Communication and consultation in Malaysia: Impact of the 1975 Code of Conduct

Balakrishnan Parasuraman
University of Wollongong

ABSTRACT

Employee participation through communication and consultation was one of the intended outcomes of the Code of Conduct for Industrial Harmony 1975 in Malaysia (hereafter referred as the 'Code'). The Code is subdivided into sections on employment policy, training, payment policy, redundancy and retrenchment, collective bargaining and collective agreements, procedures for resolving disputes, procedures for disciplinary action, and communication and consultation. Since 1975 there has been no examination of whether or not the communication and consultation section of the Code has been effective in promoting employee participation in the Malaysian workplace. Government, employers and unions appear to be interpreting the Code in differing ways. This research investigates the issues pertaining to the Code and employee participation in Malaysia from the perspective of employers, union and the government.

Introduction

The Ministry of Labour (now Ministry of Human Resources) in conjunction with the Malaysian Council's of Employers Organisations (MCEO) and Malaysian Trade Union Congress (MTUC) drew up the Code of Conduct for Industrial Harmony in 1975. The aim of Code was to lay down principles and guidelines for employers and workers on the practice of industrial relations for achieving greater industrial harmony. The Code has four main areas: a) responsibilities, b) employment policy, c) collective bargaining and finally d) communication and consultation.

There were political, economic and social factors that influenced the creation of the Code in 1975. In 1970, the state was determined to see that the climate of industrial peace was maintained at all costs to achieve the aims of the New Economic Policy which were to be implemented over the period of twenty years, from 1970-1990 (Bahari, 1989, Anantharaman, 1997, Idrus, 2001). At the same time, the state claimed that their intervention in industrial relations gave more freedom to employers and unions to solve any disputes at the workplace by themselves, rather than bringing labour-management issues to the government for their discretion (The Code of Conduct For Industrial Harmony 1975). The government argued that laws alone couldn't define the public interest. That is, laws were necessary and had a definite and important role in the Malaysian industrial relations system but they were no substitute for behaviour of mind, which regards industrial relations problems as requiring commonsense solutions.

The Code was designed adequately, however in practice it has many limitations. One of the limitations of the Code is it does not have any legal enforcement to protect employers, employees and the unions. The MTUC often argued over the years that discrimination continues to occur at workplaces even though the primary aim of the Code is sustaining industrial harmony (MTUC Newsletter 2004).

This chapter is divided into three parts. First, the brief history of labour relations in 1960s and 1970 in Malaysia will be explained. Second, the Code of Conduct for Industrial Harmony and its relation to workers communication and consultation will be outlined. Finally, discussion and conclusions will be analysed in regards to this issue.

The introduction of the code of conduct for industrial harmony: Historical underpinnings

Malaysian political development during the 1960s did not work out in favour of the development of trade unionism. Malaysia was born in 1963 when Malaya, Singapore and two states of Sabah and Sarawak on the island of Borneo formed Malaysia. Malaysia's neighbours, Indonesia and the Philippines opposed its formation. Indonesia initiated an armed confrontation against Malaysia, which led to a state of 'emergency' being declared in 1963. The state of 'emergency' lasted for three years. During this period of 'emergency', the government held more power to ensure that a peaceful situation prevailed in the country. In this regard, trade union militancy such as strikes resulted in the detention of those organising them. During the 1963-1966 periods, the government set up the 'Emergency Essential Regulations' which gave the government the power to declare that some sectors of the economy were 'essential sectors' (Arudsothy and Littler, 1993). In these 'essential sectors', workers were prohibited from taking any industrial action. When the 'emergency' period was over in 1966, the government incorporated the 'essential sectors' clause into a new piece of employment legislation called the Industrial Relations (IR) Act 1967. This Act was introduced immediately after the state of emergency after the Malaysian-Indonesian confrontation was resolved. Generally, the Act produced three significant effects on industrial relations. In other words, with introduction of the IR Act 1967, Malaysia had three pieces of employment legislation: the Employment Act 1955, the Trade Union Act 1959 and the IR Act 1967 which is practiced until the present day (Arudsothy, 1990, Anantharaman, 1997, Parasuraman, 2004).

