

Conclusions and Perspectives

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Working without limits – Reconsidering regulation

Complex development of work

The industrialised countries are nowadays often said to be in a period of transition from a society dominated by industrial production to one dominated by high-tech and service industries. These industries are often characterized by the employment of a highly skilled workforce, such that the employers' main focus appears to have shifted from their employees' physical to their intellectual capacities. Some analysts even claim that this labour market development has created a new type of exchange between labour and capital, one which strengthens labour's position in relation to both pay and working conditions.

It is argued that an ever increasing number of firms will be operating in a new context (new demands, new forms of competition, etc.), calling for new ways of organizing work processes (lean production, autonomous work groups with empowered employees, etc.), giving rise in turn to new working conditions (reduction or elimination of physical loads but entailing risks of new psychosocial strains) and thereby leading to a shift in focus of occupational health and safety problems (from physical to psychic wear and tear).

This argument, albeit tempting, is actually flawed, as demonstrated by several papers and most of the discussions at the conference. Union officials and researchers in direct contact with workplaces are not encountering, in their observation of occupational health and safety problems, the type of changes described, and the survey

from the European Foundation for the Improvement of Working and Living Conditions, presented by Pascal Paoli, shows no automatic improvement in working conditions or any trend in such a direction (Paoli, 2000).

At least two issues have to be taken into consideration. Firstly, no production method has a monopoly. As described by Lars Magnusson (2000), different methods co-exist. As such, the major occupational health and safety problems characteristic of industrial society will continue to exist in the coming years. Besides, experience shows that many of the problems characteristic of the industrial sector, such as MSD and "sick building syndrome", are equally present in the new sectors.

This leads on to the second issue. New forms of production are not automatically defined and established by the firm's external context. As VanEinatten (2000) has pointed out, changes in the external context have to be picked up, interpreted and translated before a reorganisation is introduced. This local assessment is a social process involving numerous protagonists, no one group of whom reigns supreme. Many groups, including workers and their unions, are in a position to influence interpretation, translation and implementation of change, in relation, for example, to work practices, working conditions, and health and safety matters. Wendelen (2000) and Vogel (2000) have illustrated how risk assessment may become one tool among others whereby workers can draw attention to their experience of

work. There are of course limits to the extent to which interpretation and translation of external conditions may be described as merely local. For example, the European study shows that increasing numbers of workers are complaining about higher stress levels due to the intensification of work. Such intensification would seem therefore to be a general characteristic of work, one that cannot be neglected or reformulated locally.

Some common characteristics of present developments

Workers' and unions' endeavours to influence the development of working or production processes have some features common to many sectors, whether new or old, private or public. First among these is the dilution in the employer's traditional role. For public sector employees, this aspect is not new, but it has now spread also to private firms, large as well as small (Larson, 2000; Quinlan & Mayhew, 2000; Eakin, Lamm & Limborg, 2000). Though managers can be identified, they are subject to conditions laid down by others; but these 'others' can be difficult to identify. They may be politicians in the public sector, CEOs from the holding companies behind big firms, or main contractors subcontracting the smaller firms. Their tendency, when confronted with the occupational health and safety implications of their decisions, is to pass responsibility on to the different levels of middle management. Small firms, which are subject to conditions defined by the customers, and, as indicated by several speakers, firms in societies undergoing a process of deregulation, present these implications as an unavoidable consequence of the market and not a decision. Secondly, according to Thébaud-Mony (2000), empowered workers are more directly faced with the conflict between two complementary roles embedded in the employee function : that of a worker trying to do a decent or even a good job; and that of a wage-earner trying to fend off exploitation and safeguard present and future work capacity. Several speakers pointed out that a solution to this conflict is frequently reached by putting the production role first.

Regulatory strategies

Though deregulation is at present the dominant policy discourse and appears advantageous for some groups, workers and unions should never

base their existence on regulation by market forces alone. Unions are justified in protecting less advantaged groups of workers from the direct effects of market mechanisms. Supplementary regulation can, however, take several forms and the regulation of occupational health and safety has to take account of these complex factors.

A combination of the four approaches stated beneath can be chosen when formulating a regulatory strategy :

- Command and control
- Economic instruments
- Mutual adjustment between protagonists involved
- Development of a mutual understanding among protagonists involved.

The potentials and limitations of these different strategies will now be discussed.

Command and control : the principles of the framework directive

The basic principle of establishing command and control regulation is as follows : Parliament (1) passes laws to be complied with, (2) sets up a controlling agency and (3) authorizes a budget for its activities. The agency is responsible for compliance with the law and the courts hand down penalties in the event of non-compliance.

