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Roger Bobacka*

Collective Bargaining in Finland – Legitimacy through Deliberation? **

The inclusion of main economic interest groups in policy making poses a distinct dilemma for representative democracy, because the parliament often becomes effectively bypassed in the making of important social and economic policies. The aim of this article is to discuss whether the arrangements instead could be legitimised as a form of deliberative democracy, where decisions are made through deliberation and reasoning among those whom decisions ultimately concern. The empirical part of the article is represented by an evaluation of the development of the Finnish working hours legislation in the 1990s. The case study shows that after the representatives from the main economic interest groups started deliberating the working hours issue in detail, deliberation moved from initial expressions of the need for reasoned compromise to entrenched positions. A deliberative democratic ideal, where participants should agree on a single course of action as a result of deliberation did not materialise in this case. The main conclusion is that even if the inclusion of main economic interest groups in policy making may be legitimised by outcomes in terms of economic well-being, labour market peace etc., the problem from a democratic point of view is that the inclusion does not comply with either representative or deliberative democratic criteria.

Tarifverhandlungen in Finnland – Legitimität durch Deliberation?

Die Inklusion wirtschaftlicher Interessengruppen in den politischen Prozess stellt die repräsentative Demokratie vor das Problem, dass das Parlament bei wichtigen sozialen und ökonomischen Entscheidungen übergangen wird. Ausgangspunkt dieses Beitrags ist die Frage, ob Arrangements dieser Art legitimiert werden können als eine Form deliberativer Demokratie, in der Entscheidungen getroffen werden nach abwägender Beratung zwischen denen, die davon letztlich betroffen sind. Der empirische Teil bezieht sich auf die finnische Gesetzgebung zur Arbeitszeit in den 1990er Jahren. Die Fallstudie zeigt, dass die Repräsentanten der Interessengruppen bei der Kontroverse über die Arbeitszeitfrage von anfänglicher Bekundung zum vernünftigen Kompromiss zu verhärteten Positionen wechselten. Eine für die deliberative Demokratie ideale Annahme, dass die Beteiligten nach Beratung zu einem gemeinsamen Ergebnis fänden, blieb in diesem Fall unbestätigt. Wichtigste Schlussfolgerung ist, dass selbst wenn die Einbeziehung der ökonomischen Interessengruppen in den Politikprozess nach Kriterien der wirtschaftlichen Wohlfahrt und des sozialen Friedens legitimiert werden kann, bleibt es fraglich, ob ihre Inklusion mit den Kriterien der repräsentativen oder der deliberativen Demokratie übereinstimmen.

Key words: **Working hours, democracy, deliberation, Finland**

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Introduction

Since the mid-1960s, the main economic interest groups in Finland have consolidated their position at the centre of Finnish economic and labour market policy making. This is first of all evident by the fact that broad-based incomes policy settlements have been concluded on a regular basis since 1968. The latest one is in force between 2000-02. Secondly, all the main economic interest groups have also enjoyed a routine access to pre-parliamentary legislative deliberation on labour market issues. The inclusion of these groups into policy making has been legitimised both by outcomes, i.e. as a means of achieving stable economic growth and social welfare in general, as well as a form of consensus building. Whereas the legitimacy of the arrangements in terms of outcomes is fairly straightforward and generally accepted, the inclusion of the main economic interest groups in pre-legislative deliberation as a form of consensus building is more problematic, not least from a democratic standpoint. The aim of this paper is to evaluate whether the legitimisation of the arrangements as a form of consensus building is sustainable by focusing on a collective bargaining process, represented by the revision of the Finnish working hours law.

A new working hours law was enacted in Finland in 1996, following seven years of deliberation among the main economic interest groups, legal experts, governments and various other parties on the labour market. (The working hours law had originally been enacted in 1917 and last revised in 1966.) The reason why the case of working hours has been chosen is first of all that it represents an important issue on labour markets in Europe at the moment. This is underlined by both the EU working time directive and legislation in individual countries, the French *loi Aubry* representing one of the more controversial. Secondly, during the 1990s and early 21st century, continuous demands have been made for flexibility and firm level agreements. These demands also represent a distinct contemporary dilemma when it comes to organised labour and business. The dilemma for business is basically how to extend operating hours within the limits set by government regulations and collective agreements, whereas the basic dilemma for trade unions is how to combine demands for flexibility with the collective security of workers. Working hours thus represent contemporary problems for organised interests. The research question in this paper is therefore *what the revision of the Finnish working hours law can tell about the legitimacy of collective bargaining at the national level between the main economic interest groups.*

1. Collective bargaining and deliberative democracy

The basis of legitimacy in representative democracy is that the decisions and laws are legitimate if they have been enacted in accordance with an accepted legitimate democratic procedure. This has basically meant that decisions are legitimate if they have been passed by a majority in parliament, whose members have been democratically elected. The inclusion of the main economic interest groups in pre-legislative deliberation, where the parliament has in many cases been effectively bypassed has therefore been problematic from a representative democratic perspective.

