How to Align an International Labor Strategy for Overseas Unions, Works Councils and Other Worker Representatives

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Organized labor can play a vital role—positive or negative—in an employer’s human resources operations. That is true at the local level and even truer internationally. In today’s interconnected world, collective labor challenges regularly arise simultaneously across a multinational’s various local operations, particularly when headquarters launches cross-border “change projects” like global restructurings, international acquisitions and divestitures, multi-country reductions-in-force and global HR information systems—as well as when organized labor groups launch “corporate campaigns” and other international labor offensives.

Multinationals used to silo their organized labor relationships by country. They had no business incentive to align union or collective labor strategies across borders. Consider a hypothetical old-school manufacturing company with unions at plants in Kansas City and Mexico City, “works councils” at R&D facilities in Paris and Dusseldorf and “sectoral collective bargaining agreements” reaching offices in Sao Paulo and Johannesburg. A multinational like that would traditionally have confined its approaches to collective labor locally within each respective location, making no effort to harmonize any approach to labor relations globally. In fact, integrating organized labor relationships across multinational operations might only have invited trouble—inspiring unions and employee groups in different countries to compare notes and team up across borders. This is why, for decades, multinationals’ default cross-border collective labor strategy has been local containment, not cross-border integration.

But now this dynamic has flipped. Multinational human resources operations have gone global, triggering collective labor challenges across borders. Today’s multinationals increasingly launch multi-jurisdictional initiatives that reach staff internationally—global mergers, divestitures, restructurings, reductions-in-force, codes of conduct, human resources policies, intranet systems and the like. These require a cross-border approach to organized labor and labor law compliance. Meanwhile, organized labor has also gone global; unions and labor groups now champion cross-border collective labor solidarity as a cutting-edge tactic, forcing management to respond accordingly.

Both these drivers—global HR alignment and cross-border union offensives—push multinationals proactively to craft an aligned international organized labor strategy. Multinationals’ old siloed model confining collective labor challenges locally has stopped being consistently viable. Now headquarters may seek a coherent, aligned global strategy for confronting organized labor internationally.

But devising a viable cross-border labor strategy is hard. Multinationals—particularly those headquartered in the United States—get whipsawed by disparate organized labor regimes and inconsistent approaches to unions and labor groups from country to country. Forging a useful global labor strategy is simply impossible without accounting for the radically different ways organized labor works abroad.

Our discussion here explains how a U.S.-headquartered multinational can construct a viable, aligned and proactive global collective labor strategy that enhances international business operations. We address three distinct issues: (1) why a multinational needs an aligned global labor strategy; (2) how organized labor works outside the United States; and (3) how to build a global labor relations platform that aligns collective bargaining and organized labor strategies across borders.

Part One: Why a Multinational Needs an Aligned Global Labor Strategy

Before getting into the steps a multinational needs to take to craft an aligned global organized labor strategy, we must answer the threshold question: Why bother? That is: Why can’t a multinational approach organized labor in the old-fashioned way—at the local country level, with little or no intervention or oversight from global headquarters?

There are two distinct reasons why multinationals these days often find a compelling business case to align a global approach to organized labor: facilitating global projects and countering global union offensives. First is facilitating global projects. The old model of a “multi-local” organization overseeing stand-alone local facilities, each operating independently inside its respective jurisdiction, has now become largely obsolete. Colleagues on multinational project teams work together across national borders in real time, linked by technology. Multinationals align certain benefits and HR
policies across borders, replacing old-school local HR offerings with globally-integrated models enhancing global efficiencies, competitiveness, cost savings and performance. Think of cross-border projects like international restructurings, mergers, acquisitions, spin-offs or global reductions-in-force, or consider an international HR policy, code of conduct, whistleblower hotline, health/safety program, benefits offering, or global HR Information System—or a one-time cross-border internal investigation.

These international HR initiatives inevitably harmonize certain aspects of internal human resources across borders. And so they inevitably cause ripple effects at foreign workplaces. From the point of view of local labor abroad, headquarters seems to push out more and more international initiatives with less and less regard for the views of local employees—even though these initiatives inevitably affect day-to-day work life in overseas workplaces. Overseas organized labor leaders, not surprisingly, flex their muscles and push back to hold off unwelcome headquarters-driven changes. Meanwhile, the headquarters decision-makers who drive a multinational’s cross-border HR initiatives tend to focus more on the end result than on foreign labor compliance. This is a collision course, because employers have to comply with applicable labor laws. And so the multinational needs a proactive, headquarters-level global labor strategy.

Besides facilitating global projects, the second distinct reason why modern multinationals often find a business reason to craft an aligned global organized labor strategy is countering global union offensives. The old slogan “workers of the world, unite!” may have begun as an aspirational call to arms, but by now the workers of the world actually have united. Union leaders in the United States, Australia, Canada, China, Europe, Japan, South Africa and beyond have teamed up to mobilize power internationally.1 Randi Weingarten, head of the American Federation of Teachers, believes that “as [unions] face a new global economy—one powered by technology and knowledge, where information travels at lightning speed—we can no longer operate as if we’re in a [single local] factory.”2

So-called Global Union Alliances have emerged—networks of labor representatives united across a targeted multinational’s international operations strategizing together about ways to confront global management. For that matter, unions themselves now operate globally. The union IndustriALL, for example, claims to represent 50 million workers across 148 countries. So-called “Global Union Federations” (GUFs) count millions of members across many countries. These GUFs include UniGlobal, International Transport Workers’ Federation (ITF) Global, Building and Wood Worker’s International (BWI) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF).

Another trend is for multinationals to form so-called “World Works Councils,” internal employee representative groups that operate across a multinational’s local facilities. “Unions are on the move. Their networks span the globe, structured through colossal [GUFs] and bilateral affiliations…. [L]abor relations can no longer be conducted on a strictly local, regional or national basis.”3

Indeed, unions seem to have pulled out ahead of multinationals in the move to globalize labor relationships. This should not be surprising, because unions have the incentive to globalize. Multinational management was perfectly content under the old containment strategy, siloing collective labor relationships country by country. Globally savvy labor leaders therefore lead the charge with their international union drives and GUFs, leveraging public relations and social media in “corporate campaigns” (in the UK called “global leverage campaigns”) that target multinationals’ reputations, sales and stock prices, trying to pressure an organization’s “stakeholders” around the world, often invoking the target multinational’s own corporate values statement to accuse the organization of hypocrisy.

One example of an international corporate campaign is the initiative that UNI Global Union and the ITF waged for years against Deutsche Post DHL. But other corporate campaigns go beyond a single multinational employer. In 2014, for example, globally-coordinated unions mobilized simultaneous strikes against various fast food chains across dozens of U.S. locations and as well as

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in Auckland, Bangkok, Brussels, Buenos Aries, Dublin, Hong Kong, Rabat, Rome, Seoul and many other cities worldwide as part of “Fast Food Forward,” a global campaign against the fast food industry spearheaded by the Service Employees International Union (SEIU) and the IUF. “It’s a global economy, so [the protesters were] saying ‘Why not go overseas to make it a global fight?’...They’re trying to create a global protest movement.”

Campaigns like these often aim to push the headquarters of a targeted company to sign a so-called “international framework agreement” (IFA) (also known as a “transnational company agreement”) by which management agrees to cooperate with key tenets of the global organized labor agenda, pledging union neutrality via “free association” rights, agreeing not to oppose union organizing. Some international framework agreements grant unions access to the workplace to promote their agendas; some grant unions oversight and enforcement rights. Dozens of multinationals (almost all based in Europe, but also including some U.S.-based companies) have signed these pacts even though “signing an International Framework Agreement could dramatically increase the cost of operating in emerging markets. Furthermore, IFAs can deny a business the use of union avoidance measures.”