In 1969, there had been a dramatic incidence of racial riots, which resulted in the death of at least 400 Malaysians (Abdullah, 1991). The main reason for these race riots was because the economic position of Malays at the end of the 1960s was still significantly inferior to that of non-Malays. In Peninsular Malaysia, the average percapita income of the Malays was half that of the Chinese. Imbalance in ownership of assets was a further source of communal disparities. For example, Chinese landholdings were on average, twice the size of Malay landholdings (Bahari, 1989). This situation was characterised by uncertainties and complex tensions among the races. Moreover, in the wake of the federal election in May 1969, the 'fragile communal stability' was shattered. As a result, the government declared another 'state of emergency'. In terms of the industrial relations situation, the state of emergency was used against the labour movement. In this regard, two important consequences resulted: first, the employment laws were made more restrictive; and second, the socio-economic policy designed by the government resulted in the restriction of the formation of unions in certain industries. In addition, restrictions were also made on the right to strike and there was a further extension of managerial prerogatives.

When parliament reconvened in 1971, most of the amendments to the labour laws in 1969 (decreed under the Emergency powers) were incorporated into a new comprehensive legislation. This legislation sent a clear signal to labour and the unions, of the government's determination to see its economic plan succeed. For example Kuppusamy (1998) argues that the amendment in Section 13 (3) of the IR Act 1971 on 1 November 1971 was controversial because it limited the scope of collective bargaining by prohibiting trade unions from raising any bargaining demands on the issues of promotion, internal transfer, recruitment, retrenchment, dismissal or reinstatement of an employee, including the assignment or allocation of his duties or specific tasks to him. These amendments are also more favourable to employers than employees or the union. As Sharma (1996) and Ayadurai (1996) have argued, all the issues mentioned above are part of managerial prerogative.

Although the tightening of the laws made difficult for the unions to take industrial action, the period from 1971 to 1974 saw a steady increase in the total number of strikes, including an increase in the total number of workers involved in strikes and total person-days lost due to strikes (Ministry of Labour 1977). During the steady increase in strikes in the first half of the 1970s, the government encouraged the MTUC's overt commitment to industrial harmony. This took the form of the 'Code of Conduct for Industrial Harmony' endorsed by the MTUC and the Malayan Council of Employers' Organisation (MCEO) in February 1975, through the mediation of the Ministry of Labour.

The purpose and a brief summary of the code of conduct for industrial harmony 1975 with focus on communication and consultation

The aim of the Code is to lay down principles and guidelines to employers and workers on the practice of industrial relations, for achieving greater industrial harmony (Ministry of Labour 1975). Under the Code, the MCEO (representing employers) and MTUC (representing employees), agreed on the following (The Code of Conduct For Industrial Harmony 1975:4-6):

(A) Recommend that both employers and workers:

(i) refrain from taking unilateral actions with regards to any industrial disputes;
(ii) resolve all differences, grievances and disputes strictly in accordance with the grievances procedures of collective agreement or, where there are no agreements by negotiation, conciliation and arbitration;
(iii) ensure that all times all matters in dispute are dealt with by the proper machinery establish for that purpose;
(iv) promote constructive and positive cooperation at all levels in industry and to abide faithfully by the spirit of agreements mutually entered into;
(v) establish, where none exist, a procedure which will ensure a complete and speedy investigation of grievances leading to a joint settlement;
(vi) comply with the various steps in the procedure for disposal of grievances and to avoid any arbitrary action which ignores these procedures;
(vii) refrain from resorting to coercion, intimidation, victimisation and to avoid go-slow, sit down and stay-in-strikes; and
(viii) educate management and workers of their obligations to each other.

(B) Recommend that both employers and worker observe and comply with such industrial relations practises as may be agreed, from time to time, between MCEO and the MTUC and accepted by the Ministry.