There are, however, other criteria that can be used for assessing the legitimacy of the arrangements. These criteria are drawn on the theory of deliberative democracy.

According to Cohen, a deliberative democracy is an ongoing and independent pluralistic association, where the members have divergent aims, but nonetheless have a commitment to the deliberative resolution of problems. The basis of legitimacy is a free deliberation among equals and the members should recognise each other for having deliberative capacities. The outcomes of deliberative procedures are furthermore […] 'legitimate if and only if they could be the object of a free and reasoned assessment among equals' (Cohen 1989, 21-22). Similarly, Benhabib states that […] 'legitimacy in complex democratic societies must be free and unconstrained deliberation of all about matters of common concern' (Benhabib 1987, 68).

The inclusion of the main economic interest groups in policy making has been legitimised according to similar reasons. The emergence of the welfare state meant that the tasks and duties the state had to deal with greatly increased. Especially in social and economic policy making, the interests of the main economic interest groups, and ultimately workers and employers, could have been harmed if decisions had been made solely by the state's administrative and political organs. Therefore, one of the reasons why the main economic interest groups were included in the deliberation of important labour market policies was because they were supposed to possess a good and specialised knowledge of the labour market. Otherwise such essential information could have been left unnoticed. The arrangements were thus aimed at moving people from a subjective way of looking at problems to an objective one, replacing parochialism with objectivism and a sense of justice (Young 2000: 113; Mansbridge 1992). The arrangements were in that respect also regarded a desirable complement to representative democracy (Hirst 1990). The problem in a collective bargaining context, however, is to what extent the participants, which represent strong interests, have been able to comply with such an ideal. The danger is that the deliberative ideal of democracy falls prey to a manipulation of deliberative processes for sectional strategic purposes and interests where some must behave against their reason or conviction (Cooke 2000: 968).

A decisive feature in determining the deliberative quality of the process is therefore how the participants have used their knowledge of the issue under deliberation. For example, have they argued according to their knowledge of the issue or have they used their resources (threats of strikes, lockouts etc.) to influence the outcome. Have they accepted expert-evaluations of the issue or have they simply justified their arguments by the interests of their members? If, for example, they have merely used their resources and power in the process in order to work for their own interests, then the legitimacy of the inclusion of these groups is questionable. In that case, they have resorted more to parochialism than objectivism and justice. Basically, it is a problem of whether knowledge as an essential feature of decision making is possible, or whether knowledge only becomes another tool in the execution of power. If, as Flyvbjerg (1998) argues, knowledge becomes distorted by power, consensus also becomes difficult to achieve as the more powerful do not have to rely only on their

knowledge, but can merely use their resources in order to achieve their preferences (Flyvbjerg 1998: 229-230). In that case, different opinions have been overruled by the use of power, rather than by rational arguments that everyone can accept. In this respect, the first hypothesis becomes that *the inclusion of the main economic interest groups in legislative deliberation cannot be regarded legitimate because the participants are merely maximising their self-interest through the use of knowledge (as a form of power).* It becomes a question of holding on to sectional interests and parochialism rather than a case of a search for consensus through reasoned assessment of alternative solutions.

This hypothesis closely relates to a so-called adversarial model of democracy, which is all about a strategic pursuit of goals and interests on the part of individuals. Actors in the democratic process compete for advantage, not to alter their opinions in the light of alternatives (Dryzek 2000). In adversarial democracy there is no inherent common interest, but voters pursue their individual interests by making demands on the political system, and politicians pursue their self-interest by fighting for re-election. There is no room for arguments that the interests of some people are better than others are (Mansbridge 1980: 17). Votes and preferences are aggregated, not deliberated and the inclusion of main economic interest groups into pre-legislative deliberation is not legitimate because their representation is not based on any democratic elections.

