



Non-union employee representation, union avoidance and the managerial agenda

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Abstract

Non-union employee representation is an area which has attracted much interest in the voice literature. Much of the literature has been shaped by a dialogue which considers NERs as a means of union avoidance. More recently however scholars have suggested that for NERs to work in such contexts, they may need to be imbued with a higher set of functionalities to remain viable entities. Using a critical case study of a union recognition drive and managerial response in the form of an NER, this paper contributes to a more nuanced interpretation of this dialogue. A core component of the findings directly challenge existing interpretations within the field; namely that NERs are shaped by a paradox of managerial action. It is argued that the NER failed to deliver for employees because of structural remit, rather than through any paradox in managerial intent.

Keywords: non-union representation, union avoidance, worker participation, case-study

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Introduction

With the decline in union membership and representation coverage, increased attention has switched to the study of alternative, non-union forms of employee representation (NER). Despite, and because of the decline in indirect union voice, a research focus has grown in the area of analysing motivations for, and structures of, indirect non-union employee representation (Willman *et al.* 2006; Purcell and Georgiadis, 2007; Marginson *et al.* 2010). Essentially, NERs are employer sponsored bodies of formally organised employee voice. In terms of structure, this incorporates a variety of diffuse formats and there is typically considerable variation in the precise structure and level at which they function. As outlined below, two rather different streams of thought have emerged on the subject of NERs: NERs as simply a union avoidance tactic and NERs as part of a sophisticated HR stratagem to deliver employee voice in the context of building a mutual gains work environment. The core concerns of this paper are to two questions: First, to understand, how a management used an NER to undermine a union recognition campaign? Secondly, can an NER, founded in such circumstances, ‘transform’ into a vehicle for achieving mutual gains?

In considering these questions, the article draws upon a case study of a British multinational and its efforts to introduce an NER in combat a trade union campaign for recognition in the Republic of Ireland. However, whilst the NER was in many respects shaped by a managerial concern to undermine trade union support, it also featured as part of a wider organisational attempt to foster a a more harmonious, union-free environment. The article is laid out in four sections. Section Two elaborates on the relevant literature themes, specifically in terms of the conceptual debate over whether NERs are principally bulwarks of union avoidance or whether their role is more nuanced and complex in the sense of being underpinned by a variety of managerial objectives. Section Three outlines the research method. Section Four offers background information on the case study organisation before moving on to the findings in Section Five.

Finally, Section Six discusses the main lessons to be drawn from the study, raising their implications for understanding NERs as part of a managerial approach to employee voice more generally.

Two different approaches to NERs

Essentially, NERs are employer sponsored bodies of formally organised indirect employee voice. In terms of structure, they tend to incorporate a multiplicity of diverse formats, with significant differences in the precise structure and level at which they operate (Charlwood and Terry, 2007). For example, studies of NERs in the UK found that not only can they operate in a ‘pure’ form in exclusively non-union sites, but that they can also operate in a more hybrid fashion sitting side-by-side with union representation channels in the same firm (ibid; 324-325). A useful encompassing definition of NERs is provided by Taras and Kaufman (2006)::

...one or more employees who act in an agency function for other employees in dealings with management over issues of mutual concern, including the terms and conditions under which people work...In setting up such plans management expects that the plans will encourage cooperative, advisory and consultative modes of interaction so that friction points between management and workers can be lessened or eliminated. In taking on a representational function, workers expect that NER will provide a meaningful form of employee voice, a capacity to influence management decision-making, and recognition by managers that workers have a right to respectful treatment.

(Taras and Kaufman, 2006: 132)

Whilst NERs arrangements are likely to be found in a number of diverse forms, Gollan (2000) has identified five common elements. First, membership of representative committees is restricted to employees in the organisation. Second, there are only limited formal linkages to outside trade unions, external employee representative organisations, or none at all. Third, the firm provides resources to support the employee representative organisation. Fourth, there is a representation of employees’ interests

or agency function, as opposed to the more direct forms of individual participation and involvement. Finally, such structures represent all employees at the establishment or workplace level.

Generally, two different approaches to interpreting NERs can be found within the literature. The dominant approach has been to characterise NERs as little more than sophisticated union avoidance institutions (Roy, 1980; Kelly, 1996). Recently efforts have emerged which attempt to move beyond the substitution thesis, often emphasising that managerial strategies can be quite complex and underscored by a variety of aims and objectives than mere union avoidance (Dundon and Gollan, 2007; Butler, 2009a; 2009b). The foundations to both these approaches will now be elaborated.

NERs and union avoidance

NERs have been treated with an enduring scepticism amongst many Anglophone scholars of employment relations, who tend to conceive them as an assailment upon independent employee voice, empowerment and workplace justice (Ramsay, 1977; Upchurch *et al.* 2006). A range of studies have illustrated how NERs are frequently used in the midst of union organising campaigns (Van Den Broek, 1997; Peetz, 2002; Gall, 2004; Logan, 2006). According to this interpretation, NERs are introduced to supplant the union role by showing that the union is unnecessary through offering mechanisms for resolving grievances and giving expression to non-union employee voice. This ‘replacement’ or ‘substitution’ thesis has a long tradition in employment relations research more generally. For example, in a now classic study, Bain (1970: 131-132) cast NERs as a vehicle whereby employers ‘peacefully compete’ with unions for the loyalty of employees. Roy (1980) illustrated how NERs served as a recurring fixture in the web of defences deployed by employers combating union organizing campaigns in the United States. In his study NERs featured as a form of ‘sweet stuff’, whereby employers’ affected a ‘pluralist’ architecture to dissipate employee demands for independent union representation. Theoretically this idea resonates with Ramsay’s (1977) ‘cycles of control’ thesis. Here consultation is introduced by employers when they feel their authority is being challenged. Regimes of participation are then introduced by management so as to

secure labour's compliance. Contemporary studies have continued in this vein. For authors like Kelly (1996) and Danford *et al.* (2005; 2009), NERs are merely a means through which management can maintain their non-union status or, in cases of weakened or de-recognised unions, consolidate the shift to non-unionism.