Beyond global corporate campaigns and IFAs, a distinct threat to multinationals from cross-border organized labor is internationalized labor disputes. Labor disputes used to begin and end at the local site, but today’s international-savvy union leaders are increasingly likely to expand a local labor dispute across borders, enlisting the solidarity of foreign unions in cross-border sympathy strikes and boycotts to pressure headquarters—elevating strikes and pickets to cross-border labor and public relations crises.

For these reasons, multinationals are proactively launching top-down approaches to global labor relations strategy. The old bottom-up approach (leaving collective labor to overseas outposts) is not necessarily viable today.

Part Two: How Organized Labor Works Outside the United States

When a U.S.-headquartered multinational decides to craft an aligned global organized labor strategy from the top (headquarters) down, the team responsible for that strategy has to understand the radically different ways organized labor works abroad. Collective labor traditions and laws (not to mention collective worker bodies) differ immensely around the world. U.S. headquarters simply cannot put together a coherent global labor strategy if it assumes unions and worker groups overseas work more or less as they do stateside. The differences here are so vast that we must devote the majority of our discussion on crafting a global labor strategy to drawing the contrasts and setting the stage, examining how differently collective labor works abroad.

Virtually every country imposes laws that force employers to recognize trade unions, but the social underpinning of those collective labor laws differs from place to place. In the United States, those who champion labor unions tend to see organized labor largely as a quality-of-work-life issue. As President Obama said in his 2014 Labor Day address: “If I were looking for a good job that let me build some security for my job, I’d join a union. If I were busting my butt in the service industry and wanted an honest day’s pay for an honest day’s work, I’d join a union.”

By contrast, much of the rest of the world actually frames trade unionization as a human rights issue. The United Nations Universal Declaration of Human Rights guarantees “everyone” on Earth “the right to form and to join trade unions for the protection of his [sic] interests.” The International Labour Organisation Convention 87 of 1948 declares that “[e]ach Member of the International Labour Organisation for which this convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employees may exercise freely the right to organize.”

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7 Article 23(4).
8 Article 11.
Additionally, the nuts and bolts of how organized labor works differ radically from country to country. Completely different models of collective labor representation exist around the world, and no two countries’ models are the same. That said, the collective labor model of the United States stands off unto itself. Unionization under America’s Wagner/Taft-Hartley Acts\(^9\) differs fundamentally from organized labor systems across most of the rest of the world. Canada’s labor union model comes closest to America’s and shares some “common roots”—but even the Canadian labor paradigm differs substantially from America’s: “Canadian collective bargaining law...has evolved in a different direction” from the U.S. model.\(^10\)

Ultimately, five traits or characteristics distinguish America’s unionization system from organized labor models across much of the rest of the world:

1. **Adversity:** U.S. adversarial labor relations versus the overseas “social partnership” model.
2. **Employer domination:** U.S. prohibition against employer-dominated labor groups versus overseas embrace of employer-dominated labor groups.
3. **Binary representation:** U.S. “single channel” unionization model versus overseas multi-layered labor structures.
4. **Reach of labor agreements:** U.S. bilateral collective union agreements versus overseas multilateral agreements.
5. **Penetration:** U.S. low organized labor penetration versus high penetration overseas.

To contrast U.S. organized labor with the fundamentally different organized labor models around the rest of the world, we discuss each of these five key differences.

### 1. Adversity: U.S. adversarial labor relations versus the overseas “social partnership” model

Looking in from abroad, American labor relationships can seem notably adversarial and polarized. The U.S. organized labor paradigm seems to assume a “zero sum game” in which the interests of workers and management inevitably collide. Europeans sometimes say that U.S.-headquartered multinationals seem “allergic” to labor unions. The United States labor law regime actually fosters this hostility, in that it prohibits labor/management cooperation by barring management from teaming up with its own labor representatives in its own workforce to advance their mutual interests in functional and “financial support.”\(^11\)

At least four factors keep American labor/management relationships adversarial and polarized: labor hostility, contested union elections, cost of unionization and protected concerted activity:

- **Labor hostility:** Hostility may be just an extreme form of adversity, but any discussion of the fundamentally adversarial nature of American organized labor relations needs to confront the pernicious history of American labor/management hostility. “Hostility toward organized labor in parts of the country is so intense that even companies that fervently want their workers to unionize can’t do it.”\(^12\) Relationships between management and organized labor throughout American history have reflected “that dreaded notion, beloved of [American] labor unions, that workers and owners might have interests in contradiction with one another and that their relationship [is] defined by a contest of wills.”\(^13\)

American labor history is scarred by open conflict—picket lines, violence, beatings, even killings. Strikes and lockouts in past decades dragged on for months and years and got violent. “[B]etween 1881 and 1905, capital and labor [in the United States] collided in 37,000 strikes.... During the ‘great strike’ of 1877, President Rutherford Hayes had [to send] troops to

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\(^9\) 29 USC §§151-69; §§401-531.
\(^10\) D. Gilbert et al., Canadian Labour and Employment Law for the U.S. Practitioner, 2d ed. (2006) at pg. 22.
\(^11\) Wagner Act § 8(a)(2).
Baltimore, Pittsburgh, and other cities, [and President Grover] Cleveland had used soldiers to break the Pullman strike of 1894. In the aftermath of the 1914 Ludlow Massacre in Colorado, union activists tried to assassinate John D. Rockefeller and succeeded in blowing up a Manhattan building: “[T]hat April, the state militia machine-gunned and burned a tent colony of striking miners, killing, among others, a dozen women and children.”

By 1974, unions and bosses remained just as hostile:

A [1974] strike by ten thousand municipal workers in San Francisco reduced hospital patients to two meals a day, served on paper plates, and diabetics got no special meals; transportation was paralyzed; hundreds of millions of tons of raw sewage surged into the world’s most beautiful bay. A school strike in tiny Hortonville, Wisconsin made Time magazine for the vociferousness of the passions it raised: a “teacher” hung in effigy from the local water tower . . .; school board members finding Playboy magazine subscriptions they hadn’t ordered showing up in their mailboxes and being woken up by harassing phone calls at 3 a.m.; a striker discovering his favorite hunting beagle hanged to death on his front porch on its own chain.

As recently as the 1980s, American law firms actively discouraged women from entering labor law practice—to shield them from the rough and tumble, often violent “man’s world” of the American picket line. Katherine Stone, a UCLA labor law professor, describes American labor law practice in big law firms in the ‘80s as “gruff and male-dominated... it was unusual for women to go into it.”

These days, union violence has declined along with the rest of the American labor movement as organized labor has dropped to just 6.4% of the non-government American workforce. But a hostile relationship lingers and may contribute to the decline of American organized labor. Marion Crain, a labor law professor at Washington University in St. Louis, believes that “quite a few [Americans today] are reluctant to join a [labor] organization that seems adversarial.” Open hostilities and widespread “civil disobedience” prevailed during the 2014 nationwide coordinated fast-food strikes across the United States. As another example, an omnipresent union rat anchors pickets most every day in New York City. An enormous inflated rat representing management “tends to inflate at the site of labor disputes across the city.”

For example, on November 20, 2013, the SEIU Local 32BJ picketed 295 Park Avenue, a self-described “24 hour luxury doorman building with all conveniences,” and mobilized a “large rally” of “a thousand people...accompanied by the now famous inflated rat.”