There is, however, another line of argument that puts the inclusion of the main economic interest groups in a different light. This argument is based on a more unitary model of democracy. In this case, the participants may initially have conflicting preferences about a given issue, but mutual understanding and rational discussion may lead to the emergence of a decision that works for the common interest (Mansbridge 1980: 25). In concluding broad-based incomes policy settlements, for example, the objective rationality of business is naturally different from that of labour. This has to lead to bargaining and compromises. In such processes the aim of deliberation is to discuss and find solutions that everyone can accept. If the participants have not reached a compromise that is objective and everyone can accept it may well be the case that no decision will be made at all. It would also be absurd to demand that unanimity be reached on all issues. The most important aspect is not unanimity, but an ongoing dialogical process where participants try to settle common problems and conflicts (Bohman 1996). The legitimacy lies in the process of deliberation among those who the matter concern, not in the outcome as a result of voting by democratically elected representatives. The main point is that deliberation has taken place, not necessarily consensus or a unanimous outcome. Instead of reaching consensus, a more desirable procedure is where participants agree on a course of action, but for different reasons (Dryzek 2000: 170). Even if it in a collective bargaining context is a great risk that the participants are holding on to their preferences and being mainly self-interested, they have nonetheless taken part in a deliberative process and continue to do so in other similar processes. Without such a deliberative process, the prospects for finding a common interest among business and labour are even more

difficult. The counter hypothesis to the first one is therefore based on a unitary model of democracy, where *the inclusion of the main economic interest groups in legislative deliberation is legitimate because the participants have agreed on a single course of action as a result of deliberation, despite differing opinions.* If this hypothesis holds, it would also mean that the arrangements are a form of consensual policy making in its true sense, because the participants have agreed on a course of action based on reasoned argumentation. If the first hypothesis holds, it would mean a form of imposed 'consensus' where the more powerful have decided the course of events and others have had to comply. The working hours case should give some indications as to which one is more accurate.

2. The working hours case

It is no overstatement to say that working hours, together with wages, represent one of the central issues of disputes in the labour market. The recent debate has focused mainly on different models of working hour arrangements. It has been regarded as fairly obvious, that too general and rigid models have failed to take into account the specific situations individual firms face in a modern labour market. Prevailing and outdated working hour arrangements, together with current rates of economic growth, have been regarded as a hindrance to the creation of new jobs (Blyton 1985: 36-37). Requirements for new working hour arrangements in terms of when, and how, working hours are placed during the day, week and year have been regarded as an important policy-measure in improving employment and economic efficiency (duRoy et al 1989; McRae 1995; Bercusson/Dickens 1996; Taddei 1998). The main objective has consequently been how to create greater opportunities for more individualised flexible arrangements. In Finland, this has to take place in the context of a thoroughly regulated labour market. These regulations are contained in a complex mixture of three categories: legislation, collective agreements and employment contracts. The complexity of the regulations is also underlined by the opportunities for making diverging statements from legislation at the collective agreements, local collective agreements, and individual agreements level. In addition, regulations included in broad-based incomes policy settlements have sometimes demanded revisions of legislation, especially in the early 1970s.

2.1 The main dilemmas

The overall current debate in the 1990s has been focusing on, as noted above, how to create a more flexible labour market. Flexibility may be seen as a recent phenomenon of the 1990s, but the Organisation for Economic Co-operation and Development (OECD) had already started to discuss new patterns for working hour arrangements in the mid 1960s. The problem was seen as how to introduce greater flexibility in the allocation of working hours, such as flexibility of retirement age, education and training during working-life, part-time work and temporary employment (OECD 1973: 6). The issue of flexible working hours has stayed on the agenda within OECD, when its recent research has been focusing on empirical evaluations of

how flexibility has been applied on the labour markets in Europe (OECD 1986; 1990; 1992; 1995).

For both workers and employers, the new working hours policy has consequently been directed towards the creation of flexible arrangements, suitable for individual options, when traditional working hours policy has been directed towards general, universal working hour arrangements, equally binding to all (Hörning et al 1995: 28-29). The main objective for employers has been to increase the opportunity for flexible agreements through legislation, without the opportunity to make delegatory statements in collective agreements. This would in turn reduce some of the power of the national trade unions and employers' associations in favour of individual employers. This would also create greater demands on shop stewards, since they would increasingly have to negotiate directly with the employer. The employers' basic standpoint has been, as noted above, a favouring of mandatory statements in legislation, which cannot be delegated to collective agreements. *The main dilemma for the employers has become how to extend the operating hours of business, within the limits set by government regulations and collective agreements* (OECD 1995: 13).

