



Worker Voice and Representation

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EXECUTIVE SUMMARY

This policy proposal recommends the creation of new legal avenues for workers to express their collective voice, both on the job and in corporate governance. American workers highly value good labor-management relations, cooperation with their employers, and a sense that their voice is heard on important workplace issues. Businesses in turn benefit greatly from the increased productivity, enhanced job satisfaction, improved information flow, and strengthened worker-management trust that results when workers have a voice.

Yet federal law does an inadequate job providing effective avenues for worker voice. Section 8(a)(2) of the National Labor Relations Act (NLRA), written to prevent the proliferation of employer-dominated labor organizations that subvert rather than serve worker interests, renders illegal several promising forms of worker organizations, such as the “works council” model common to other parts of the world. American law also does not grant workers the right to send “one of their own” to their employer’s board of directors—a practice both common and constructive in many nations.

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American workers and employers deserve a Better Bargain. The NLRA should be amended to allow for nonunion cooperative worker-management organizations like works councils, while protecting against employer domination of such organizations. Federal law should also grant worker organizations, like works councils or labor unions, the right to send worker representatives to corporate boards, while exercising appropriate caution regarding the scale of such representation.

A renewed appreciation for the cooperative and community-building nature of work should cause policymakers to reconsider the roles and responsibilities of both workers and employers. More cooperative workplaces and better labor-management relations can greatly benefit workers, employers, and American economic competitiveness. Getting there will require a willingness offer workers new ways to express their collective voice.

INTRODUCTION

In *The Fractured Republic*, Yuval Levin examined America's declining trust in institutions, including the businesses that employ much of the American workforce, warning that "the place and promise of work in the lives of many Americans...has faded." The American Compass Better Bargain Survey explores where workers still find promise in their workplaces and where it has faded. More than anything, the answer depends on whether workers have a voice in the workplace, and whether management listens to it.

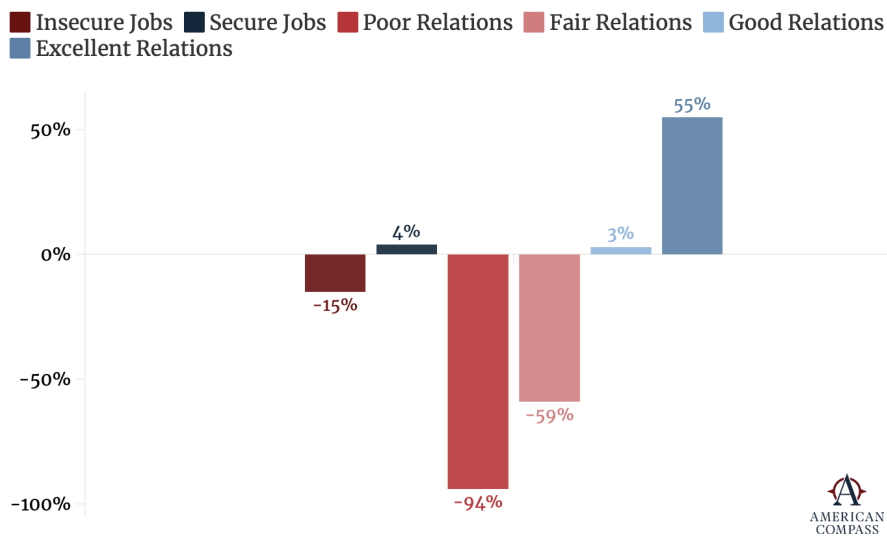
Good labor-management relations are of paramount importance to American workers. One of the Better Bargain Survey's most striking findings is the degree to which the character of that relationship, more than objective measures of job quality, determines job satisfaction. The survey asked workers how likely they would be to recommend their job to a friend, on a scale from zero (not at all likely) to ten (extremely likely). Someone responding between zero and six is a "detractor," while a response of nine or ten signals a "promoter" who is highly satisfied. The share of promoters less the share of detractors gives a single value, called the Net Promoter Score, often used by corporations to measure employee satisfaction.

