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3 Germany: From Collective Voice to Co-management

Walther Müller-Jentsch

3.1 Introduction

Works councils were not always as undisputed as they are today among trade unions and the great majority of employers. Already in the period of early industrialization liberal politicians and social reformers advocated bodies of workers representatives, called factory or workers' committees (*Fabrik-ausschüsse* or *Arbeiterausschüsse*). In addition, some early social-minded employers relinquished some of their traditional prerogatives by setting up committees designed to air workers' collective views. Prussian state bureaucrats, too, conceived of workforce representation at the plant level as part of their general political program to modernize state and society, together with a vocational training system, an industrial code (*Gewerbeordnung*), and a system of social insurance. But not until 1891 did the amended industrial code provide for optional workers committees, which were made obligatory in 1905 for the mining industry in the wake of extensive industrial strife. At that time the unions still opposed such institutions as—in the view of August Bebel, the leader of the Social Democratic party—mere “fig-leaves of capitalism.”

During the First World War the unions and the Social Democratic party observed a policy of collaboration with the war government (*Burgfriedenspolitik*). A special law (*Gesetz über den vaterländischen Hilfsdienst*) extended workers committees to all factories with more than 50 employees in industries of basic importance to the war economy. After the war, when works councils were legally established in the Weimar Republic in 1920, they were designed to preempt the revolutionary council movement. Being stripped of political functions, the *workers' councils* became industrial *works councils* (*Betriebs-*

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räte). On the day the Works Councils Act was passed, a powerful demonstration of revolutionary workers and militant trade unionists marched to the Berlin parliament. Machine-gun fire violently ended the march, killing 42 demonstrators.

The political and economic turbulence of the Weimar Republic did not give the works councils a real chance to develop their potential. Because of their politically radical background, they were kept subordinate to a cooperative union movement that desperately tried to play its part in the reconstruction of a peace economy and the building of a social democratic society. At the time, the common goal of the legislator and of the employers and unions was the "unionization of the works councils." A thorough analysis of the period came to the conclusion that the legislator defined the works council as "an organ of the collective agreement" (Brigl-Matthiaß [1926] 1978, 15), primarily responsible for the supervision and implementation of the collective agreements negotiated between unions and employers' associations.

After the Second World War the dual structure of interest representation through unions and works councils was reinstitutionalized with the Collective Bargaining Act of 1949 and the Works Constitution Act of 1952. But the political situation was now completely different. This time the aim of the employers and of the legislature was not to bring a revolutionary council movement under union control, but to counteract a politically united union movement (*Einheitsgewerkschaft*) that advocated nationalization of basic industries and full co-determination in line with their anticapitalist Munich Program of 1949. What was on the agenda now was a neutralization of the works councils and their separation from the unions. When the conservative majority under Adenauer passed the Works Constitution Act in the Bundestag, it was against fierce opposition from the labor movement. The Deutscher Gewerkschaftsbund (DGB)—the national union confederation—spoke of a "black day in the development of democracy" in Germany. The unions objected especially to the denial of full parity of representation on the supervisory board (unlike in the coal and steel industries, where parity had been instituted in 1951, for all other industries only one-third representation was enacted), the tight limits on the councils' co-determination rights on economic matters, and regulations that kept the unions out of the workplace and insulated the works councils from their influence.¹

When the Social-Liberal coalition under Chancellor Willy Brandt pushed ahead with its policy of social reforms, amendment of the Works Constitution Act in 1972 was a central objective. The employers saw an erosion of managerial prerogatives and spoke of a "trade union state" (*Gewerkschaftsstaat*) about to destroy free enterprise and strangle the economy. This was certainly a political statement which greatly exaggerated the fears of the employers. Although

1. After the battle was lost for the unions, a leading and influential union intellectual, Victor Agartz, drastically phrased the view of the Left: if the union movement still wanted to achieve its goals, it must chase the Bundestag into the Rhine (Pirker 1979, 282).

the works councils' co-determination rights on social and personnel matters were strengthened, co-determination was not extended to financial and economic matters. And although the access of the unions to the workplace and their links with the works councils were improved, the formal independence of the councils and their exclusive jurisdiction over interest representation at the plant level were not affected.

In the course of time, the industrial relations actors have learned to live with works councils; in fact, they have used and adjusted them in line with their goals. Unions had to accept and cooperate with a workplace institution that was not an integral part of their organization and had its own constituency. Employers had to accept that broad areas of managerial decision making had become an arena of joint regulation. The facts of industrial life forced management to change its style and become willing to cooperate with the works councils, whereas the councils had to learn the rules of co-management by transcending their collective-voice function and taking responsibility for productivity and economic success.