The issue is more of a dilemma for the trade unions. At the same time as the workforce is concerned with more individualised working hour arrangements to balance time spent between work and spare-time, the trade unions also have to be able to defend their members' interests collectively (OECD 1995: 12). *The dilemma for the trade unions is consequently how to combine the current trend of demands for individual flexible labour market regulations with the collective security of workers.* The European Trade Union Confederation (ETUC) has also stated that more flexible and individualised working hour arrangements can be accepted only if they are at the same time subjected to collective negotiations.

The layout of the empirical part is based on how the objective of introducing opportunities for more flexible arrangements according to legislation was achieved; what arguments the different parties expressed during the decision making process; how consensus was reached on the issue; and finally, how dissent, and opposition was dealt with. (A new act was approved by the parliament in 1996.)

2.2 Formulating the new working hours law

The analysis of the case has been based on arguments stated by the participating main economic interest groups from different stages of the decision making process, i.e. before the process began in 1990, during the work in the working hours committee that deliberated the issue 1990-93 and the aftermath of its work 1993-95. In the so-called working hours committee that prepared the issue, the workers' representatives were from the Central Organisation of Finnish Trade Unions (SAK), Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals (AKAVA). The employer's representatives were from the Confederation of Industry and Employers (TT), Department of Public Personnel Management (VTML) and the Commission for Local Authority Employers (KT). The

material used for the analysis consisted mainly of written unofficial documents and comments, statements written down by the chairperson, unofficial and official memoranda, faxmessages by the parties and discussions with the negotiators. Based on this material, the working hours issue could be divided into three different issue categories: unanimity, compromise and conflict. The unanimous issues in the revised law were characterised by a lack of discussion, since the parties did not comment on the content of them. These issues did not touch upon the parties' preferences, since many of them were merely of legalistic nature that had to be included in all legislation. There were in all eight such issues.

The second category, i.e. issues of compromise, was more interesting, since these issues to a greater extent touched upon the different parties' preferences. These issues (28 in total) were resolved according to a form of legal reasoning, meaning that different types of solutions were compared in terms of similarities and differences. The chairperson made a proposal for a new paragraph, which was then discussed in the committee. Based on this discussion, the chairperson made revised versions, and eventually all the parties could accept a final proposal. These issues naturally implied action in terms of the calculation of the options available and their possible consequences, but they could to a greater extent be characterised as argumentation in favour of, or against, certain statements. If a new act had been based on these issues alone, a revised working hours act would have caused no problems, since the parties reached an agreement on them. These issues also underlined the fact that, even if the representatives did not change their preferences completely, they nonetheless were able to accommodate the opposition's views into their own interest parameters.

Finally, there were five issues in the category of conflict. All but the final one of these issues of conflict dealt to some extent with opportunities for introducing agreements on regular amount of working hours and on maximum amount of overtime working hours at firm level, as a complement to the traditional way of making the agreements according to collective bargaining. Traditionally, opportunities for firm level agreements had been possible only under the auspices of the national trade unions and employers' associations. (According to statements in the previous working hours law, trade unions and employers' associations that cover the whole country have had rights to make their own collective agreements on working hours, with the same status as legislation).

The main conflicts in the committee consequently dealt with issues concerning how negotiations on working hours issues were to be arranged in the future - according to agreements at a national level or extended opportunities for agreements at the firm level. As a result, the conflict, not surprisingly, related to the basic preferences of employers, i.e. individual flexible arrangements, as well as the basic dilemma for trade unions, i.e. how to preserve the collective rights of workers in the search for more flexibility. The rest of the empirical part will therefore focus on how this problematic issue of the relationship between collective agreements and firm level agreements was resolved.

Issues of conflict

Before the committee started its work, all parties were in favour in one way or another of increasing opportunities for making firm level agreements. A central feature of statements made by the workers' representatives before the committee started its work, was that the individual and personal opinions of workers had to be taken into account. This was clearly expressed in a memorandum from 1990, when the largest confederation of trade unions (SAK), outlined the basic principles for the development of working hours legislation. In these principles, the importance of collective agreements was secondary to the importance of individual workers needs.

