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WORKS OR UNIONS COUNCILS? THE SPANISH CASE

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Works councils¹ are defined legally in Spain as the unitary organs of representation of workers at the level of the firm. The law also regulates the existence of union sections inside the firm. Hence, there is a dual system of workers representation in the Spanish system of labor relations. However, in contrast to many other foreign systems, this *second channel* of interest representation is especially salient in relation to the *first channel* controlled by the unions, although these organizations have a real control of works councils and implement their policies at firm level through them. One of the main questions that the Spanish case raises is precisely whether and to what extent it is possible for a union to pursue its policies effectively by means of an organ with union and non-union duties. Another important question are the reasons for, and implications of, this system of representation in a country with two main unions, divided along ideological and political lines: the socialist UGT (*Unión General de Trabajadores*, General Union of Workers) and the communist CCOO (*Comisiones Obreras*, Workers Commissions).

Historically there has been a wide variety of labor relations systems in Spain. Since the thirties, this country has tried four different combinations of unionism and works councils: a) free-unionism without works councils (Second Republic, 1931-39), b) neither free unions nor works councils (1939-1953), c) works councils without free unionism (1953-1977), and d) unions and works councils (1977 to the present).

The first reflection on the possible introduction of works councils can be found in 1921 when the *Instituto de Reformas Sociales* (Social Reforms Institute), a governmental consultive organism, inspired by the experience of the German Works Councils in 1920, thought of the introduction of Industrial Cooperation Councils on the passing of the Law on Works Contracts. Unions and employers represented in this institute maintained very different stances and the project did not succeed (Borrajó 1975; Cabrera 1987; Soto 1989). This project advanced one step beyond during the Second Republic (1931), when a Parliamentary commission approved the creation of unionized *Intervention Councils of Workers and*

Employees in all non-agricultural firms with more than 50 employees. However, the employers opposed this project and it was not approved by the plenary sessions of the Republican Parliament (Borrajo 1975; Cabrera 1983).

The Spanish Civil War is well-known for its experience of seizure of firms. Revolutionary works-councils led by the anarchist CNT (National Confederation of Labor) and, also in some cases, by the socialist UGT, confiscated the enterprises to the employers and imposed a collectivistic form of production in agriculture and industry, especially in Republican regions such as Catalonia, Aragón and Valencia (Girona 1986; Bosch, 1987; Casanova, 1988).

The system of industrial relations changed dramatically during the first phase of Francoism (1939-1958), being based on the idea of corporations. Every union was outlawed, with the exception of the official one, which employers and employees were forced to join. Through the so-called vertical union, the State controlled labor relations in the belief that there was not a basic conflict between the interests of employers and workers. Wages and working conditions were regulated by governmental decrees, and the hierarchic organization of every firm was established by a set of State norms called *ordenanzas laborales*. However, the official union was unable to control the regulation of production in every firm, as its supporters were not so numerous as to be present in every workplace. So, restricted works councils elections were regulated in order to legitimize the vertical union and to control the effective implementation of the *ordenanzas laborales*. That explains why the law on *Jurados de Empresa*, the first form of works councils regulated by law in Spain, was passed so early (1947), long before the economic liberalization program of the late 1950's was initiated.

The second period of the Francoist regime (1958-1975) was characterized by economic liberalization. The autarchic model was replaced by an opening to international markets. Labor regulations were loosened through the introduction of a controlled system of collective bargaining (1958), which gave negotiating functions to the already existing works councils and paved the way for the birth of semiclandestine unions (Maravall 1978; Foweraker 1989; Balfour 1989). The State

had several ways of handling the system: control over the candidates to works councils at the workplace, approval of every agreement between employers and workers, and the right to exercise compulsory arbitration if both sides did not come to an agreement (Amsden 1972).

During the transition to democracy the main reforms in the field of industrial relations were aimed at granting bargaining autonomy to both employers and workers and at making our industrial system similar to other Western European ones. Free workers and employers associations were allowed, and most of the government mechanisms of intervention in this area were suppressed. Works councils were reformed as follows: a) changing their name from *Jurados de Empresa* to *Comités de Empresa*, b) spreading its compulsory presence: from enterprises with more than fifty employees to those with more than ten workers, although in the smallest firms the representatives were differentiated by calling them *Delegados de Personal* (staff delegates); c) reducing the role of the State in controlling the electoral system, workers and unions being free to present lists; d) giving the trade unions a set of advantages in the electoral system to compete in this arena; e) abolishing their mixed (employers and employees) character, and f) putting into the background the cooperative functions of works councils in favor of representative functions, without detriment to the managerial competence of employers.

There was a widespread conviction that works councils were institutions that should be retained in a democratic industrial system. However the question of their functions in relation to unions was problematic. At the beginning of the transition the union sections were not legally recognized, so many functions were in the exclusive hands of the works councils², mainly negotiation at firm level and strikes. Until 1980, through the Workers's Statute (*Ley Estatuto de los Trabajadores*, LET), the bargaining role of unions inside the firms was not recognized. (See below for the different positions of the unions.)

However, the new democratic labor legislation eliminated workers' representation (one worker for every six employer representatives) in the boards of

directors of companies, which had existed since 1962. That is explained by unions' refusal to participate in a minority position in the management of private firms and the resistance of employers to parity administrative boards. The State, however, has been less reluctant and unions are eager to participate in public institutions. This has been implemented in two stages: first, via union representation in public organisms of economic regulation; and second, with the introduction of the representation of unions in boards of public enterprises through the 1986 agreement between UGT and the INI (National Institute of Industry, the holding of public enterprises in Spain).

