The role of trade unions in Germany

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Outline

I. Communication of Trade Unions with Political Level
II. Trade Union Representation at Company Level
III. Trade Unions: Perception of Workers/Employers
IV. Collective Bargaining at Company Level/Impact on Business Decisions
I. Communication of Trade Unions with Political Level
Methods, Procedures or Practices

Political strikes are unlawful as right to strike is tied to collective bargaining.

No formal dialogue between trade unions and the government, no formal tripartism.

○ Failure of the so-called „concerted action“(government, „social partners“, German Central Bank) at the end of the 1970´s
○ Failure of the the so-called „Pact for Employment“ in 2003.
Social partnership *(Sozialpartnerschaft)* between trade unions and employers:

- Short-time working as the product of social partner cooperation.
- Increased cooperation at establishment level between management and employee representatives, mainly around implementation of opening clauses.*

*Eurofound*, Impact of the crisis on industrial relations, 2013: “In Germany, although the impact is judged to have been severe, this has taken the form of the social partners working together to find new and creative solutions to the problems posed by the crisis.”
„Informal tripartism“

Joint initiative of trade unions and employers regarding „exclusivity of collective agreements“ (*Tarifeinheit*).

**Increased cloud of trade unions** especially since the financial crisis (2007-2009).

- Regular meetings between the chancellor and the head of the DGB.
- Last federal elections: No party endorsement by the DGB.
- Federal Ministry of Labour held by Social Democrat.
II. Trade Union Representation at Company Level
Basic Set-up of Workers´ Representation

Dual Channel Model of Workers´ Representation

- Workers representation by **works councils** („works constitution“, Works Constitution Act – WCA).
- Workers representation by **trade unions**.

Workers´ representation in supervisory boards

In addition to employee representation at plant level, there is also a system of **workers´ representation on corporate boards**.
Workers representation by Works Councils

Works councils form autonomous legal bodies which represent workers’ interests independent of trade unions.

Works council members are not required to be members of a trade union.

They are elected by all employees who work in a given establishment irrespective of trade union membership.
Level of Representation

- **Establishment: Works councils** represent the workers of a specific establishment (*Betrieb*) which is an “organisational unit” as opposed to an enterprise (*Unternehmen*) which serves an economic purpose.

- **Company**: If several works councils exist in a given enterprise, a so-called **central works council** has to be established. Each works council appoints to the central works council one of its members.

- **Group of companies**: In a group of companies, a so-called **group works council** can be established at the parent company.
Role of trade unions within the „works constitution“

Lists of candidates for works council elections can be submitted by (one twentieth of all) employees as well as by trade unions.

In practice, more than 70% of all works council members might be members of a trade union (though the percentage of works councils without trade union representatives is slowly rising).
Works Constitution: Specific Rights of Trade Unions

- Trade unions enjoy the **right to contest works council elections**.
- Trade unions may **apply to the labour court** for an order to **remove from office any member of the works council or to dissolve the works council** on the grounds of grave dereliction of its statutory duties.
- A delegate of a trade union represented on the works council may be **invited to attend meetings in an advisory capacity** on request of at least one-fourth of the members of the works council.
- A trade union can **request to call a works meeting** (of all employees in a given establishment).
Trade Union Workplace Representation

So-called „union workplace representatives“ (gewerkschaftliche Vertrauensleute).

At the six German Volkswagen plants, there are a total of 3696 elected stewards of the IG Metall.

- They are elected every four years.
- They represent IG Metall and its members.
- They are independent of the works councils.
- They act on the basis of the by-laws of IG Metall.
Trade Union Rights at the Workplace

In particular, the right to enter premises, a right that was developed by the courts on the basis of Article 9(3) of the Basic Law.

Federal Labour Court of 22.06.2010: Membership campaigns form part of the constitutionally protected activities of trade unions. This includes the right of shop floor campaigns.
Workers´ Representation in Supervisory Boards

Co-determination Act 1976: Shareholders´ and workers´ representatives in equal numbers in companies that employs more than 2000 employees on a regular basis.

No real co-determination on a basis of parity since vote of chairman (regularly representing shareholders) carries double weight.

Supervisors board with twelve members: Four members representing company staff and two trade union representatives (elected on the basis of proposals of candidates).

Federal Constitutional Court of 01.03.1979: Right of trade unions to prosose candidates conforms with the Constutition as it improves quality and counteracts „selfishness“ at company level.
III. Trade Unions: Perception of Workers/Employers
Germany: The Role of Trade Unions

**Workers**: Turnout of voters at works council elections of around 80%.

**Employers:**
- Works Constitution, though costly, is basically accepted.
- Workers’ representation on supervisory boards is consistently challenged.
IV. Collective Bargaining at Company Level/Impact on Business Decisions
Collective Bargaining at Company Level

The right to bargain collectively forms a constitutional right of trade unions under Art. 9 (3) of the Basic Law.

Predominant level: branch or sector, but company level agreements (Firmentarifvertrag) have been on the rise lately.
Only „mighty“ trade unions enjoy the right to conclude collective agreements.

Only members of employers’ association and trade union are legally bound to collective agreements, but their provisions often form implied terms of employment contracts.

Rate of unionisation: Less than 20%.
Co-determination rights of works councils are relatively weak with regard to business decisions (protection of „entrepreneurial freedom“).

Works councils can conclude collective agreements (Betriebsvereinbarung), but are prevented from interfering with collective agreements concluded by trade unions (section 77(3) WCA).

Trade unions enjoy a claim for injunctive relief.

Importance of so-called „escape/opening clauses“:
For instance, the so-called „Pforzheim agreement“ which allows for certain deviations from collective agreements.
In practice, a certain "erosion" of collective bargaining has been taking place:
- The percentage of workers whose employment conditions are dependent on collective bargaining is down from 80% (1990s) to 60%.
- There is a rise in the number of companies opting for membership without a binding commitment to the sectoral agreement.

Statutory minimum pay (as from 01.01.2015) and easing of declarations of generally binding:
**Strengthening or weakening of collective bargaining?**
Impact on Business Decisions

Ruling of the Federal Labour Court of 24.04.2007 on the admissibility of so-called „collective bargaining social plan“ (Tarifsozialplan):
Right to bargain collectively under Art. 9(3) of the Basic Law not restricted by section 111, 112 WCA.

Legal literature divided on the issue of balancing right to bargain collectively and entrepreneurial freedom.