> 'The starting point is not only a reduction of working hours, but also that the personal and individual needs of employees have to be taken into account. In making agreements on working hours, the employee has to be able independently to choose the kind of working hours that suits him best' (SAK 1991: 30).
>
> 'If opportunities for agreements at firm level are included into the working hours legislation, the trade unions must have opportunities to supervise the procedures. The law must also include a basic right for workers that cannot be overlooked, not even by national collective agreements'. (SAK 1991, 33)

This was also in line with the employers' associations' (TT) view of the needs for development.

> 'The current view of working hours is still characterised by a sense of collective rigidness. We need more educated and experienced workers ... who can work in a responsible way in situations demanding flexibility and versatility'. (Memorandum 18.12.1989, 2)

The employers' representatives also stressed that a labour market policy based on agreements at the firm level was important, since it would improve the competitiveness of companies and create more responsible workers. Both parties thus stressed the needs of individual workers and employers.

It was significant for the statements during the committee's work that the workers' representatives still held that some changes in the working hours legislation were necessary in the deep recession Finland was in at that time (early 1990s). According to them, merely cosmetic changes were not enough, but if these changes were part of the collective agreements, they were willing to accept extended agreements at firm levels. In the view of the employers' representatives, the question of agreements at firm levels on working hours was most important. If such agreements were not included in the law, a revision was seen by them as unnecessary. During the process, the parties consolidated their own positions: the workers' representatives committed themselves to collective agreements and the employers to agreements at the firm level. According to the workers representatives '…[an introduction of opportunities for making agreements at the firm level] means a radical shift in the balance of negotiations' (SAK 9.10.1992). According to the employer's representatives '…this is the most important issue; agreements at the firm level must be developed' (TT 28.2.1992).

The main divergence of interests could be seen as a question of institutional choice, i.e. regulations based on collective bargaining, as represented by trade unions,

and in the form of individual agreements, as represented by employers' associations. The workers' representatives opposed the introduction of opportunities to make regulations on working hours according to legislation at the firm level, mainly because it would have changed a situation where trade unions had a form of veto-power to make binding agreements. The employers' position on the issue was the opposite, since opportunities for making agreements on working hours according to legislation would have reduced the power of trade unions. This would have provided employers with more freedom to implement flexible working hours simply by keeping within the framework provided by legislation, without having to resort to negotiations with the trade unions.

After the committee's work, the workers' representatives stressed that the central confederations of trade unions have the best opportunity of estimating the bargaining positions of the workers and of the employers. (Committee proposal 1993: 2, 8) And furthermore.

> 'In this deep recession, there is no need for a revision of the working hours act. Agreements made at the firm level must be developed in accordance with collective agreements' (Memorandum 15.4.1993: 4).
>
> 'The greatest deficiency in the committee's work is that the opportunity for trade union supervision of workers is weakened. It is surprising that alternatives are presented that do not take into account the rights of trade unions to make agreements. According to SAK, the economic recession and the spirit of time [a deregulated labour market] cannot be regarded as reasons for a revision of the act' (Memorandum 15.4.1993: 4).

In the employers' views, the committee had not brought forward any arguments that would speak against the need for agreements at firm levels, at the cost of collective agreements. According to them '…if [the alternative of agreements at firm levels] cannot be agreed upon according to legislation, there is no need for a new act at all' (TT 4.12.1992).

It is fairly obvious that the problems for the committee to reach a final decision was caused by the basic standpoints of the parties, explained above. The employers' representatives would have approved of the chairperson's proposals since they correlated with their basic preference, i.e. how to extend operating hours of business. The workers' representatives rejected the proposal since it did not fit into their basic preferences of a stress of collective agreements.

In 1993, the working hours committee had not yet made any final proposal for a revised working hours act. It became a task for the government, in particular the minister of labour, to try and find a solution to the problems in order to enable a submission of a government bill to the parliament. The government subsequently prepared a bill on a new working hours act to be submitted to the parliament in 1993. This bill was prepared by the labour minister, who was from the Conservative Party, openly supporting the views of the employers. The bill was nonetheless withdrawn, because of the overall political and labour market situation in 1993. Unemployment reached 20 per cent, the Finnish economy was, as mentioned above, in a deep recession and, in trying to reduce labour market costs, the Centre led government was in open con-

flict with the trade union movement. The government and the trade unions came close to an open conflict in 1993, when the central confederations of trade unions made a threat of general strike as a reaction against the government's social, economic and labour market policies (Kauppinen 1994, 333-334). The government had to retreat on its intended labour market policies, including the proposed revision of the working hours law.

