

**COMPARING AND QUANTIFYING LABOR STANDARDS IN THE
UNITED STATES AND THE EUROPEAN UNION**

By

Richard N. Block, Professor
block@msu.edu

Peter Berg, Associate Professor
bergp@msu.edu

Karen Roberts, Professor
robert15@msu.edu

**School of Labor and Industrial Relations
Michigan State University
East Lansing, MI 48824 USA**

19 September 2003

Forthcoming in the International and Comparative Journal of Labour Law and Industrial Relations. Presented at the 13th World Congress of the International Industrial Relations Association, Berlin, 8-12 September 2003. The authors thank Veronique Marleau for her valuable comments and insights on earlier drafts of the paper. Gyorgy Szell and John Gennard also provided comments. The opinions and views expressed herein are solely those of those authors.

INTRODUCTION

Labor standards continue to receive a great deal of attention as part of the ongoing political debate about trade agreements such as the 1993 North American Free Trade Agreement (NAFTA) and as part of discussions within the World Trade Organization (WTO) (Brown, 2000; Nagourney, 2003). Increasing economic interdependence among industrialized countries has heightened public awareness on the role labor standards may play in the global economy. Labor standards define the work environment, shape conditions of employment, and have implications for trade, foreign direct investment, employment, and economic competitiveness.

Much of the discussion and research on labor standards consists of separate literatures focused on discrete issues related to labor standards. There is an extensive literature on collective bargaining in the United States and the need for reform as well as separate literatures on workplace safety, workers compensation, or unemployment benefits (Kaufman 1997; Weiler 1990; Vroman 1997). As noted, the discussion of labor standards often takes place within the area of trade policy, focusing on differences across developing and developed economies (Compa 1993; Aggarwal 1995; Block, Roberts, Ozeki, and Roomkin, 2001; Compa 2001). Some labor standards literature also tends to concentrate in particular on the role of the European Union in setting labor standards (Springer, 1994; O'Keefe and Twomey 1999; Davies, et al. 1996; Hantrais 1995). Little research, however, has examined labor standards as a whole system by country or region or quantified labor standards to allow for better comparisons of differences in labor standards across countries and regions. There has been little discussion of the trade-offs

between various labor standards and how developed nations pursue one set of standards at the expense of others.

Block and Roberts (2000), Block, Roberts and Clarke (2003) are exceptions. In this paper, we adapt the methodology Block and Roberts used to measure differences between the labor standards of the U.S. and Canada to compare and rank labor standards at the community level of the European Union (EU) with the labor standards at the federal level in United States. While our analysis shows that overall, the EU has higher labor standards than the United States, we also find that the U.S. has several standards that are equal to above those in the EU. The differences in labor standards reflect the values of each jurisdiction and have different implications for workers in both areas.

THE EUROPEAN UNION AND THE UNITED STATES

While much of the debate about labor standards focuses on the differences in labor standards between less developed and developed economies, labor standards also have important economic implications across developed economies. The European Union and the United States are currently the major economic powers in the world. The economy of the European Union is virtually the same size as the United States; using 1995 exchange rates, the combined GDP of the 15 EU countries in 2002 was US\$10.1 trillion compared to US\$9.2 in the United States (OECD, 2003).¹ The ten countries that will enter the EU in May, 2004 will add additional \$380 billion in GDP to the EU, based on 2001 and 2002 data (United States Department of State, undated).

Although the EU and the U.S. are competitors in the goods and services product markets, they are also dependent on each other for economic growth. As the largest

market economies in the world, the consumption patterns of both economies have a huge impact on stimulating economic growth and employment. Thus, labor standards have significance both for their effect on productive competitiveness and their ability to support consumer demand.

It may be argued that it is inappropriate to compare labor standards across the United States and the EU because the United States is a sovereign country and the EU is a political and economic union of sovereign countries. This difference, however, may not be as meaningful as it first appears. Since the 1950s, but with a substantial acceleration of the process in the 1990's, the EU has been on a path of increasing integration. The EU has evolved from a free trade zone in the early 1960's, to a customs union by the early 1990's, to a common market with full mobility of capital and labor in the late 1990's, to partial economic union by the first years of the 21st century. (European Union, 2002; Rodriguez-Pose, 2002).

Political integration is present in the very structure of the European Union governing bodies, e.g. the parliament, Council of Ministers, and the European Commission (Springer, 1994). The current discussion regarding a constitution of the EU illustrates quite clearly how far Europe has come with respect to political integration (Economist 2001). Over the past five decades, the countries of the EU have become increasingly integrated economically with the reduction in trade barriers and growing ease of movement of labor across member countries (Rodriguez-Pose, 2002). The recent monetary union among 12 member states and the responsibility the European Central Bank now plays in setting monetary policy has integrated Europe economically as never before.

Further, the EU countries have begun to demonstrate an ability to exercise economic and political power as a bloc, often in a manner that is different than it is exercised in the United States. In 2001, the EU rejected General Electric's bid to purchase Honeywell, a bid that was initially approved by United States authorities (Shiskin, 2001). The Commission was of the view that the merger would not increase efficiency; rather, it would strengthen the market dominance of GE hurt competition and customers (Davis and Rhagavan, 2001). This was a significant and unexpected blow to General Electric, and the merger with Honeywell subsequently fell apart. The EU has also taken the initiative in opposing the U.S. tariffs on imported steel (Winestock, 2001; Matthews and Winestock, 2002, World Trade Organization, 2003) and appears willing to continue to litigate antitrust issues against Microsoft, despite the settlement between Microsoft and the U.S. government (Mellor, 2003). These examples illustrate that the progress the EU has made in economic integration is providing a base from which the bloc can exercise economic power to offset the United States and to protect the interests of the EU.

In addition, the political relationship between the EU and its member countries is sufficiently similar to a federal structure to form a basis of comparison between the EU and the U.S. (Marleau, 2003). The EU implements its labor standards through directives from the European Council which requires member states to enact national legislation and enforce the standards (Springer, 1994; Borchardt, 1999-b).