Predictably, the survey found that those feelings vary by job quality. "Secure jobs," defined as those with annual income of at least \$40,000, stable earnings, steady hours, and health benefits, earn a score of +4%. "Insecure jobs" (all the rest) earn a score of -15%.

But the effect of job quality is tame compared to that of labor-management relations. Workers reporting "Excellent" relations gave their jobs a score of +55%. "Good" relations yielded a score of +3%, "Fair" relations a score of -55%, and "Poor" relations a score of -94%. Moving down one step in quality of labor-management relations had more than twice the impact of moving from secure jobs to insecure ones.

FIGURE 1. Net Promoter Score

Workers, by job quality and relationship with management



Source: American Compass Better Bargain Survey (2021) · N = 1,187
 “Workers” excludes those in the labor force who own their own business or supervise others. “Secure Job” defined as job that earns \$40,000 or more per year, with predictable earnings, steady hours, and health benefits. Labor-management relations cuts exclude freelancers, self-employed, and business owners. Question wording: “On a scale from 0–10 (with “0” meaning not at all likely and “10” meaning extremely likely), how likely would you be to recommend your job to a friend?”

This emphasis is consistent with Massachusetts Institute of Technology professor Thomas Kochan’s finding that American workers experience a massive gap “between the voice they feel they should have and the voice they feel they do have” at work. The decline of American labor has deprived many workers of an outlet for meaningful voice in the operation of their firms, and between 50% and 60% of American workers have less influence than they want on critical workplace issues beyond wages and benefits, like job security, protection against abuse, the role of new technologies in the business, the values of their employer, and the respect afforded to employees.

The Better Bargain Survey shows the importance of that gap. Workers who say they don’t have enough influence at work gave their jobs a Net Promoter Score of -48%, while those who feel they have about the right amount of influence gave their jobs a score of +15%. Jobs offering workers insufficient influence scored much worse than ones offering objectively unattractive terms and conditions; jobs offering workers the right amount of influence scored much better than objectively “secure” ones.

Failure to provide outlets for worker voice is a tragedy both for workers, who deeply value the opportunity to have a say in what happens at work, and for the firms that employ them, which would benefit from the higher productivity and increased innovation that worker engagement can deliver. The ongoing erosion of social trust and the dissolution of bonds across American institutions and between socioeconomic strata represent losses on their own terms. When they reach into the workplace, they also threaten the nation’s global competitiveness.

Closing this gap requires a renewed conception of business as a cooperative endeavor rather than a site of perpetual conflict. As Pope John Paul II, one of the 20th century's greatest critics of the dehumanizing nature of both Marxist totalitarianism and unfettered laissez-faire, once wrote:

It is characteristic of work that it first and foremost unites people. In this consists its social power: the power to build a community. In the final analysis, both those who work and those who manage the means of production or who own them must in some way be united in this community. In the light of this fundamental structure of all work—in the light of the fact that, in the final analysis, labour and capital are indispensable components of the process of production in any social system—it is clear that, even if it is because of their work needs that people unite to secure their rights, their union remains a constructive factor of social order and solidarity, and it is impossible to ignore it.

Recognizing the cooperative nature of work must in turn prompt a rethinking of the roles and responsibilities of both workers and firms. Workers are not simply “one economic input among many” or “commodities to be purchased,” but co-creators of value who take risks alongside investors, and who bring invaluable insight to processes of innovation and production. They are also human beings, whose dignity and sense of agency in their vocation merit respect as valuable ends unto themselves. A society that does not prioritize that dignity and agency courts decline in social trust and cohesion.



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Many business leaders recognize this and actively desire more cooperative and collaborative relationships with employees. The Better Bargain Survey finds that more than 20% of managers feel that their own employees have too little influence in the workplace—twice the share who say employees have too much influence. And wise business leaders understand that cooperative solutions are vastly preferable to harsher political solutions that will inevitably be handed down from Washington, should worker needs go unheeded for too long. Greater employee voice would also support managers in their efforts at resisting the maladaptive market pressure to prioritize short-term profit over long-term value creation.

