

LABOR PARTICIPATION RIGHT OF LABOR RIGHT: GUARANTEEING DEMOCRATIC PARTICIPATION IN ENTERPRISE MANAGEMENT

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Abstract: It is the embodiment of labor force as human capital to guarantee the labor participation right of laborers and enable them to participate in the democratic management of enterprises. However, in practice, adverse selection and moral hazard caused by information asymmetry will lead to the fact that workers' right to participate in labor can not be guaranteed, so it needs to be prevented. From the perspective of law and economics, this paper discusses how to realize the protection of labor participation rights of workers by trade unions through the game between workers' congresses or workers' congresses, workers' directors and workers' supervisors and enterprises, and draws suggestions.

Keywords: labor participation, law, economics, democratic participation



Laborers' right to participate in labor, also known as the right to participate in management, democratic management or co-decision, is "the right of laborers to directly or indirectly participate in the operation and management of their enterprises (including the distribution of benefits) through the control and intervention of the economic and production process." [Li Yunhua, Research on Employment Rights, China Social Sciences Press, 194 (2009).] The scope of the right to participate in labor is relatively broad, including at least: the right to know, the right to suggest, the right to consult, the right to propose, the right to consent, the right to veto and so on. [Li Yunhua, Research on Employment Rights, China Social Sciences Press, 197 (2009).] In a broad sense, the right to participate in labor should also include the right to share profits.

The right of labor participation is one of the legal labor rights enjoyed by workers. China's relevant labor laws on the right to participate in labor mainly include the system of workers' Congress, the system of making factory affairs public, and the system of workers' directors and supervisors. Article 8 of the Labor Law of the People's Republic of China clearly stipulates: "Workers shall, in accordance with the law, participate in democratic management through workers' congresses, workers' congresses or other forms" Article 6 of the Trade Union Law stipulates: "Trade unions shall, in accordance with the provisions of the law, organize workers to participate in the democratic decision-making, democratic management and democratic supervision of their own units through workers' congresses or other forms." At the same time, the Trade Union Law also puts forward requirements for trade unions to protect workers' democratic participation rights according to different types of enterprises. Article 35 of the "Trade Union Law" stipulates the mode of democratic management of state-owned enterprises and the duties of trade unions: "The workers' Congress of a state-owned enterprise is the basic form of democratic management of the enterprise and the organ for workers to exercise their power of democratic management, and it exercises its functions and powers in accordance with the law. The trade union committee of a state-owned enterprise shall be the working body of the workers' Congress and shall be responsible for the daily work of the workers' Congress, and shall inspect and supervise the implementation of the resolutions of the workers' Congress. Article 36 stipulates the duties of a collective enterprise: "The trade union committee of a collective enterprise shall support and organize workers to participate in democratic management and democrat-

ic supervision, and safeguard the rights of workers to elect and dismiss managerial personnel and to decide on major issues concerning operation and management." Trade unions in other types of enterprises, in accordance with the provisions of Article 37, "organize workers to participate in democratic management of enterprises and institutions in a form suitable for enterprises and institutions."

With regard to the system of employee directors and supervisors, China's Company Law stipulates that state-owned enterprises must set up employee directors, other enterprises can set up employee directors, and employee supervisors must be allocated to all types of companies. Thus it can be seen that the Company Law gives workers more rights to supervise the operation and management of the company as supervisors, but there is no mandatory provision for workers to participate in the decision-making of operation and management as directors in addition to state-owned enterprises. Considering the current national conditions of our country, the implementation of employee directors in non-state-owned enterprises may not be recognized by these enterprises.

At the same time, we can see that the Trade Union Law not only gives workers the right to participate in labor, but also gives trade unions the right to participate in the operation and development of enterprises. Article 38 stipulates: "Enterprises and institutions shall listen to the opinions of trade unions when studying major issues concerning operation, management and development; trade union representatives must attend meetings held to discuss issues concerning wages, welfare, labor safety and health, social insurance, and other issues involving the vital interests of workers." As trade unions are the representatives of workers, the purpose of the above-mentioned provisions of the Trade Union Law is to indirectly protect workers' right to participate in labor by giving trade unions the right to participate in the operation and management of enterprises. Therefore, the right to participate in the operation and management of enterprises granted by law to trade unions can also be regarded as the right to participate in labor in a broad sense.