It is true, as Marleau (2003) observes, that the U.S. and the EU are organized under different governing principles. The governing principle of the EU is subsidiarity, in which the responsibility flows from the bottom up, essentially with the member states

ceding authority by treaty to the EU (Marleau, 2003). On the other hand, in general, the governing principle in the U.S. is supremacy, or reverse subsidiarity, in which the federal level takes precedence (Marleau, 2003). Despite this difference between the EU and U.S., however, there are good reasons to compare the EU and the US. Since the 1970's, the EU since the 1970's has promulgated directives in a wide range of labor- and employment-related matters, such as worker movement among countries, individual employment contracts, protection of young workers, gender equality, working time, and safety and health as a means of providing social protection to all citizens of the EU (Blainpain, 1999). Second, although the U.S. has continually expanded the scope of federal labor and employment legislation, this expansion is primarily a post-mid 1930's phenomenon facilitated by U.S. Supreme Court decisions supporting the constitutional authority of the federal government to regulate employment within the states under the provision of the U.S. constitution providing the federal government authority over interstate commerce (NLRB v. Jones, and Laughlin, 1937; United States v. Darby, 1941). Prior to the late 1930's, the constitutionality of the federal government regulating employment that was solely within the boundaries of a state was constitutionally uncertain under the commerce clause (Hammer v. Dagenhart, 1918; Bedford Cut Stone Co. v. Journeymen Stone Cutters Association, 1927).²

Recent decisions of the U.S. Supreme Court demonstrate that the respective roles of the national and state governments in regulating employment are continually subject to reexamination, albeit under different provisions of the U.S. Constitution. In 2000, the U.S. Supreme Court ruled that the provision that applied the U.S. law prohibiting age discrimination to employees of state governments was unconstitutional because it

required states to subject themselves to suits from their citizens in the absence of a willingness to submit themselves to suits, thereby infringing upon state sovereignty (Kimel v. Florida Board of Regents, 2001). A similar Supreme Court decision with respect to the U.S. law prohibiting discrimination on the basis of disability was issued in 2001 (Board of Trustees . . . v. Garrett, 2001). Although federal law governing labor relations and collective bargaining generally preempts state laws (San Diego Building Trades . . ., 1959), U.S. Supreme Court decisions have permitted states to indirectly influence the outcomes of labor disputes though upholding state limitations on picketing on the grounds of trespass (Sears Roebuck . . ., 1978) and permitting a state to provide strikers with unemployment insurance (New York Telephone Co. . . ., 1979).

Thus, the principle of subsidiarity within the EU and concern over the roles national and supranational levels within the EU should play (Springer, 1994; Marleau, 2003) is not dissimilar to the continuing debate the in the United States regarding the proper roles of the federal government and the states in regulating economic activity, including the employment relationship. The differences in the nature of the relationship between the states and the federal government in the United States and the member states and the EU are not so great as to make a comparison of labor standards inappropriate.

Currently within the United States, while most labor standards are regulated at the federal level, some, such as workers' compensation, and in a sense, unjust dismissal, are regulated at the state level, the latter primarily through common law rather than through legislation.³ Unemployment insurance represents a blend of federal and state regulation (Vroman, 1990).

While the United States and the EU appear to be converging in terms of political and economic structure, such convergence has not developed in the respective views of employment in the two jurisdictions. Indeed, the United States and the EU represent two fundamentally different conceptions of the employment relationship. In general, the United States employment model is based on the primacy of market forces. The basic view in the United States is that optimal labor market outcomes are those that are produced by the functioning of the market; therefore government regulation and, to some extent, the scope of collective bargaining should be minimized. The EU, on the other hand, bases its conception of employment on the principle that unregulated markets create an imbalance of power between the employer and employee; therefore, government regulation and institutionalized unions are necessary to create countervailing power in the labor market that protects employees. (Block, Berg, and Belman, forthcoming.)

Thus, the EU countries are seen as traditionally placing a higher value than in the United States on worker protection. It would therefore be expected that the EU would enact higher labor standards than the United States (Block, Berg, and Belman, forthcoming). These standards are often hypothesized as constraining employers and introducing economic inefficiencies (Blank, 1994). In contrast, the United States is seen as placing a higher value on unconstrained market forces at the possible expense of worker protection, and therefore legislating lower labor standards than the EU (Block, Berg, and Belman, forthcoming).

Overall, then, the comparability of economic size and level of development between the EU and U.S. as well as the existence of political federalism suggest a type of

naturally occurring experiment involving the U.S. and the EU. With respect to employment, the apparent differences in regulatory philosophy suggest that labor standards should be higher in the EU than in the U.S. More generally, if regulation of the labor market is more extensive in the EU than in the United States, the impact of these differences on socioeconomic outcomes deserves examination. This paper will focus on the first issue, differences between labor standards in the EU and the United States.

THE LABOR STANDARDS DEFINED AND ANALYZED

For this study, the basic definition of a labor standards was that adopted by Block, Roberts, and Clark (2003) in their study of the U.S. and Canada. A labor standard was defined as:

a governmentally established procedure, term, or condition of employment, or employer requirement that is designed to protect employees from treatment at the workplace that society considers unfair or unjust. The common element across all the standards is that they are mandatory – they are imposed and enforced by government. (Block, Roberts, and Clarke, 2003, p. 35).

A difference between comparing labor standards in the United States and Canada and comparing labor standards in and EU is the existence of the Charter of Fundamental Rights in the EU, which addresses some labor rights (Charter of Fundamental Rights . . . 2000) and the nature of enforcement. The Charter is a statement of principles, and it may form the basis of court decisions (Borchardt, 1999-a). On the other hand, it is not a treaty or a directive (Borchardt, 1999-a). Based on this ambiguous status, in order to be conservative in our computations, we exclude “rights” provided in the Charter from our analysis.

We are comparing labor standards at the community level in the EU and the national level in the United States, which represents the highest possible jurisdictional level for the United States and Europe. It is beyond the scope of this study to compare the country-level in the United States with the country-level in Europe, or, possibly, the state level in the U.S. with the country-level in Europe. For this reason, because enforcement of EU directives is a member state function in the EU, whereas enforcement of federal labor and employment law is a federal function in the U.S., differences in enforcement will not be analyzed.