There is a strong body of international evidence supporting this interpretation. In four UK cases studied by Dundon (2002: 8) for example, “management derecognised the trade unions, but in place they promoted their own form of employee involvement: company councils and semi-autonomous work teams”. In two others, “a series of worker participation schemes were implemented to counter claims for collective representation” (Dundon, 2002: 8). Similarly, Gall and McKay (2001) observed that employer resistance to union organising in the UK was marked by a recurring trend to formalise and institutionalise non-unionism by establishing ‘consultative’ and ‘representative’ forums, where staff issues and grievance could be dealt with. While such institutions in non-union settings have a relatively low incidence in the UK (Kersley *et al.* 2005), they appeared to be fairly common in situations where the employer opposes a recognition campaign (Gall 2004). In a study of Irish employer opposition to trade union recognition, D’Art and Turner (2005: 130) observed that the creation of NERs was the second most typical response used by companies after ‘captive audience’-type discouragements of union membership. Similarly findings have been found in Australia (Peetz, 2002) and the US Logan (2004).

In this context, NERs are found to be deficient, providing little else than ‘cosmetic’ (Terry, 1999) or ‘symbolic’ (Wills, 2000) offerings of employee voice and functioning as a poor cousin to union-based bargaining (Lloyd, 2001; Waitling and Snook, 2001; Gollan, 2006). Within Broad’s (1994) study of “DenkiCo” for instance, although numerous issues around the organisation of work, single status and planning were formally tabled, the council habitually failed to bring any influence to bear. Lloyd’s (2001) study of “Aeroparts” observed changes to shift patterns and the distribution of overtime which were unilaterally forced through by management (Lloyd, 2001: 322). Much of the data is demonstrative of an

absence of institutional distance between delegates and their managerial sponsors, amid concerns that representatives are commonly ‘in the pockets of management’ (Watling and Snook, 2001: 8). Ultimately such outcomes have been traced back to notions of power and independence (Gollan, 2002; Butler, 2005). Put simply NERs are seen to lack both: they typically do not have recourse to legal or union-based sanctions and as employer-sponsored structures, are, ultimately, interpreted as quisling bodies with little meaningful autonomy.

Beyond the union avoidance thesis

However, a different line has recently emerged, suggesting that only partial insights are gleaned from those accounts which too readily dismiss NERs as bulwarks against trade unionism. This line has argued that while union-avoidance may trigger such bodies, employers may come to later imbue them with other functionalities which, potentially at least, may serve positive functions for workers (Taras and Kaufman, 2006; Dundon and Gollan, 2007; Butler, 2009a; 2009b). In addition, managerial strategies towards NERs can often be about delivering an effective employee voice that affords employees the opportunity to develop their knowledge and skills and enabling them to contribute to decisions normally reserved for management (Gollan, 2006; Haynes et al., 2005). In the US, Kaufman (2003) has outlined how the formalisation of voice through NER structures can provide employers with an opportunity to fine-tune managerial messages, which adds a greater degree of legitimacy concerning the non-union arrangements across the workforce. This reflects the argument that non-union employee voice can serve multiple purposes and objectives (Dundon *et al.* 2004).

A component of this argument is an awareness that NERs, imbued with the singular logic of combating union organizing drives, will prove potentially self-defeating when not aligned to wider HR policies and practices (Pun *et al.* 2001; Taras and Kaufman, 2006). Indeed this resonates with the advice of ‘management consultants’ specialising in union avoidance assistance to firm, wherein, they will warn clients to avoid short-termist cosmetic exercises in favour of more robust long-term attempts at creating

workplace harmony so as to avoid unions in the future (c.f. Levitt and Conrow, 1993; Mooney, 2005; Logan, 2006). That is, if employers allow the NER to simply fall into disuse when the union threat subsides, they risk a return to conflagration in the future. Empirical evidence suggests that unless non-union forums work satisfactorily for employees, they can readily switch their allegiances to trade unionism (Dundon *et al.* 2005; Taras and Chapman, 1999). Thus for employers there may be an imperative to see the NER move beyond the initial remit of union avoidance to incorporate a transformative, positive-sum programme. The spectre of unionisation may be enough to initiate a ‘renaissance’, whereby avoidance co-joins with the softer rationales of fostering cooperation, morale building and maximising unity of interest. Accordingly, the NER may outgrow its initial “socially pernicious” impulses and evolve into a body that delivers transformative positive-sum outcomes (Taras and Kaufman, 2006: 531).

Yet little empirical work has afforded such potentialities adequate attention. Rather, a trend of empirical studies has been preoccupied with accounting the lack of formal autonomy and power NERs display. Equally important insights might be secured from focusing on why some NERs ‘work’ as union-substitution mechanisms. Whilst it is true that an employer-sponsored NER born in the midst of a recognition dispute might find itself upon inhospitable grounds, it may maintain its lifespan if a credible relationship is fostered between the parties (Beaumont and Hunter, 2005).

To take this argument further, understanding NERs in the context of union avoidance as simply an employer design to maintain the union-free prerogative offers little in the way of appreciating how such a body might proceed in its ‘day-to-day’ functions (Dundon *et al.* 2005). Some efforts in this regard do exist in the NER literature as a whole, but seem to have limited applicability to the circumstance of NERs in countering union avoidance. The problem is that hitherto studies of NER have a tendency to lapse into portrayals of an omnipotent management dominating an acquiescent workforce. In Butler’s (2005) study of ‘MediCo’, representatives were a powerless mass “imbued with managerial interpretations of given

situations” (p. 282) and “heavily and systematically exposed to the managerial agenda” (p. 284). Similarly in Kirkbride’s (1986) evaluation of the non-union representative body at ‘Betacalave Placid’, management seamlessly manipulate an ideology of hegemonic properties in order to reinforce its will. The characteristic outcome is “an unconscious compliance” of representatives with “managerially imposed definitions of reality” (Kirkbride, 1986: 23). While in Cressey’s (1986: 80) seminal study of two American multinationals, management were successful in “installing a corporate enterprise consciousness that overrode wider class or workgroup interests”. This seems to discount that even the most subordinate agents have some resources at their disposal, which they can use to influence the actions of their superiors. This may be particularly true of cases where NERs have been inserted to combat actual union organising campaigns or where they have been designed to pre-empt the potential influence of a union. The representative robustness of an independent trade union may be lacking, but employers have an incentive to ensure that it meets some of the substantive demands of the workforce. Yet it remains uncertain as to whether a NER fades when the union threat subsides or continues to be vigorous in order to ‘see off’ future encroachments, or indeed to continue to meet employee expectations for voice. If it is the latter, then this may mean that a strong impetus exists amongst management to NER evolve beyond its initial terms of reference into a ‘positive-sum’ body. The capacity of the NERs to achieve this may depend on a number of crucial variables) including the relative power of management and trade unions in a particular firm; the relationship between the union and its members over time and the intentions and choices of the employers in managing the NER (Cooper and Briggs, 2009).