There are three main challenges to the status quo. The first is that works councils are now the pivotal institution of the German industrial relations system, their position vis-à-vis the union having been continually strengthened. What consequences will this have for the future role of unions within the dual system of interest representation? Second, the world of business is undergoing profound changes in market environment and production spheres. New networks of cooperation and producer-supplier relations, as well as joint ventures and transnational conglomerates, blur the demarcation lines of the traditional business unit which the law defined as the realm of the works council. What strains are put on the works council by the dual development of globalization on the one hand and decentralization on the other? Third, what will be the consequences for the works council if the new models of management-initiated direct participation at the workplace spread over the economy?

3.2 Institutional Base and Legal Rights

German works councils are representative, encompassing, and mandatory in the private sector (manufacturing and services). A different system of staff representation exists in the public sector, which provides for staff councils with somewhat fewer powers than works councils.

Works council members are elected by the whole workforce of establishments with five or more permanent employees. Companies with more than one establishment have central works councils, composed of delegates of the establishment-level works councils. A works council for a group of companies (*Konzernbetriebsrat*) is to be formed if requested by the works councils of subsidiaries employing at least 75 percent of the group's workforce. Wage earners and salaried employees are represented according to their numerical

Table 3.1 Works Council Elections, 1965–90

Year	Number of Establishments Participating	Elected Council Members	Percentage Female	Percentage Foreign
1965	23,813	142,672	11.0	–
1968	24,902	142,412	11.4	–
1972	29,298	173,670	13.5	2.2
1975	34,059	191,015	15.7	2.6
1978	35,294	194,455	17.1	3.1
1981	36,307	199,125	19.3	3.3
1984	35,343	190,193	20.0	3.1
1987	34,807	189,292	20.5	4.5
1990	33,012	183,680	23.5	4.6

Source: DGB.

strength. Employers and senior executives (*leitende Angestellte*)² are not represented by works councils. It is estimated that no more than 2 percent of all employees are *leitende Angestellte* in the sense of the law.

There are no official figures about the actual number of works councils. The DGB collects data on all establishments with an affiliated union present, and the Ministry of Labor regards the DGB figures as giving a fairly correct picture of the real distribution. According to the DGB, some 180,000 members of works councils were elected in more than 33,000 establishments in the 1990 elections (table 3.1). There are no exact figures on the number of establishments that are legally eligible to have a works council; hence, the percentage of eligible establishments and workers that are covered by the works council system can only be estimated, and it is believed that about 35 percent of establishments that could have a works council have one. Establishments without a works council are almost exclusively small firms with fewer than 100 or, more typically, fewer than 50 employees. The percentage of total employment covered by the works council system is therefore much higher than the percentage of establishments. It is estimated that about 70 percent of the eligible workforce is covered by works councils.

Data are also collected by the Deutsche Angestellten Gewerkschaft

2. *Leitende Angestellte* (senior executives, senior managers, or leading personnel, as the term is sometimes translated; the official translation of the Works Constitution Act speaks simply of "executive staff") are persons "who under their contract of employment and by their status in the company or establishment (1) are entitled on their own responsibility to engage and dismiss employees on behalf of the establishment or one of its departments; or (2) are endowed with general authority (power of procuration) or full power of representation or power to sign (*Prokura*), the latter also being important in relation to the employer; or (3) regularly carry out other duties which are important for the existence and development of the company or an establishment and fulfillment of which requires particular experience and knowledge, if, in doing so, they either essentially make decisions on their responsibility or substantially influence these decisions; this may also be the case with stipulated procedures, particularly those based on legal provisions, plans or guidelines and when cooperating with other executive staff" (Works Constitution Act, section 5(3)).

Table 3.2 Union Representation on Works Councils, 1965–90 (%)

Year	DGB		DAG and Others		Nonunion	
	A	B	A	B	A	B
1965	82.7	–	4.3	–	13.1	–
1968	83.1	–	3.5	–	13.4	–
1972	77.6	–	3.5	–	18.9	–
1975	77.5	67.9	3.5	14.6	18.8	17.5
1978	78.1	58.6	3.8	18.1	18.1	23.3
1981	77.5	63.2	3.9	13.5	18.6	23.3
1984	77.4	63.9	3.6	10.7	19.0	25.4
1987	76.6	65.4	3.4	7.1	20.0	27.5
1990	76.3	69.3	3.1	5.6	20.6	25.1

Sources: A, DGB; B, IW.

(DAG)—a small union of white-collar workers—and by a research institute maintained by employers, the Institut der Deutschen Wirtschaft (IW). Both institutions, however, cover significantly fewer establishments than the DGB. The DAG survey extends only to some 7,000 establishments where the DAG has members and elected representatives. The IW survey is more reliable as it is based on quota sampling by size of establishment. The IW also gradually expanded its sample, from 4,528 establishments in 1981 to 14,644 in 1990. Since the DGB does not include establishments in which DGB unions are not present, it is biased in regard to council members' union affiliation and votes gained by DGB unions. Table 3.2 therefore presents the figures from both samples.

In eligible establishments that do not have a works council, three employees or a union represented in the establishment³ can take the initiative to call a meeting, with the aim to set up an electoral board. Alternatively, a labor court can set up such a board on application from three employees or the union; in this case, an external union official can be delegated to the electoral board. Electoral board members enjoy the same legal protection against dismissal as works council members.