As a consequence of the process of democratization of Spanish institutions, a new union system emerged. Hence, in order to understand Spanish works councils better, it is worth sketching its main features in the new democratic scenario.

First of all, the Spanish union model may be labelled as one of *representative duopoly*. In the face of the multitude of union initials that were registered immediately following the opening of the Register of Union Organizations in 1977, the legal norms established mechanisms to ensure the role of majority unions in a similar way as French and Italian *most representative* workers organizations. But, in contrast with these cases, works councils elections are held during a period of three months every four years to grant union representation. This mechanism has caused the medium or small sized unions not strictly concentrated in one sector or geographical area to lose representative strength.

This representative duopoly has certain exceptions; the most important are those produced in certain autonomous regions. In the Basque Country, the Christian-Democratic ELA-STV (Solidarity of Basque Workers) has the highest percentage of committee members or staff delegates, and in Galicia the INTG (Nationalist Union of Galician Workers), now known as the CIG (Galician Inter-union Coalition), has more than 15% of the delegates in the region. Both achieved results that made them enjoy the status of representative unions in their regions and in state level agreements. On the other hand, at company level certain

minority unions exist that attain more than 10% of delegates with the consequent right to negotiate in agreements. This occurs with the socialist autonomous *Union Sindical Obrera* (USO, Works Union) in some old companies, the anarchist CGT (General Confederation of Workers), mainly in Catalonia, the CSIF (Independent Union Confederation of Civil Servants) in the public administration and with company unions or employee platforms that arise as a reaction to weak proposals from majority unions or a strong and charismatic leadership not integrated into those organizations.

A second feature of Spanish unionism has been its *political dependence*: As in other Southern-European countries, the majority unions have been politically linked with parties, the former being in a position subordinate to the latter.

The relationship of the Spanish Socialist Workers Party (*Partido Socialista Obrero Español*, PSOE) with the UGT is rooted in its birth. The UGT was set up by PSOE members and during the life of its first general secretary, Pablo Iglesias, the top leadership was the same for both organizations. However, after Iglesias' retirement in 1918 due to health reasons, the leadership was divided between Francisco Largo Caballero and Julián Besteiro, although each, in addition to others, were in both the PSOE and UGT executive committees³. During the Second Republic, both leaders, together with the emerging Indalecio Prieto, disagreed fundamentally on economic and political matters and there was an important dispute between their respective followers, which divided the party and union rank and file during the civil war (Gillespie 1989, 35-52). Following this division, both Largo Caballero and Besteiro lived in exile until the beginning of the seventies, a decade during which there was an emergence of younger leaders from Spain. Prominent among them were Nicolás Redondo, a Basque socialist involved in the trade union, and Felipe González. The UGT Congress in Toulouse (France) (1973) marked the entry of Nicolás Redondo in the top leadership of the union. Later, after Redondo relinquished his role in the party leadership in the 1974 Congress in Suresnes, Felipe González, leader of a Sevillian group of socialists, was named the new secretary general of the socialist party, with an executive composed of

domestic leaders based in Spain.

Until 1985, Redondo and González worked together with no great problems. Both had as a common goal the growth and organizational strengthening of their respective organizations. This could only be done through mutual assistance. The PSOE, the main opposition party from 1977 to 1982, made a common front with the UGT against the government of the UCD (*Unión de Centro Democrático*), a coalition of many small parties. Even during the first year of socialist government, the UGT took advantage of its idyllic relations with the government in order to get ahead in the union arena in opposition to CCOO. However, the PSOE's program of economic adjustment, carried out due to the absence of a strong political counterweight, entered into contradiction with the desire on the part of the UGT to protect working class interests. The new pension law, the project for industrial reconversion, the liberalization of employment markets, the priority given to the fight against inflation based on low wage increases in the face of the struggle against unemployment, all these factors caused a progressive deterioration in the relationship between the party in government and the unions. The schism began with Redondo's moves in the Parliament, such as his vote against the new pensions law, continued with the resignation of UGT leaders from the socialist parliamentary group and climaxed in a general strike on 14th December, 1988, which paralyzed the country in protest against the government's economic policy.

The CCOO, which was born spontaneously in the course of worker activism under Francoism, was to be used by the PCE (*Partido Comunista de España*, Communist Party of Spain) in its fight against the dictatorship from within its institutions. Although the union, as a nascent movement, was considered a politically independent organization committed to the struggle in favor of working class interests, and although it admitted not only independent members but also activists from other parties (Ariza 1976), the fact is that at the beginning of the seventies most its executive positions were held by PCE members.

CCOO experienced a similar process of autonomization from the PCE. Yet, the causes were very different. CCOO gained independence not because of

differences in one or the other's political strategy, but because of the party's political weakness. When the latter was strong, it used the union as a platform to foster its political objectives. But, after the 1982 elections, the PCE dramatically lost almost all of its parliamentary representation and the union recovered the political initiative.