Americans might assume labor/management relationships are just as hostile and antagonistic abroad, and sometimes they can be. For example, inflated rats and picketers in rat costumes have been spotted at labor disputes in Australia and England. In countries like India, Malaysia, Nigeria and South Africa, organized labor culture can be tense and violent. In 2014, disruptive pickets erupted at an Olympic Park construction site in Rio de Janeiro. There have been high-profile cases of French and Chinese strikers actually kidnapping their managers.

16 R. Perlstein, supra note 13, at p. 250.
22 Novel Service Group and Local 32BJ Service Employees, NLRB Case No. 02-CA-113834, ALJ Opinion (NY)-04-15, Jan. 15, 2015, at p. 5.
But the tenor of labor relations and labor disputes in many countries tends to be notably more cooperative than in the United States, embodied by the so-called “social partnership” model between labor and management. Continental European and Japanese managers, for example, boast about constructive relationships with organized labor and un-ironically refer to their labor/management model as this “social partnership.” Labor demonstrations in these jurisdictions can get put on largely for show. In France “it is as though...the traditional time-honored strike or mass demonstration is [merely] a massive social safety valve, a chance to let off steam, shout and have a tantrum, before returning to the real world.”23 French pickets may include a lot of yelling, but passers-by seem to know they can ignore the antics; at a prearranged time, picketers may adjourn and convene in a nearby bar. According to the New York Times, “Overlooked in all the chanting, banner waving and tire burning is that the strike in France today is often a carefully choreographed dance [that] is just the latest chapter in a 132-year tradition.”24

In Germany, labor demonstrations tend to be even tamer. The “German tradition” of labor disputes is characterized by “a fair balancing of interests”:

German unions usually prefer short, carefully focused warning strikes that demonstrate their power without squandering public sympathy.... [One] strike at the Frankfurt airport last week...began...at 3:30 a.m. and [strikers] were back on the job by early afternoon. This approach is part of the social consensus that has guaranteed political stability since World War II.25

In Japan, labor disruptions can be downright orderly. When Japanese union Zenchuro scheduled a one-day strike against U.S. military bases on November 30, 2007, it helpfully disclosed, in advance, that its pickets would “last eight hours and begin at the start of the business day of each worker.” The union issued a press release assuring the public that while demonstrators might line up near the main gate at American military bases “throughout Japan and Okinawa,...U.S. personnel and contractors [would] be able to go through the gate.”26

Even the boss kidnappings—called “sequestrations”—in France and China seem to be public relations stunts. Striking “kidnappers” feed their “hostages” well and (in France) serve decent wines. Out of 15 “boss-nappings in France since 2000, only one led to a prosecution”—the other 14, presumably, were mild enough not to be even allegedly criminal.27 In otherwise-authoritarian China, police are “reluctant to intervene” in staged boss-nappings; where the supervisor “hostage” is a U.S. citizen, the "U.S. Embassy...[does] not appear to be able to provide much...assistance."28

- **Contested union elections:** Beyond labor hostility, a second reason American labor relationships tend to be particularly adversarial is that U.S. employers get “unionized” through a contested recognition process that centers on formal elections. This process polarizes unionization into a zero-sum, win-or-lose proposition. Under the American winner-take-all unionization system, bosses hotly contest union campaigns while unions fight equally hard to win dues-paying members. American employers rarely recognize a union unless at some point the federal government had intervened, supervised an election and certified a labor organization as the staff’s official bargaining representative.29 For example, when scholarship-earning football players at an elite U.S. university won a provisional right to a union election, the university—a non-profit charitable institution—“pulled out all the stops to squash the union,” putting on a “textbook case of how to aggressively battle a union” and waging the

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23 P.M. Eastwell, They Eat Horses, Don’t They?: The Truth About the French” (2013), at p. 188.
“vigorously, strenuous anti-union campaign that [American] employers often employ when they’re determined to defeat unionization efforts…. [the] message [was] consistent and clear: vote no—for yourselves, for the team and for the university.”

Outside the United States (particularly in civil-law systems), one reason that unionization and the collective labor representation process tend to be less adversarial is because unionization overseas tends to be more fluid and less binary, and often outside an employer’s sphere of influence. “Decertification” is often impossible. In fact, in many jurisdictions, formal union recognition processes may not even exist. In many countries, unionization is not binary and so it makes no sense to talk about whether a particular workplace is “unionized.” Where employers and unions have no threshold organizing issue to fight over, labor relations are that much less adversarial.

In Brazil, unions are mandatory—elections are unnecessary and unionization is effectively 100%. China flatly requires that employers support a “union” purporting to represent workers.

In continental Europe, Latin America and parts of Asia, unions can come into a workplace with no formal recognition process. In Mexico, just one or two employees can sue to force an employer to sign a union agreement; workforces in Mexico can be unionized overnight, when a union demands recognition just by a showing of some support within the workforce. In Israel, a union comes in when just one-third of the workforce sign union cards. In Bangladesh, a union comes into a workplace once 30% of the workforce becomes union “members.” In Poland, a union with just one member in a workforce can enjoy recognition status. In Russia “it only takes three employees to form a union, demand formal recognition and obtain the protections against dismissal and detriment which the law offers to union members.”

Even some of the countries that do hold formal union recognition proceedings, like Israel and Turkey, certify unions after a petition with a mere minority of employees having signed union cards gets filed with the government, without any formal election. And as we will discuss, many countries impose “sectoral” collective bargaining agreements across entire industries, which makes formal union relationships all but moot because even nonunion employers must comply with the very same CBA that applies in unionized workplaces. (This said, Canada and some other jurisdiction do hold U.S.-style union elections.)

- **Cost of unionization:** After labor/management hostility and contested union elections, a third reason U.S. labor relationships tend to be fundamentally adversarial is the high cost of unionization. American labor law gives employers the world’s keenest financial incentive to fight to stay union-free. The late comparative labor relations scholar Roger Blanpain of Belgium once opined that it costs more for an employer to be unionized in America than anywhere else on Earth. Other jurisdictions tend to impose union relationships and collective bargaining agreements more broadly, without regard to whether an individual employer is party to a formal union relationship, and so in those countries unionization has much less effect on an employer’s marginal operating costs. This means employers outside the U.S. tend to have less economic incentive to resist unions—which makes bosses’ attitudes toward organized labor less adversarial than under the all-or-nothing American regime, in which losing an election and becoming unionized amounts to a significant factor in a business’s profits and losses.

- **Protected concerted activity:** A fourth reason U.S. labor relationships tend to be particularly adversarial is the uniquely American doctrine of protected concerted activity. American labor law protects pre-union-organizing “concerted activity”—non-union staff informally banding together and complaining about the boss even before anyone mentions a union—on the theory that employee grievances might lead to union organizing. America’s protected...
concerted activity doctrine gives staff a legal right publicly to disparage bosses using broadcast and social media to spread complaints. Concerted activity protection even reaches a lone non-union employee exhorting colleagues, in vain, to resist management. A 2014 case under this rule reinstated, with back pay, a non-union car salesman fired because he called his boss a “f*cking crook” and an “as*hole.” 36 Another case reinstated an employee fired for calling his boss, in a Facebook posting, a “nasty motherfu****” and a “loser.” 37 One case interpreted the protected concerted activity doctrine to outlaw a non-union employer’s work rule against “negativity” and “negative comments.” 38 In March 2015, the NLRB General Counsel issued a detailed memorandum declaring many common clauses in employee handbooks illegal because they restrict concerted activity, even though they do not overtly address unionization.