The MCEO and MTUC again with the help of the Ministry of Labour drew up a document entitled Areas for Cooperation and Agreed Industrial Relations Practices under Clause 7 of the Code. This document recommended fifty specific industrial relations practices and four broad areas of cooperation. It included sections on employment policy, training, payment policy redundancy and retrenchment, collective bargaining and collective agreements, procedures for resolving disputes, procedures for disciplinary action, communication and consultation (Anantharaman, 1997). For the purpose of this paper, the research only focuses on communication and consultation section.

The Code emphasises the importance of communication and consultation between employers and unions in the workplace to encourage employee participation. The Code encourages management to inform employees and trade unions about the issues arising in the workplace. These matters include terms and conditions of work, safety rules, training, and opportunities for promotion. Management are also required to ensure their representatives will communicate well with their 'down line' employees in order to maintain an industrial harmony at the workplace. There are various methods of communication and consultation can be used, for example direct communication between managers and employees, notice boards, house journals, training and regular consultation (Anantharaman, 1997). Apart from this, under this Code, employers also are encouraged to establish employee participation through the use of joint consultation committees or work committees, in which the employees and unions are represented. In non-union sectors, employers should provide any means of consultation method to allow employees to give their views on matters that affect their working life and also work situation. The committees are also encouraged to discuss the wider range of issues in the workplace, which concern both employees and management.

Research methodology

The research methodology was primarily qualitative consisting of unstructured face to face interviews and document analysis. Interview responses were noted in writing or recorded during the course of the discussion. The interviews were conducted from September 2003 to June 2004 in Malaysia in the respondents' workplaces.

The main key respondents involved in this study came from the MTUC, Malaysian Employer Associations (MEF), Department of Industrial Relations, Ministry of Human Resources and Metal Industry of Employees Union (MIEU). Apart from interviews, a number of document sources of information were used for analysis. These included the IR Act 1967, Trade Union Act 1959, The Code of Conduct for Industrial Harmony 1975, MEF newsletter, MTUC newsletter, Malaysian local newspaper, government brochures and conference proceedings.

Union, employer and government views regarding the Code and employee participation in the workplace

The following discussion demonstrates the competing views on the relevance of the Code from union, employers and the government. These different views in respect to the relevance of the Code relate to the present industrial relations scenario. The union argued the Code is not relevant in the current industrial relations climate due to external pressures such as globalisation, the Asian economic crisis, liberalisation of the economy, mergers and acquisition in the private sector, flexible working arrangements, employment relations in informal sector, labour migration and many other factors (Interview with MTUC, 21.12.2003). On the other hand the employers indicated that currently the Code was relevant only when applied on retrenchment issues. As one of the employer respondent from MEF stated,

> 'So far from what I can see only the particular part of retrenchment, is always being raised by the unions or the employer when they go to the Industrial Court to contest retrenchments done by the companies. The union uses Rule 22 to say that companies are not carrying out all stages before retrenchment' (Interview with MEF, 24.9.2003).

In the Code, Rule 22 indicates the measures to be taken by a company where retrenchment becomes necessary.

A comment from a government official on the relevance of the Code overall was that the Code is relevant in current scenario of industrial relations, even though it was introduced thirty years ago. Furthermore, the Code is just a guideline for employers and unions to implement any policies that will maintain industrial harmony at the workplace such as employee participation schemes. Hence it is up to the employers whether they are going to use this Code in implementing employee participation schemes as mentioned in the Code. The government further pointed out that most of the private companies in Malaysia do not use the Code as a basis for implementing any type of employee participation at the workplace.

The government accentuates cooperation between management and unions at the workplace as a very important factor in enhancing industrial harmony. The primary objective when the government proposed this Code in 1975 was 'to lay down principles and guidelines to employers and workers on the practice of industrial harmony' (The Code of Conduct For Industrial Harmony 1975:3). Therefore the government also anticipated that the Code would develop a better communication process between unions and employers in the company. If the communication for both parties improves then the government and employers believe industrial disputes and conflict will be reduced in the workplace.

