between organizational units, employee involvement, and productivity- and quality-related reward structures. From being championed for its own sake, worker participation became a means to improve productivity and product quality; in the words of a leading Dutch sociologist of organization, participation is now promoted for functional rather than structural reasons (Lammers 1974).

It is not yet possible to estimate the full impact of these changes, but undoubtedly the importance of the firm as an arena in labor relations has increased. Sectoral multiemployer agreements on wages, hours, and related conditions remain important in metal engineering, construction, printing, the dairy industry, agriculture, banking, insurance, and hospitals and health care institutions, to name only the most important. But there is also a tendency to make application of these agreements more flexible and allow better tailoring to the conditions in individual firms. Company agreements have always been predominant in the international sector of the Dutch economy (Philips, Shell, Unilever, AKZO, DSM, PTT, and KLM) and are also typical for firms in the rapidly expanding sector of professional and business services, though many of these firms offer only individual contracts.

Collective bargaining below the firm level, in individual plants or work-

shops, is rare. Industrywide agreements tend to set minimum rather than standard terms, but the differences are often small. Unions, in particular affiliates of the FNV, seem attracted to a "second round" in the negotiating process, after framework agreements have been reached at the industry level; but the leading employers' federation in the metal and electronics industry has rejected this since two bargaining rounds would, in its words, inevitably lead to two pay rounds. The General Employers' Association (AWV), which is not itself involved in bargaining and instead assists individual firms, is more disposed to a two-tier bargaining system. Both the sectoral and the general employers' associations agree that industry-level agreements have still a function to serve, but they want leaner agreements with narrower coverage and scope, allowing for more individual contracts and reversing the trend toward adding ever newer subjects such as pay compensation systems, training, health, job security, facilities, and so forth.

The unions are reluctant to accept a larger role for the works councils in decentralized collective bargaining. They favor a more restrictive reading of section 27.3 of the Works Council Act—which prohibits the council from renegotiating matters already dealt with by collective agreement—to the effect that councils should be allowed to renegotiate matters under agreement only if asked to do so by the contracting parties. In 1990 the Foundation of Labor, in which the central employers' and union organizations work together, surprisingly issued a recommendation to revise the law in this direction. Employers saw a chance to restrict the scope of co-determination, whereas the unions wanted to forestall an erosion of their prerogatives. This manifestation of opportunism led to protests among works council members and the union rank and file, and the proposal has not been heard of since. After almost two years, the Social Economic Council, whose advice on works council reform was invited by the government, still does not know what to do and is hopelessly divided. A change of the law in either direction—reducing or expanding the bargaining responsibilities of works councils—is improbable.

Dutch employers seem not quite ready to concede works councils a greater bargaining role. In 1985 the parliamentary leader of the Christian Democratic party, who was later minister of social affairs and employment (1990–94), proposed increasing the role of the council in decentralized wage bargaining, causing a storm of protest from the unions, especially from the FNV. But employers did not embrace the idea either. The general position of their associations, and the actual behavior of most employers, is to keep works councils out of wage bargaining. According to a representative sample among Dutch firms by Huiskamp and Risseuw (1988), only 6 percent of all works councils were actually involved in collective bargaining. It must be recalled that, unlike trade unions, works councils cannot legally call a strike.

The role of the works council is different in firms not covered by an industry or company collective agreement. This is often the case in the subsidiaries of American firms, especially but not only in computer firms, software houses,

and consultancy and accountancy firms, and also at Dow Chemicals. Not all American firms stay outside the employers' federations, however, and collective agreements may also be absent in Dutch-owned firms. In these cases management sometimes negotiates a "covenant" with the council. In a recent court case<sup>7</sup> the unions demanded nullification of such a covenant signed between the works council and an employer who had refused to negotiate with the unions. The court rejected this request, arguing that under Dutch law unions do not hold the exclusive right of employee representation in collective bargaining. While works councils cannot renegotiate a collective agreement signed by unions, where the employer is not present he loses his rights. If unions fail to organize or gain a collective contract because the employer refuses recognition, works councils are free to negotiate alternative arrangements. Covenants lack the juridical infrastructure of the collective agreement, do not receive public protection, and are not legally binding on individual contracts between employer and employee (Doup and Van der Heijden 1991).

The long-term implications of this ruling remain to be seen. Elsewhere I have argued that in Dutch industrial relations the traditional, highly centralized, and patterned model of industrial relations is being eroded by strong centrifugal pressures (Visser 1992b). The 1980s witnessed the emergence of a *terra nova* of large and small firms connected to volatile international markets and engaging in innovative work organization and labor management practices. Many new and expanding firms in emerging sectors, such as business services, computers and information processing, and small-scale engineering and design, are nonunion. If management discovers that individual contracting is less than optimal, especially in such areas as training, job evaluation, and company benefits, its natural partner is the (nonunion) works council. It would be premature to argue that in this case the council becomes a union substitute, since there was no union to begin with. The question is rather whether councils in this case preempt union organization and make the organizing task of unions more difficult. I have no direct evidence either way, but one might speculate that the road to union organization may well go *via* works councils. As a next step, employees, if they feel they need stronger negotiators, may vote for candidates who have the support of unions.