No other country seems to protect concerted activity in this way. Other countries do protect formal labor representatives (incumbents holding union office). For example, Bangladesh Labour Act 2006 §195(c) makes it an unfair labor practice to “discriminate” against an employee “on the ground that such person is, or is not, a member or officer of a trade union.” Some jurisdictions require affirmative court permission for employers to fire union stewards and other worker representatives, even if the employer has good cause for dismissal unrelated to union activity. Common law countries like Australia and Canada protect certain overt pre-union-organizing “industrial activity”—non-union staff trying to bring in a union or expressly championing collective labor rights. 39 But America’s protected concerted activity doctrine goes significantly farther because it insulates bad, anti-employer behavior completely unrelated to unions, union organizing and collective representation, including even incidents where an employee knew nothing about unions or union organizing. While this doctrine may help American unions trying to organize non-union workplaces, it frustrates management—and contributes to the adversarial dynamic that polarizes U.S. labor relations.

2. Employer domination: U.S. prohibition against employer-dominated labor groups versus overseas embrace of employer-dominated labor groups

After the adversarial nature of labor relations, a second characteristic that sets American organized labor apart from much of the rest of the world is its rigid prohibition against employer-dominated labor organizations. U.S. federal law assumes that any employer-dominated labor organization is inherently corrupt. In America, an employee representative group that management “dominate[s],” “interfer[e] with” or “contribute[s] financial or other support to” is, as a matter of law, a sham that is illegal because it cannot legitimately represent constituent workers’ interests. 40 American unions may sometimes get accused of falling under outside influences (Communists in the old days, organized crime in the Jimmy Hoffa era, currently the Democratic Party) but in the American system, the most unforgivable labor sin for a unionist is being in the pocket of management. The U.S. Labor Act § 8(a)(2) keeps the fox out of the henhouse by prohibiting management from forming, sponsoring, funding or even “support[ing]” any worker representative group that bargains with management over terms and conditions of employment. The American labor law ban against employers “contributing financial…support” to unions reaches so far that under U.S. federal law, a boss who treats union stewards to a round of soft drinks (much less a round of beers or a Christmas lunch) is in effect paying a bribe in violation of federal law. Commentators have called this American labor law ban on employers “support[ing]” labor groups an “anachronism.” 41

United States law prohibiting “company unions” made national news in 2013 and 2014 when a German-owned company considered launching an in-house employee group for a U.S. facility. As just

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36 Plaza Auto Center, Inc., 360 NLRB No. 117 (2014).  
37 Pier Sixty LLC, 362 NLRB No. 59 (2015).  
40 Wagner Act § 8(a)(2); see Electromation line of cases, 309 NLRB No. 163 (1992), aff’d 35 F. 3d 1148 (7th Cir. 1994); The Developing Labor Law, supra note 29, at chap. 8.  
mentioned, a European-style in-house employee group sponsored and supported by the employer raises big challenges under U.S. labor law. In this situation, the employer ended up having to invite in a real labor union.42

Americans steeped in U.S. labor relations might assume that something intrinsic to the labor/management dynamic makes it a good policy to prohibit bosses from dominating worker groups. But in fact many countries with vibrant organized labor movements actually invite—and often affirmatively require—management-dominated labor organizations. Many jurisdictions force employers to launch, organize and fund in-house worker bodies like works councils, worker committees, workplace forums, staff delegates, staff representatives, worker ombudsmen, and health and safety committees that bargain or “consult” with management over workplace conditions. And under many countries’ labor law regimes, management regularly funds unions and other worker bargaining groups. The policy behind these mandates is to support organized labor by requiring management—better organized and richer than labor—to step up and pull its weight in the “social partnership” by offering resources to its needier “partner,” the worker group. Maybe this is something of a Robin Hood policy, forcing rich management to fund poor labor groups’ meetings, pay union stewards’ salaries and underwrite bills for labor consultants. French law, for example, forces employers to pay employee groups a slush fund of a flat percentage of total payroll; French worker groups are free to spend their big allowance however they want, even on parties. Big multinationals in Europe pay hundreds of thousands of euros annually to fund European Works Councils (“EWCs”), which often feature a lavish annual employer-paid trip that flies worker representatives to an EWC get-together.

To an American, all this employer support for (and funding of) labor organizations seems inherently corrupting. To an American, employer-run labor groups seem susceptible to being infiltrated or bought off by management, too structurally and financially dependent to engage in hard bargaining. Indeed, employer-dominated “white” or “white knight” unions (such as in Mexico) or “in-house unions” (such as in Malaysia) might be overly friendly to management, as compared with the independent or so-called “national” trade unions in these countries. But this is not always the case. Every day, thousands of employers across Europe, Asia and beyond find themselves embroiled in conflict with their in-house works councils and worker committees—even though these bodies are employer-sponsored and -funded. To a frustrated U.S. multinational tangling with tough in-house worker bodies overseas, the fact that militant staff representatives receive employer organizational support and management payments does not ameliorate the sense that these groups bite the hand that feeds them.

3. **Binary representation: U.S. “single channel” unionization versus overseas multi-layered labor structures**

After adversarial labor relations and employer domination of labor organizations, a third characteristic that distinguishes U.S. organized labor from much of the rest of the world is the binary nature of American union relationships—the so-called “single channel” American unionization model. As a practical matter, the one and only channel of worker representatives available to American workers is a “labor organization,” or union. In the United States (as just discussed), labor groups like works councils and workplace consultation committees that do not qualify as labor unions or as federally-recognized “labor organizations” are flatly illegal. As mentioned, American bosses get unionized only after a formal government-supervised certification process that involves a representation petition, union recognition proceedings, a government-supervised union election, union certification and maybe later a decertification.43 Further, after a U.S. employer gets unionized, each of its employees either falls within the workplace “bargaining unit” or else is non-union staff. The result: Every employer in America is either a party to a formal, federal-government-enforced bargaining relationship with a recognized labor union in its workforce, or else is a “non-union shop” with no collective bargaining obligations whatsoever. Within a unionized employer’s workplace, every worker is either unionized and in the bargaining unit, or is not unionized at all.

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43 Wagner Act § 9.
• “Newfangled worker committees”: One refinement here is the nascent movement among tiny handfuls of American workers to band together temporarily in informal non-union “newfangled worker committees,” invoking the U.S. labor law protection of “concerted activities.” These groups serve chiefly to protect American workers lodging complaints against their bosses—they tend to be ad hoc and short-term, engaging in little if any hard collective bargaining.44

Single channel organized labor is not unique to the United States. Binary labor regimes are said to exist in a number of countries outside the United States, from Canada to Malaysia to Latin America to Israel to Scandinavia and beyond. But many jurisdictions around the world—including most of Europe—take a layered approach to labor representation. In fact, as we will discuss, even Canada, Malaysia, Latin America, Israel, Scandinavia and many of the other purportedly-single-channel jurisdictions actually recognize a second layer of labor representatives in addition to unions.

In layered worker representation regimes, American-style binary union recognition proceedings tend not to be an issue because national unions often act as worker representatives at the industry level, with little formal “shop level” presence in most local workplaces, unless there happens to be an internal union “committee,” “delegation” or “cell.”45 In some layered collective labor regimes, union elections are not an issue because trade unions represent only their own members within a given workplace—staff is free to join a union or not, and bosses deal with unions almost as employees’ personal agents. In Japan, for example, dues-paying union members might use their union to confront their employer with grievances, while non-union-member colleagues may be on their own. In Germany, a collective bargaining agreement might cover a dues-paying union member employee but not a non-union-member co-worker. In other layered collective labor regimes, law empowers so-called “minority unions” that may represent only one or a handful of workers within a workplace bargaining unit. In Colombia, a minority union enjoys full collective bargaining and grievance-processing rights even in a workplace where a majority union represents most of the rest of the staff.46

Beyond layered relationships with formal trade unions, many jurisdictions impose layers of non-union staff representatives in addition to unions. As already mentioned, law in many countries forces employers to set up—and then to bargain or consult with, and often to fund—a layer of so-called “statutory consultative bodies” that exists parallel to formal trade unions.