The first step in the determining differences in labor standards in the EU and United States is deciding which standards will be analyzed. In order to analyze a standard, it was necessary to compare the levels of protection across political jurisdictions that were roughly comparable; for purposes of this study – the community level in the EU and the national level in the U.S. Six possible regulatory schemes for any standard could be considered: (1) regulation at the community level in the EU and at the national level in the United States; (2) regulation at the community level in the EU but no regulation in the United States; (3) regulation at the national level in the United States but no regulation in the EU; (4) regulation at the community level in the EU and at the state level in the United States; (5) regulation at the national level in the United States and the country level in the EU; and (6) regulation at the country level in the EU and the state level in the United States.

The quantitative comparison is most straightforward for standards that the EU regulates at the community level and the United States regulates at the national level. We also consider standards that the EU regulates at the community level and the United

States does not regulate at any level, and standards that the United States regulates at the national level and the EU does not regulate. These standards can be evaluated based on the assumption that the absence of a regulation is the lowest possible standard.

We do not analyze standards that fall into one of the other three categories where the standard is only promulgated at the sub-national level in the United States or sub-community level in the EU. As this study compares the national level in the United States to the community level in the EU, to consider standards that are regulated at the state level in the United States and at the country level in the EU require the computation of a weighting scheme by which we determine what percentage of the United States or EU workforce is covered by the legislation. Equally important, the focus of this study is on standards common to the EU and the US.

Table 1 juxtaposes this categorization upon thirteen labor standards. The first ten labor standards in Table 1 were those quantified in Block and Roberts (2000) and Block, Roberts, and Clarke (2003): minimum wages, overtime, paid time-off, unemployment insurance, workers' compensation, collective bargaining, employment discrimination, unjust dismissal, occupational safety and health, and notice of large-scale layoffs/plant closings. These were included in the Block-Roberts (2000) and Block-Roberts-Clarke (2003) studies because either the federal government in the United States or Canada or one of the states or provinces had legislated in each of these areas. This rationale for inclusion was defensible for the study of two different countries, each with political jurisdictions within its borders, because we could examine standards at roughly comparable levels of government – national/federal and state/provincial. With respect to areas in which the EU legislates but which were not legislated in the United States or

Canada, we added three standards: employee involvement, parental-family leave,⁴ and employee rights in a transfer of ownership of an enterprise or facility (Blainpain, 1999).

As can be seen from Table 1, ten standards, minimum wage, working time, paid time off, collective bargaining, anti-discrimination, occupational safety and health, advance notice, employee involvement, parental-family leave, and employee rights in a transfer of ownership, fell within one of three categories for inclusion, and all will be examined. Two standards analyzed in the in the U.S. – Canada study, unemployment insurance and workers' compensation, fell into categories for exclusion. Workers' compensation in the United States is regulated at the state level in the US, and is part of the broader social security protections that are left to individual countries in the EU (Harris and Darcy, 2001). Unemployment insurance is a blend of federal and state requirements in the U.S . (Vroman, 1997), and, like workers' compensation, is part of social security in the EU (Harris and Darcy, 2001).

The most difficult standard to address with respect to inclusion was unjust dismissal. There is a Charter-based prohibition against unjust dismissal in the EU (Charter of Fundamental Rights . . . 2000), but there is no national legislation on unjust dismissal in the US. Only Montana, of the fifty states in the United States, has enacted unjust discharge legislation (Block, Roberts, and Clarke, 2003). On the other hand, judicial decisions in forty states have provided employees some protection from unjust discharge, generally based on theories of contract. Thus, although there is no systematic, broad-based regulation of unjust dismissal at any level in the United States, suggesting a consensus against statutory regulation of unjust dismissal, none of these decisions have been legislatively overturned.

The foregoing discussion of unjust discharge protection in the United States suggests that, given the Charter-based reference to unjust discharge in the EU, we place unjust discharge in the excluded category. What regulation exists in the U.S. is found in the states, and the EU has no binding directives on unjust discharge. Thus it will be considered to be regulated at the state level in the U.S. and the country level in the EU.

METHODOLOGY FOR COMPARING LABOR STANDARDS

As noted, our methodology for comparing labor standards in the EU and United States is based on Block and Roberts (2000) and Block, Roberts, and Clarke (2003). The first step was the construction of the individual indices. Each standard was comprised of a number of provisions or components. A weighting scheme was established for the components (provisions) of a labor standard, such that the total weights of all the provisions within a standard equaled 1. Greater weights were given to provisions within each standard that were determined to be most important (Block and Roberts, 2000). The jurisdiction with the provision that provided the greatest protection for workers was given a score of score of 10. Where a jurisdiction did not have a provision that the other jurisdiction had enacted, the jurisdiction was given a score of zero on that provision. Where the jurisdiction had enacted a weaker provision than the other jurisdiction, that jurisdiction was given a score of 5. The provision scores within each standard were multiplied by the weight attributed to the provision to obtain a score for that standard for the jurisdiction. The scores on each standard for the jurisdiction were then summed to obtain a total score for the jurisdiction.

Based on the foregoing discussion and Block and Roberts (2000), the index construction can be generally expressed as follows:

let s_{pdj} = the score assigned to provision p in standard d in jurisdiction j , where $0 \leq s_{pdj} \leq 10$;

X_{dj} = the index score for standard d for jurisdiction j ; W_{pd} = weights for each provision within each standard, where $\sum W_{pd} = 1$; and S_j = the labor standards score for jurisdiction j . Then

$$X_{dj} = \sum_{p=1}^n s_{pdj} * W_{pd} \text{ where the index consists of } n \text{ provisions and}$$

$$S_j = \sum_{d=1}^D X_{dj} \text{ where the standards score for the jurisdiction consists of } D \text{ standards.}$$

COMPARING LABOR STANDARDS IN THE UNITED STATES AND THE EUROPEAN UNION

Tables 2-12 present the results from the index scoring for the ten or eleven labor standards for the United States and the EU for which national- community-level comparisons can be made. Table 2 presents the overall results. Under the assumption that all standards are equally important, the results indicate that labor standards at the EU level are considerably higher than the comparable labor standards at the national level in the United States; the EU score is 68.05 while the U.S. score is 47.35. The remainder of this section of the paper will discuss the individual labor standards.