#### 4.6 Evaluation: Costs and Benefits of Works Councils

What do works councils contribute to the economy, the performance of firms, and the welfare of workers? What costs in terms of time, money, production losses, or otherwise are associated with works councils, and who is paying them? Do councils benefit only insiders? Do they lower employment levels by raising the threshold for employment? Do councils help management and

7. *Dienstenbonden FNV/CNV v. Grabowski & Poort*. May 19, 1992.



employees negotiate more efficiently and accelerate adjustment to changing technological and international conditions?

The data needed for drawing a complete social, political, cultural, and economic balance sheet of the works council is lacking. Recently, van Hees (1993) explored the impact of works councils and unions on labor costs, quality and speed of decision making, conflict resolution and social peace, management quality, wage inequality, and the use of external resources in Dutch firms. However, his was a qualitative study based on a discussion of one case in particular, and he made no distinction between the impact of the union and that of the works council. To my knowledge there exist no empirical studies on the effect of Dutch works councils on firm profitability or productivity, over time or across firms. Generalization from case studies is not without problems: all surveys show that council practices vary a great deal, although the legal structure of constraints and opportunities is the same. On the other hand, while managers and works council presidents disagree on many aspects of council performance, on one point they agree: works councils have improved the quality of decision making, and works council legislation has penalized hit-and-run styles of management.

Of course this comes at a cost: decisions take longer and require more preparation, paperwork, and meetings, and this is often perceived as an increase in rigidity. Other costs include time off and training for council members, as well as expert advice and other resources that must be paid for by the employer. For a firm of 500 employees, I hazard an estimated cost of 2 percent of the annual wage bill, taking into account paid leave, meetings, facilities, and the council's budget. This does not include the hours management spends on consultation and preparation. The benefit for the firm is greater legitimacy and better acceptance of painful decisions, especially on organizational adjustments. Time "wasted" on preparation may be time saved on implementation, more efficient bargaining, and less conflict. But the largest benefit may well be higher worker commitment, which may survive even painful adjustment processes.

The benefits for workers are more security and fairness, with few or no costs attached. With some sense of fairness in decision making and increased employment security, the acceptability of decisions will rise. Works councils, if they actively use the opportunities offered by the law, will ensure that due consideration will be given to the social and employment consequences of decisions, and that forced dismissals or layoffs will be used only as a last resort. If there must be forced separations, the firm must come forward with a social compensation plan, which usually offers better terms than existing social security and unemployment insurance provisions. Because of the high costs involved, employers will have an incentive to think of something better than returning redundant workers to the external labor market. In exchange, employees will have less reason to oppose alternative options which may entail changes in tasks, job loads, skills, or working hours for themselves.

It is tempting to attribute some of the membership decline in the 1980s to a

crowding-out of unions by works councils. Under multiunionism it is difficult for unions to conquer the workplace through control of the council. We have shown some evidence that workers do perceive *voting for union candidates* as a substitute for *union membership*. However, few workers see *the works council* as a substitute for *the union*, and most workers believe that both institutions are needed to be effective. This suggests that Dutch unions suffer from a free rider problem that they cannot solve without either improving their services to members or reinforcing social norms of solidarity through plant organizations of their own.

On the other hand, voting may be a first step toward greater involvement in the union, and unions may find it easier to organize councils than disaggregated workers. There are no indications that employers use councils against unions. Most firms prefer to bargain with unions rather than with works councils. But there are also firms that have excluded unions, insist on non-union membership as a condition of employment, offer individual employment contracts only, and entertain a rather cozy relationship with the council. At the same time, we also witness a formalization of relations in these very firms, through quasi-collective agreements ("covenants") which may well prove an intermediate step from individual contracting to full-blown collective bargaining.

We may, finally, look at the costs and benefits of works councils from a societal point of view. I have found no evidence that works council legislation has scared away businesses or lowered investment and employment in the Netherlands. Less conflict, higher worker commitment, and more investment in training may be seen as advantages. Statutory works councils cast the safety net for workers wider than unions, though they need the help of unions under adverse conditions. Works councils also assist in the enforcement of health and safety legislation, the protection of handicapped and disabled persons, equal opportunity, and so forth, where the law explicitly assigns a monitoring task to them. Councils may well deepen the bite of legislation on firms, but as local enforcement agents, trained in weighing conflicting interests, they may also help find customized and flexible solutions.

My overall conclusion is that, even under weak and divided unionism as currently exists in the Netherlands, works councils do make a positive difference. Despite the economic recession and severe union decline, councils have achieved an established position in Dutch industrial relations. They contribute to the quality of managerial decision making and help trade flexibility in work organization for employment security. This beneficial outcome is not always achieved, and in fact much variation is found in what works councils actually do. Some are sleeping and have never been tested, and others would fail if they were, but some—probably a minority—have become active players. Where councils have achieved an active role, this was often because of support from an organized constituency and the union; but there are also examples of works councils that owe their position to employers realizing a functional need for

consultation. Above all, works councils, having been strengthened as an institution of employee representation in 1979, have cushioned the impact of economic adversity and union decline on firm-level labor relations in the Netherlands during the 1980s.

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