Most studies remain sceptical on the viability of the NER to develop into a positive-sum body however. Ramsay (1977) proposes that the framework of common interests upon which such participation schemes are often premised are untenable, and in practice the efficiency of such schemes become severely attenuated by the realities of underlying structural conflicts. Over time, managerial interest in such bodies wanes as the threat from labour recedes. Echoes of this are found in the more recent literature on NERs. A number of authors have advanced that management sponsored NERs are readily diluted because of their

dependent nature, their tendency for management dominance and their inability to move beyond the most basic communicative mechanisms (Upchurch *et al.* 2008; Danford *et al.* 2009; Butler, 2009). At the core of the management NER agenda is a conundrum shaped by efforts designed to defend prerogative *à la* Ramsay and, generate employee engagement through the structured involvement of the workforce. These demands, it is claimed, are incompatible with the latter being readily subsumed by the later. The NER becomes the reverse mirror of its own ambitions, reflecting the very opposite of its claimed intent.

It is in the context of these types of concerns that this paper is set. Specifically the paper seeks to further inform this literature and address the kinds of concerns outlined above by engaging with two research questions:

- First how effective is a NER in undermining employee support for trade union recognition in the context of a union organising campaign?;
- Second, can a NERs, founded in such context, ‘transform’ into a ‘positive-sum’ body?

The Case and Methodology

To address these two research questions, a purposive sampling strategy was deployed and conducted through a qualitative single-case study. Given the particular, and rather specialised, nature of the target population – organisations who have opposed trade union recognition requests and developed NER regimes - purposive sampling was necessitated. It may often be used in instances where a researcher wants to identify a particular type of context or episode for investigation (Babbie, 1995). Often, purposive sampling is utilised where a researcher is working with a general analytical concerns or debates whose overall conceptual purchase they are seeking to determine. Ultimately, as Yin (1994) has pointed out, the researcher in this context is not capable of, or even seeking to, generalise to wider populations. Rather the concern is to make generalisations to theory through the use of ‘critical cases’ (Yin, 1994; Eisenhardt, 1989). Thus a particular theoretical argument which attempts to make generalisable statements to a population of cases can be examined by either finding representative cases which fit, and demonstrating

what would have been expected or predicted, or conversely, demonstrating that the theory fail to hold in these particular cases.

The case study is derived from a larger research project examining the comparative effects of the EU's Information and Consultation Directive in the Republic of Ireland and Northern Ireland in cross-border organisations. *BritCo* is a former UK state-owned enterprise, privatised under the Thatcher government in the 1980s. In 2000, *BritCo* acquired an indigenous company in the Republic of Ireland, becoming the second largest in its sector in the country. In 2005, the *BritCo* business in the Republic merged with the existing Northern Ireland group, forming *BritCo Ireland*. It currently employs approximately 3000 staff on the island of Ireland with about 2000 in the Republic and a further 1000 in the North. While the business operates on an all-island basis, the company's human resource approach is fundamentally different across the two jurisdictions. In Northern Ireland for example, *BritCo Ireland* is heavily unionized, recognizing two trade unions – one for engineers and call-centre staff and one for management. This is an inherited legacy of the company's public sector past. In the Republic however, where this case study is based, *BritCo*'s business acquisitions were in the non-union sector and the company, in spite of the merger with the unionized North, has actively promoted a non-union relationship.

In this case study, the field research had access to all levels of the firm, from top management down. Our study incorporated a longitudinal component, allowing the case to be studied over a reasonably lengthy two-year period. This involved repeat visits and numerous follow-up discussions with key organisational stakeholders. An assortment of primary and secondary data collection methods was used. The findings are based largely on semi-structured interviews (lasting between one and three hours) with all levels of management (including the Chief Executive Director and Human Resources Director of *BritCo Ireland*), union officials, non-union representatives, shop stewards, as well as shorter interviews (up to one hour) with samples of employees. These amounted to twenty-six interviewees over a two-year period. In total

the interviewees were comprised of six managers, three union officials, four non-union representatives, and thirteen employees from various operational levels of the company. All interviews were taped and transcribed. Finally, secondary methods consisted of extensive internal (company/union) and external archival and documentary material, derived over two years.

In relation to the interview data, the subsequent material generated in the fieldwork was analysed as follows. The semi-structured approach to interviewing produced a sizeable amount of open-ended qualitative data. The approach used in this regard was to organise the raw data into conceptual categories or “units of meaning” (Miles and Huberman, 1994: 56) which could then be used to analyse the data. The first stage was essentially ‘open coding’, where particular conceptual categories were located to particular paragraphs of fieldwork notes and assigned initial labels. The second stage was ‘axial coding’ where concepts were further broken down, if possible, into more specific sub-categories of response, which was subsequently followed by a cross-comparison of transcripts. The final stage was ‘selective coding’, where previous codes were analysed across the transcripts and combined into pieces of evidence presented in the findings chapters. This incorporated analytic comparisons of methods of agreement and methods of difference. The former focused attention on what was common across the transcripts, whilst the latter focused on transcript responses which lacked common features and outcomes.