In addition to the system of workers' Congress, workers' directors and workers' supervisors, the realization forms of the right to participate in labor also include the system of making factory affairs public and the system of employee stock ownership. In view of the limitation of space, we will not analyze the system of making

factory affairs public and the system of employee stock ownership one by one.

1. THE RIGHT TO PARTICIPATE IN LABOR: THE EMBODIMENT OF LABOR FORCE AS HUMAN CAPITAL

At the beginning of the study of the right to participate in labor, we need to first clarify a question, why should workers enjoy the right to participate in labor? In state-owned enterprises and collective enterprises, if workers participate in the democratic management of enterprises because the ownership of the assets of these enterprises belongs to the state and the collective, and workers, as the masters of the state, have the right to participate in these enterprises, it seems understandable. However, private enterprises and foreign-funded enterprises, as non-public enterprises, generally understand that the ownership of their enterprise assets belongs to the management, and the workers are only the main body employed to provide labor, so that is, distribution according to work, according to the labor they provide to obtain a certain amount of wages, what are the basis and reasons for their participation in the operation and management of enterprises? Do they enjoy the right to participate in labor?

The answer is yes. The rise of labor participation right, "on the one hand, is inseparable from the long-term demands and efforts of workers; on the other hand, it is closely related to the trend of thought that modern and contemporary society has begun to regard enterprises as a collection of multiple interests (rather than a simple private property of investors)."[Li Yunhua, *Research on Employment Rights*, China Social Sciences Press, 195 (2009).]

From a deeper point of view, the reason why workers should have the right to participate in the operation and management of enterprises is that "managers and workers are the main body of labor property rights.". It is not only a labor behavior, but also an investment behavior for workers to invest in enterprises. Workers should not only get labor income, but also get property rights income like other company property investors.[Mei Shenshi, *On the Structure of Modern Corporate Power: a Legal Analysis of Corporate Governance*, China University of Political Science and Law Press, 56-57 (1996).]This is the viewpoint of human capital theory, that is, labor force is also a kind of capital, human capital, and when workers invest in enterprises, they are actually

investing their own capital. Enterprises are the result of capital investment, and as capital investors and owners, they should enjoy the corresponding management rights and management rights. Therefore, as a manifestation of human capital, laborers, as the owner of human capital (owner of property rights), should enjoy the same right to participate in management as employers of enterprises invested in physical capital, and participate in the democratic management of enterprises invested in order to ensure that their human capital investment has a better return, which is the law and economics basis of laborers' right to participate in labor.

The usual economic view of capital is that it is "a physical asset owned by a household, firm, or government." [Hu Chuntian, Wu Hema, Huo Deming and Xiong Bingyuan, Introduction to Economics, Peking University Press, 218 (2006).] So for enterprises, capital is the physical assets invested by the state or private into the enterprise, including capital, land, machinery and equipment, and so on. Obviously, in this view, the existence of human capital as a non-physical form does not belong to the category of capital. However, the theory of human capital has innovated that intangible human capital also belongs to capital.

The theory of human capital was clearly put forward at the beginning of the 20th century, and it was not generally recognized by the academic circles before that. For a long time, the concept of human capital has not been recognized by the economic circles under the influence of people's pursuit of material wealth and the moral pressure brought about by regarding people as capital. However, in 1906, Fisher, an American economist, first put forward the concept of human capital in his book *The Nature and Income of Capital*, and brought it into the theoretical framework of economic analysis. [Jiao Binlong et al., *Human Capital Disparity and Income Distribution Gap*, The Commercial Press, 2-4 (2011).] The main representative of modern human capital theory, American economist Schultz, published "Human Capital Investment" in 1961, which systematically expounded the theory of human capital. He believed that, like material capital embodied in material products, human capital is embodied in workers. The capital formed through investment and constituted by the knowledge, skills and physical strength (health) of workers, or the capital embodied in workers and expressed by their quantity and quality, is human capital. [Bian Yajing, *Research on the Optimal Proportional Relationship between Physical Capital and Human Capital*, China Economic

Press, 2011, p. 9.]Schultz's view on human capital is basically the mainstream view in the West. It can be seen that human capital is the capital composed of the knowledge, skills and physical abilities of the laborer, which is opposite to the physical capital and embodied in the laborer. The investment of human capital has two meanings for laborers. The first meaning is that laborers, as the owner of human capital, have the right to participate in the operation and management of enterprises. The second meaning is that laborers have the right to participate in and share the benefits of enterprise operation.