Wage Rates

This index incorporates standards associated with minimum wage payments, a determination by the jurisdiction that some wage levels are so low as to be socially undesirable, despite the possibility that an employer and an employee would be willing to agree on wage rate that is lower than the minimum. Table 3 shows the index computation. As can be seen, the United States has a minimum wage requirement, which is \$5.15 per hour, while the EC has no minimum wage directive (Blainpain, 1999; United States Department of Labor, undated-b). According to our coding scheme, because the EU has no minimum wage requirement, indeed is prohibited by treaty from addressing pay issues (Treaty of Amsterdam, 1997, Article 137), the U.S. should be given a score of 10. The U.S. score was reduced, however, because there are some situations in which an employer may pay an employee less than the minimum, such as when employing a young worker during the first 90 days of employment, or when employing disabled workers, full-time students, and student learners (United States Department of Labor, undated-e). Based on foregoing, the United States was assigned a minimum wage score of 9.5, while EU was assigned a minimum wage score of zero.

Overtime and Working Time

The overtime and working time index is presented in Table 4. The U.S. and the EU represent different models of working time regulation. The U.S. has no laws limiting the time employees can work and no laws requiring rest periods. Rather, the U.S. has established an economic model using financial incentives to structure behavior, with a requirement that the employer pay nonexempt employees time-and-one-half for all work over 40 hours in a week (U.S. Department of Labor, undated-a).⁵ Such a system is

designed to simultaneously discourage employers from asking employees to work overtime and to provide incentives for employees to work overtime, ideally resulting in a match of demand for and supply of overtime hours.

The EU uses direct legislation rather than monetary incentives to structure behavior. It has legislation that creates a maximum number of hours that can be worked in 24 hours and over a one-week period, establishes rest and meal breaks, and establishes requirements for employers to address stressful or monotonous work (Blainpain, 1999). There is no choice and there are no financial incentives in the system. There are no such requirements in the United States (United States Department of Labor, undated-c).

We argue that a system of direct regulation provides workers with more protection than a system of financial incentives. Ultimately, in the United States, if the employer is willing to pay the overtime, the employer may require the employee to work regardless of the employee's preferences. We believe this element of potential coercion results in less protection of employees than the direct regulation embodied in the EU model. This difference is reflected in the weights given to the provisions, .35 for the overtime requirement, with the score reduced by exemptions and the absence of an employee right to refuse by weighting each of these at .05, for a total of .45 on the economic incentive provisions. The total weights on the regulatory provisions, on the other hand, total .55.

As a result of this weighting scheme and the provisions included, we find that the EU working time index is greater than the U.S. working time index. The EU index is 5.5, while the U.S. index is 3.5.

Paid Time Off

The paid-time off indices are presented in Table 5. As can be seen the EU has far higher standards for employee paid time off than does the U.S. Two types of paid leaves were included in the index: holidays and vacation/annual leave. The U.S. establishes national holidays but imposes no requirements that employees be treated any differently on those holidays than on any other days (Block and Roberts, 2000; Block, Roberts, Clarke, forthcoming; United States Department of Labor, undated-d). There are no EU-wide holidays. We weighted a provision that requires that holidays be paid higher than the simple establishment of holidays because paid time off is clearly more valuable to employees than unpaid time off or not time off. The EU requires all employees working in the Community receive at least four weeks paid annual leave (Blainpain, 1999). There are no federal standards requiring paid time off in the U.S. Based on the foregoing, the EU scores substantially higher than the U.S. on the paid-time off index. The EU score is 7.5; the U.S. score is .83.

Collective Bargaining

Table 6 presents the computation on collective bargaining rights. Rather than attempt to analyze in detail collective bargaining rights in the United States and the EU, we based our analysis on the source of rights. The United States legislates worker rights to collectively bargain, while the EU includes them in the Charter of Fundamental Rights, but does not legislate them at the community level (Treu, 1996; Blainpain, 1999; Charter of Fundamental Rights, 2000; Hardin and Higgins, 2001).⁶

This low score for the EU and high score for the U.S. should not be taken to mean that workers in the U.S. have greater collective bargaining rights than workers in the EU. Evidence suggests that EU countries generally provide their workers fairly strong collective bargaining protection through national legislation, while the U.S. is generally considered by scholars to have fairly low levels of collective bargaining protection for workers, accompanied by a strong anti-union movement among employers (Gross, 1994; Samuel, 2002; Adams, 2002). Rather, this result should be taken to mean only that the EU does not regulate collective bargaining at the community level, while the U.S. regulates collective bargaining at the national level.

This standard also takes into account the fact that unions in the EU are considered one of the “social partners,” and, along with employers, must be consulted on legislation involving social policy (Treaty of Amsterdam, 1997). This gives unions additional status in the system that must be taken into account. Because it is a procedural right rather than a substantive right, it was assigned a weight that was half of the substantive statutory right in the U.S. of .1. The result is a collective bargaining score of 6.67 for the U.S. and 3.33 for the EU, as presented in Table 6.⁷

Discrimination

Table 7 presents the computation for the anti-discrimination protection indexes. Both the EU and the United States have developed broad-based bans against discrimination in employment. The EU score is 10, the U.S. score is 9.35. Both jurisdictions prohibit discrimination based on race, gender (including sexual harassment), religion, national origin, and disability (Wolkinson and Block, 1996; Block and Roberts,

2000; Block, Roberts, and Clarke, 2003; Council of the European Union, 2000-a). The factors that result in a slightly higher discrimination standard in the EU are the EU prohibition on discrimination based on sexual preference and the EU willingness to consider comparable worth as a factor in determining pay equity between genders (Council of the European Union, 2000-a).