The Case

Background: Triggers to Union Organising at *BritCo*

In terms of the initial triggers for the recognition campaign, a number of grievances existed amongst employees at *BritCo Ireland* in the Republic. According to respondents interviewed, the actual merger of *BritCo* on an all-Ireland basis in 2005 was perceived by employees to have had a negative impact on the level of satisfaction with company culture in the Republic. Fears of potential redundancy appeared to be common amongst workers at the time. This was compounded by the fact that employees felt redundancy terms were low by industry standard and behind those offered by *BritCo Ireland* in the North – indeed the

provisions laid out in the staff handbook were below norms for that sector. In particular, in Northern Ireland, there was a “no compulsory redundancy” agreement dating back to BritCo’s UK public ownership days. A further source of grievance for employees was that *BritCo Ireland* management had been unwilling to disclose the salary range to employees in the company. Rather there was vague discourse of “job families”: individual workers were not told where they were on the individual band. Finally, another key grievance were company changes post-merger with regard the company car scheme in the Dublin South facility. Many engineers at this site lost access to company cars, or had to change company cars for vans, or in some cases, went from a fully expensed company car to an allowance.

Yet even though individual grievances did exist, these tended to be underscored by a more general sense of injustice revolving around *BritCo Ireland* employees lacking union recognition rights in the Republic in comparison to the arrangement in Northern Ireland. A perception existed amongst employees in the Republic that Northern Irish staff experienced superior terms and conditions of employment because of this, particularly on issues like redundancy pay, time-off and benefits.

Union Organising

With these background factors in mind, the impetus for the contact with the union came from a small, but organised group of engineers amongst the company’s workforce in Dublin South. These individuals had been members of the union for some years prior to the organizing campaign; in some cases being former employees of the indigenous, unionised market leader *IrishCo* but having left to join *BritCo Ireland* whilst still retaining their membership of the union. Whilst membership density did not constitute a majority of *BritCo Ireland* employees (estimated by union officials and management at around 30%), there were a number of areas within the company according to both management and unions where union organisation was concentrated, notably in the Dublin South facility but also amongst call centre service employees in Central Offices. Yet it was claimed by union representatives that efforts by the union to raise members’ concerns at local-level were proving fruitless. According to the Chief Executive, *BritCo*

Ireland's opposition to recognition was shaped by two factors. The first was based on a presumption that recognition would affect the company's capacity to operate on a cost basis revolving around price and flexibility. The second rationale given was that:

We believe that the union is biased towards *IrishCo*, our major competitor. Because most of its members are members of the *IrishCo's* employee share ownership plan which owns 30% of the company. The General Secretary of the union said recently after *IrishCo* had announced some very disappointing results that it was the regulators fault because there was too much competition in the sector and that it was destroying jobs. So if you want an example of bias there you go.

(Chief Executive Director, *BritCo Ireland*)

Consequently specific issues of concern were advanced by the union to the Labour Relations Commission (LRC) under the Irish legislation for dealing with collective disputes in non-unionised firms¹. Management participated at this meeting, principally because they “knew [recognition] wasn't going to be forced on [the company]” (HR Manager, *BritCo Ireland*). At the meeting, the LRC advised the company to take measures to ensure that their disciplinary and grievance procedures were in line with recommended Codes of Practice, by inserting a provision for individual union representation. However on a range of other issues raised by the union, progress was negligible in the face of strong managerial intransigence.

In these instances, the union contemplated opting to advance a case under the statutory leg of the Right to Bargain provisions, however this course of action was ruled out in light of a National Supreme Court ruling². In any case, members at *BritCo Ireland* were reported by the union to be keen to push for full-blown recognition rights, something precluded under the Right to Bargain clause. Consequently, the

¹ For detail on this legislation see D'Art and Turner (2002)

² See O'Sullivan and Gunnigle (2009) for more detail

union adopted a highly public campaign strategy designed to pressurize the company into negotiations. Billboard advertisements around Dublin city centre were rented, as well as a number of ad-mobiles displaying the message: 'Disconnect Discrimination'. The crux of the union's publicity campaign portrayed *BritCo* as treating its staff in the Republic less favourably than staff in Northern Ireland:

We now have the ridiculous situation that if you are one inch on one side of the border *BritCo* will recognise your right to be represented by a Union but if you are an inch on the other side of the border it will discriminate against you.

(President, Union)

Furthermore, the Chief Executive of *BritCo Ireland* received over 4,000 emails requesting union recognition for collective bargaining purposes. Whilst union members were reported by union officials to be in favour of balloting for industrial action, the union advised in favour of a one day, lunchtime protest.

Managerial response to campaign and the role of the NER

As the organising campaign began to develop momentum in *BritCo Ireland* a hitherto inoperative 'Information and Consultation forum' was strongly promoted by management. This forum had initially come into place in 2005 in preparation of the *Provision of Employee (Information and Consultation) Act 2006* in the Republic, and was to take meet every three months. It served the requirements of a 'pre-existing agreement' under that legislation and formally designed to provide information on developments in the organisation's activities and economic situation. As a vehicle for employee voice, the pre-2007 forum was acknowledged by management to be largely ineffective, with no coherent system of appointing employee representatives and with discussion being kept to a minimum:

It wasn't a comfortable, open forum. It was more this is what we are going to talk about, and hopefully no one will ask any questions. Essentially the previous chief executive gave a financial outline of how the company was doing and that was it.

(Human Resource Manager, *BritCo Ireland*)

Meetings became so infrequent that the forum had effectively become defunct by the start of 2007. However, the new forum re-labelled '*BritCo Vocal*' in early 2007 was promoted far more vigorously by management, meeting every four weeks instead of at the end of every three months. The re-vamping of the forum occurred within the time period between the union's first formal approach to management and the advancement of the dispute to the Labour Relations Commission under the first leg of the 'Right to Bargain' procedures for a conciliation meeting. The forum was claimed by HR to offer a "robust defence" against the union in terms of exploiting loop-holes available in the Right to Bargain legislation. The forum was also re-vamped because, as the Chief Executive claimed, it would "combat how vocal the union was". Similarly acknowledged by the Human Resource Director of the *BritCo Ireland* in reviewing the forum's working:

The information and consultation forum was in place before we received advances from the union, but when we rebranded to *Vocal* there was certainly a little bit more noise in the system. So we enhanced the relationship, because if we got that right, we felt employees wouldn't see the need for a third-party.