The rise of human capital theory and practical exploration have injected new demand for labor participation rights. Modern enterprise theory holds that the enterprise is not only the enterprise of shareholders, but also the contract composed of human capital and non-human capital. The new point of this proposition is that it not only provides the possibility for a new form of labor remuneration right, but also provides support for labor participation right.[Xue Changli, On Labor Rights, Science Press, 68 (2010).]It is precisely because workers enjoy the right to participate in labor that trade unions, as organizations for workers to safeguard their rights, should have the obligation to ensure the effective enjoyment and realization of workers'right to participate in labor. Next, the paper analyzes the information asymmetry and game problems that may occur in the process of exercising the right of labor participation by workers and trade unions representing workers in the sense of law and economics.

2. THE RIGHT TO PARTICIPATE IN THE RIGHT TO SHARE DECISION-MAKING AND INFORMATION ASYMMETRY.

Since the laborer has the right to participate in the democratic management of the enterprise, it means that the laborer also needs to make decisions on the relevant matters of the enterprise. The laborer's participation in the decision-making of the enterprise's operation and management is to share the decision-making power, and the laborer shares the right of the enterprise's operation and management decision-making.

Decision-making needs to be based on information, and decisions made without information or inaccurate information are often incorrect or even misleading the business

development of enterprises. Because the work of workers in enterprises is often only a part of the whole business operation, it is difficult to fully understand the various business information of enterprises, so when they participate in the business decision-making of enterprises, they often face the problem of information asymmetry with other parties of enterprises such as directors, professional managers and so on. The corresponding decision-making can not fully conform to the actual situation and can not maximize the interests of workers.

1 The Problem of Sharing Decision-Making Power and Adverse Selection of Labor Participation Right

The problem of adverse selection has been mentioned above. Adverse selection can lead to the phenomenon of low-skilled workers driving out high-skilled workers in the labor market. In the process of workers participating in the democratic management of enterprises, there are at least two levels of problems, the first is how to avoid adverse selection and moral hazard due to information asymmetry in the process of electing workers' directors and supervisors to realize workers' labor participation rights. Second, how to avoid adverse selection and moral hazard caused by information asymmetry when participating in the selection and decision-making of professional managers. The above two problems are essentially the same, both involving adverse selection and moral hazard in the case of asymmetric information. For the workers who participate in democratic management, there may be adverse selection because of the asymmetry between the information they have and the employee directors, supervisors and professional managers. For example, because they do not know the background and qualifications of the candidates for staff directors, staff supervisors and professional managers, they vote wrongly, choose relatively poor staff directors, staff supervisors and managers, but do not choose excellent staff directors, staff supervisors and professional managers who really think about the workers. Another example is that they do not understand the company's business projects introduced by professional managers and are deceived by them to choose business projects with poor profitability and give up business projects with strong profitability. Although it does not mean that the participation of workers will necessarily lead to this adverse situation, after all, the shareholders of enterprises and their appointed directors and supervisors

also participate in democratic management, but the participation of workers will lead to a greater probability of this situation.

In view of the situation that the right of workers to participate in democratic management can not be brought into full play due to adverse selection caused by information asymmetry, trade unions need to be guaranteed from the following two aspects:

Firstly, we should set up a competitive system and an open election system for candidates of employee directors, supervisors and professional managers before they are recruited. The advantage of the competition system is that it can more fully tap the market (the source of employee directors and supervisors is the labor market within the enterprise, while the source of professional managers is the labor market within and outside the enterprise), and the result of fair and full competition is that it can make the qualified personnel. Reduce the problem of adverse selection caused by inadequate information. The significance of the open election system is that the resumes and other information of the candidates for employee directors, employee supervisors and professional managers can be publicized and publicly tested by the vast number of workers in the enterprise through public elections, thus reducing the adverse selection problem caused by inadequate information.