Occupational Safety and Health

Table 8 presents the index computations for the occupational safety and health (OSH) standard. The value in the U.S. relative to the EU on the general duty clause United States results from its statutory status in the U.S. vis-à-vis its inclusion in the Charter for the EU (Charter of Fundamental Rights, 2000; Wolkinson and Block, 1996; Block, Roberts, and Clarke, 2003). Both jurisdictions create standards for chemical, contaminants and unsafe practices. On the other hand, the EU requires employers to consult with employees on safety matters, to provide information that employers in the U.S. are not required to provide by federal law, and to provide training to employees (Blainpan, 1999). The U.S. requires none of this. In addition, the EU has a broader definition of health than the U.S., incorporating psychological factors (Blainpan, 1999). As a result, the EU on occupational safety and health is 9.0 while the score for the U.S. is 3.5.

Notice of Large Scale Layoffs

Table 9 presents the results for advance notice of large-scale layoffs. The two jurisdictions are comparable on their provisions for advance notice of large-scale layoffs.

The United States requires more notice than the EU (60 days as compared with 30) days, but the EU has no minimum on the employee complement for the firms that must provide notice (Blainpain, 1999; Block, Roberts, and Clarke, 2003). Thus, the EU coverage is greater than the U.S. coverage. The slightly higher index value for the EU vis-à-vis the U.S, 8.75 as compared to 8.25, results from the greater weight given to the coverage provision vis-à-vis the length of notice provision.

Employee Involvement

Table 10 presents the results for employee involvement. Employees in the United States who are not represented by a union have no rights to be independently involved in employer decisions or consulted by their employer in any way. The EU, on other hand, requires all European companies, companies established under the Statute for European Company to establish independent negotiating committees consisting of elected employee representatives with which the company must consult (European Union, 1994; European Union, 2001a). The scope of consultations is undefined, but there are provisions for a written agreement (European Union, 2001b). In addition, all “Community Scale” undertakings, firms with 1000 employees within the member state and 150 employees within each of two member states, are required to have European Works Councils (European Union, 2001-b). The result is a score of 10 for the EU and zero for the United States.

Parental-Family Leave

Table 11 presents the results for parental and family leave. The U.S. and the EU are comparable on leave for family purposes, although they structure their leave

standards somewhat differently. The U.S. provides 12 weeks of unpaid leave during a 12-month period that can be used for personal- or family-related medical reason (United States Department of Labor, undated-c). The EU provides maternity leave and parental leave separately (Blainpain, 1999). Maternity leave may be up to 14 weeks (Blainpain, 1999). Three months of parental leave is provided for each child up to age 8 (Blainpain, 1999). Both the EU and U.S. receive a score of 5, as presented in Table 12. We believe that that these provisions are comparable because, while the U.S. permits more leave, the leave must be used for medical reasons. EU parental leave may be used for any reasons related to child care.

Ownership Changes

The EU provides substantial protection to employees in the event of an ownership change in a firm. The EU requires that the successor honor the employment “contract,” the basic terms and conditions of employment provided to the employees by the predecessor. EU employees are protected from dismissal due solely to the change in ownership, and are entitled to information and consultation with their representatives. If there is a collective agreement in place, it must be honored (Blainpain, 1999; Council of the European Union, 2001-a).

The U.S., on the other hand, provides no statutory protection to employees in the event of a change in ownership or other change in structure. The only protection is for the recognition of a union representing the successor’s employees if the new firm is deemed a “successor, if a collective bargaining relationship existed between the predecessor and union, and if the successor hires a majority of the predecessor’s

employees. There is no requirement that the successor honor the collective agreement of the predecessor (NLRB v. Burns International Security Services, 1972; Fall River Dyeing and Finishing Corp v. NLRB, 1987).

As a result, the difference between the two jurisdictions is substantial. As shown in Table 12, the EU receives a score of 10, and U.S. receives a score of .75.

DISCUSSION AND CONCLUSIONS

Labor standards at the community level in the EU are higher than labor standards at the national level in the United States. The EU is higher than the U.S. on working time, paid-time off, occupational safety and health, employee involvement, and changes of ownership/transfer of undertaking. The only standards on which the U.S. is higher than the EU are those addressing minimum wages and collective bargaining, and we believe that the latter result is a function of the EU choice not to regulate collective bargaining at the community level rather than any lack of collective bargaining protection for workers in EU countries.⁸ The EU and the U.S. are roughly equivalent on anti-discrimination legislation, large-scale layoffs, and parental/family leave. Taken together, these results are consistent with the conventional wisdom regarding labor standards in the two jurisdictions; the EU, at the community level, provides greater protection for workers than does the U.S. Moreover, if the EU chose to regulate collective bargaining at even the same level as the U.S., the overall score for the EU would be higher than the score attributed to it here, suggesting that the computed difference is truly a lower bound vis-à-vis the actual difference.

The differences in the labor standards between these two regions can be explained by the different views of the labor market and the employment relationship in the United States and Europe. In the U.S., the labor market is accepted as competitive. Buyers (employers) and sellers (workers/employees) are presumed to generally operate in a competitive labor market that such that neither party can influence the determination of terms and conditions of employment. In economic terms, the U.S. presumes that employers and employees are price takers. The presumption of competition is consistent with the view is that the government should intervene as little as possible so as not to upset this competitive balance. The acceptance of the competitive labor market presumption implicitly supports the idea that terms and conditions should be established by employers and employees with minimal government involvement and will efficiently and fairly protect both employers' and employee's interests. This doctrine of minimal intervention is reflected in a low level of governmentally imposed labor standards. (Block, Berg, and Belman, forthcoming)

Moreover, the employment relationship in the U.S. is viewed primarily as an economic transaction rather than a relationship that incorporates social content. This economic view is exemplified by the adherence of the U.S. to the employment-at-will doctrine: as a general principle, either party can terminate the employment relationship at any time. The employment relationship then exists only so long as it creates sufficient value for both the employer and the employee. When the value created is insufficient for just one of the parties, the relationship can be terminated with no required notice (Groschen, 1991).