(Human Resource Director, *BritCo Ireland*)

Whereas no coherent electoral system existed for the previous forum, under *BritCo Vocal* employee representatives were chosen through election, with typically one representative per 100 employees. Electoral constituencies were designed to allow for each business area to have one representative, although the engineering and call centre sections of the business were allowed to elect three representatives as over 300 people were employed in that section. Where more than one representative came forward an election would take place. Whereas the previous forum was little more than a presentation by the Chief Executive Director on the financial performance of the company, *BritCo Vocal*

meetings were reported by HR to be far more substantial and inclusive. The format, as reported by participating management and worker representatives tended to take the following character. First, the meeting began with the Human Resource Director outlining current developments in the company, followed by a financial and market update by the Chief Executive Director, with the remainder of the meeting set aside for employee representatives to raise pertinent issues and discuss matters of concern.

Yet although the initial agenda sponsoring *Vocal* appears to have been in response to the union campaign, the forum was *also* seen as part of a wider strategy of employee relations reform within the company::

we believe that our business needs and the interests of our employees are better served through open dialogue and consultation using our full range of communication channels, including our employee information and consultation forum.

(Chief Executive Director, *BritCo* Ireland)

We wanted to do it [create *Vocal*] as part of our own employee relations plan, to create a more progressive and more functional forum.

(Human Resource Director, *BritCo* Ireland)

Much of this reform program in the Republic was spearheaded by the arrival of the incumbent Chief Executive Director in the early 2007 who appeared committed to notions of employee voice and involvement. A number of new practices were developed and enhanced to foster this new open culture of communication. For example, parallel to *Vocal*, a weekly ‘all hands update calls’ was also introduced whereby the Chief Executive makes a ‘telephone call’ to all employee on company developments. Employees may listen and even respond to the Chief Executive when this takes place (although in practice, employees responding to the Director never happens). Regular web chats and Chief Executive

written blogs, alongside a Friday newsletter were also developed whilst greater resources were put into the Communications Department.

Yet *Vocal* was not the only NER deployed by management. It became apparent in its first months of operation that the forum was being overrun with Dublin South issues. Management reported that this was undermining the effectiveness of *Vocal* in terms of addressing other business sections concerns and in helping to maintain positive, less fractious meetings. Management outlined in interviews that Dublin South issues were not only of a highly adversarial character, but were time-consuming and specific to that site. Management therefore decided that Dublin South issues would be removed from *Vocal* and the site given its own forum. *Vocal* employee representatives from Dublin South were active union members and it was this plant that was in many respects the stronghold of union membership within the company. Given the adversarial climate of Dublin South and the support for unionisation which resided there, management recounted that it was therefore desirable to have a forum specifically for that site.

However from interviews with management it seems that their principal hope was that the Southern Works Committee (SWC) would address one of the main sources of contention amongst staff in Dublin South – the changes to policy on company cars. As decided at the first meeting of the SWC, the forum would meet once a month.

The Union's attitude to both forums appears to have been relatively neutral. According to the principal trade union organiser, members were "neither encouraged to engage with the forums, but neither were they told to disengage". In the context of management introducing the two forums, the union sought to play a background role - assisting forum representatives with advice and guidance on how to deal with particular issues as they arose.

The NER and creating the mutual gains environment

In the latter half of 2007, although other initiatives were adopted like the hands-all-call and internal blog, management advanced that *Vocal* was the principal vehicle through which they attempted to tackle the underlying sources of employee discontent at *BritCo* Ireland. As has been shown above, there was, as management respondents relayed in interview, a calculated attempt to resolve issues which had fanned support for trade union recognition.

In these early stages, there is evidence to suggest that such managerial messages were consistent with actual organisational outcomes and a robust and functioning voice mechanism appeared in evidence. For example one of the first matters raised by employee representatives was the widespread concern over potential redundancy payment on offer at *BritCo Ireland*. Generally, many staff in the Republic had felt the extant offering was low, not just by industry standards, but also in comparison to practice in Northern Ireland. Through *Vocal*, management explained that the terms on presented in the company handbook had simply been replicated from the original Irish company prior to the takeover. Terms were low, it was advanced, because as a relatively young company, staff would typically not have held long service. Management conceded that the handbook should be re-written by the human resource department in consultations with the employee representatives on the forum. Furthermore employee representatives were given a month to review the final handbook through holding meetings with their constituencies on any pertinent issues which arose. The outcome from this process was that aspects of the Northern Irish redundancy program were introduced into the Republic; principally the practice of a redundancy pool wherein employees at risk of losing their jobs are given eight weeks to secure a new position and/or project in the company. Management however refused to extend the “No Compulsory Redundancy” agreement which it had in the UK, and consequently Northern Ireland, to the Republic of Ireland. Despite this, representatives and employees interviewed across *BritCo Ireland* expressed satisfaction with the manner in which this issue was addressed through *Vocal* and the subsequent outcome. Not only did the company manage to resolve a grievance which had been at the core of the union organising campaign, but it appeared to have delivered a very effective consultative regime.

Yet *Vocal* was found to be less satisfactory when employee representatives sought some solution to the non-disclosure of salary scales. Through the forum, management outlined to staff their unwillingness to a change of practice on this matter, claiming that widespread disclosure of sensitive information might be passed onto competitors. In an effort to address employee concern over the issues, management offered to post a confidential sheet to individual employees, outlining their particular roll code, job family and the associated benchmarked pay range. Employees would then individually receive a letter annually updating them on it. This however proved to be largely unsatisfactory to staff who regarded managements' secrecy on the matter to be, as one employee representative put it, "very much cloak and dagger" and lacking in transparency.

This outcome may be pointed in other ways. Employee representatives have felt that once management attempted to redress underlying issues prompting union demand at the company, the range and scope of issues appearing at *Vocal* substantially narrowed. Attempts at raising other substantive issues like the transparency of pay increases and how performance appraisals were being managed by line management have been claimed by representatives to be either written off the agenda or glossed over by management in meetings. Analogous to this has been that initial promises of robust involvement in policy making matters became steadily confined to the management of facilities type issues. Below a table of the core issues addressed by the forum by the end of year 2007 is provided, with a list of those issues addressed in the forum by middle of year 2009. The type of issues prevalent at the end of year 2007 and those addressed by the end of the field research tend to lend support to accounts by employee representative that the remit of issues discussed at *Vocal* progressively narrowed over time with representatives in 2009 were reporting that efforts to raise concerns over key emerging grievances - like performance management – were not open for consultation and discussion at the forum.