Employers are free to adopt strategies that promote worker voice, and many do—as the presence of workers reporting “Excellent” labor-management relations attest. But in many cases, existing federal law poses an active obstacle to institutions of workplace collaboration, and in others, the creation of a new institution for worker participation in corporate governance could go a long way toward establishing a cultural norm that accords workers the respect they deserve.

This paper proposes two complementary policies that together offer a genuinely better bargain for American workers, with elements that both unions and businesses should find appealing. The first of these policies is formal recognition of “works councils” as both a supplement and alternative to traditional labor unions for promoting good labor-management relations and improving cooperative discussion on the shop floor. The second is a formal mechanism by which workers could elect representation to their corporation’s board, entitling them to participate in governance at the firm’s highest level as well.

PART I

A VOICE FROM THE (SHOP) FLOOR: COOPERATIVE WORKER-MANAGEMENT ORGANIZATIONS

In 2014, the United Auto Workers (UAW) attempted to organize the Volkswagen plant in Chattanooga, Tennessee. Volkswagen supported the effort because it desperately wanted to implement its collaborative production model, rooted in the type of labor-management “works council” common in Germany—which would be illegal in the United States without a labor union present.

The works council model provides a nonunion, workplace-level forum for cooperative discussion between workers and management on matters outside the scope of collective bargaining. As American Compass Research Director Wells King explains, the works council is:

[A] legal organization independent of a labor union designed to promote cooperation between labor and management at the local level. ... Councils consist of elected employee and employer representatives who adapt conditions of the broader collective bargaining agreements to local circumstances and address workplace concerns not covered. ... [T]hey must be consulted on critical workplace issues such as safety or personnel decisions ... [and] employers must inform and negotiate with them on a range of issues.

Works councils are prevalent throughout the European Union. They predominate in Germany, where they are the

only worker organization that operates at the enterprise level. ... Unlike the adversarial legal framework of American labor relations, the legal basis of the German works council is essentially collaborative: to work with management “in a spirit of mutual trust ... for the good of the employees and the establishment.”

Works councils increase trust between workers and employers, enhancing job satisfaction while promoting cooperation and smoothing the introduction of new practices. They increase long-term productivity and improve the flow of useful information between workforce and management. Even without works councils, smart managers around the globe often convene discrete, temporary employee advisory groups to help address specific challenges, with predictably positive results.



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Unfortunately, American workplaces are restricted the options available. Section 8(a)(2) of the National Labor Relations Act forbids the formation of any kind of “employer-dominated” worker organization. If a workforce is legally able to form an independent labor union, that is the avenue for formal collective voice they must pursue (thus, Volkswagen’s gambit). When the NLRA was written in the 1930s, employers frequently used employer-controlled “company unions” to quash worker interests while purporting to represent them; thus, Congress sought to ban the practice. But in doing so, it legally foreclosed a wide universe of employee-management cooperative strategies that were then, and remain now, popular among workers and managers alike. In its rush “to disallow the paternalistic type of works council,” explains University of Massachusetts professor Lenore Palladino, the NLRA failed to “distinguish the consultative and representative roles of workers’ organizations sufficiently.”

Rulings on section 8(a)(2) by the National Labor Relations Board and federal courts have made clear that even well-intentioned attempts to initiate formal worker-management forums for cooperative discussion are often unlawful. Because a labor union under the NLRA is the only permissible representative organization for workers, any sort of experimentation with works-council-style organizations requires a workplace to be unionized first.

Efforts to amend the law have also failed, most notably the TEAM (Teamwork for Employees and Managers) Act of 1995, which would have clarified that employer-initiated establishment of “employee involvement organizations” did not constitute an unfair labor practice under the NLRA. The TEAM Act passed the Republican-controlled Congress with the strong support of Big Business interests, but was vetoed by President Clinton at the urging

of organized labor. The sad coda to the Volkswagen tale is that, even with employer and union both urging them to organize, workers returned a “no” vote. With workers so disinclined to pursue traditional organizing, and with traditional organizers so disinclined to support legal changes that would allow alternative paths, workers are left with no options.