At least two of the standards on which the United States is comparable with the EU can potentially be construed as promoting market efficiency rather than functioning exclusively as worker protections. Standards on non-discrimination focus on eliminating non-economic factors from the employment decision. The standards with regards to large-scale lay-offs can be seen as promoting more efficient job search by providing employees labor market information in a timely manner.

The other labor standards, which are more stringent in Europe, are seen in the U.S. as excessive intervention in the employment relationship, restricting the rights of employers and workers to establish mutually satisfactory terms and conditions of employment. These standards include employee participation, paid leaves, occupational safety and health, and employee rights relating to the transfer of business ownership.

The higher level of labor standards in the EU is consistent with the view that the employer has more market power than the employee and that the employer is not a price taker in the labor market. Therefore, employees must be protected by regulation from the ill effects of employer exercise of market power. Thus, labor standards in the EU serve as a form of social regulation of the labor market. By placing certain constraints on employers, or by forcing employers to consult with employees or their representatives across a range of issues, the EU in a sense, attempts to artificially construct a set of terms and conditions of employment that might exist if the parties had equal bargaining power.

As a caveat, it should be observed that this analysis did not include labor standards at the state level in the U.S. that might be higher than the federal standards (Block, Roberts, and Clarke, 2003) nor did it analyze standards in individual EU countries, which cannot be lower than the EU standards. Finally, as noted in the context

of collective bargaining and unjust discharge, the paper gave a low weight or did not address labor “standards” that were addressed at the EU level through the Charter of Fundamental Rights in the EU, but not through directives. Although this paper cannot be said to represent standards that cover any individual worker in the EU or the U.S., it does present what can be thought of as a lower bound scoring of labor standards protecting workers in each jurisdiction. As such, we believe it provides a useful overview of differences in standards at the community level in the EU and federal level in the U.S.

Earlier in the paper, it was pointed out that a type of social experiment is developing across the Atlantic Ocean. Europe has created a capitalist system based on private property but with a highly regulated labor market, creating a wide range of employee rights embodied in overarching governing regulation.. The U.S., on the other hand, has created a capitalist system based on private property and lightly regulated labor markets, with relatively few rights guaranteed to employees. An important policy question to be examined is how much of any differences in the economic performance of the two systems can be attributed to labor market regulation and protections.

REFERENCES

- Adams, Roy, 2002, "America's "Union-Free" Movement in Light of International Human Rights Standards," paper presented at AFL-CIO/Michigan State University Conference on Worker Rights, East Lansing, Michigan, October 11-12.
- AFL-CIO (2003), "Bush Proposal Could End Overtime Pay for Millions of Workers," News for Working Families, April 7 at <http://www.aflcio.org/issuespolitics/ns03282003a.cfm>.
- Aggarwal, Mita. 1995. "International Trade and the Role of Labour Standards," International Economic Review, August.
- Bedford Cut Stone Co. v. Journeyman Stone Cutters Association, 1927, US. Supreme Court, 274 U.S. 37 at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=274&page=37>.
- Blank, Rebecca (1994), "Does a Larger Social Safety Net Mean Less Economic Flexibility?" in Working under Different Rules, Richard Freeman, ed., New York: Russell Sage Foundation, p. 157-187.
- Blanpain, Roger (1999), European Labour Law, The Hague, London, Boston: Kluwer Law International.
- Block, Richard N., Peter Berg, and Dale Belman, forthcoming, "The Economic Dimension of the Employment Relationship" in The Employment Relationship: Examining Psychological and Contextual Perspectives, Jackie Coyle-Shapiro, Lynn Shore, Susan Taylor, Lois Tetrick eds., Oxford, UK: Oxford University Press.
- Block, Richard and Karen Roberts. 2000. "A Comparison of Labour Standards in the United States and Canada," Relations Industrielles / Industrial Relations, Vol. 55, No. 2.
- Block, Richard, Karen Roberts and R. Oliver Clarke (2003). Labor Standards in the United States and Canada, Kalamazoo, Mich.: W.E. Upjohn Institute for Employment Research.
- Block, Richard, Karen Roberts, Cynthia Ozeki, and Myron Roomkin (2001). "Models of Labor Standards," Industrial Relations, Vol. 40, No. 2 (April), pp. 258-92.
- Board of Trustees of the University of Alabama v. Garrett, 2001, No. 99-1240 at <http://www.findlaw.com/casecode/index.html#federal>.
- Borchardt, Klaus-Dieter Borchardt, 1999-a, "Fundamental Rights in the EU," in The ABC of Community Law, Brussels, Directorate-General for Education and Culture Publications Unit, at <http://europa.eu.int/eur-lex/en/about/abc/index.html>.

Borchardt, Klaus-Dieter Borchardt, 1999-b, "Interaction Between Community Law and National Law," in The ABC of Community Law, Brussels, Directorate-General for Education and Culture Publications Unit, at <http://europa.eu.int/eur-lex/en/about/abc/index.html>.

Brown, Drusilla (2000), "International Labor Standards in the World Trade Organization and the International Labor Organization," The Federal Reserve Bank of St. Louis Review, Vol. 82, No. 4 (July/August), pp. 105-12 at <http://research.stlouisfed.org/publications/review/00/07/0007db.pdf>.

Carley, Mark, 2001, Bargaining at European Level: Joint Texts Negotiated by European Works Councils, Dublin: European Foundation for the Improvement of Living and Working Conditions.

Charter of Fundamental Rights of the European Union (2000) at http://www.europarl.eu.int/charter/default_en.htm

Compa, Lance. 2001. "Free Trade, Fair Trade, and the Battle for Labor Rights," in Lowell Turner, Harry C. Katz, and Richard W. Hurd (eds.) Rekindling the Movement: Labor's Quest for Relevance in the 21st Century, Ithaca: Cornell/ILR Press.

Davies, Paul, Antoine Lyon-Caen, Silvana Sciarra, and Spiros Simitis (1996). European Community Labour Law: Principles and Perspectives, Liber Amicorum Lord Wedderburn, Oxford: Clarendon Press.