• Collective bargaining, consultation and negotiation: As a point of semantics, in some legal systems only trade unions, not statutory consultative bodies, are said to engage in “collective bargaining.” In these systems, non-union worker representatives merely receive “information” and then “consult” or (in Germany) “co-determine” with their bosses. But these non-union staff representatives often negotiate hard with management over terms and conditions of employment and grievances in a way that, in the United States, would qualify them as “labor organizations” fully engaged in collective bargaining. Under U.S. labor law, a “labor organization” or union “exists for the purpose...of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.”47 Overseas, these non-union worker groups exist for many of these same purposes.

The lead example of a non-union statutory consultative body is of course the works council, which in some jurisdictions can exist in several layers within an organization, from company-wide works councils down to local site-level works councils. Works councils often have profound effects on human resources, sometimes actually transforming a national economy. In Germany, for example “powerful works councils...force manufacturers to pay and treat workers well. This has, arguably, [given] much of Germany’s manufacturing sector...no choice but to focus on making high-quality precision goods that merit the higher costs that can cover a more expensive work force."46

47 Wagner Act §2(5).
Motor vehicle workers in Germany make around $60 an hour, well above hourly U.S. auto wages.”48 Separately, Europe requires that large pan-European employers set up a multinational works council layer called the “European Works Council” or “EWC.”49 And then, layered on top of EWCs, some European-based multinationals have voluntarily launched so-called global works councils—in-house bodies of workers representing company workforces worldwide (but that would likely be illegal in the United States under Labor Act § 2(5)). Other examples of statutory consultative bodies in various countries around the world include: labor/management councils; worker committees; staff consultation committees; employee or staff delegates or delegations; working-environment committees; employee ombudsmen; workplace forums (as in South Africa); “joint commissions on productivity and training” (as in Mexico); stand-alone “worker representatives” (as in Denmark); and “enterprise employees as one party” (as under the China Labor Contract Law of 2008, arts. 51-52).

In addition, some jurisdictions force employers to set up temporary, ad hoc or one-off (what we might call “pop-up”) worker representative groups that staff elects to consult or negotiate with management over a temporary or one-time-only issue. Temporary consultative bodies can spring up, for example, when a European Union employer with no works council or union group considers doing a reduction-in-force (“collective redundancy”) or asset sale/spin-off/divestiture. Bulgarian law lets workers confer together and with management in an occasional “general meeting.”50 In Japan, employers regularly enter overtime pay agreements with pop-up employee representative bodies elected by a mere show of hands.51 Chinese workers can form a pop-up “assembly of laborers’ representatives” to negotiate whenever management proposes changing “material matters that have a direct bearing on the immediate interests of its laborers concerning labor remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare, employee training, working discipline or work quota management, etc.”52

Separately, many countries around the world require that employers set up labor/management “health and safety committees.” Canada, Malaysia, Latin America and Scandinavia—jurisdictions that labor experts often claim have “single-channel” systems—actually mandate (at least in certain contexts) a layer of health and safety committees in addition to unions.53 In France and elsewhere, these workplace health and safety committees are empowered to negotiate with management over an immense range of topics that include workplace harassment, benefits, overtime, vacation and other issues that extend well beyond the usual topics that Americans (at least) consider legitimately related to workplace health and safety.

Americans accustomed to the single-channel Wagner Act labor relations model may rightly wonder whether so many layers of staff representatives raise—or lower—workers’ voice in labor/management dialogue. (Again, the Wagner Act § 2(5) presumes that any non-union staff representatives beholden to management would be weak and impotent shams.) Experience overseas shows that just because non-union bargaining groups are beholden to management does not necessarily make them weak and is not necessarily inherently detrimental to workers. These statutory consultative bodies can be tough, well-funded and influential—sometimes fierce negotiators wielding real clout and impeding management-sponsored workplace changes. U.S. multinationals often grumble about militant works councils in France and Germany that fight back every time management tries to do a reduction-in-force, a restructuring, or merger, or tries to launch a new work rule, code of conduct, whistleblower hotline or HR information system.

Another issue here is cost. Overseas non-union consultative bodies can get expensive. Management generally must fund them, often (as in France) with a flat percentage of total payroll. Employers also find themselves underwriting independent experts who advise worker groups. And employers under these regimes often must pay for expensive business trips, worker audits, training

49 EU Works Council Directives, 94/45/EC and 2009/38/EC.
50 Bulgarian Labor Code arts. 7a-d; 103d.
52 China Labor Contract Law of 2008 at art. 4 ¶ 2.
and other expensive extras. In one situation, as an example, a works council in Europe won a right to fly two employee representatives to America, all expenses paid, to do a systems audit at U.S. headquarters.

4. **Reach of labor agreements:** U.S. bilateral collective union agreements versus overseas multilateral agreements

After adversity, employer domination, and binary representation, a fourth feature that distinguishes organized labor in the United States from much of the rest of the world is the reach of collective bargaining agreements. American CBAs tend to be bilateral, between just one employer and one union. When a U.S. labor union “local” (branch of a national parent union, optimistically called the “international”) wins a right to represent the staff in an employer “bargaining unit,” just one employer and just one union tend to fall under a legal duty to bargain. If that employer and that union hammer out a CBA, their CBA only binds those two. No one else need pay much attention.

- **Refinements:** While U.S. labor law does not impose CBAs on parties that never agreed to bargain for them, one refinement here is that unionized American employers in a few industries like interstate trucking, construction and New York City residential doormen sometimes voluntarily band together in multiemployer bargaining groups that negotiate multiemployer CBAs or that set up multiemployer pension plans. But only a tiny percentage of the U.S. workforce falls under multiemployer CBAs—and in any event, multiemployer CBAs reach only those employers that at some point voluntarily opted into the multiemployer bargaining regime. Another refinement is that U.S. state government prevailing wage laws require non-union construction contractors working state jobs to pay their workers local union CBA “prevailing wages.” But those non-union contractors do not have to comply with other provisions in so-called “prevailing” CBAs—prevailing wage laws are merely wage laws.

Overseas, by contrast, trade union CBAs often bind more than just the parties who agreed to them, and can apply across entire industries. These CBAs often have the effect of unionizing entire industry sectors: Local law forces management across the industry sector to comply with a detailed union agreement that reaches even bosses who object, never signed on, and have no formal relationship or recognition history with the signatory union. Even a start-up company launching “greenfield” operations in a covered industry immediately finds itself “unionized,” in that from “day one” the law forces management to comply with a detailed, pre-drafted union agreement. There are even some sectoral CBAs that effectively unionize services providers who are not employees—Italy, for example, imposes a sectoral CBA that reaches “commercial agents,” non-employee sales contractors.

- **Jargon:** Outside the United States, multi-employer CBAs that reach a whole industry are usually called “sectoral” collective agreements, because they cover an entire industry sector. But certain jurisdictions label their local industry-wide CBAs using local terms, like “law contract” (contrato-ley) in Mexico, “bargaining council agreement” in South Africa, “collective service agreement” in Sierra Leone, “agreement under extension order” in Israel and “industry-wide collective contract” in China.