Thirdly, Spanish unions are *organizationally weak*: If we take membership figures as an indicator, we can see that Spain has with France the lowest levels in Western Europe. Today, approximately 10-15% of the salaried employed population is affiliated to a union (Escobar 1991). Although the figures should be taken with caution because they come either from congressional union sources or from surveys, membership reached its peak in 1978 with an approximate 40%, a percentage that was reduced to a little more than 20% in 1981. If we only take into account employees in industry, undoubtedly the worker segment with the highest membership rates, surveys have periodically indicated a tendency towards decline since the end of the seventies. In 1978, only 42% of the industrial workers were not affiliated to any union. In 1980, a similar sample increased the proportion to 60.7% and in 1984 the percentage rose to 75.4% (Pérez-Díaz 1980; Pérez-Díaz 1992). Several reasons account for this dramatic decline: the ephemeral democratic euphoria, which led to an artificial growth in the desire to participate in public life, principally through neighborhood associations and workers associations; the initial belief that being affiliated leads to advantages over not being affiliated; the unions' inefficiency in negotiating favorable agreements for individuals in economic crises; the inoperativeness of these organizations in offering differential services to their members; the economic crisis with a high unemployment rate that did not favor stable membership at all; and finally, the evolution of the economic structure (the growth of the service sector, the black economy, or new forms of business organization). The membership decrease was strongest before the general strike of 1988, after which there are indications of a progressive absolute increase in affiliation, paralleled by the growth in employment. According to UGT congressional data, between 1986 and 1989 the number of militants grew from 333.000 members to nearly half a million, a 44% increase (UGT 1989, 53). In

CCOO, between 1984 and 1989, there was a 33% increase, membership increasing from 375.000 thousand to nearly half a million.

However, membership figures portray a very poor image of the power and influence of Spanish unions. We have to take into account the employee's solidarity with the union, an attitude that coupled with organization membership constitutes a predictor of union vote. At the beginning of the transition, three fourths of industrial workers were active in or in favor of a union. In 1980, 47.8% showed no support for any union organization, in 1984 this skepticism diminished only to 41.2%, despite the continuing decline in membership (Pérez-Díaz 1992), but this grew to 43.5% in 1988 (IDES 1989) and in 1991, although another wording was used, 62.4% of the employees did not sympathize with any union (Escobar 1991). We can consider, then, that there has been growing union disenchantment during the mid-eighties and early nineties.

But the unions' organizational weakness is especially manifest in its basic structure. The low number of executive staff working for the organization (in 1989 UGT had a staff of less than 100 people), the low number of cadres and the insufficient union formation of activists led to low effectiveness. Unlike its Western European counterparts, Spanish unions, together with Portuguese unions, are very young. After forty years of illegality, they have had to build their organizational structures in a limited period of time. Fifteen years accompanied by a long economic crisis are not enough to create a support of effective union activity. And this is even more evident if we consider the shortage of financial resources. Unions keep the dues low to avoid further depletion of union ranks, resulting in the need to keep costs (including payroll) low and at the same time they must offer services to those interested. Thus, unions have had to turn to other financial sources: the State has been the big union benefactor in the mid-eighties, mainly as a result of the law of restitution of union property confiscated by the Francoist Regime (this being very advantageous to the UGT). This clause has meant that the unions have headquarters and funds aside from those of the workers' dues.

Last but not least, Spanish unions have a *high mobilizing capacity*: The

situation the working class experienced during Francoism has favored this norm. During Franco's last twenty years, worker organizations were illegal; there was, therefore, no opportunity to train and to establish a formal network of union activities. On the contrary, the Francoist regime, by allowing collective negotiation enabled the leaders to carry out a task of worker mobilization in adverse conditions: semi-illegality of strikes, police control, etc.

Union mobilizations can be grouped into three types: sector or company strikes, general strikes and demonstrations.

Sector or company strikes constitute the main way of fostering labor demands. They take place either during the process of negotiating a collective agreement, or as a result of a failure to keep one that is already signed. The majority of working days lost are the result of this type of conflict. In 1988, year of the December 14 general strike, 58.3% of working days lost were due to general strikes. But in 1989 general strikes accounted for less than 1% of working days lost due to strikes. Conflict in Spanish companies during the eighties was the highest in Europe, at a slightly higher level than Italy's. Even so, Spain's highest figures were reached in 1976-1979 quadrennial (see 1), during the transition period, a time when workers mobilized for claims pending from the dictatorship period, and the unions used this mechanism as a means of establishing proof of its presence and political power.

Strikes usually take place in big employment centers and their effectiveness is also greater in larger concentrations of employees. With statistical data of conflict which establishes the number of employees and centers involved, we can, based on the isolated results of the 24 hour strike on 14th December of 1988, deduce that the average number of workers in work places in Spain is 6.3. In 1986, the average size of the centers involved was 30.2; and in 1988, without including the call to general strike, it was 8.4, the lowest of all those available.

The central indicator of the unions' mobilizing capacity is the effectiveness of their calls to strike, which can be measured either by the percentage of work

places which join the strike or by the percentage of workers supporting the conflict. Since 1986, the first year for which data are available with a homogeneous methodology, the effectiveness in work places has been above 70%, except in 1988 (if we exclude the general strike), which only reached 55%. On the other hand, the effectiveness measured in terms of workers is always higher than 75% during all years, in 1986 it even reached 93.8% out of a total of one and three quarter of a million workers called out on strike.