Still, concerns about company unions should not be dismissed as a historical curiosity, or merely a pretext for existing unions to preserve their monopoly on labor-management relations. The deliberate disruption of worker organization efforts occurs frequently and goes lightly punished in the United States. The Dunlop Commission, convened in 1993 by the Departments of Labor and Commerce to determine how to “enhance workplace productivity through labor-management cooperation and employee participation,” emphatically endorsed making nonunion cooperative organizations legal, but emphasized also that such organizations must maintain strong protections against becoming company-dominated shams or tools for frustrating other collective action by workers. The TEAM Act did not offer that protection.

The time may now be right for progress. Reform-minded labor organizers and advocates have begun to reject organized labor’s traditional unwillingness to contemplate works councils. As David Rolf, one such labor reformer, put it, “Even if the primary fights over wages and benefits are happening elsewhere, workers still want and need a voice in the place where they spend their days.” Changes in the domestic economy and global competitive pressures also highlight the value of works councils, which “appear to be a critical component of this evolving global economy,” according to a group of researchers led by the former president of West Virginia University. If the worker voice gap doesn’t close, “employees will continue to be left behind as the economy changes. And employers could miss out on innovation and improvement.”

Policymakers should permit and encourage works councils to form.

POLICY DESIGN CONSIDERATIONS

Policymakers should eliminate the NLR’s section 8(a)(2) prohibition on formal worker-management cooperative organizations like works councils. This prohibition disallows badly needed forums for mutually beneficial engagement. Policymakers should also address legitimate concerns that remain about company-dominated worker organizations and ensure true employee independence in such organizations. A few principles should guide legislative efforts:

- The formation of a worker-management organization should be at workers’ discretion. It should remain an unfair labor practice for an employer to create one unilaterally.
- Workforce consent should be obtained in a fair and unimpeded election.
- Worker representatives to a worker-management organization should be chosen by workers alone, without interference.
- Employers should be prohibited from using the formation of a

worker-management organization to defuse an effort at organizing a union. Employers should face meaningful consequences for interfering in worker elections of any variety, including for worker-management organizations and labor unions.

- In unionized workplaces, both union members and nonmembers should be permitted to take part in decision-making regarding organization formation and selection of worker representatives to that organization.
- The collective bargaining function should remain within the exclusive purview of formal unions; those issues that works councils may address should be separately enumerated.
- Worker-management organizations should be permitted to elect one or more representatives to the employer's board of directors. Labor unions, where they exist, should be given the same right. Even modest worker representation on a corporate board would meaningfully enhance the coherence between what a worker-management council discusses and what a board discusses, and including this opportunity as a feature of the worker-management organization helps to ensure that employers opting to cooperate with one are doing so out of a genuine desire for greater employee voice rather than to co-opt it.

PART II

A SEAT AT THE (BOARDROOM) TABLE: WORKER BOARD REPRESENTATION

In 2017, Toys “R” Us filed for bankruptcy, shuttering over 800 stores and laying off 30,000 workers with no severance. In 2019, as the retailer staged a comeback, it invited three former employees to join a “mirror board,” an advisory group parallel to the board of directors, with access to board-level information and materials, specialized training by labor experts, and a mandate to offer unvarnished advice and workforce perspective to the board. In the United States, the move turned heads because of how unusual it was. (So unusual, in fact, that it may not be permanent. Toys “R” Us is under new ownership again, with no word yet on whether the new investors care to continue the arrangement.) Elsewhere in the world, this would have been entirely unremarkable. Many countries grant workers representation on corporate boards, including a majority of European Union members (and Norway), and a majority of OECD members.

Worker board representation brings “first-hand operational knowledge to corporate board decision-making” and increases the typical firm’s market value. It increases labor productivity and the rate of capital formation. It provides a useful check against corporate short-termism and value-extracting behavior like asset stripping. Across an economy, worker board representation tends to reduce income inequality.