In a sense, industry-wide CBAs are not really “agreements” at all, in that the law imposes them on non-signatories who never agreed to be bound. Nevertheless, these sectoral agreements effectively unionize workers across an industry. All staff in a covered industry, even non-dues-paying, non-union members without union cards, work under terms and conditions of employment set by a union CBA. Laws in countries from Argentina, Brazil and Mexico to France, Germany, Spain and Switzerland to China, Costa Rica, Israel, Mali, Sierra Leone and South Africa and beyond impose sectoral CBAs in some contexts. Examples of these agreements include: the French retail collective agreement; the Swiss pharmaceutical industry collective agreement; the Italian national collective bargaining agreement for the commercial sector; the Argentine telecommunications industry collective

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54 See The Developing Labor Law, supra note 29, at chap. 11 §III(D).
55 Labor laws in these countries detail how “sectoral” collective bargaining agreements extend to the entire industry. See, e.g., Costa Rica labor code as modified by Law No. 9343 of Jan. 25, 2016 at art. 63.
agreement; the Mexican broadcast industry “law-contract,” and the 56-page Luxembourg Collective Bargaining Agreement for Bank Employees 2014-2016 “govern[ing] relations and general working conditions between the members of the Luxembourg Bankers’ Association...and their employees working on a permanent basis in the Grand Duchy of Luxembourg,” except for “Senior Executives” and “bank apprentices.”

In sectoral CBA jurisdictions, “[c]ollective bargaining occurs at the multi-enterprise level with employers organized into large multi-employer federations negotiating a minimum-terms agreement with the national, regional, or sectoral federation of unions.”56 The union in these jurisdictions therefore plays a very different role from the role of unions in the “enterprise-level-focused” American system. Trade unions in sectoral CBA countries tend to focus their energies on hammering out broad national and regional accords. They often relegate “shop level” issues and local grievances to works councils or to other local employee representatives at the individual employer level.

To an American, the central question becomes whether these sectoral CBAs make much difference as to employment terms and human resources standards. There are two views here. One view is that sectoral CBAs must be mostly inconsequential, because they merely set lowest-common-denominator standards that have to reach the industry’s weakest and poorest employers: A sectoral “collective agreement must be keyed to the economic situation of the median or maybe even to the economically weaker members of the employer federation.”57 Under this view, CBA mandates that set lowest-common denominators will only impose insignificant employment terms and uncontroversial human resources standards that do not much concern rich multinational employers.

The other view, though, is that sectoral CBAs can be transformational, imposing sweeping mandates that actually drive national labor economies. According to Steve Caldera, former president of the U.S. International Franchise Association, a sectoral CBA explains why American fast food workers average $8.30 per hour while their counterparts in Denmark bring home $20 per hour at minimum: Although Denmark does not impose a statutory minimum wage (American law is stricter than Danish law in that regard), the Danish fast-food union 3F sectoral CBA imposes a $20 minimum wage. Caldera argues that “[u]nions dominate [in Denmark], and the employment system revolves around that fact. Trying to compare the business and labor practices in Denmark and the U.S. is like comparing apples to autos.”58 Another proponent of this view is Stéphane Cazanave, a celebrity baguette baker in Saint-Paul-lès-Dax, France. Cazanave’s bête noir is the clause in his local bakery sectoral CBA that forces bakeries to shut down one day per week: “I am angry because in France, people are prevented from working. We are companies. All we are asking to do is do business, create wealth, and in France, we are blocked by absurd laws and [worker-protective] decrees” in sectoral CBAs.59 Indeed, sectoral CBAs can be so powerful that France and Germany recently amended their labor laws to let employers negotiate so-called “restructuring collective agreements” by which labor and management can negotiate below the minimum levels set in sectoral CBAs.

5. Penetration: U.S. low organized labor penetration versus high penetration overseas

In distinguishing American organized labor from labor systems across the rest of the world, we have addressed adversity, employer domination, binary representation and the reach of union agreements. A final distinguishing feature of American organized labor is its shallow penetration into the national workforce. We have seen that the only labor representatives the United States allows are “labor organizations” that amount to genuine labor unions, and we mentioned that labor union representation in the U.S. non-government sector has dropped to just 6.4%.60 The U.S. unionization rate has dropped so low that the International Labour Organisation and other international labor observers have criticized the United States for compromising, in practice if not in theory, the fundamental human right of worker association. We also mentioned that collective bargaining agreements in the U.S. only reach unionized labor. Taken together, this all means that 93.6% of

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57 Id. at 1615, 1625.
Americans employed in the private sector are free agents working completely outside the organized labor system, with no coverage under any collective agreement and with no representation of any collective labor representative.

There are various theories to explain why the U.S. union penetration rate has fallen so low. We mentioned the labor law professor who believes Americans are “reluctant to join” unions because they “see[m] adversarial.” According to another view, American unions’ lack of success in organizing employees “comes down to the cost of representation, and employees choose not to move forward because they don’t want to pay that much in dues.” But perhaps these explanations are unsatisfying. After all, unions were even more adversarial back in the heyday of the American labor movement, in the 1950s and 1960s. And unions back then just as consistently collected dues.

In sharp contrast to America’s receding organized labor presence, overseas the tentacles of collective labor still reach deep. Even as trade union membership declines in many countries, collective labor representation is as robust as ever in much of the world: A much higher percentage of workforces abroad have labor representation. Therefore, employers operating outside the United States run into staff representatives even in industries that Americans consider completely outside the union sphere, like financial services, technology and consulting.

Foreign systems use various measures to get their organized labor counts up. The Brazilian model mandates universal union representation. Beyond that, we have seen many countries extend sectoral collective union agreements to non-union staff in ostensibly non-union workplaces. Another tactic for collectively organizing workers overseas (also already discussed) is the layered labor model that imposes statutory consultative bodies like works councils, worker committees, workplace forums, staff delegates, ombudsmen, health and safety committees and the like, in addition to unions.

If we isolate “union membership” or “union density” as our relevant metric we see that in many countries outside the United States, union membership has also fallen sharply, if not quite as much as stateside. But union density is an inherently deceptive statistic because it ignores both collective labor coverage under sectoral union CBAs and coverage by non-union statutory consultative bodies. When we add in employees who fall under industry-wide CBAs plus those represented by non-union statutory consultative bodies, we see that in many jurisdictions, huge majorities of the national workforce participate in organized labor. In France and Portugal, for example, while only a modest minority are card-carrying union members, a vast majority of the workforce participates in organized labor through union membership plus sectoral union CBA coverage plus non-union consultative bodies.

A lesson here is to be careful comparing “unionization” or “union density” rates between the United States and other countries without also looking at the far more relevant metric of collective labor participation rates or collective labor coverage. The International Labor Organization, for example, tracks the metric collective bargaining coverage, which the ILO “defines as the share of employees to whom a collective agreement applies.” According to the ILO, “collective bargaining coverage varies significantly between countries, from just about 1 or 2 per cent in Ethiopia, Malaysia, the Philippines and Peru to nearly 100 per cent in France, Belgium, Austria and Uruguay.” And then, on top of collective bargaining coverage, factor in statutory consultative body coverage.

In many contexts overseas, high collective labor participation rates make worker representatives all but inevitable. In that environment, the supposed “allergy” that American management is sometimes said to have for unions and the “scorched Earth” union-free management strategy that some say characterizes the American labor environment can be counterproductive. Internationally-focused labor experts like Cisco Systems’ human resources director “urge multinational HR and business leaders not to fight the inevitability of active trade unions [and other staff representatives] in their companies [abroad,] but to build mutual respect and a partnership early in the relationship.”