General strikes can be called in different geographical areas. During the process of industrial restructuring, several of them took place in affected localities, such as Sagunto and Reinos, two of the areas whose main industrial plants were closed, and in regions such as Asturias and Murcia. Since the beginning of the transition, in the last seventeen years, only five general strikes have been called that included the entire country. The first was called by CCOO against a wage freeze and in favor of amnesty, freedom and democracy. UGT had not yet celebrated its first congress and did not participate in the call to strike. The second general strike was called by the short-lived COS, the Coordinating Committee of Union Organizations that summoned UGT, CCOO and USO, against the referendum for a political reform and in favor of the political project of socialist and communist and other center-orientated or leftist parties, grouped around the *Platajunta*. The third arose out of the attempted *coup d'état* of 23rd February in 1981 led by Colonel Tejero. UGT did not call the strike, and the result was very lopsided. Another strike called only by the CCOO took place in 1985 as a result of the Pension Retirement Law. Fifth, there was the strike of 14th December, called by the two majority unions against the socialist government's economic policies and, more specifically, in favor of withdrawing the Youth Employment Plan project, which was a total success for its organizers. Lastly, in 1992 CCOO and UGT called a four hour general strike, with less success than its predecessor, against a governmental decree that cut unemployment benefits and a bill regulating strikes.

The evolution of works councils in democracy. The political and economic context.

Works councils played an important role during the transition to democracy in Spain (1975-1978). In the 1975 elections to *Jurados de Empresa*, CCOO promoted in many firms the *Candidaturas Unitarias y Democráticas* (CUD, Democratic Unitary Lists), a set of candidates belonging to different illegal parties or unions which were part of the opposition against the dictatorial regime. On the other hand, Anarchists and the Socialists of the renovated UGT opposed participation in these elections. The CUD obtained relative success in some sectors of the economy and in certain geographical areas. Balfour (1988) has reported some documents, found in the headquarters of the police in Barcelona, which include a chart of the results of those elections in the province of Barcelona. 69% of the elected delegates belonged to the CUD. Among them, police classified 44% as *red* (sic) and 25% as *non-red*, and among the former group, 9% were subclassified as *good* (sic), 13% as *neutral*, and 22% as *bad*, many of this category being members and sympathizers of clandestine organizations with a "criminal" record or at least a personal file in the archives of the police. In many places an alternative to the *Jurados de Empresa* system of organization of representatives was organized on the initiative of the workers. This system consisted in most cases of non-standing committees elected in mass meetings; it disappeared after the first democratic elections for works-councils in 1978.

This period was marked by a high mobilization with a political content in favor of democracy and strong demands for wage rises. With regard to the former works councils where representatives belonged to an opposition party or union played an important role in mobilizing workers (inside and outside) firm in favor of one of two paths to democracy. Two main political options were available at this time (Maravall and Santamaría 1986): *reforma* (reform) and *ruptura* (breakup). The former entailed a smooth process of democratization that preserved some elements of the previous regime; the latter favored a bigger change in the political system through the formation of a provisional government. Most of the local

workers' leaders endorsed the second choice and mobilized the grass-roots to achieve it (Fishman 1990). The confrontation between these two models resulted in the adoption of a mixed path called negotiated reform/breakup backed even by the main leftist parties, PSOE and PCE, which controlled the labor movement. On the other side, works councils and workers, backed by the semi-illegal unions managed to obtain high increases in wages during this period in a time of international economic crisis.

1977 was a key year in the transformation of labor relations in Spain: a) unions were legalized under a pluralist model, against the strategy of CCOO, who aspired to set up a unitary unionism; b) two governmental decrees were issued in order to clarify the regulation of industrial relations: the former regulated collective bargaining and the right to strike (R.D.L. 17/1977); the latter established the mechanism of workers representation through *Comités de Empresa* and established the rules for the first democratic works councils; and c) the first attempt to deal with the economic crisis via social pacts took place, although the first pact was carried out by the main parties with parliamentary representation, ranging from the moderate right to the communist party (*Pactos de la Moncloa*).

The second period (1978-1985) of the evolution of industrial relations in the young Spanish democracy was characterized by social pacts. After the political Moncloa Pacts, the first agreements (ABI, Interconfederal Basic Agreement, and AMI, Interconfederal Framework Agreement) were reached between the main employers organization (CEOE, *Confederación Española de Organizaciones Empresariales*) and the socialist UGT. While CCOO pursued a strategy based on the mobilization of the labor force, UGT sought negotiation with employers. It offered moderation in exchange for union recognition in the workplace. At a higher level, low increases in wages were agreed, but also the contents of the forthcoming LET. That produced a new issue of confrontation at firm and provincial level between the two main unions in Spain, because UGT agreed to negotiate wage rises within the limits laid down at elite level, while CCOO tried to mobilize

workers to obtain more benefits at least in firms not exposed to the effects of the crisis. A debate took place at this point about the structure of collective bargaining. CCOO defended an articulated negotiation, meaning that agreements at lower levels should obtain better conditions for workers, while UGT and CEOE favored the expansion of the conditions of higher levels to all the lower ones, except in situations of crisis.