Secondly, we should set up special organizations or special trade union staff to collect relevant information about the operation of enterprises and improve the problem of adverse selection caused by information asymmetry. Although some information may be unwilling to be disclosed to trade unions and workers as trade secrets, unless it is the core secrets of enterprises, at least at the level of trade unions, trade unions should try their best to obtain business information of enterprises so that workers can participate in the democratic management of enterprises more comprehensively and objectively.

2 The Sharing of Decision-Making Power and Moral Hazard of Labor Participation Rights.

In addition to adverse selection, information asymmetry may also cause moral hazard problems. The moral hazard that may occur here is that employees of enterprises (other workers who do not participate in democratic management), especially employee directors, employee supervisors and professional managers, are passive and do

not conscientiously perform their duties and work well, but because of the difficulty of supervision, it is difficult for workers who participate in democratic management to see their inefficiency. The overall interests of enterprises are damaged, and the interests of workers are also damaged. When bad phenomena occur due to moral hazard, "we should not only play the role of moral education and legal and disciplinary norms, but also pay more attention to adjusting institutional arrangements in order to fundamentally change the incentive mechanism and behavior of individuals and organizations." [Lu Feng, *Principles of Economics (Chinese Edition)*, Peking University Press, 186 (2002).]

In view of the problem that moral hazard may occur due to information asymmetry and affect workers' right to democratic participation, it is suggested that trade unions can solve the problem from the following aspects:

First, establish a supervision mechanism for employee directors and supervisors. Because of the information asymmetry between ordinary workers and staff directors and supervisors, the information that ordinary workers have is relatively insufficient. In order to avoid the moral hazard of staff directors and supervisors, it is necessary to establish regular reports from staff directors and supervisors to trade unions and workers. So that workers can understand the performance of their chosen employee representatives and the operation of the company, and realize their right to participate in labor.

Secondly, what matters should trade unions negotiate with enterprises on behalf of workers be included in the scope of democratic management. The participation of workers in the democratic management of enterprises requires the trade union to negotiate with the shareholders of enterprises or their corresponding directors (boards) and obtain their understanding and support, otherwise the right to participate in labor will become a right on paper and can not become a real right. At the same time, what matters should be included in the scope of workers' democratic participation should also be consulted by trade unions and enterprises in advance, because not all affairs of enterprises need and should be participated by workers, on the one hand, some of the operations of enterprises belong to business secrets, especially core secrets, which are not suitable for workers to participate in. On the other hand, some matters have little to do with workers. At least the matters related to the vital interests

of workers, such as the expansion of factories, the increase of canteens and so on, should allow workers to participate democratically and make decisions. On the one hand, this kind of democratic participation ensures that workers know these business plans to draw on the wisdom of the masses, on the other hand, it also enables workers to participate in democratic management to improve their enthusiasm and efficiency of labor, and indirectly improves the profits of enterprises. Therefore, the participation of workers in the democratic management of enterprises is not only beneficial to the workers themselves, but also to the enterprises, which is a "win-win" situation.

Japan's practice is worth learning from. It is not difficult to see from Japan's patriarchal corporate culture that, unlike the trade unions in developed countries such as Europe and the United States, the trade unions in Japanese enterprises are closely linked with enterprises, and their relationship with enterprises is more coordinated and relaxed. They are more involved in the management of enterprises as representatives of workers rather than as the opposite of enterprises, in order to benefit workers through the development of enterprises. As some Japanese scholars believe, "the extensive cooperative relationship between trade unions and operators has injected lubricant into Japan's labor market." At the same time, Japanese trade unions tend to focus on how to promote the development of enterprises, because only when enterprises develop can treatment of workers be fundamentally improved. Therefore, some scholars have pointed out that trade unions are powerful and irreplaceable partners of business operators in strengthening enterprise management and carrying out rationalization activities. This is also a remarkable feature of Japanese trade unions compared with those in developed countries in Europe and the United States.