61 Supra note 19.
64 Id.
65 J. Scorza, “An HR Journey Leads to Insights in Asia,” interview with Danielle Monaghan, HR Magazine, July 2013 (emphasis...
This point is vital to any multinational that aims to build an aligned global labor platform.


Now understanding how organized labor works outside the United States, we return to our central question of how to align an international labor strategy for overseas unions, works councils and other worker representatives. That is, we now address how a multinational can proactively align its human resources operations across borders. (What steps can a multinational take to facilitate and simplify the ever-growing list of headquarters-driven human resources integration initiatives that reach staff internationally—initiatives like cross-border restructurings, mergers, acquisitions, spin-offs, reductions-in-force, global HR policies, codes of conduct, whistleblower hotlines, international safety programs, global employee benefits programs, conversions to new HR Information Systems and border-crossing internal investigations?) Also, we now address how a multinational can position itself to counter global union offensives. (What steps can a multinational take to counter offensives by foreign organized labor—offensives like international union “corporate campaigns” and union demands that the multinational adopt an “international framework agreement,” launch an international employee representative body or respond at headquarters to a foreign labor dispute that cooperating unions pursue across borders?)

The answer to all these questions is the same: Build a global labor relations platform. We mentioned that the old “bottom up” approach of relegating collective labor strategy to overseas local managers may, today, be less effective than a headquarters-driven “top down” approach. And so a multinational employer seeking to align its approach to organized labor across borders should take the time and spend the resources to build a strong platform to serve as both a launching pad for future cross-border workplace initiatives and as a parapet defending against targeted international organized labor initiatives.

Building this global labor relations platform can be a big job. Headquarters may show little interest in (or little budget for) a grandiose undertaking in what the organization may regard as the moribund, money-sucking backwater of organized labor. Yet building a sturdy platform to support labor relations internationally pays off for many reasons besides just advancing global labor integration and saving time and money through increased efficiencies. A well-built global labor relations platform will:

• advance headquarters’ corporate goals and enhance operational flexibility internationally
• harmonize local collective bargaining provisions and procedures across borders, driving uniformity for the organization
• engage and empower the organization’s own overseas labor negotiators who bargain for the employer, motivating them to bargain harder and steering them to advance headquarters initiatives rather than merely local goals
• streamline and implement headquarters-driven “change initiatives” affecting the workplace internationally
• brush back internationally-focused trade unions as they team up across borders, launching international corporate campaigns and pushing headquarters to launch a European Works Council, a world works council, or sign an international framework agreement

Where these reasons justify building a global labor relations platform, the question becomes how to build it: How does a multinational that today finds itself with a disorganized agglomeration of disparate collective labor relationships scattered across affiliates around the world clean up its inefficient foreign labor contracts, align its various foreign worker representatives, heal its festering
While building a global labor relations platform takes time and money, the blueprint for building one is fairly simple. It has four parts: (1) project team; (2) information-gathering; (3) labor philosophy; and (4) platform application.

1. Project team

The first step in building a global labor relations platform is selecting the project team. Project management for a cross-border labor alignment initiative should be top-down, falling under the headquarters human resources function or under any headquarters-level global manager of industrial relations. The project team must include the head in-house employment lawyer with global responsibility. Be sure to include on the team any headquarters-level global health and safety function, and consider involving a corporate communications or public relations person—as well as someone from corporate compliance. If the company has a European Works Council or other cross-border labor consultation body, include on the project team that body’s management-side liaison who advocates on behalf of management.

Consider adding to the global labor alignment team an outside expert experienced in international labor law (like an international labor lawyer or labor consultant with experience beyond just the headquarters country). Any outside expert brought in needs to know how to build a global labor relations platform, and should bring practical experience wider than just a home-country labor relations mindset. A lawyer leading the global labor project team might be able to structure the global labor platform project so it comes under at least the U.S. attorney/client privilege.

2. Information-gathering

Project team in place, the next step in building a global labor relations platform is to gather information internally about the organization’s existing labor relationships around the world. Consider these four issues:

- **Management labor liaison directory:** Too often, no one at headquarters is sure who, overseas, speaks on behalf of the organization to local foreign labor representatives. Begin gathering labor relationship information by identifying all the organization’s own internal local labor liaisons—it’s in-house, on-the-ground labor relations experts who currently consult and negotiate around the world on behalf of management with foreign labor representatives. For example, find out who in your Paris office consults with your French works council on behalf of management, who in your Tokyo facility negotiates for management with your Japanese unions and who in Lima convenes health-and-safety meetings at the Peruvian facility. Put together a country-by-country directory (with up-to-date contact information) and a global email directory that lists the organization’s own in-house management-side labor liaisons in each overseas location. Be sure to include not only managers who bargain with full-fledged trade unions but also point-people who consult with statutory consultative representative bodies like works councils, worker committees, workplace forums, staff consultation committees, ombudsmen, health/safety committees and the like. Add to the directory the names and contact information of outside labor lawyers and labor consultants that the organization retains to advise overseas facilities.

- **Inventory of labor representative bodies:** Using the overseas labor liaisons just identified, create a list of all the organization’s own labor organizations that represent staff internationally—full-fledged unions plus in-house standing statutory consultative bodies that the organization’s overseas operations host, sponsor, recognize, consult, bargain, “co-determine” or negotiate with. For each labor body, identify the corresponding management-side labor professional who serves as management’s lead contact with that group.

- **Library/database of labor agreements:** In-house inventory of labor representative bodies now in hand, assemble a virtual library or database of the written labor agreements that the
organization has with labor representatives around the world. Include all trade union collective bargaining agreements and all applicable sectoral CBAs, even ones to which the organization is not a signatory. Collect works council constitutions and “works agreements” including any European Works Council agreement plus all labor ombudsmen charters, health and safety committee constitutional documents, “social plans” from past lay-offs, grievance resolutions with ongoing effect and any other agreements with labor representative bodies worldwide. In gathering up these collective agreements, inevitably some of them will seem to have expired by their terms. As to those, find out (and note in writing) the company’s position as to roll-over or ongoing enforceability. Add to this virtual library or database any headquarters declarations on labor relations policy that the organization may have issued, such as any labor/free association statement in a supplier code of conduct, any international framework agreement (“transnational company agreement”) or any charters of multiemployer bargaining groups to which the organization might be a party.

• **Other information:** Next, assess the nature or tone of the organization’s existing organized labor relationships worldwide. Summarize the status of the bargaining relationship with each labor organization. Which if any of the company’s unions are so-called “white” (“white knight”) unions friendly or beholden to management? To which global union federations do unions representing the organization’s workers belong? Are any foreign labor organization drives underway? Are any cross-border labor initiatives, secondary boycotts, corporate campaigns or pushes for international framework agreements in the works? If you do not have a European Works Council yet, do you have a European employee population over 1,000 susceptible to getting one? To which employer bargaining groups do overseas affiliates belong? Then make timetables: When do local meetings with foreign labor groups in each country take place? How long does it usually take to implement new management proposals in each labor group? When are collective agreements next up for renewals? Collect data about overseas affiliates’ local bargaining goals and agendas, the patterns of local grievances and disputes, and the tenor of local bargaining relationships. Which relationships are typically hostile, and which are generally cooperative? Which relationships are proactive and which are moribund? What are foreign worker representatives’ bargaining objectives? How many days, on average, do company affiliates lose to strikes? What are the biggest obstacles the local management-side labor liaisons struggle with around the world?