Worker board representation is also invaluable in navigating crises, allowing critical decisions to both reflect the input and better secure the support of the workforce. Summarizing studies of Germany’s system of “co-determination,” in which workers are entitled to elect anywhere from one-third to one-half of supervisory board seats depending on firm size, Grant Hayden and Matthew Bodie write that this “contributed to Germany’s ability to recover from the global financial crisis much more quickly than other countries without strong systems of employee representation. Shareholders have fared pretty well.”

Scandinavia’s experience during the 2008 financial crisis provides an especially salient example. Countries in the region had made worker board representation optional based on workers’ choice, creating a sample of public companies about half of which had workers on the board. Research on these firms has found that because worker board members are accountable to both the workforce that elected them and to the firm, they can “credibly transfer information on the preferences of both employees and employers...thereby facilitating the efficient information exchange necessary for integrative solutions.”

During the financial crisis, firms with worker board representation were less likely to resort to layoffs, opting instead for alternative measures to reduce labor costs when needed. Workers were more willing to make shared sacrifices to keep their firms afloat, and the firms were more willing to prioritize workers’ continued employment. These firms showed that “the joint involvement of employees and shareholders in formulating strategic responses...can lead to mutually beneficial outcomes during crises.”



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Introducing worker voice onto corporate boards has risks as well, but these tend to be overstated by those in the business community most comfortable with the status quo. For instance, one potential concern is that worker board representation could import disruptive political activism into corporate governance. But if worker representatives are truly representative—that is, if they are freely and fairly chosen by and accountable to the workforce—then advocacy for an agenda irrelevant or unhelpful to the workforce is unlikely to occur and could be quickly remedied by the workforce itself.

Given that corporate political activism generally seems to be imported into the boardroom by executives, independent directors, and activist shareholders, the more likely outcome is that the introduction of a working-class sensibility would mitigate rather than amplify the trend. The Better Bargain Survey is suggestive on this point, finding that American workers

prefer belonging to a worker organization that focuses exclusively on workplace issues to one that engages in national-level politics by a two-to-one margin. Conversely, if workers do care about a particular political issue, it is likely to be one vital to their welfare—information a board should want to receive and discuss.

A second concern is that worker board representation might obstruct the unusual flexibility that U.S. corporate law grants American businesses, which allows them to take the dramatic risks required for radical innovation—the uniquely American all-in, do-or-die corporate gamble. For instance, some evidence suggests that German firms tend to be better at incremental rather than radical or paradigm-breaking innovation (though other research finds that worker representation on boards has no negative effect on innovation at all). But this concern is best understood as a concern about workers dominating board decisions, not the presence of any worker representation at all. If America were to start with one or two worker representatives on a board, they would bring critical new perspectives and require decisions to be made in view of the workforce and its concerns, without holding anything approaching a veto.

Nor is it necessarily the case that American levels of risk-taking are optimal for a well-functioning and prosperity-generating economy. German firms that have equal numbers of worker and shareholder representatives on the board “conduct fewer and better M&A deals, have more stable cash flows and profits, and have lower idiosyncratic risk” relative to firms that do not. Those are important and value-creating outcomes. Public policy defines the corporate form for purposes of advancing the common good, and while a point surely exists where adding additional worker representation to a board could have diminishing or even negative returns, it seems vanishingly unlikely that the point will already have been reached when the number of representatives is zero. Indeed, given a U.S. corporate sector that appears more focused on the financial engineering of short-term profits than on investing capital in long-term value-creation, leaving worker voices out of the boardroom may itself be a source of systemic risk and stagnation.

A final concern holds that worker board representation is simply not suited to the American legal, economic, and cultural context. This is the sort of hand-waving one does after running out of genuine objections. Of course, America is different from other countries, and of course, an American approach to worker board representation will look different as well. But there is no logic to the argument that because it has worked well elsewhere it will not work here.

European policies did emerge from a business culture already predisposed to warmer labor relations. But even there, laws governing board-level representation have often been very controversial and strongly opposed at the time of their adoption, only to become politically durable across parties after the fact, and widely embraced by business leaders who eventually credit them for cooperative labor relations. Enacting laws can achieve meaningful shifts in business culture and political norms.