3. LABOR PARTICIPATION RIGHT AND GAME

In the process of exercising the right of labor participation and democratic management of enterprise affairs, workers are also faced with the problem of game with enterprises. As mentioned above, there are two main forms for workers to participate in the democratic management of enterprises, namely, the general meeting of all workers or the Congress of workers, and the system of employee directors and supervisors. For workers, the discussion and resolution of major issues concerning the operation and management of enterprises through all workers' congresses or workers' congresses is

a game with employers, because the above resolutions can be accepted by enterprises, in fact, it is also the result of the game between the two sides. In addition, the employee directors and supervisors, as their representatives, are involved in the game with other members of the board of directors and the board of supervisors when convening the corresponding board of directors and the board of supervisors, and the results of the game have a direct impact on the resolutions of the board of directors and the board of supervisors. For employee directors and supervisors, their strategies on related matters are influenced by other parties involved in democratic management, and the best decision can only be made after the strategies of other parties are determined. Therefore, the game has an important impact on the realization of the right to participate in labor. In the above game, what role does the trade union play? This paper intends to analyze the main body and means of the game.

1 Through the Game of All Workers'congresses or Workers' Congresses.

For the two game forms of labor participation mentioned above, the main body of the game needs to be clarified through the game of all workers'congresses or workers' congresses. Before discussing whether the main body of the game of all workers'congresses or workers'congresses is all workers, workers'representatives or trade unions, we need to make it clear first. What is the relationship between all workers' congresses, workers' congresses and trade unions? The current law of our country distinguishes the nature of enterprises. Article 35 of the Trade Union Law stipulates that the trade union of a state-owned enterprise is the working body of the workers' Congress, which is responsible for the daily work of the workers' Congress, inspecting and supervising the implementation of the resolutions of the workers' Congress, but it does not make clear provisions for collective enterprises and enterprises of other nature, but generally requires that the trade union should support and organize workers to participate in democratic management. The reason why the law stipulates this is nothing more than two points. The first is that the establishment of trade unions in state-owned enterprises is relatively common and sound, and can exist and operate as the working body of the workers'congress. However, many collective enterprises and non-public enterprises themselves have not formed trade unions. If these types of enterprise trade unions

are stipulated as the working body of the workers' Congress, In the actual situation, it is inevitable that it can not be realized and become a "right on paper", and at the same time, it may also paralyze the established workers'congresses because of the absence of trade unions in enterprises and the inability to deal with the daily work of the workers' congresses. This flexible handling of the law is also an expedient measure. Secondly, because the membership base of trade unions in state-owned enterprises is better, the situation of workers joining trade unions is better than that in collective enterprises and non-public enterprises, so that trade unions can actually represent all workers to participate in the democratic management of workers. On the contrary, collective enterprises and non-public enterprises, even if trade unions have been established, the nature of enterprises determines that employers are not as active and generous as state-owned enterprises in joining trade unions, which makes the proportion of trade union members in all employees generally not as high as that of state-owned enterprises. As a result, if the trade union represents the interests of trade union members (some workers) as the working body of all workers'congresses or workers' congresses, its representativeness is easily questioned by non-trade union members, and it is difficult to obtain the recognition of the majority of workers.

It is the vague representativeness of trade unions that leads to the confusion of trade unions in the game of labor participation rights. As far as trade unions in collective enterprises and non-public enterprises are concerned, because they are not the working bodies of all workers'congresses or workers' congresses, what role do they play to ensure the real enjoyment and realization of workers'democratic participation rights? How to realize the guarantee of democratic participation right through strategic interaction (game) with employers?

Because the trade union of an enterprise is a permanent institution, and the general meeting of all workers or the general meeting of workers is only held regularly or temporarily, and it is not a permanent institution, if the law does not clarify the relationship between the general meeting of all workers or the general meeting of workers in collective enterprises and non-public enterprises and the trade union of an enterprise, but only generally requires the trade union of an enterprise to support and organize it. It will greatly reduce the strength and depth of the work of trade unions to protect the right to participate in labor, and it is easy to make all workers'congresses or workers'

congresses superficial and stylized, thus failing to achieve substantive democratic participation. In view of the fact that trade unions in enterprises are representatives of workers in enterprises, trade unions in collective enterprises and non-public enterprises should also be endowed by law with the responsibilities of permanent working bodies of all workers' congresses or workers' congresses, so that trade unions in collective enterprises and non-public enterprises can participate to a greater extent in all workers' congresses or workers' congresses. It also inspects and supervises the implementation of the resolutions of the General Assembly to ensure the real realization of the right to participate in labor. As mentioned above, the Trade Union Law only stipulates that trade unions in state-owned enterprises are the working bodies of workers' congresses, mainly based on the different status and strength of trade unions in enterprises of different nature in China, but in order to encourage trade unions in collective enterprises and non-public enterprises to actively protect labor. It is necessary to endow such types of enterprise trade unions with permanent working bodies of all workers' congresses or workers' congresses. Due rights should first be reflected as rights stipulated by law, and then be transformed into real rights through efforts.