The last century has seen changes in this type of regulation (Gunningham & Johnstone, 1999). The early detailed specification type of regulation, which stipulates exactly what is expected of the employer, has been supplemented by a combination of performance specifications - describing the expected outcome with the actual means of devising its achievement being left up to the employer - and system-specification, where mandatory structures and procedures to achieve the desired results are laid down. The development of performance specification is a reaction to the increasing complexity in and between the firms, which makes it extremely difficult, if not impossible, to frame detailed specifications for all relevant areas, even though detailed specifications do still have a role to play in areas such as machine guards and universal tool design. Regulation based on a combination of performance and system-specification implies that designated workplace agents use the prescribed structures

and procedures to reflect on how to achieve compliance with performance standards. Accordingly, it is often called reflexive regulation and it is on this idea that the EU 'framework directive' is based. The main elements of the directive are as follows :

- An emphasis on the employer's duty to ensure safe and healthy working conditions
- Based on a participatory approach where workers are guaranteed training and information
- Combining risk-assessment with preventive principles as a core activity, and
- With access to expert knowledge through affiliation to an occupational health service.

In 1989 the 'framework directive' was passed, with a requirement that the member states transpose its provisions into national legislation no later than 1993. Though the member states failed to meet the deadline, by now we do have some preliminary evidence of the regulation's operation in practice. In several member states the transposition and implementation of the principles have given new impetus to the debate on how to manage occupational health and safety. But we also know from studies and experience that most employers fail to live up to the directive's intentions, and that both employers and employees have difficulties in addressing the more complex problems and adapting to the new proactive strategy enshrined in the preventive principles (Karageorgiou et al., 2000; Wendelen, 2000; Sevilla & Vega, 2000).

In spite of these difficulties, the framework directive does not lack potential. So, it is important that the workers, their representatives and the unions test whether these strategies are practicable. This is especially useful in situations where the employers' sense of responsibility is fading and it is also of importance to devise participatory procedures that do not dismiss the health and safety prevention aspect linked to the role of a wage-earner in favour of the interest in a continuous improvement linked to the role of producer participating in the development of society. Yet, as pointed out by De Troyer (2000) in her introductory report on the European hospital sector, the intensification of work obstructs the satisfactory provision of care. Accordingly, it is important for union strategies to consider both roles.

Monitoring and enforcement are important issues within this regulatory approach. All member states have by now introduced legislation, whereas controlling agencies and effective inspection strategies remain to be established and developed in several member states. The exchange of union experiences on these issues will be of relevance in coming years.

Mutual adjustment

Regulation by mutual adjustment implies that the state leaves the initiative for mutual adjustment to the main stakeholders in the field, typically employers and employees and their organizations. The traditional procedure is negotiation and agreement, but new approaches based on certified systems, combined in some cases with logos (firm and product labelling), may emerge.

Negotiation and agreement

This approach is well known to the labour market organizations. Agreements may, in some cases, have a primarily symbolic significance, but for them to have real effect on the ground the following factors must be present : the establishment of a negotiating situation; the agreement of all parties involved on basic issues at stake; and the capability of formulating appropriate demands (e.g. no jobs with (cycle times) under 15 minutes, no jobs paced by machines, possibilities of changing tasks, etc.). To achieve credibility the parties involved must also be able to guarantee the implementation and documentation of the level of implementation. There must also be a conflict resolution mechanism for cases where agreement cannot be reached.

This regulatory instrument has been used in several cases to settle certain types of occupational health and safety issue. In my country (Denmark) it has been an effective instrument for ensuring that the employer pays for personal protection equipment such as special footwear and special clothing in specific branches and trades. In other cases, however, it has shown its limitations. First of all, such agreements basically cover only the parties to the negotiation. They may lead to an effect in non-organized firms, but in many cases firms not covered can achieve short-term advantages. Secondly, this regulatory approach is more sensitive to local changes in the balance of power between the parties involved than is the legislative

approach. Thirdly, this approach has demonstrated a tendency to replace prevention with extra bonuses. Finally, in relation to new areas (such as monotonous work and psycho-social problems), where the basic concepts are still under discussion and the causal relations between workplace exposure and health and safety effects are complex, it has proved difficult to build up a coherent system to comply with central agreements (Hasle & Møller, 2001).

Thus it can be stated that negotiation will not become a major strategy for dealing with the present occupational health and safety issues, though it may be one component of a combined approach. Therefore, it is necessary to conduct a critical assessment of the potential for using negotiation and agreement as a means of regulating working conditions that cause occupational health and safety problems.

Certified systems

From the mid-80s and early 90s certified quality control systems have been the main instrument for regulating central aspects of the contract between customer and producer. The experiences with these systems have inspired a series of public agencies to establish regulatory strategies based on the ability of what are considered the primary stakeholders to frame standards for a system of concerted actions ensuring compliance with performance standards in combination with third-party audits. This approach has been used to regulate both the external environment and occupational health and safety (Gaupset, 2000; Lindøe & Hansen, 2000; Needleman, 2000). Whereas standardized systems have been established for the external environment (ISO-14000 & EMAS) the central stakeholders have been reluctant to frame corresponding trans-national standards for occupational health and safety (Zwetsloot, 2000; Vogel, 1999).