Table 1 The narrowing of the Vocal agenda

Sample of key issues arising and consulted through Vocal for year 2007)	Sample of key issues arising and consulted through Vocal for year middle of 2008 to middle of 2009)
<ul style="list-style-type: none"> • Consultation over revisions on Employee Handbook/Redundancy policy 	<ul style="list-style-type: none"> • Management of facilities budget to finance new carpets on third and fourth floors of Central Office
<ul style="list-style-type: none"> • Consultation over the disclosure and presentation of company salary scales 	<ul style="list-style-type: none"> • Transposition of national government ‘cycle to work’ scheme
<ul style="list-style-type: none"> • Consultation over employee entitlements to a company car and roll-out of new policy 	<ul style="list-style-type: none"> • Consultation over securing new company healthcare providers

Notably employee representatives and employees recognised that the provision and amount of information improved on pre-recognition dispute experiences,. Yet the limitations of *Vocal which employee representatives and employees recounted in interview* for addressing substantive concerns like transparency in rewards and performance management appears to be a running problem. In this context, three representatives dropped out of the forum in late 2008 under the perception that it was “toothless”. Indeed more persistent attempts by representatives from Dublin South to raise constituent concerns over car-policy changes resulted in their issues being passed onto the subsequently created SWC.

Evaluations of the SWC by employee representatives at the end of the fieldwork process indicated that in many respects this forum had been an inauspicious vehicle. Although designed to address the operational specifics of the new car policy for Dublin South, the forums sphere of influence was unclear from the

outset and it took a series of meetings over a 12-month period for both sides to actually decide what the terms of reference for the forum would be. Eventually it was agreed that issues which could only be specific to Dublin South could be raised at the forum, and issues of a more company-wide flavour would have to be advanced to *Vocal*. The SWC was initially presented by management at the site as a body for allowing employees to assist in ‘shaping policy issues’ and the evidence suggests that managers and workers took very different interpretations of what this meant. The first year of the forum were marked by exchanges between management and representatives over what issues were appropriate for the SWC to address and those that should be raised at *Vocal*. This in itself could of course be read as indicative of a robust voice exchange and would chime with management aspirations to create a more effective in-house voice regime. However by the time the terms of reference had been finally settled, representatives found that their ability to influence ‘policy’ in the company, as they understood it, to be greatly limited:

Ok, you got to have your say at the table, but management had already made policy at that stage...

It was basically this is the policy, have a read of it. When we did do anything it seemed to be about facilities issues

(SWC Representative A)

The SWC, as both management and representatives evaluated, addressed minor, day-to-day operational issues. However to attribute such outcomes to management’s particular vision for the remit of the forum would not be wholly accurate. In this regard the incumbent employee representatives had a role to play. A number of the non-union representatives outlined in interview that they saw the position as an opportunity to demonstrate their abilities to management and allow them to advance up the corporate ladder. Indeed some representatives interviewed outlined that they ran for the position on the advice of line managers who claimed that it would assist future endeavours towards promotion.

Consequently, representatives working under this assumption observed that they were less inclined to raise issues which might fracture their working relationship with management in any way. This has often

served as a source of frustration for the employee representatives who were active union-members and who felt that it debilitated against efforts to create a united front when raising issues with management. Indeed this was part of the rationale for the aforementioned representatives dropping out of the forum in 2008. A further corollary of this is that the more 'career-minded' representatives or those who are members of line management or project management teams increasingly found that their 'caseload' has eased off. One of the representatives, who in his time as an SWC representative was promoted to management, observed a collapse in the number of cases he received in the aftermath of his promotion with constituents bringing their issues to representatives associated with the union recognition drive, something which he attributed to employees suspicions of management in Dublin South. The same dynamic, of employees taking their grievances to more union associated representatives was also observed by the union organising official who saw it as a central explanation for the growing requests for individual union representation at disciplinary and grievance hearings in Dublin South since late 2008 and throughout 2009.

In aggregate the efficacy of the NERs in fostering a more co-operative workforce climate has been questionable. Whilst employees conceded that the forum and wider changes in HR practice brought in since 2007 enabled a greater flow of communication from management to the workforce and had delivered on some grievances such as redundancy terms, the consensus of representatives by the conclusion of the research two years later appears to be represented by opinions such as:

I'm not saying that they would go and change things through *Vocal*, it is not presented as if you have a chance to go change things, it's often a *fait accompli*, very much information coming down. We get listened to, but whether we have substantial influence, no I doubt it. (*Vocal* Representative A)

Would I say we were really listened to and had a say? No. I thought it would be more about being involved in policy and getting your voice across, but that certainly never happened. (SWC Representative B)

Much of this dissatisfaction appears to stem from the initial presentation of the forum as one suggestive of full-bodied employee involvement and as an effective in-house substitute to an ‘external’ union:

We have in place comprehensive policies and procedures for dealing directly with our employees on any issues they may have. Our Employee Forum, was created with the specific purpose of representing employee views and sharing feedback on a broad range of issues via representatives elected by our employees. We believe this is an effective channel, along with many other company processes, by which employee concerns are raised in the company. So the union wouldn’t have any role to play.”

(Human Resource Manager, BritCo Ireland)

Management now conclude that this was perhaps a mistake on their part and that nearly two years on from the introduction of the forum, there is a need to shift the tone of emphasis:

We don’t want it to be “we agreed this with *Vocal* therefore it’s all fine”. It is an information and consultation forum, it is not a negotiation agreement and it’s ok if we don’t agree with things because there are certain things we as managers need to do as a business. Since we moved away from the title of ‘information and consultation’, people forget what *Vocal* is put in place to do and maybe we need to rethink that and how we present the forum going forward. (Human Resource Director, *BritCo Ireland*).