The permanent working body of the enterprise trade union as the general meeting of all workers or the workers' Congress not only helps to affirm and strengthen the right of the enterprise trade union to protect the right to participate in labor, but also benefits the result of the game between the enterprise trade union and the employer. After defining the relationship between the enterprise trade union and the general meeting of all workers or the workers' Congress, we further consider the main body of the game and the role of the enterprise trade union in the game of the right to participate in labor. There is no doubt that the main body of the game through the workers' Congress or the workers' Congress should be the game between the workers or the workers' representatives and the employer, because the decision-making body of the workers' Congress or the workers' Congress is the workers or the workers' representatives. Then, as the representative of the interests of workers, if the trade union wants to play a positive role in this game and protect the right to participate in labor, it needs to make reasonable decisions through its trade union members in all workers and workers' representatives, thus affecting the resolution results of all workers' congresses and workers' congresses. From this point of view, the proportion of trade union members and whether

the membership base is solid or not directly affect the resolution results of all workers' congresses and workers' congresses, thus having an important impact on the game between trade unions and employers. Therefore, from the perspective of game, in order to give full play to the role of trade unions in protecting the right to participate in labor and maximizing the interests of workers through the game of full-time workers' congresses or workers' congresses, trade unions and relevant legislation should make efforts in the following aspects:

First, on the basis of legislating that enterprise trade unions are the working bodies of all workers' congresses or workers' congresses, legislation stipulates the specific procedures, rules, daily work contents, supervision and guarantee of all workers' congresses or workers' congresses. It makes the trade union play games through all workers' congresses or workers' congresses in accordance with the law, and it is easy to operate.

Second, expand the proportion of trade unions. In the case that the trade union becomes the working body of the general meeting of all workers or the workers' Congress, whether the trade union can really gain the trust and support of all workers or workers' representatives, the proportion of its trade union members in all workers is very important. If the trade union membership accounts for half or more of the total number of workers, the trade union membership base is better, it can better play its role in safeguarding rights, it is more handy in the daily work of all workers' congresses or workers' congresses, and it is easy to gain the trust and support of workers. In addition, when the general meeting of workers votes, the proportion of trade union members also directly affects the voting results. When the number of trade union members accounts for half or more of the voting number, the trade union can decide the final voting results through its trade union members, which constitutes the game strategy between the trade union and the employer and affects the strategy of the employer.

Third, increase the proportion of trade union members in the staff representatives. In the case of the game through the workers' congress, if the trade union wants to improve its influence in the game, give full play to its advantages of collective rationality and avoid the blind decision-making of the workers' representatives on the management of the enterprise, it needs to increase the proportion of its trade union members in the workers' representatives, so that when the workers' congress votes, the trade

union will be able to do so. The opinions of trade union members become more likely to influence the final voting results.

In a word, the trade union has the advantage of collective rationality compared with the individual labor. It is one of the effective ways for the trade union to protect the workers' right to participate in labor that the trade union plays a game with the employer through the general meeting of all workers or the workers' Congress to vote on the management matters of the enterprise so as to further influence the management decisions of the enterprise.

2 Game Between Employee Directors and Employee Supervisors

It is one of the ways to realize the laborer's right to participate in labor through the game between the employee directors and the employee supervisors. Article 39 of the Trade Union Law of the People's Republic of China stipulates that the employee representatives in the board of directors and the board of supervisors of a company shall be elected in accordance with Company Law. The relevant provisions shall be implemented. However, the Company Law of the People's Republic of China has put forward rigid provisions for the employee directors of state-owned enterprises, but there is no rigid requirement for the employee directors of other enterprises: "For a limited liability company established by two or more state-owned enterprises or two or more other state-owned investment entities, the members of the board of directors shall include the employee representatives of the company" (Article 45), "a wholly state-owned company The board of directors shall include representatives of the staff and workers of the company. The representatives of the staff and workers who are members of the board of directors shall be elected at the meeting of the representatives of the staff and workers of the company " (Article 68)." The board of directors of another limited liability company may also include representatives of the staff and workers of the company. The representatives of the staff and workers on the board of directors shall be democratically elected by the staff and workers of the company through the meeting of the representatives of the staff and workers, the meeting of the staff and workers or other forms. (Article 45) This means that whether the employee director system is adopted in non-state-owned enterprises is decided by the articles of association of the share-