The revision of the working hours legislation did not stop there, however. In a memorandum by a 'working group for employment', appointed by the Finnish President, the development of a new working hours act was seen as an important instrument in the fight against unemployment. The new government in 1995, led by a Social Democratic Prime Minister, also stated the importance of a new working hours act for the improvement of employment. A government bill on working hours was planned for submission to the parliament sometime during the spring of 1996. A ministerial working group was set up by the government in 1995, with the task of further developing the working hours legislation. Its objective was to include into a revised working hours law, in one way or another, some of the new regulations agreed on in sectoral collective agreements for 1994-95. In the Collective agreement for the metal industry from 1994, for example, it was stated that the starting point was firm level and individual agreements, and if no such agreements were made, then the collective agreements were to be implemented. The stress on opportunities for agreements at firm levels and a reduction of the maximum amount of overtime were seen as the most important objectives (Tiitinen et al 1996: 13). The working group consisted of the independent expert who had functioned as chairperson in the previous committee, a civil servant as the secretary, three representatives from the same central confederations of trade unions as before, and three representatives from the same central confederations of employers' associations. The tripartite form of legislative preparation was thus continued. The working group started its work in autumn 1995, and had to finish it by January 31, 1996.

The starting point for the group was the conflictual issues not resolved by the working hours committee in 1993. The issues that had to be resolved were the range of application of the new working hours act, regular working hours by agreements at firm levels, maximum amount of, and payment for overtime, night work and daily rest in connection to EU directives, weekly rest, Sunday work, and the mandatory status of the legislation. An additional task for the working group was to implement the EU working time directive by November 23, 1996 and make the necessary amendments to the Finnish working hours law.

The working group

The range of application of the new act was in itself not particularly difficult to resolve in the group. In the first alternative for a new paragraph by the chairperson (which was identical to the proposal by the working hours committee), the main problems that had to be resolved were the position of workers in supervisory positions, work done in forests, vehicle drivers and army personnel. The chairperson, supported

by the expert on labour legislation, proposed that persons in a supervisory position and all forest work should be exempted from the act, and that no special statements for vehicle drivers were to be included. The employers' representatives supported all the proposals made by the chairperson. The workers' representatives strongly objected that vehicle drivers were to be exempted from the law. Instead, they demanded a separate legislative statement to be implemented on vehicle drivers (Memorandum 22.1.1996).

A new sentence was added to the proposal February 7, 1996 when vehicle drivers were included into the act. This was a result of negotiations between the government and the workers' representatives. According to the chairperson '… vehicle drivers were for some unknown reason included at a very late stage' (Interview with chairperson 6.11.1997). The government's involvement in the work became even more obvious in the next sections, which dealt with the definition and standard amount of working hours.

The most problematic issues in the working group were what was to be regarded as a standard number of working hours; the role of collective agreements versus legislation, and opportunities for making agreements at the firm level. The parties agreed that the daily standard working hours were to be set at eight, and weekly working hours at 40. In the next paragraph, the chairperson suggested that work could be organised according to a maximum of 120 hours over a three-week period or 80 hours over a two-week period for certain areas. These areas were for example, the police, customs, hospitals, home work and restaurants. This section was written at the end according to the proposal by the chairperson. The employers' representatives supported by the chairperson and the expert made a proposal about opportunities for making agreements at firm levels on this issue. The workers' representatives did not accept this supplement and it was not included into the final proposal (Memorandum 22.1.1996).

The next paragraph became the most difficult for the working group, as it had been for the previous committee, i.e. opportunities for making agreements at the firm level by following legislative regulations, instead of according to collective agreements. The preferences of the different parties had not changed after the committee finished its work. The workers' representatives did not approve of opportunities for making firm level agreements as an alternative to national collective agreements, while the employers' representatives were heavily in favour of such opportunities. In a summary by the chairperson one week before the working group's deadline, he mentions that this issue was still to a large extent unresolved, especially when it came to the unorganised employers. The preferences expressed by the different parties were completely incompatible (Memorandum 22.1.1996). The issue was nonetheless resolved after a meeting between the government, which was as mentioned above led by the Social Democrats, and the workers' representative (SAK). After this meeting, the government made a statement on how to proceed with this issue. This statement was almost completely in line with the workers' preferences. According to the chairperson in the previous committee, who functioned as an expert in the subsequent