3. **Labor philosophy**

Project team in place and global labor database assembled, next formulate, articulate and test a global labor relations philosophy or strategy:

• **Articulate a global labor philosophy:** A Canadian and a German labor lawyer have said: “We believe the best way to protect local operations is for each [multinational] to decline the invitation to sign an [international framework agreement]. Instead, [each multinational employer] should develop and implement its own global labor strategy, taking into account the different labor laws and business environments in which it [does] business.”66 Follow this broad advice by formulating and articulating a viable labor relations strategy or philosophy for the conglomerate multinational organization. One simple global labor philosophy, for example, might just be to leverage the organization’s existing labor representative structures around the world advantageously, to facilitate and streamline cross-border headquarters-driven workplace initiatives. Otherwise, a global labor relations philosophy might take more of a stand, even if a polarizing one. At one pole is the quintessentially European view nurturing employee “free association” rights in “social partnership” with management. Some European multinationals embrace global works councils and actively declare global union neutrality through framework agreements. Of course, a U.S.-based multinational will likely reject a labor philosophy so friendly to organized labor, but the (mostly European) organizations that embrace such overtly labor-friendly philosophies have, from their point of view, laudable motives and concrete business imperatives: promoting the universally-recognized human right of worker association; fostering labor peace; enhancing corporate reputation; reducing labor

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66 Sherrard & Wisskirchen, *supra* note 3, at p. 29 (emphasis added).
risks; improving relationships with unions and workers; strengthening business relationships; building brand identity; and impressing customers with positive public relations and socially-responsible corporate citizenship.

At the opposite pole, a quintessentially American global labor relations philosophy is the “union-free” position that expressly opposes organized labor wherever opposing labor is legal. (In Brazil, as mentioned, unions are mandatory and so a union-free position is illegal; openly opposing unions also seems to violate Chinese labor law.) American-headquartered multinational fast-food chains and retailers have been said to embrace a labor philosophy like this that opposes organized labor worldwide, wherever that position is legal. Those companies prefer to deal with their worldwide workforce directly, without worker representative middlemen in the way.

In articulating an organized labor philosophy, distinguish supply chain labor issues and supply chain agreements like the Bangladesh accords. While unions’ corporate campaigns (in England called “leverage campaigns”) often implicate supply chain labor issues, carefully distinguish the internal labor situation of the multinational’s own staff from supplier labor issues. Too often multinationals confuse these very distinct issues. An organization’s internal labor philosophy does not have to be the same as its supply chain labor philosophy, but the two philosophies do need to align.

• **Test the labor philosophy:** After articulating a global labor philosophy, whatever it is, test it. Does it work in practice consistently across global operations? As mentioned, one “acid test” of a labor philosophy that resists organized labor is to verify that it aligns with the company’s own supplier code of conduct: A multinational with a union-free labor philosophy would be inconsistent if it also imposes a “free association” mandate on its suppliers. Another “acid test” for a global corporate labor philosophy is to ask the hypothetical “white union” question: Imagine the organization launches a new facility in Mexico and local Mexican advisors suggest (as they often do) inviting in a management-friendly “white”/“white-knight” union to keep away Mexico’s hostile independent militant unions. White unions are common in Mexico and for the most part are legal, although of course they would be flatly illegal in the United States as management-dominated. Decide whether contracting with a white union would be consistent with the articulated labor philosophy.

4. **Platform Application**

Having articulated and tested the organization’s global labor relations philosophy, the final stage in building a global labor relations platform is to apply that philosophy to the organization’s overseas labor relationships, identifying and resolving problems. This is the most complex step, but at the same time this is the most valuable part of a global labor relations platform. To do this, consider these issues:

• **Problem spotting and solving:** Analyze the information gathered in light of the global labor relations philosophy to isolate which labor problems the organization most urgently faces overseas. What themes and patterns hamper the organization across borders? For example, are foreign labor representatives too obstreperous? Too slow in consulting? Too uninformed about headquarters goals? Devise strategies to fix these problems. Factor in management goals. Pave a path for future “change projects.” Address the cumbersome provisions and procedures in foreign collective bargaining arrangements and other identified obstacles that block the organization’s integration and cross-border projects. If, for example, the organization’s local collective bargaining processes in some jurisdictions are too slow (maybe local labor representatives insist on discussing just one issue at a time and delay submitting their positions), focus on those locations for attention and reform. If, for example, the European Works Council agreement gives too much power to the EWC to obstruct pan-European merger and acquisition deals, then try to amend the EWC agreement. Develop a jurisdiction-by-jurisdiction agenda for reforming local collective bargaining relationships,
collective agreements and consultation procedures to advance the global labor relations philosophy, speed up and align consultation timelines across jurisdictions and facilitate headquarters-driven global initiatives.

- **Benchmarking:** Next, benchmark good labor practices across relevant jurisdictions. If peer employers’ local collective bargaining agreements, works council “works agreements,” social plans and labor representative relationships offer innovative, flexibility-enhancing provisions and procedures, then that might mean your organization is saddled with antiquated labor arrangements that need reform. Bring these into alignment with the local market by borrowing or adapting helpful labor practices from other companies.

- **Labor relations “pyramid”:** Using the in-house list of management-side labor liaisons already developed, build a cascading-down labor-relations “pyramid” of management-side negotiators worldwide. Design a communications and involvement strategy that engages and empowers the organization’s own overseas management-side labor negotiators, focusing them on the headquarters labor agenda. Teach overseas local managers what kinds of organized labor activity to watch out for. Empower them to report emerging labor issues and union maneuvers up to headquarters. To facilitate future headquarters “change projects,” maintain and support this global labor platform pyramid structure using intranet tools and regular conference calls. “[P]ut key [international] labour issues on senior management’s agenda through yearly briefings and HR-related inputs into leadership development. [Ensure] joint thinking on labour-related relationships with external stakeholders, including international trade unions and NGOs, to pre-empt campaigns.”

- **Change-management process:** Be sure to turn to this global labor platform every time headquarters launches a new M&A deal, reduction-in-force, code of conduct, work rule, compensation plan, intranet system, HR Information System or other “change project” that reaches rank-and-file overseas staff. Each time headquarters launches its latest change initiative, use the labor relations pyramid to advance the organization’s global labor agenda. This way, the organization can effectively drive change from the top of the pyramid down. Indeed, this may be the biggest single payoff for launching the global labor alignment project.

- **Ongoing monitoring:** Implement a process to maintain the global labor platform and to monitor how it works going forward. Keep internal labor directories updated. Keep team relationships active and lines of communication open. Appoint a headquarters labor expert to track organized labor activity across the group worldwide. And monitor the media for news reports of labor activity and corporate campaigns that could affect the organization.

### Conclusion

Internationalization pushes multinationals to take an aligned, global approach with organized labor. Many multinationals need a coherent global strategy to address organized labor internationally. But before it can craft a global labor strategy, a multinational headquarters first has to understand how organized labor works around the world. Domestic American employers tend to have adversarial organized labor relationships. Overseas, organized labor relationships differ greatly, and often (if not always) amount to more of a “social partnership.”

It is possible and often advisable to build a global labor relations platform that aligns collective bargaining and organized labor strategies across borders. With a solid, thorough global labor platform, foreign worker representation becomes less imposing an obstacle each time headquarters decides to launch some new global alignment initiative or when the organization gets targeted in a cross-border union campaign. With a global labor platform in place, foreign labor compliance becomes orderly, predictable and headquarters-driven—a way to avoid a reactive crisis where foreign organized labor seems to get the upper hand.

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