holders of the company, that is, the choice of the management. Although the system of employee directors plays an important role in the participation of workers in the operation and management of the company, from the perspective of shareholders (investors), if there are employees' representatives in the board of directors, they need to share the decision-making power with the employees, and the board of directors often decides the important matters of the company and also involves the company. The establishment of employee representatives is more harmful than beneficial to the profit-seeking nature of shareholders in non-state-owned enterprises, so it can be imagined that the promotion and application of the employee director system in non-state-owned enterprises is more difficult. Because of the absence of employee directors, it is difficult for trade unions to play games with enterprises through employee directors. Of course, there will certainly be some non-state-owned enterprises with employee directors. Obviously, the establishment of employee directors in non-state-owned enterprises is not necessarily in line with the interests of shareholders of non-state-owned enterprises, so it is not very helpful to force non-state-owned enterprises to set up employee directors through legislation, and may even be counterproductive or superficial, leading to the establishment of employee directors in non-state-owned enterprises or manipulated by shareholders of the company. Therefore, it is advisable for China's Company Law to voluntarily set up employee directors in non-state-owned enterprises. For the enterprise trade union, it is one way to realize the worker's democratic participation right through the game between the employee director and the employer, while it is another way to realize the worker's democratic participation right through the game between the employee supervisor and the employer.

Article 52 of the Company Law of the People's Republic of China stipulates that a limited liability company shall set up a board of supervisors. The board of supervisors shall include representatives of shareholders and representatives of the staff and workers of the company in an appropriate proportion, of which the proportion of the representatives of the staff and workers shall not be less than one third, and the specific proportion shall be prescribed in the articles of association. The representatives of the staff and workers on the board of supervisors shall be democratically elected by the staff and workers of the company through the meeting of the representatives of the staff and

workers, the meeting of the staff and workers or other forms. It can be seen that the establishment of employee supervisors is different from that of employee directors. The law does not distinguish between state-owned enterprises and non-state-owned enterprises, but requires the establishment of employee supervisors. The reason is that democratic supervision is more acceptable to the management of enterprises than participation in the management of enterprises. At the same time, from the time point of view, supervision is more than participation in management decision-making, which belongs to the category after the event for enterprises, has less impact on enterprises, and is easy for management to accept.

At present, the law takes a voluntary attitude towards the establishment of employee directors and a compulsory attitude towards employee supervisors, so it is advisable for enterprise trade unions (especially those without employee directors) to attach importance to the construction of employee supervisor system, and to realize democratic supervision through the game between employee supervisors and enterprise management. In order to give full play to the game between the trade union and the management of the enterprise through the staff supervisors, the staff supervisors are often elected by the staff Congress or the staff Congress, so the proportion of the trade union members in the staff Congress or the staff Congress, as well as the proportion of the trade union members in the staff supervisors, is the proportion of the trade union members. It directly affects the result of guaranteeing the right of democratic participation by the trade union of enterprises through the system of employee supervisors. What the trade union needs to do is to increase the number and proportion of trade union members elected as staff supervisors in order to expand the influence of trade unions in this game.

4. CONCLUSION

In a word, the right to participate in labor is an important part of the right to work. From the perspective of law and economics, it can be analyzed that its source is the embodiment of labor force (manpower) as a kind of capital, that is, human capital. At the same time, the problem of adverse selection and moral hazard caused by the problem of information asymmetry also brings trouble to the workers in the form of labor participation rights and in the management of enterprises. By setting up the system of competi-

tion, open election and supervision mechanism of employee directors and supervisors, the problem of adverse selection and moral hazard of employee directors and supervisors can be reduced. In addition, in order to realize the right of workers to participate in labor, trade unions and workers not only play games with enterprises through all workers' congresses or workers' congresses, but also need to play games with enterprises through workers' directors and supervisors. If trade unions want to help workers realize labor rights including labor participation rights, their own resource allocation should be efficient, which directly affects the protection of labor rights by trade unions in enterprises.

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