THE EXTENT OF EMPLOYEE PARTICIPATION IN THE MALAYSIAN PRIVATE SECTOR: One area for cooperation in the Code concerns communication and consultation as part of employee participation. The union argues that the Code clearly specifies the employers should inform employees and the union about matters which concern them and their views should considered when the company proposes any changes, which affect their working life. According to the union, sharing the information between employers and employees/or trade union is a crucial aspect in order to ensure the company produces a better result for high performance. Information is generally passed via monthly meetings, notice boards, house journals, training program and other direct employee participation forms (Interview with MTUC, 21.12.2003). Joint consultation or work committees are another form of indirect employee participation in the workplace (Interview with MTUC, 21.12.2003). The union further emphasises that these forms of participation will only practiced if the company recognises the union in the workplace. Otherwise, direct employee participation is most popular in the non-union private sector in Malaysia (Ahmad, 1998, Parasuraman, 2002, Parasuraman and Goodijk, 2002).

According to the MEF, the majority of companies in Malaysia generally do not apply the Code to implement employee participation programs in the workplace even though consultation and communication are directly referred to in the Code. As one of MEF official stated,

> 'Basically I don't think any companies constantly use the Code, I mean to be frank with you…I don't think any companies will use the Code to say that, look this is part of a guideline for employee participation and you want to implement this.. You can have workers participate as a result of other things rather than the Code itself' (Interview with MEF, 24.9.2003)

The MEF also demonstrates that some employee participation programs are introduced in the workplace without referring to the Code itself. For example the case of DMIB Berhad - a subsidiary of Sime Darby Berhad, which is involved in the manufacturing of tyre related products. DMIB managed to implement a new wage system call a Productivity Linked Wage System (PLWS) with cooperation from union and employees (The MEF, Newsletter, March 2003:3). This system is part of a collective agreement, which was enforced from 1 January 2000 to 31 December 2001. In their traditional collective agreement, they did not emphasise performance, especially when it came to the yearly salary increment and contractual bonus. Now, they have moved toward a new scheme where the company and employees can share the profit. Some of new variables added into this scheme are annual performance increments, an annual performance bonus, a monthly 'multi-skill allowance' scheme payment and monthly productivity payments. The employers believed the scheme had clear objectives and was motivating enough to encourage employee participation in the workplace (Interview with MEF, 24.9.2003). Again there are many other examples of employee participation schemes, which are not based on the Code. MEF again stressed that the Code is only used when company is facing a retrenchment crisis. This view is also supported by Kuppusamy (1998) and Anantharaman (1997) who also stated that the Code is usually used regarding dismissal and retrenchment cases.

The MTUC on the other hand, stressed that employers should promote employee participation schemes in the workplace based on the Code. Without employer absolute support and assurance on this issue, it is hard for the union to participate in organisational decision-making processes or influence any ideas. From the union's perspective, to achieve a greater participation in the workplace, the employers in Malaysia should encourage non-managerial employees to form unions. Under the Malaysian labour law, the union can only function if the employers give recognition to it. One respondent from MTUC said 'If there is no union in the company, then they (non-managerial employees) will gather themselves under a tree, motorcycle park and even in rest room to talk about their working life and company issues' (Interview with MTUC, 21.3.2003). This will create a negative environment in the company where both management and employees are not sharing ideas to implement best practice employee participation schemes. The union standpoint is that if there is trade union in the workplace, then employees can pass their ideas or views through union representative who will subsequently discuss issues with management. As one of union respondent from MTUC argued,

> 'Now, in this case they must have union and once a month meet with Chief Executive Officer (CEO) (not the personnel manager) whether there is issue or no issue…. the CEO himself as the captain of the ship must sit down with union leaders maybe over a cup of coffee to find out what's going on… Things such as: what do employees feel about this company, how much their contribution, how much they talk, how much they think, what they think how to improve for interest for both side. These initiatives must come first from employers' (Interview with MTUC, 21.12.2003).