This two-sided (UGT-CEOE) model of social consensus changed mainly for two reasons: first, the danger of a break-down of democracy expressed in the unsuccessful *coup d'Etat* in 1981; and second, the worsening of the economic conditions manifested mainly in high rates of unemployment. Both made CCOO begin to take part in the social consensus. Thus, the ANE (*Acuerdo Nacional de Empleo*, National Agreement on Employment) was signed in 1981 by the government, the CEOE and the Socialist and Communist unions. Two years later a new agreement (*Acuerdo Interconfederal*, AI, 1983) was reached with the participation of CEOE, UGT and CCOO, without the signature but with the approval of the Socialist government. These two agreements reduced the conflict between both unions, but generated tensions inside the CCOO that reduced its affiliation and its representation in works councils in favor of UGT. At that time there were signs that social pacts were efficient in controlling inflation and labor conflicts, but unable to improve the employment level in Spain (See 1). Finally in 1985, only UGT signed the agreement (*Acuerdo Económico y Social*) with employers and the socialist government that ended the period of centralized collective bargaining and incomes policies (Espina 1990). All of these pacts tended to focus on the space of the industrial relations outside the firm, giving a salient role to the union or leadership in detriment to works councils and other local union structures (Giner and Sevilla 1984; Roca 1987; Zaragoza 1988; Pérez-Díaz 1992). Inside the firms, though, a general disagreement developed between the two unions sections because of recent experiences of confrontation in negotiations (UGT was accused of following and implementing governmental policy, CCOO of backing the opposition of the communist party to the socialist government); and due to the competition for the votes of employees in the firm, since after the

superiority of CCOO in the two first elections, UGT, backed by the socialist party, had obtained the majority of delegates in the 1982 works councils elections.

Table 1.- Spanish macroeconomic indicators from 1975 to 1991.

Year	Unemploye nt	Inflation	G.N.P. W. Days lost	Strikes.(miles)
	Rate		Growth	
1975	4.0	16.7	1.1	-
1976	4.9	16.7	3.0	12593
1977	5.7	22.8	3.3	16642
1978	7.4	20.2	1.8	11551
1979	9.1	16.7	0.2	18917
1980	11.8	13.7	1.8	6178
1981	14.6	12.0	-0.3	5154
1982	16.5	13.8	1.2	2788
1983	18.1	11.6	1.8	4417
1984	20.9	10.9	1.9	6358
1985	21.9	8.5	2.3	3223
1986	21.5	10.5	3.8	2279
1987	20.5	5.9	5.6	5025
1988	19.5	5.7	5.2	6843
1989	17.3	7.0	4.8	3685
1990	16.3	7.3	3.7	2443
1991	16.3	6.9	2.4	4421

Fuente: I.N.E., *Contabilidad Nacional de España*, (base 1985), and I.N.E. *Encuesta de Población Activa*.

During this period of social pact, the main points of the labor policies of the socialist government were the following: in the industrial field, the Government promoted a tough plan to restructure several sectors affected by the crisis. In this process, the UGT defended moderate stances in line with government positions, CCOO adopted a mobilizing strategy, while works councils, supported by the grass-roots, exerted radical pressures to defend employment and achieve the best redundancy conditions. Second, the socialist government aimed at the flexibilization of labor markets: the chapter on employment of the Workers' Statute was amended in order to open the way for new forms of contracting. That was an attempt to increase the level of employment and facilitate the creation of new jobs, but it resulted in the segmentation of employees and the creation of two kinds of workers inside the firm with different interests, thus opening new problems for the works councils. The third policy concerned the unions. In its earlier period, the socialist government backed UGT. A new union law (LOLS, *Ley Orgánica de Libertad Sindical*, Organic Law of Union Freedom) was passed that gave the union sections a seat in works councils and the right to be recognized by employers. In the meantime, a set of measures were taken to fund unions in a way that favored the socialist workers' organization. Finally, after the Spanish entry into the EEC (1986), and as a result of a restrictive monetarist policy of the government that pushed up the interest rates, an increasing flow of foreign capital arrived in Spain, mainly in the financial sector, but also in key companies that were sold at low prices.

A new period began after 1985 when the UGT leaders' expectations that social democratic policies would be applied by the government were disappointed. This gave way to a process of symbolic and real tensions and estrangement between them and the socialist party. The first strains appeared in relation to the government's policy of industrial restructuring, but the issues that led to the greatest tension were a pensions reform designed to reduce public expenditure, the different plans to give flexibility to the labor market, such as the *Decreto sobre Empleo Juvenil* (Decree on Employment of the Young) which led the unions to call a successful general strike, and, more recently, the reduction of unemployment

benefits to cut the public deficit.

From the mid 80s there have not been social pacts at macro-level. UGT argued that it was time that workers benefitted from the economic improvements and business surpluses, to a large extent caused by salary moderation during the democratic transition. The government, however, absolutely refused to give in to these aims, arguing that such a growth in salaries was incompatible with the objectives of low inflation and being competitive in the European market. The CEOE closed ranks around the government's argument, while CCOO, in the face of PCE's political weakness, tried to reach an alliance with UGT, because this would imply the weakening of the socialist party's workers base. In consequence, the wage agreements had to be carried out in regional, provincial or firm level negotiations, where UGT and CCOO tried to obtain improvements above the wage growth advised by the government. In the public sector, where negotiations take place between government and union representatives, no agreement was reached and the level of conflict grew, while in the private sector, the CEOE, in a context of economic recovery, was willing to sign salary increases as long as social peace was assured and perhaps in order to divide unions and government.

The effects on works councils of this new economic and political scenario were evident. UGT and CCOO representatives were more likely to arrive at similar positions in negotiating with employers, mainly managers of public firms, and at the same time they enjoyed a greater autonomy with regard to central unions, as long as they were not constricted by top-level negotiations. Even in the last two years, 1991 and 1992, unions have not given any common suggestion to their members in the negotiating boards about wage increases, and unionized representatives have begun to negotiate high salaries in exchange for collaboration with employers that are trying to adapt their firms to more open markets, as a result of the integration of Spain into the EEC.