The lesson for American policymakers should not be to flatly reject what works elsewhere, but rather to proceed cautiously in adapting what works elsewhere to the American context. Perhaps counterintuitively, the more

hostile American environment for labor-management relations creates a particularly attractive opportunity: even modest movements toward worker board representation would represent a major development with the potential for substantial impact.

The business community has made a great show in recent years of “redefining” the purpose of the corporation and insisting on its commitment to the interests of numerous stakeholders, including workers, rather than simply the maximization of shareholder value. Very little actual change has resulted. Policymakers should take them up on their offer and create a governance mechanism that realizes their purported values.

POLICY DESIGN CONSIDERATIONS

Several principles should guide policymakers seeking to grant workers access to board representation:

- Worker board representation should be a feature of labor law (which is federal) rather than corporate law (which is the province of state governments). The right to elect worker board representatives should accompany the presence of an employee-controlled organization, whether a works-council-style organization made legal under section 8(a)(2) reform, a labor union, or both.
- Workers should have the option of board representation, not an automatic seat they must fill. The option would be exercised through creation of a worker organization, through which representatives could be selected.
- The primary goal of worker board representation should be credible facilitation of information exchange, leading to increased trust and cooperation. One or two representatives are sufficient as a starting point for American policy experimentation.
 - Worker board representation can ensure that board decisions are made with worker input and insight, with awareness of worker concerns, and in the light of worker observation. This on its own would represent a fundamental pro-worker shift in American corporate governance, without imposing unmanageable costs on American business.
 - Proposals from Senators Warren (40% of board seats), Sanders (45% of board seats), and Baldwin (one-third of board seats) broadly follow the German model, seeking to give workers something approaching control over board-level decisions. This overshoots the mark. Countries that allow for one or two worker representatives depending on board size provide the better starting point for strengthening American labor-management relations.

- The initial priority should be worker board representation for employees of the largest corporations, which employ the preponderance of the American workforce and have the most well-established corporate-governance infrastructure.
- Worker board representatives must be genuinely accountable to the workforce. The workforce must have an option to recall and replace representatives via the worker organization through which board representation is selected.
- Policymakers may wish to consider placing worker board representatives on a particular committee of the board, in which case they should prioritize a voting seat on a corporation's nomination committee. This committee oversees and selects board members and key executives and is one of the few board committees that is fairly standard within U.S. corporations, avoiding the need for businesses to rearrange their governance to accommodate the requirement.
- Conflict-of-interest rules excluding worker board representatives from sensitive discussions should be narrowly tailored to genuine conflicts (e.g., some Scandinavian countries sensibly bar worker board representatives from involvement in collective bargaining). Vague concerns that the mere presence of worker representatives will prevent effective governance ignore the demonstrated benefits that only such representatives can bring to board deliberations. Simply preferring not to have certain conversations in front of workers raises the question of what conversations those are, and why workers might be upset by them.

CONCLUSION

Workers want more voice in their workplaces, positive relationships with management, and cooperative decision-making. Policymakers can create mechanisms to offer them that, improving job satisfaction, productivity, investment patterns, and crisis response in the process. Doing this simultaneously at the shop floor and corporate-board levels makes the most sense. Workplace cooperation and worker board representation promote different and complementary types of information sharing, from worksite-specific questions of schedule and production process to strategic questions of labor costs and investment choices. The combined approach also makes practical and political sense, balancing the concerns that labor unions have about cooperative worker-management organizations with the new forum that board representation affords, and using the former to implement the latter.

This approach should be attractive to policymakers across the ideological spectrum who are genuinely committed to addressing America's economic challenges and advancing worker interests. It will require leaders willing to challenge the entrenched interests of Big Business and Big Labor that

usually set the terms for their respective camps. One of Levin's great insights in *The Fractured Republic* is that people lose faith in institutions, including employers, when political debates about those institutions become ossified along static, nostalgic dimensions, with all sides committed to the answers of yesterday rather than tomorrow. Whether the interests of workers can overcome that inertia is a good test for the potential of a more worker-focused politics.



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