This indicated that the union felt that top management should be aware of what's going on at the bottom level. According to MTUC, most of time the top management only pay attention to managers rather than listening to the union or employee representatives at enterprise level. In this case employee participation is not practiced. If this continuously happens in the company, it will create conflict and disputes among union/or employees and management in the workplace (Ariffin, 1997, Idrus, 2001, Aminuddin, 2003, Terry, 2003, Parasuraman, 2004).

The union also believe the decisions at the workplace should be made by both parties and not from the one party entirely. According to the union, the present scenario in Malaysia indicates that most management make decisions without consultation and without involving union or shopfloor employee representatives, particularly non-managerial employees.

Their argument is validated when we observe the employers position on this issue. Employers said that employees or the union only can propose suggestions or ideas but management will always make the final decision. Pateman (1970) calls this partial participation. This shows there is no balance of power between management and union in the workplace to influence codetermination in the decision-making process. The government has a different point of view from the employers. The government considers that more mutual cooperation between management and unions or employees in the workplace will enhance industrial harmony in the organisation.

SHOULD THE CODE BECOME LAW? The Code is currently just a guideline developed by the government for unions and employers to follow. However the union argues that the Code particularly on the issue of employee participation, should be endorsed as an Act or Directive similar to what can be seen in most Western European countries. They argue that if the Code has a legal obligation attached, it will force employers to implement the Code at the company level. Employers and the government disagree with the union's proposition. For them, it is not necessary to amend the Code as an Act in Malaysian Employment Law. This is because, as claimed by employers, most of the High Court decisions on labour cases based on the Code are more favourable to them rather than the union. The reason being that the Code does not have any legal rights in the law. For example, an employer from the MEF claimed that,

> 'Some companies went to the High Court and actually the High Court said that the Industrial Court was wrong in the giving legal effect to the particular documents…. they pointed out that the documents are just a Code and should not be given legal effect, there is no such thing as a breach the Code because the Code is just guideline basically' (Interview with an MEF member, 24.9.2003)

Discussion and analysis

Based on findings discussed above, there are different views from the union, employers and the government in regards to the implementation of the Code of Conduct for Industrial Harmony 1975 and its impact on employee participation in Malaysia. The union argued that the Code should be revised substantially in order to improve the present industrial relations system and particularly employee participation. The union also contended that the Code must be promoted as an Act in Malaysian labour law in order to force employers to keep employees informed, and allow consultation on matters that affect them at work. Unions believe that if the Code has legal enforcement then employers will take it more seriously and develop and establish joint consultation and work committees at the workplace. Legal rights on employee participation certainly provide more voice to employees and unions to negotiate with management on range wider issues in the enterprise or workplace. The union's argument also supports other research findings (Musa, Shabidi, Msola and Kidwanga, 1997, Ng, 2002, Terry, 2003, Todd, Lansbury and Davis, 2004).

Todd, Lansbury, Davis (2004) strongly criticised the employee participation practices and implementation process in Malaysian workplaces. They recommended in their study that Malaysia could imitate some model of employee participation (such as work councils) from European Union or labour management councils (LMCs) in Korea. They also argued that if work councils and LMCs will be established in Malaysia, it should not subvert or weaken the union activities. They suggested unions could play a role in the collective bargaining activities and work councils/LMCs as an alternative channel for employees to represent themselves with management particularly in non-union firms. Union and work councils/LMCs have separate roles at the organisational level. In relations to this matter, Ng (2002) when discussing labour standards in Asia, proposed Asian countries establish work councils as practiced in European Union. However, he emphasised that councils should have a legal constraint before implemented in the organisation, which supports the Malaysian union's views.