Present regulation of the Spanish works councils

The structure, composition, election, duties and rights of Spanish works councils are highly regulated, mainly through the LET approved by Parliament in 1980 at the end of the democratic transition. Besides, this law permits further regulation via formal or informal collective agreements and it is complemented by a large series of court rulings resolving conflicts of interpretation between employers and employees (Rodríguez-Sañudo 1988; Martín 1991; Albiol 1992). The competencies that the LET confers to the works councils are the following:

a) *Information rights*: The employer must inform the works council on at least a quarterly basis about the economic evolution of the sector and the prospects of production, sales and employment of the firm. The representatives of the workers have also to be informed annually of the balance and the annual account, and, if it is a joint-stock company, the employer has to provide them with all the documents that it distributes to the shareholders (LET, 64.1.1 and 64.1.2). Works councils must also be informed regularly on other topics, such as the evolution of the level of absenteeism and the statistics on work accidents and professional diseases (LET, 64.1.7). *A posteriori*, the works council has to know all the sanctions imposed on the workers for very serious offenses (LET, 61.1.6). Finally, the works councils are empowered to receive all the written forms of contracts (LET, 64.1.5), and since 1990 the employers have had to give them an abstract of every new employee contract, with the exception of those of high-management staff (LDIRC, Law on the Information Rights of the Representatives in Contracts Matters).

b) *Reporting (consultive) rights*: Although the LET assures management functions only to the employers, works councils have to be heard in a series of cases such as the reduction of working time, redundancies and reorganization of jobs, functional and geographical mobility of a group of workers, plans for training, introduction or revision of systems of organization or work control, and the introduction of changes in the incentive system and evaluation of jobs (LET, 64.1.3). These are important resources of control for works councils on management decisions. The LET specifies that in cases of redundancies and major

changes on work organization, the management has to get authorization from the public authorities unless an agreement is reached with the works council (LET, 41).

c) *Rights to legal action*: One of the most important functions that works councils perform in Spain is monitoring the implementation of labor legislation and collective agreements. For this purpose, they have the right to perform judicial or administrative actions against employers and can report them for not observing legal prescriptions regarding not only the sphere of the works council, but also of the entire workforce of the firm (LET, 64.1.8).

d) *Negotiation rights*: From the legal reintroduction of collective agreements in 1958 at a moment when the unions were banned, works councils have been entitled to sign agreements at firm level. Nowadays, they maintain this legal right, while unions have to meet certain criteria to do so⁴. The scope of the bargaining competencies of Spanish works councils includes wages, working hours, union rights and any other labor question (LET, 87).

e) *Strike calls*: While many other European works councils are forbidden to call strikes, this Spanish body of representation enjoys that right. This is exercised usually while the negotiation is taking place, during conflicts of interpretation of collective agreements or even as a means of pressure against unwanted employers' decisions not regulated by law or agreements (RDL 17/1977, 3).

f) *Managing social funds of the firm*. Almost every big firm in Spain has a special fund that improves the social welfare of their workers. This is a small amount of money that is used for low interest loans, subventions to the school of children's employees, organizing sports competitions, parties and firm clubs, and so on. According to the law these funds have to be co-managed by the works councils jointly with the employers.

As in return for these rights, the members of Spanish works councils have the following *obligations*: a) to collaborate with managers in order to attain the maintenance and growth of productivity (LET, 64.1.10); b) to inform the employees

on all matters related to the labor relations in the firm (LET, 64. 1.11), and c) maintain professional secrecy in relation to all the information the members of works councils receive in their capacity as representatives (LET, 65.1).

Finally, the law forces the employer to provide the works representatives with the following guarantees: a) an adequate office space and notice boards, b) paid time-off to perform their representative functions, according to the number of employees in the workplace, and c) special protection in relation to dismissals (LET, 68).

Spanish works councils are composed of a group of workers elected by the entire workforce of the firm. However, when there are more than 250 employees, works councils consist also of union delegates that have the same rights and obligations, except voting. The number of members depends on the number of workers it represents (For a schematic representation, see **¡Error!Marcador no definido.**). The LET establishes that the basis of an election is the workplace, but the definition of this basis is unclear. The different locations and sizes of workplaces that a firm may have is a source of conflict of definitions between employees and employers to delimit the constituencies of works councils. The former, as well as unions, try to multiply the elections whenever they have the security of having an adequate organizational structure in single work places, while the latter tend to concentrate the elections in order to minimize the costs of representatives. **¡Error!Marcador no definido.** shows the number of representatives allowed for every size of the constituency. If a firm had, for example, three plants in the same province, each of them with two hundred employees, it would be possible either to set up three works councils with nine members each or to have only one works council with seventeen representatives. That implies a reduction of ten members (17 instead of 27), but the amount of paid

time-off is greater. The seventeen representatives are entitled to 595 hours per month, whereas the twenty seven only have 540 hours. One good example of the possible reorganization of constituencies is RENFE (the national company of railways) which before the 1986 elections reduced the number of representatives from 1947 to 1139 and the number of constituencies from 134 to 51, one works council for each of Spain's mainland provinces, except for Madrid which has four and Barcelona two (Ferner 1988, 94).

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Although the entire workforce of a plant or firm has the right to vote⁵, the LET (71) and the Decree 1311/86 regulate the holding of elections in workplaces with more than 49 employees into two colleges⁶, the first for technical and administrative staff, and the second for skilled and non-skilled workers. The LET leaves to collective agreements the possibility of creating a third college initially conceived for management staff. This possibility has scarcely been put into practice, as in the last elections of 1990 (excluding Basque country data) only 8143 voters were classified in this third electoral college (UGT 1992). The objective of this division into colleges is to assure the proportional representation of each group of workers where one of them constitutes a minority of the workforce in a firm, in order to avoid the loss of legitimacy of the works councils for a set of employees with special characteristics and, often, different interests.