Davis, Bob and Anita Raghavan (2001), "Consumers vs. Competition: U.S., Europe Depend on Circumstances to Choose Sides," The Wall Street Journal, July 3.

"Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule, (United States) Federal Register: March 31, 2003, Volume 68, Number 61, p. 15559, at <http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=673832273127+1+0+0&WAISaction=retrieve>.

Economist, The. 2001. "Europe: The latest battle for the continent's new shape; A constitution for Europe," December 8.

Electromation, Inc. v. NLRB (1994), 35 F. 3d 1148, 7th Circuit.

European Union, Council of (1989), Council Directive 89/391/EEC of 12 June 1989 On The Introduction Of Measures To Encourage Improvements In The Safety And Health Of Workers At Work.

European Union, Council of (1993), Council Directive 93/104/EC of 23 November 1993 Concerning Certain Aspects Of The Organization Of Working Time.

European Union, Council of (1994), Council Directive 94/45/EC of 22 September 1994 On The Establishment Of A European Works Council Or A Procedure In Community-Scale Undertakings And Community-Scale Groups Of Undertakings For The Purposes Of Informing And Consulting Employees.

European Union, Council of (2000), Directive 2000/43/EC of 29 June 2000 implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic origin.

European Union, Council of (2000), Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

European Union, Council of (2001-a), Council Directive 2001/23/EC Of 12 March 2001 On The Approximation Of The Laws Of The Member States Relating To The Safeguarding Of Employees' Rights In The Event Of Transfers Of Undertakings, Businesses Or Parts Of Undertakings Or Businesses.

European Union, Council of (2001-b), Council Directive 2001/86/Ec, Council Regulation (Ec) No 2157/2001 Of 8 October 2001 On The Statute For A European Company (Se).

European Union (2002), "Saying Goodbye to the National Currencies," Release IP/O2/344, 28 February at http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/344|0|AGED&lg=EN&display=.

Fall River Dyeing and Finishing Corp. v. NLRB (1987), U.S. Supreme Court, 482 U.S. 27.

Freeman, Richard & James Medoff. 1984. What Do Unions Do. New York: Basic Books.

Groshen, Erica. 1991. "Five Reasons Why Wages Vary Among Employers," Industrial Relations, 30 (3), Fall, p. 350-381.

Gross, James, 1994. "The Demise of National Labor Policy: A Question of Social Justice," in Restoring the Promise of American Labor Law, S. Friedman, R. Hurd, R. Oswald, and R. Seeber, eds., Ithaca, NY: ILR Press, pp. 45-58.

Hammer v. Dagenhart, 1918, U.S. Supreme Court, 247 U.S. 251 at <http://www.findlaw.com/casecode/index.html#federal>

Hantrais, Linda. (1995). Social Policy in the European Union. New York: St. Martin's Press

Hardin, Patrick and John E. Higgins, Jr., Editors-in-Chief (2001), The Developing Labor Law: The Board, the Courts, and the National Labor Relations Act, 4th Edition, Washington, D.C.: Bureau of National Affairs.

Harris, David and John Darcy (2001), The European Social Charter, 2nd Ed., Ardsley, NY: Transnational Publishers.

Kaufman, Bruce. 1997. Government Regulation of the Employment Relationship, Madison: Industrial Relations Research Association.

Kimel v. Florida Board of Regents, 2000, U.S. Supreme Court, No. 98-791 at <http://www.findlaw.com/casecode/index.html#federal>.

Marleau, Veronique, 2003, "Globalization And The Problem Of Compound Decentralization: Lessons From The Canadian Labour Relations Setting," paper presented at the International Commemoration of Mario Biaggi, Modena, Italy, March 19-20.

Matthews, Robert Guy and Geoff Winestock (2002), "EU Proposal on Steel Imports Gets Thumbs-Down from Bush," The Wall Street Journal, February 7.

Meller, Paul (2003), "Europe Accuses Microsoft of Continuing Antitrust Abuses," The New York Times, August 6.

National Labor Relations Board v. Jones & Laughlin Steel Corp., 1937, U.S. Supreme Court, 301 U.S. 1 at <http://www.findlaw.com/casecode/index.html#federal>.

Nagourney, Adam (2003), "Democrats Seeking Labor's Backing Call for More Health Benefits and Less Free Trade," The New York Times, August 6.

New York Telephone Co. v. New York Department of Labor, 1979, U.S. Supreme Court, 440 U.S. 519 at <http://www.findlaw.com/casecode/index.html#federal>.

NLRB v. Mackay Radio and Telegraph Co., 1938, U.S. Supreme Court, 304 U.S. 333 at <http://www.findlaw.com/casecode/index.html#federal>.

NLRB v. Burns International Security Services (1972), 406 U.S. 272, <http://www.findlaw.com/casecode/index.html#federal>.

OECD. 2003. "Gross Domestic Product," <http://www.oecd.org/dataoecd/48/4/2371304.pdf>.

O'Keefe, David and Patrick Twomey (eds.), 1999, Legal Issues of the Amsterdam Treaty, Portland: Hart Publishing.

Samuel, Lenia, 2002, Fundamental Social Rights: Case Law of the European Social Charter, Strasbourg: Council of Europe, 2002.

San Diego Building Trades Council v. Garmon, 1959, U.S. Supreme Court, 359 U.S. 236 at <http://www.findlaw.com/casecode/index.html#federal>.

Sears Roebuck and Co. v. Carpenters, 1978, U.S. Supreme Court, 460 U.S. 180 at <http://www.findlaw.com/casecode/index.html#federal>.

Shiskin, Philip (2001), "EU Officially Blocks GE-Honeywell Deal, The Wall Street Journal, July 5.

Springer, Beverly (1994). The European Union and Its Citizens: The Social Agenda, Westport, Conn. and London: Greenwood Press, 1994.

Treaty of Amsterdam Amending The Treaty On European Union, The Treaties Establishing The European Communities And Related Acts (1997) at <http://europa.eu.int/eur-lex/en/treaties/dat/amsterdam.html>.