From a union point of view these systems seem to have succeeded in reducing the number of accidents. But the experiences have also made some unions hesitant. Firstly, it has been difficult to incorporate health issues. Secondly the systems should be designed to implement performance standards and participatory programmes drawn up at national level. But they have often been regarded by the employees as systems introduced by management, giving the latter the right to decide

on procedures as well as type of participatory scheme and aims and goals. Finally, management seems to have been more engaged in managing reports and numbers rather than in introducing preventive measures.

In spite of this, the idea of establishing "kitemarked" certified systems is still much to the fore in many member states. As such, unions must develop strategies to counter these adverse effects.

Economic instruments

A third approach to regulation, and a well-known strategy, is not to control firms but to provide economic incentives that will motivate management to address occupational health and safety issues. It has, however, been difficult in the occupational health and safety field to frame an incentive system that effectively promotes preventive actions. First of all a reliance on economic instruments dispenses with any discussion of ethical or legitimate behaviour. Secondly, a system based on past performance (last years' accident and sick leave rates) is as likely to lead to a strategy to reduce workers' absence as to a strategy to manage workplace improvement. Nevertheless, in a market-driven economy such instruments are appealing at least for state agencies and the search for such strategies will continue. Consequently, the unions have to develop an appropriate attitude to this approach and put forward demands.

Developing a mutual understanding

The final type of regulation stems from the development of an understanding and conceptualisation of the field among the stakeholders involved. As pointed out by VanEijnatten (2000), the concept of 'flexibility' has dominated discussion of industrial and labour market development, while the concept of 'intensified work' has not been equally promoted in public debate as another expression of the same development. The need for a gender-specific conceptualisation of developments in working conditions also requires emphasis.

Union officials submerged in legislative and bargaining processes may fail to appreciate that relevant knowledge is context-sensitive. Though quantitative data from questionnaire-based surveys and



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laboratory experiments may be a prerequisite for regulatory actions at regional, national and supranational (EU) level, this type of knowledge may not be a prerequisite for local action. To promote a commitment to joint actions among stakeholders other social settings for data-gathering may be more relevant.

This implies that unions wanting to serve their members' interests at enterprise level must realize/accept the context-bound relevance of action-oriented knowledge, and must never promote questionnaires and measurements as the primary source of relevant data. This is a fact well-known to most union officials, but due to the twofold nature of their activities it has to be regularly repeated. There is a long tradition of cooperation between workers, unions and researchers on the production of documentation-oriented knowledge. There is, at the same time, a need for cooperation between unions and researchers on the study of the forms and characters of action-oriented knowledge at enterprise level.

Conclusion

It is questionable whether developments in western European societies can be described as a transition towards a completely new mode of production. Rather, workplaces and working conditions appear to be growing increasingly complex. The basic mechanism of the labour market in capitalist societies has had an important role in regulating not only wages but also working conditions. Management are to some extent inclined to address workplace health and safety when there is a shortage of skilled labour, but less so when there is a surplus.

One of the implications of solidarity is that the unions should seek to attenuate the impact of the labour market in times of surplus. As a means of fulfilling the need for a regulatory strategy in the occupational health and safety field, the detailed specification type of regulation has, over the years, become increasingly inadequate as a principal approach. Accordingly, we have witnessed a continuous development towards reflexive forms of regulation as an important means of supplementing detailed specifications. In the early phases the performance specification was the main new focus, but more recently the performance specification has been combined with system specifications.

Within the EU, the framework directive embodies such a development. In countries that have implemented some of the main elements (risk assessment, worker training and mandatory affiliation to occupational health services) constructive developments have been identified at workplace level. But the potential of this approach to deal with the complex development in production systems has to be further explored in practice.

The same argument applies to negotiations on workplace issues in relation to occupational health and safety. The potential and limits of negotiations have to be investigated and there are several existing instances of developments that lend themselves to more thorough investigation.

Alternative regulatory approaches to command and control are available. In order to be effective in the present situation, a regulatory strategy must entail a command and control approach in combination with economic instruments and formalized occupational health and safety management systems. This must be accompanied by the well thought out and long-term development of conceptual frames and systems for knowledge production serving the formulation and communication of workers' views on the development of production processes.

The plans for the EU accession of certain eastern European states present a risk of further deterioration of working conditions in western Europe. Several of the states have not yet, since transition from a command economy to a market economy, taken regulatory initiatives to stem the effects of the free play of the market. Western European enterprises are already facing fierce competition from a number of sectors in eastern Europe such as the transport sector - competition that may result in a deterioration of working conditions. It is a major challenge facing all EU member states in the years to come to ensure that inclusion of the eastern European countries does not represent a threat to the general working and living conditions of workers in the Community. At present this issue does not appear to number among the Commission's priority concerns. Workers are therefore at risk of facing a situation in which occupational health and safety standards are levelled down as the result of a European policy too exclusively geared to the creation of an even larger European market for free trade.

It is not my task as a researcher to design or recommend specific union strategies. But I consider it important that workers, in collaboration with unions and researchers, should reflect on regulatory strategies to sustain local activities, thereby empowering them to face the difficulties likely to arise and to take responsibility for their working conditions.

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- **Willy Bushak**
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