Unions or employees can call for elections every four years. The existence of works councils, then, is not compulsory unless there is an initiative either from a representative union or from the majority of employees of the constituency (workplace, plant or firm). Most of the works councils elections take place during a period of three months, devised for computing the results to grant the status of representative to a union at a level (geographical and functional) above the firm. In cases where several unions or groups of employees call for the elections, the first initiative has priority over the second⁷. In the last elections of 1990, CCOO, as a representative union at national level, and so with the right to call for elections everywhere, proceeded in this way and established the schedule for the holding of

elections in more than 200.000 workplaces. CCOO's strategy was to call elections for the beginning of the three months period those elections that were going to take place in work places where they expected to achieve a majority, and delay elections to the end of the period in those firms where its victory was probable. So, the rival unions campaign would not jeopardize victory in "CCOO firms", while the other ones could be changed by a good campaign carried out by CCOO. Furthermore, good results for CCOO in the former firms could also influence the latter. However, this strategy did not have any other effect but a harsh confrontation between the two main unions and a campaign of mutual charges of electoral fraud during the three month elections period⁸.

The presence and composition of works councils in Spanish firms.

From the first democratic elections in 1978, there has been an increasing trend in the number of workplaces where a work council election is held within the three month reference period. As it is shown in **¡Error!Marcador no definido.**, one may see a stabilization between 1978 and 1982 when the elections were held every two years, but after 1986, the number has increased sharply. This can be attributed to a growing competition between the two main unions, and to the 1985 LOLS, which gave unions more rights in the workplace and confirmed that the criteria for union representativeness were to be based on the results of these elections. According to this law, a union is representative at any level if it obtains more than 10% of the representatives at national level or if it obtains more than 15% of the representatives at regional level. Furthermore, due to the 1977 Moncloa Pacts, since 1979 unions and employer associations have been able to participate in state agencies such as the National Institute of Unemployment (INEM), the Health National Institute (INSALUD), the National Institute of Social Services (INERSO) and others, whose posts are distributed according to the electoral results⁹. Besides this, the socialist government began to finance unions proportionally to the number of representatives they obtained in works councils elections¹⁰.

[INCLUDE HERE **¡Error!Marcador no definido.**]

It is very difficult to determine precisely the number of firms where works councils are established, because the statistical figures reflect centers of payments to Social Security, and in certain cases they do not have the same limits as the constituency of a works council. According to **¡Error!Marcador no definido.**, there was about 20,000 centers of this type with more than 50 workers in 1989, while about 14,000 works councils elections took place in work places of this size. On the other hand, the number of workers in these firms is around 4 million while the electorate is about 3 million. An approximate calculation shows that about 75% of the workers in firms with more than 50 employees have the opportunity of voting for a representative and that roughly 70% of the workplaces of this size have a least one works council. More precisely, in the 1990 elections, the 109,133 works councils officially counted represented an electorate of 5,443,283 employees. Due to the fact that the salaried population in Spain at that time accounted for more than 9 million, the percentage of workers represented by staff delegates or works councils is 60%. This figure could be a bit higher because some elections do not take place within the period in which the results are calculated¹¹ or are not included in the official results, due to problems of procedure.

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Another source of evidence on the representation of works councils are surveys. In the 1984 survey directed by V. Pérez-Díaz, only 10% of the industrial workers in enterprises with more than five hundred employees answered that there was not a works council in their firm, and 50% of those who worked in a firm of less than 25 employees gave the same negative answer. The overall results of the six sectors interviewed (Metal, Textile, Building, Mining, Chemicals and Food) showed that 23% of the employees did not have representatives in their workplace. It was very unlikely for a person employed in public firms of those sectors not to have a representative (8%) and the same could be said of workers in multinational firms (12%), while for those employed in a private national firm they were more likely not to have representatives (26.5%).

Another important aspect of the legal regulation of the Spanish works council is the electoral system. While if the workplace has less than 50 workers the employee can vote for one or three candidates, in the elections held in larger work places the voter has to choose between several closed lists. Each of these electoral lists is composed of an ordered set of candidates belonging to the same union¹². The effects of this design are quite evident. First, it gives the union section the power to nominate the candidates, and second it is very difficult for a non unionized/organized worker to present his/her candidacy, even though it is possible whenever he/she is able to convince as many people as the number of work councilors of his/her workplace and obtain in his/her constituency signatures of workers equivalent to three times the number of seats in the works council. However, every group of workers inside the firm can be registered legally as a union and in this case it does not need to collect the signatures of other workers. That explain the picturesque names of some unions that gained at least one seat in the 1990 elections¹³.

A problem that the system of closed list creates is that a union may not have enough activists in a workplace to complete it. The result is that in some non-unionized firms the union list had to be composed by a mix of both unionized and sympathizer employees, generally the former at the top and the latter at the bottom. Even with this redistribution, there is evidence that an important subset of representatives elected under the symbol of a union are not affiliated to it. In a survey on representatives and affiliates of the UGT, 24% of the members of the works councils elected from the union lists were not affiliates, 5% quit the union after the elections took place, and out of the 71% of the affiliated representatives 22% had joined the union after the elections year (Bouza 1989). Although there are no data available on the other main union in Spain, it is likely that the percentage of non-affiliated representatives in CCOO is even higher, as a result of the more open attitude of this union to non-affiliate workers.