working group, the issues of flexibility and agreements at the firm level were at the end diluted. The intentions before the process, where opportunities for more flexibility would be increased, were at the end much less significant than intended. The only area where firm level agreements became possible according to legislation, was the largely unorganised sector with employers not bound by any collective agreement (for example hairdressers). Such employers and employees could, according to legislation, make agreements on the prolonging of daily working hours by a maximum of one hour. The maximum weekly working hours could nonetheless be no more than 45 hours, and had to be no more than a monthly average of 40 hours. This sector, however, is only about 5 per cent of the total labour market. This meant that opportunities for firm level agreements were only possible under the auspices of central confederations of trade unions and employers' associations for 95 per cent of the labour market. The workers' representatives gained an almost complete victory on this issue (Interview with expert on labour legislation 6.11.1997).

This interpretation was also supported by the chairperson. According to him '…a government representative attended a meeting at 9pm with the 'wishes' of the government that had to be taken into account. They left us no alternative' (Interview with chairperson 7.11.1997). According to one of the employers' representatives, the SAK representatives in the committee spent a whole day at the Ministry of Labour, discussing with the government how to resolve the issue. The result of this discussion was that the workers' representatives gained a complete torjuntavoitto ('unexpected victory against all odds') (Interview with expert on labour legislation 6.11.1997). The employers' representatives were, naturally, not pleased with the procedure, but they had no option other than accepting it (Interview with employer's representative 10.11.1997). It was, after all, the government's bill they deliberated.

On the issue of overtime, the aim of the chairperson, (and expert), was that the previously implemented supplementary overtime, which had been added to ordinary overtime, was to be withdrawn. They also suggested that the upper limit be set at 138 hours over a four-month period. This proposal was supported by all the other parties in the working group. In addition, the employers' representatives proposed that the maximum annual amount of overtime be set at 416 hours, in line with the EU-directive. The workers' representatives suggested the maximum annual amount of overtime be 200 hours. If the extra overtime was preserved in the new law, it had, according to the workers' representatives, to be no more than 100 hours annually (Memorandum 22.1.1996). The basic positions of the parties were that the employers' representatives thought that the maximum amount of allowed overtime should be higher, because the total amount of working hours had been reduced during the last decades. The workers' representatives thought that the maximum amount of allowed overtime was higher in Finland than in other countries, and should therefore be reduced. The parties reached no agreement on this issue.

This issue was again resolved by government intervention. As a result of this meeting between the government and workers' representatives, mentioned earlier, the government made its own proposal according to which this problem was to be re-

solved. They decided that the maximum amount of overtime could be 138 hours over a four-month period, while the annual maximum amount of overtime could be 250 hours. In addition, 80 hours per year of overtime could be agreed upon at the firm level (Government memorandum 12.2.1996). The government thus made something of a compromise, since 80 hours of overtime could be agreed upon at firm level, a statement which the workers' representatives objected to, but the employer's representatives could approve. When it came to payments for overtime, the employers' representatives were of the opinion that the income from overtime work was higher in Finland than elsewhere and therefore the payments for overtime could be lower. The workers' representatives thought that since the amount of overtime was higher in Finland, then the amount of payments should be relatively higher. Both parties defended their argument by the same international comparison, but came to completely different conclusions.

The implementation of the EU working time directive did not cause any problems for the group and its participants. The main difference between the directive and the Finnish working hours act was that the directive did not limit regular daily working hours or working weeks. It did on the other hand, state that the average working hours could not exceed 48 hours per week, but this could be exempted from by means of laws, regulations or collective agreements, on condition that workers were afforded equivalent periods of compensatory rest (Official Journal of the European Communities 1993: 22). Furthermore, the directive did not limit night and shift work and there were no statements about payments for overtime. The structural difference between the directive and Finnish legislation was, therefore, that the Finnish law stated how many working hours were allowed, while the directive stated the mandatory amount of rest (Interview with trade union representative 11.11.1997). In making the new working hours act, the starting point was fully to implement the directive and thereby prevent disputes over interpretation of the Finnish legislation and its relation to the directive (Tiitinen et al 1996: 24).

The most interesting part of the directive was statements about derogations from the directive. It was stated that

> 'Derogations may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest' (Official Journal of the European Communities 1993: 22).