Treaty Of Nice, Amending The Treaty On European Union, The Treaties Establishing The European Communities And Certain Related Acts (2001) at http://europa.eu.int/eur-lex/en/treaties/dat/C_2001080EN.000101.html.

Treu, Tiziano, 1996, "European Collective Bargaining Levels and the Competencies of the Social Partners," in European Community Labour Law: Principles and Perspectives, Liber Amicorum Lord Wedderburn, Paul Davies, Antoine Lyon-Caen, Silvana Sciarra, and Spiros Simtis, eds. Oxford, Clarendon Press, pp. 169-87

United States v. Darby, 1941, U.S. Supreme Court, 312 U.S. 100 at <http://www.findlaw.com/casecode/index.html#federal>.

United States Department of Labor (undated-a), "Fact Sheet #23: Overtime Pay Requirements of the FLSA" at <http://www.dol.gov/esa/regs/compliance/whd/whdfs23.htm>.

United States Department of Labor (undated-b), "Find It! By Topic. Wages - Minimum Wage" at <http://www.dol.gov/dol/topic/wages/minimumwage.htm>.

United States Department of Labor (undated-c), "Find it! By Topic. Work Hours - Breaks and Meal Periods" at <http://www.dol.gov/dol/topic/workhours/breaks.htm>.

United States Department of Labor (undated-d), "Find it! By Topic. Work Hours - Holidays" at <http://www.dol.gov/dol/topic/workhours/holidays.htm>.

United States Department of Labor (undated-e), “FLSA Advisor - Wage and Hour Division, Employment Standards Administration” at <http://www.dol.gov/elaws/faq/esa/flsa/003.htm>.

United States Department of Labor (undated-f), “Compliance Assistance - Family and Medical Leave Act” at <http://www.dol.gov/esa/whd/fmla/>.

United States Department of State (undated), “Background Notes” at <http://www.state.gov/r/pa/ei/bgn>.

United States v. Lopez (1995), U.S. Supreme Court, No. 93-1260 at <http://www.findlaw.com/casecode/supreme.html>.

Urwin, Derek (1998), “A Glossary of the European Communities and European Union,” at European Union Internet resources, <http://www.lib.berkeley.edu/GSSI/eu.html> linked to <http://www.abdn.ac.uk/~pol028/sources/europe.htm#dpage>.

Vroman, Wayne, 1990. “The Aggregate Performance of Unemployment Insurance, 1980-1985,” in Unemployment Insurance: The Second Half Century, W. Lee Hansen and James F. Byers, ed., Madison, Wis. and London: University of Wisconsin Press, pp. 19-46.

Vroman, Wayne. 1998. Topics in Unemployment Insurance Financing, Kalamazoo: W.E. Upjohn Institute for Employment Research.

Weiler, Paul C. 1990. Governing the Workplace. Cambridge: Harvard University Press.

Winestock, Geoff (2001), “EU Threatens WTO Steel Suits Against U.S. by End of Month,” The Wall Street Journal, June 12.

Wolkinson, Benjamin & Richard Block. 1996. Employment Law : The Workplace Rights of Employees and Employers, Cambridge, MA: Blackwell Publishers.

World Trade Organization (2003), Final Panel Reports: United States – Definitive Safeguard Measures On Imports Of Certain Steel Products, WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R, WT/DS259/R, adopted July 11 at http://www.wto.org/english/news_e/news03_e/panel_report_11july03_e.htm.

ENDNOTES

¹ GDP for the EU includes the following countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy Luxembourg, Netherlands, Portugal, Spain, Sweden, and UK/Northern Ireland.

² In *Dagenhart*, the U.S. Supreme Court declared unconstitutional a federal law that was intended to prevent the shipment across state lines of goods made with child labor. In deciding the case, the Court stated:

(i)n interpreting the Constitution it must never be forgotten that the nation is made up of states to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved. . . . The power of the states to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government. . . . To sustain this statute would not be in our judgment a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the states. (247 U.S. at 276-77).

³ Montana is the only state in the United States that has enacted a statute limiting the right of employers to dismiss employees (Block & Roberts, 2000).

4. Family leave had been incorporated in the anti-discrimination standard in Block and Roberts, 2000 and Block, Roberts, and Clarke, 2002. For the purposes of this study, we created a separate leave standard to capture the importance of such leave in the EU (Blainpain, 1999).

⁵ Management salaried and professional employees are generally exempt from the overtime provisions of the law based on their occupational status. Exempt status is based on the law and augmented by rules and regulations adopted by the United States Department of Labor (USDOL). In March 2003, the USDOL proposed to amend these regulations (“Defining and Delimiting . . .”). The USDOL states that the purpose of these proposed rules changes is to “update and revise the regulations” in accordance with a 1999 report of the United States General Accounting Office that “recommended that the Secretary of Labor comprehensively review and make necessary changes to the (exemption) regulations to better meet the needs of both employers and employees in the modern work place, and to anticipate future work place trends” (“Defining and Delimiting . . .”). The AFL-CIO has opposed these changes on the grounds that they would reduce the number of workers who receive overtime (AFL-CIO, 2003).

⁶ This is not to argue that workers in EU countries do not have rights to collective bargaining. Rather, it is simply to point out that these rights are not provided at the EU level.

⁷ We limit the collective bargaining index to the basic right of association rather than attempting a detailed analysis of U.S. labor law, as the extent to which these laws protect workers rights to bargain is open to debate. For example, a basic principle of free collective bargaining is the right to strike. The Treaty of Amsterdam prohibits the EU from addressing the right to strike. While U.S. labor law provides employees with a right to strike, it also permits employers the right to permanently replace strikers (NLRB v. Mackay Radio . . ., 1938). It could be argued that permitting employers the right to replace workers negates, to some extent, the right to strike. An analysis of this and other issues is beyond the scope of this paper.

⁸ Although there are no directives that regulate collective bargaining across the EU, there is a great deal of collective bargaining-type activity occurring at the EU and multinational level within the European Union. See Carley, 2001.