It is that the 'voluntarist' approach to employee participation in Malaysia is linked to Malaysia's history as a British colony (Ponniah, 1979, Anantharaman, 1997). However, the insufficiency of legal support for employee participation may be linked to a broader pattern of repression of employee and trade union rights (Ayadurai, 1993, Jomo and Todd, 1994, Ariffin, 1997, Todd *et al.*, 2004). A noteworthy finding from this research has some implications for the research

conducted by Terry (2003) in the United Kingdom particularly on employee representation. He shows that employee participation schemes such as joint consultation committees and shop stewards in the United Kingdom are given fewer legal rights to make or influence any decisions as similar practices in most European Union countries. This is also like the situation existing in Malaysian companies. The union and employees do not have any power to influence workplace decisions because of high managerial prerogatives and also 'they had a little influence on most HRM policies' (Mellahi and Wood, 2004:211). Therefore the union lobbies the government to revise or amend some of the present industrial relations legislation, which was introduced in 1950s, 1960s and 1970s. If the present industrial relations laws are revised then this will develop a new paradigm in employee participation practices in Malaysia (Todd *et al.*, 2004).

There appear to be similarities between Malaysia and Tanzania. Musa, Shabidi, Msola and Kidwanga (1997) argued in the case of Tanzania, the institutional problem has become main barrier for worker participation in the private enterprise. Based on empirical research they claimed that the Presidential Directive No.1 of 1979, which created worker participation in Tanzania, was not reinforced in the law and also was not legally binding. This will weaken the position of employee participation in the enterprise level. This study supports the Malaysian case where the Code of Conduct for Industrial Harmony 1975 is not legally binding and also has no legal effect. For this reason, employee participation is very weak and workers and union are unable to influence the workplace decision-making process.

On the other hand, the employers and the government in Malaysia have rationalised that the implementation of employee participation at the workplace was not based on the Code itself. The employers designed employee participation and involvement schemes in the workplace because of their own initiative along with other aims of increasing employee commitment and enhancing productivity, efficiency and adaptability and as well as other contingency factors. These findings are similar to Idrus (2001), Poole *et al.* (2001) and Ackers *et al.* (1992). Poole *et al.* (2001) who argued in their "model for the comparative industrial democracy", that the implementation of employee participation and involvement are initiatives by the management and were part of an organisational innovation process. Ackers *et al.* (1992) also have the same argument that contingency factors influenced employee participation and involvement practices in the organisations. These factors are business cycle, market pressure, organisation structure and strategy, active trade unionism in the workplace and are ideologically driven from the employers. Idrus (2001) argues that the state will not change any industrial relations law or the Code in the current situation because of the state's main economic development objective that to transform Malaysia from developing to the developed country by the year 2020.

Conclusion

The union, employers and the government have competing interests around the Code of Conduct for Industrial Harmony 1975 and its impact on employee participation in Malaysia. In fact, the aim of the Code and its implementation in the industry level is not compatible. It looks very clear but in practice there are many limitations for unions and employees in the workplace. From the union perspectives, the majority of employers in Malaysia have little room for unions and employees actively participating in workplace decision-making process. If the employers continue to exercise high managerial prerogative, then an implication for employees and union is that they have less voice and less opportunity to participate fully in any workplace decision-making. On the other hand, the government and employers claim that Malaysia has 'best practice' of industrial relations system and a strong industrial harmony in the Asia in terms of low strikes. With regard to this issue, both Anantharaman (1997) and Bahari (1989) also argued that even though the Code seems to bring peace and harmony in the industry (with reductions in strikes) it was not favourable to the unions in the country. The argument is that if the state and employers continue to use a repressive approach towards unions and employees' rights in Malaysia, then the wider concept of industrial democracy at the enterprise level may be hard to realise. In line with this argument, a question is posited about the code, and its impact on employee participation in Malaysia. If the Code is entirely amended by the state and gives strong legal enforcement like in Western Europe, will there be genuine employee participation taking place where the union and employees will actively participate in the workplace decision-making process together with management?

Acknowledgements

I would like to thank Dr Terri Mylett, Bernadine Cantrick-Brooks and two anonymous reviewers for their invaluable assistance on this paper. Views expressed are those of the author except where due acknowledgement is given. The University of Wollongong Human Ethics Committee has approved this research project.

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