This meant that the directive did not prevent the trade unions and employers associations from making their own collective agreements in the future, on condition that they did not take away any advantages that the directive gave. The directive was consequently incorporated into the Finnish working hours law without any major problems in the working group. This was mainly because it did not infringe any Finnish institutional arrangements; it was still possible to derogate from the directive by collective agreements between the national trade unions and employers' associations. After the working group had finished its work and submitted a proposal 19 February 1996, the government submitted a new working hours bill to parliament on 22 April

the same year. No changes to the bill were made by parliament and the law came into force 23 November 1996.

2.3 The aftermath

Even if the new working hours regulations have been in place for almost six years now without causing any major problems, it does not mean that the discussion around working hours has ended. The main discussion in Finland has continued to be concerned with the implementation of increased flexibility on the labour market. Even if there are, as mentioned above, few opportunities for arranging flexible working hours according to the working hours law, the opportunities for diverging from legislation by branch-wise collective agreements have nonetheless meant that flexible working hour arrangements have been implemented in a great majority of Finnish workplaces. Flexible arrangements have also been introduced on, for example, annual holidays and salaries, albeit to a lesser extent than working hours. This has been the case for both the private and public sector (Seretin 2001).

As mentioned in the introduction, the latest broad based incomes policy settlement is in force between 2000-02. The settlement was concluded during favourable economic conditions in Finland and, consequently, it contained some general wage increases combined with a reduction of income tax, which had been promised by the government. The settlement did not contain any statements on working hours, apart from a provision that there was to be a promotion of … 'good working hour practices and improvement of flexibility based on individual circumstances' (Incomes policy settlement 15.12.2000). In addition, the main economic interest groups signing the settlement also supported the appointment of a tripartite working group. Its task was to follow international developments of working hours, especially those in other European countries. Thus, even if the parties may disagree about the content of working hours policies, clearly showed by the case study above, they nonetheless continue to agree that working hours are of great importance for both labour protection in general and for productivity and the efficient use of resources.

3. Summary and Conclusion

Returning to the hypotheses, it is debatable whether the inclusion of the main economic interest groups in this case can be legitimised by it adhering to a form of deliberative democracy. The end result of the conflictual issues was not resolved by deliberation among all the issues concern, but by decision by the government in conjunction with the workers' representatives. The employers' representatives had no option but to accept the final solution negotiated by the government and the workers' representatives. The participants were at the end of the process not equal. It was only on the issues of compromise where the inclusion could be regarded legitimate because the participants agreed on a single course of action as a result of deliberation, despite differing opinions. The crucial question is, however, whether it is possible to draw any wider conclusions based on a single case? This case has arguably been 'extreme' in the sense that it dealt with the basic contemporary dilemmas facing trade

unions and business at the moment. In that sense, it could be regarded as a one-off. On the other hand, main economic interest groups generally represent strong interests, and it would be rather naïve to think that they would be able to reach compromises on all issues by assessing alternative reasons and objectives. This would be against the very nature of the trade union – business relationship.

Should the inclusion of the main economic interest groups be abandoned, then, in favour of traditional forms of representative democracy where the laws are deliberated and decided by democratically elected politicians with the aid of experts? The current arrangements can be regarded as unjust and un-democratic in the sense that they are based on the participation of the main economic interest groups only, but the outcomes can nonetheless be perceived as just. This has largely been the case in, for example Scandinavia and Austria, whereas in the UK, on the other hand, the inclusion of the main economic interest groups in policy making in the 1970s never generated any widespread support and became short lived. In Scandinavia and Austria, the arrangements have worked for the common interest in terms of a labour market characterised by few conflicts together with low inflation and economic growth. The legitimacy of these arrangements is therefore *only* to be based on the perception that the outcomes are just and adhere to the common interest, not the inclusion of specialised knowledge as a means of consensus building. In a labour market context specialised knowledge soon becomes overshadowed by self-interest. From a democratic perspective, it becomes a problem of how important means are in achieving certain outcomes. In the public's eye, a democratic deficit may be a small price to pay for economic well being.

To conclude, it is conventional wisdom in a deliberative democratic discourse that deliberation should more or less automatically lead to more reasoned solutions and informed compromises, thereby enhancing democratic legitimacy. This was not the case here. In this case, after the representatives from the main economic interest groups started deliberating the working hours issue in detail, deliberation instead moved from initial expressions of the need for reasoned compromise to entrenched positions. A deliberative democratic ideal may therefore remain an ideal when it comes to collective bargaining between the main economic interest groups at the national level. Although the arrangements adhere to justice and the common interest they do not comply with either representative or deliberative democratic criteria.

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