The official results of the different elections (**¡Error!Marcador no definido.**) show the high and increasing degree of unionization of works councils.

While in the first free election 18% of non-union candidates were elected, in the last elections less than 5% percent of delegates belonged to a group of independent workers. Quite on the contrary, only two unions obtained almost 80% of the members of works councils. That confirms the Spanish union model of biunionism, with the exception of two autonomous regions: the Basque Country, where a nationalist and Christian-Democratic union gets more than 37% of representatives, and Galicia, where a nationalist leftist union shares more than 23% of the seats in the Galician works councils. These results are interpreted by the winning unions as a triumph of the class-oriented labor movement, whereas the rest of the unions (USO, CGT and CNT) attribute these results to the electoral mechanism, fraud and political and governmental help to the winning unions. Anyway, the electoral rules, including the proportional system in small constituencies which exclude from works councils candidates from lists with less than 5% of the votes, favor those big unions with the ability to present lists in a large number of workplaces. Comparing **¡Error!Marcador no definido.** with **¡Error!Marcador no definido.**, it is evident that those less favored by the electoral system are the small unions as they obtained 12.5% of the votes, but only 7.1% of the representatives in works councils.

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In **¡Error!Marcador no definido.** some patterns of voting may be observed. Although in the whole, UGT is the winner with 42.6% of the votes, in workplaces with more than 49 employees the proportion of votes is higher for CCOO (39.8% *versus* 37.0%). The main differences between these two unions are found in the second college of skilled and non-skilled workers, where the difference in percentages is almost 15 points in favor of CCOO. Other interesting data are that small unions and non-affiliated candidates obtain the majority of their votes in the first college of technical and administrative staff, while more than 50% of the votes for UGT come from the elections of staff delegates in workplaces with less than 50 workers.

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Another perspective which proves the degree of unionization of the Spanish works councils is the percentage of them where one of the two big unions is represented. As there is no data available at this level for 1990 elections, we have to consider data for 1986. Out of 11653 works councils where the results were computed 7602 of them had at least one UGT representative, and 6944 had CCOO members (**¡Error!Marcador no definido.**). And out of 531 works councils representing more than 500 employees, only 9.8% of them had neither UGT nor CCOO representatives and 55.0% had only UGT or CCOO lists members. However, it was difficult to find in this segment works councils with only UGT (5.6%) or CCOO (5.6%) candidates.

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The data on those works councils where a union had a majority is only available for the region of Madrid. In this area (**¡Error!Marcador no definido.**) 12% of works councils did not have representatives of the two main unions. 39.2% of works councils in Madrid had a CCOO majority, while UGT had more than half the representatives in only 23.5% of them. However, computing together both unions, they had a majority in 73.5 of these councils.

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Another important fact that the same **¡Error!Marcador no definido.** illustrates is the difference between non-computed and computed figures. The former are not added to the official results due to procedural failures. In the region of Madrid around 15% of work councils elections were not included in the final statistics, and moreover the official figures favored the two main unions, which sit in the committee that judges the reliability of the acts. Thus, while including non-computed results there were 15% of works council

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Thus expressed in the first democratic regulation of industrial relations, the Royal Decree 17/1977, promulgated by the Government, before the legalization of unions.

According to data contributed by Tuñón de Lara, at the end of the twenties "of the eleven positions in each organism, eight were filled out by people who were in both, and five who held levers of daily decision-making were the same in both organizations" (Tuñón de Lara 1985, 257).

The recognition of the employer or having, together with other representations in the bargaining board, more than 50% of the representatives elected in the functional and geographical area of the negotiations.

The elector has to have been at least one month in the firm and the nominee at least six months (LET, 69).

If the workplace has less than 50 employees, there is only one college (LET, 70).

The rules that control the works councils elections are written by the Labor Ministry under the form of a Decree. The most recent are RD 1256/86 and RD 953/1990.

Even after the elections there were intensive mutual accusations in computing the results as a consequence of suspicions of fraud. That is why the labor authorities only published the official results one year after the end of these elections.

A good example of the importance of this representation is the fact that in every province the union has the right to have representatives in every state agency with provincial offices. One union which obtains majority in all the provinces would have a hundred representatives only in one agency, while the second union would have only fifty.

UGT, the union with most privileges in receiving subsidies, recognized an amount of 2,127 millions of pesetas out of a total income of 5,202 millions between January 1986 and June 1989 (UGT 1989, 158)

For example, B⁺, a firm with about ten thousand workers, held elections one year before because its first elections were out of the official counting period and it followed the periodicity established by the law. During the election period the members of the works council and other trade unionists promoted elections in other firms instead of campaigning in their own workplace. Besides, firms created between 1986 and 1989 could celebrate elections for the establishment of a new works council and wait four years until new elections.

These are the rules from 1982. Before this time, the system was more complex and the employees had to select both a list and a name within it.

For example: *Sociedad Obrera: La Marítima Terrestre* (Works Society: The Land Marine), *Asociación de Mandos Intermedios y Subordinados Reunidos*, (Association of Intermediate Command in Joined Tubes) , *Asociación de Personal Encuadrado en la Tercera Categoría de ENDESA* (Association of the Staff Comprised in Third Category of ENDESA), *Asociación Profesional de Personal de Segunda Categoría de ENDESA* (Professional Association of Second Category Staff of ENDESA).