Yet pursuing this line is likely to alienate *BritCo Ireland* employees further whose aspirations hitherto have been for robust negotiation rights – aspirations driven by perhaps superficial comparisons of the unionised arrangement in Northern Ireland. The forums have been unable to dissipate employee demands for unionisation and indeed the issue of recognition has remained the touchstone by which engineering and call centre employees appear to measure management’s commitment to a genuinely participative workplace culture:

Some employees see it as management paying lip service, because we have no union, we have no power...there is a whole culture amongst employees that we should be unionised, particularly in Dublin South, which is the extreme, but also in City Offices. (*Vocal Representative B*).

There is a certain percentage of staff who think it’s not fair, that the North have a union and who definitely want a union no matter what. (*Call centre employee, BritCo Ireland*).

Discussion

The literature on NERs has regularly outlined how such bodies emerge amidst the context of a union recognition contest and/or premised on a union avoidance objective. Yet there has been little analysis of the capacity of such bodies to successfully displace trade union influence or to develop beyond the ‘avoidance thesis’ to assess their efficacy in creating a positive-sum, union-free work environments. Existing efforts appear to simply note the existence of avoidance tactics. Yet as Taras and Kaufman (2000) have argued, for such arrangements to endure, even if only for the short-run, they need to be embedded with a higher set of functionalities than simply an ethic of ‘keeping the union out’. In light of these debates, the paper asked, how effective are NERs in undermining employee support for trade union recognition in the context of a union organising campaign and can a NERs, founded in such context, ‘transform’ into a ‘positive-sum’ body?

Considering the first question, it was found that in the case of *BritCo Ireland*, management revamped the NER arrangements, *in part*, to counter the trade union campaign in the company. As such the employer response resonates with accounts of union substitution *vis-à-vis* NER arrangements. However there is considerably more to the story than straightforward union avoidance. The rejuvenated voice regime was not espoused to employees under those auspices, but was rather advanced under notions of ‘commitment’ and ‘involvement’ as engendered by best-practice human resource management. At the same time, the evidence suggests that this was more than a rhetorical ploy or confidence trick on the part of management. Above all, there was a clear *intention* on the part of senior management to initiate a programme of engagement with employees across the organisation. This stemmed in part from the arrival of a new Chief Executive Director committed to notions of a ‘high-involvement’ culture, but also from a necessity to roll-back the engulfing climate of mistrust sowed by the recent corporate merger and associated restructuring. Accordingly, a pronounced campaign of information and consultation was delivered by management throughout the organisation, in tandem with the overhauled NER regime. The *BritCo Ireland* approach to the NERs itself exemplified these two tendencies: it served to counter union organising attempts while simultaneously establishing the seeds of some modicum of employee voice, albeit voice on managements’ terms. However, as demonstrated above, this project has not been sustained in the long-run. Issues being addressed through the NERs in time came to be seen to be by employees as minor and irrelevant and this lent itself to employee apathy and frustration. The findings on the workings of the forums are in many respects supportive of literature on NERs (Taras and Kaufman, 1999; Bonner and Gollan, 2005; Gollan 2007).

In conceptualising NER failure, a number of authors have tended to postulate that NERs suffer from a ‘paradox of intention’ (Upchurch *et al.* 2006; Danford *et al.* 2009; Butler, 2009). According to these authors, management sponsored NERs are readily diluted because of their dependent nature, their tendency for management dominance and their inability to move beyond the most basic communicative mechanisms which in turn undermines their ability to transform to a positive sum vehicle. At the core of

the management strategy is a conundrum shaped by, on the one hand, efforts designed to defend *prerogative* and, on the other, efforts aimed at generating employee engagement through the structured *involvement* of the workforce. These demands, it is claimed, are incompatible with the latter being readily subsumed by the later. The NER becomes the reverse mirror of its own ambitions, reflecting the very opposite of its claimed intent.

However, the case of *BritCo Ireland* shows that the inadequacy of the NER cannot be explained by recourse to a supposed paradox in management action. In this case, evidence of a paradox did not exist: management never intended the NER to serve as a vehicle wherein they would concede power and accept a dual authority channel. The dominant managerial interpretation of voice at *BritCo* was to view it as the transmission of information to employees in order to assist change processes and, to a lesser extent, to conceive voice as a form wherein employees acted as a point of supply, offering ideas to complement organizational effectiveness. This is similar to other studies wherein non-union voice structures are used simply as devices for information and communication rather than as robust consultation or indeed bargaining agents (Gollan, 2003). Consequently, management faced no contradiction in logic because their efforts to affect their desired interpretation of the NER were wholly consistent with a unitary framework of human resource management. Rather than there being a conflict of managerial logics, this case indicates that the NER was deficient to employees because of a consistency of managerial logic – the body was imbued with deficits to aid management in shaping relations to their preference.

As suggested by Pateman (2010), outcomes need to be appreciated within a wider institutional context. Whilst there are no a priori reasons why NER regimes should not be successful in promoting and sustainable mutual gains, they are nonetheless likely to be quite rare within a predominantly or wholly voluntarist industrial relations context. In the absence of statutory or mandated rights for employees, successful and enduring NERs are likely to require ongoing

management that is both risky and potentially costly for employers. After some initial evidence of mutual gains at BritCo, the momentum did not last due to the lack of voluntary and institutional support systems. In short, the NER was not imbued with sufficient independence from management, gave workers too little power and was largely restricted to information sharing. Of course there is the possibility that worker expectations misunderstood the purpose of the NER – as Kim (2009) has noted elsewhere, unions and NERs are ‘separate domains’ and serve different purposes, and any claim to enduring mutuality is misleading.

Discussion

The literature on NERs has regularly outlined how such bodies emerge amid the context of a union recognition contest and/or premised on a union avoidance objective. Yet there has been little analysis of the capacity of such bodies to successfully displace trade union influence or to develop beyond the ‘avoidance thesis’ to assess their efficacy in creating a positive-sum, union-free work environment. Existing efforts appear to simply note the existence of avoidance tactics. Yet as Taras and Kaufman (2006) have argued, for such arrangements to endure, even if only for the short-run, they need to be embedded within a higher set of functionalities than simply an ethic of ‘keeping the union out’. In light of these debates, the article asked, how effective are NERs in undermining employee support for trade union recognition in the context of a union organizing campaign and can an NER, founded in such a context, ‘transform’ into a ‘positive-sum’ body? Considering the first question, it was found that in the case of BritCo Ireland, management initiated the NER arrangements, *in part*, to supplant union influence in the company. As such the employer response was a typical example of union substitution vis-a-vis NER arrangements. However there is considerably more to the story than straightforward union

avoidance. The rejuvenated voice regime was not espoused to employees under those auspices, but was rather advanced under notions of ‘commitment’ and ‘involvement’ as engendered by best-practice human resource management. At the same time, the evidence suggests that this was more than a rhetorical ploy or confidence trick on the part of management. Above all, there was a clear *intention* on the part of senior management to initiate a programme of engagement with employees across the organization. This stemmed in part from the arrival of a new chief executive director committed to notions of a ‘high-involvement’ culture, but also from a necessity to roll back the engulfing climate of mistrust sowed by the recent corporate merger and associated restructuring. Accordingly, a pronounced campaign of information and consultation was delivered by management throughout the organization, in tandem with the overhauled NER regime. The BritCo Ireland approach to the NER itself exemplified these two tendencies: it served to disrupt union organizing attempts while simultaneously establishing the seeds of some modicum of employee voice, albeit voice on management’s terms. However, as demonstrated in the preceding section, this project has not been sustained due to a combination of managerial unwillingness and employee apathy and frustration.

In conceptualizing NER failure, a number of authors have tended to postulate that NERs suffer from a ‘paradox of intention’ or ‘rival logics of action’ (Butler, 2009a; Danford et al., 2009; Upchurch et al., 2006). According to these authors, management sponsored NERs are readily diluted because of their dependent nature, their tendency for management dominance and their inability to move beyond the most basic communicative mechanisms, which in turn undermines their ability to transform to a positive-sum vehicle. At the core of the management strategy is a conundrum shaped by, on the one hand, efforts designed to defend *prerogative* and, on the other,

efforts aimed at generating employee engagement through the structured *involvement* of the workforce. These demands, it is claimed, are incompatible with the latter being readily subsumed by the former. The NER becomes the reverse mirror of its own ambitions, reflecting the very opposite of its claimed intent. However, the case of BritCo Ireland shows that the inadequacy of the NER cannot be explained by recourse to a supposed paradox in management action. In this case, evidence of a 'rival logic of action' did not exist: management never intended the NER to serve as a vehicle wherein they would concede power and accept a dual authority channel. The dominant managerial interpretation of voice at BritCo was to view it as the transmission of information to employees in order to assist change processes and, to a lesser extent, to conceive voice as a form wherein employees acted as a point of supply, offering ideas to complement organizational effectiveness. This is similar to other studies wherein non-union voice structures are used simply as devices for information and communication rather than as robust consultation or indeed bargaining agents (Gollan, 2003). Consequently, management faced no contradiction in logic because their efforts to affect their desired interpretation of the NER were wholly consistent with a unitary framework of human resource management. Rather than there being a conflict of managerial logics, this case indicates that the NER possessed a consistency of managerial logic: the body was imbued with deficits which management could use to shape relations to their preference. This outcome, as suggested by Pateman (2010), is likely influenced by wider institutional context and also relates to the second research question on whether NERs can 'transform' into positive-sum' bodies. While there are no a priori reasons why NER regimes should not be successful in promoting and sustainable mutual gains, they are nonetheless likely to be quite rare in an industrial relations context of voluntarism, where employers have few constraints on their authority and the choices they make. As such, successful and enduring NERs

are likely to require ongoing management support, dedicated employee representation, internal institutional supports and HR policies, and independence from management (cf. Cooper and Briggs, 2009). Crucially management have to allow such vehicles to be sites for an organizational pluralism if they wish them to be genuine attempts at alleviating worker concerns. This necessitates an acceptance by management of conflict as a normal feature of organizational life and as something to be openly addressed rather than avoided or glossed over. After some initial evidence of mutual gains at BritCo, the momentum did not last. The conditions were not in place at BritCo for enduring mutual gains – the NER was not imbued with sufficient independence from management, gave workers too little power and was largely restricted to information sharing. It did not measure up to worker expectations of independent representation. Of course there is the possibility that worker expectations misunderstood the purpose of the NER – as Kim (2009) has noted elsewhere, unions and NERs are ‘separate domains’ and serve different purposes. It is worth adding a caveat to these points, by noting that the insertion of NERs into voluntarist regimes however does not entirely undermine their capacity to deliver mutual gains. Haynes et al. (2005), for example, found joint consultation and certain forms of non-union employee voice, in the New Zealand context, to be more effective than previous accounts have allowed. Yet this aside, as Freeman and Lazaar (1995) remark, non-union workplace voice is unlikely to be meaningful unless supported by legislation/regulation – left to their own devices many employers introduce weak forms of employee voice of which workers may be sceptical. Management tend to limit the requisite investment required to enable a distribution of power necessary for genuine participation as they seek to preserve their managerial prerogative. On the other hand, workers may

demand more influence than deemed acceptable by employers. This was clearly the case at BritCo. Without ‘beneficial constraints’ (Streeck, 1995), along the lines of German works councils, most employers when left to their own choices (especially in NER work regimes) will tend to introduce weak employee voice systems. In turn, workers often become sceptical and disillusioned when partnership-type practices are viewed as ‘bolted-on’, lacking integration with other people management policies and schemes are left to atrophy (Wilkinson and Dundon, 2010).

Conclusion

The critical case used in this study demonstrated that while NERs may have an impact in disrupting union organizing, the evidence lends no support to the idea that NERs can transform into a positive-sum body. To achieve such a transformation, a plethora of institutional and actor-based supports like management commitment, dedicated employee representation, independence and legislative backing may be needed. Of course, to confidently determine whether these factors would foster an enduring NER and whether some individual factors are more important than others is an issue for further empirical enquiry. Future critical cases displaying these initial conditions could provide answers on this matter and contribute to knowledge and understanding of the NER phenomena.

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