Works councillors have a term of office of four years. Prior to 1989 it was three years, and prior to 1972 two years. The extension of the time in office reflects the increasing professionalization of a works councillor's role. The number of council members varies with the number of employees; establishments with 100 employees have five members, those with 500 employees nine, and those with 1,000 employees 15 (table 3.3).

The larger the firm, the higher the number of full-time works councillors. Establishments with 300 to 600 employees must give full-time release to one of their nine works council members; establishments with more than 1,000

3. To be legally "represented" in an establishment a union need have no more than one member.

Table 3.3 Legal Number of Works Council Members by Size of Establishment

Size of Establishment (number of employees)	Council Members	Released Full-time
5-20	1	-
21-50	3	-
51-150	5	-
151-300	7	-
301-600	9	1
601-1,000	11	2
1,001-2,000	15	3
2,001-3,000	19	4
3,001-4,000	23	5
4,001-5,000	27	6
5,001-7,000	29	7-8
7,001-9,000	31	9-10
9,001-12,000	33	11-14
12,001-15,000	35 ^a	15-18 ^b

Source: Works Constitution Act, sections 9 and 38.

^aTwo further members for every additional 3,000 employees.

^bOne further member to be released for every additional 2,000 employees.

employees must release three members; and establishments with more than 5,000 employees must release at least seven members (table 3.3). Other, more favorable arrangements can be made by collective agreement between unions and employers' associations, or by a works agreement between works council and employer. Volkswagen, for example, has a works agreement that provides for the full-time release of all works council members.

The numerous and effective participation rights of German works councils are tied to a general obligation to cooperate with management in "a spirit of mutual trust" for "the good of the employees and of the establishment" (Works Constitution Act, section 2(1)). The council is required to negotiate "with a serious desire to reach agreement" (section 74(1)); "acts of industrial warfare" as well as "activities that interfere with operations or imperil the peace of the establishment" are inadmissible (section 74(2)). Works councils are also obliged to observe confidentiality of information. Matters defined by the employer as "trade or business secrets" may not be shared with the workforce. In fact, these rigid regulations can be and have been circumvented informally without resulting in legal action.

The works council's participation rights include:

1. *Co-determination rights on social matters*, including principles of remuneration, introduction of new payment methods, fixing of job and bonus rates and performance-related pay, allocation of working hours, regulation of over-time and reduced working hours, leave arrangements and vacation plans, and

the introduction and use of technical devices designed to monitor worker performance (section 87);

2. *Co-determination rights on personnel matters*, especially questionnaires and testing methods and guidelines for recruitment, transfer, up- and down-grading, and dismissals (sections 94 and 95);

3. *Veto rights on individual staff movements*, such as hiring, grading, transfer, and dismissal—this right, however, is limited to specified cases (sections 99 and 102);

4. *Information and consultation rights over personnel planning* and over changes in work processes, the working environment, and jobs; a full co-determination right only exists when these changes “are in obvious contradiction to the established findings of ergonomics” and prove to be “a special burden for the employees” (sections 90 and 91);

5. *Information rights on financial matters and alterations*: a standing committee of the works council, the finance committee (*Wirtschaftsausschuß*) must be informed by the employer “in full and in good time of the financial affairs of the establishment”; the same applies in case of planned changes “which may entail substantial prejudice to staff interests” (sections 106–12).

The information and consultation rights of works councils over the introduction of new technology were extended by the 1989 Works Constitution Act amendment. While the DGB wanted full co-determination, the law strengthened the consultation and information rights of both works councils and affected employees. Employers now must not only inform but also consult the works council in good time, so that its suggestions and objections can be taken into account (section 90(2)). The employer must also inform affected employees about planned measures and their effects on their jobs and formally discuss with them how their skills may be adapted to the future requirements. Employees are entitled to call in a member of the works council to the discussion (section 81(3)).

The works council has strong participation rights in the field of health and safety. Among them are: (1) information and consultation rights concerning working procedures and the working environment, as far as necessary for the prevention of accidents; (2) co-determination rights on “arrangements for the prevention of employment accidents and occupational diseases, and for the protection of health on the basis of legislation or safety regulations” (section 87(7)); and (3) rights of supervision with respect to a firm’s compliance with applicable legal safety regulations.

The Work Safety Act (*Arbeitssicherheitsgesetz*) of 1973 requires certain firms to hire company physicians (*Betriebsärzte*) and professional safety staff (*Fachkräfte für Sicherheit*). The law gives the works council co-determination rights on the appointment, dismissal, and task assignment of these personnel.

In general, works council participation rights are strong in social matters,

less strong in personnel matters, and weak in financial and economic matters. The potential for works council intervention in managerial decision making decreases with the proximity to essential business decisions. This confirms the nature of the works council as a body designed to reconcile conflicts of interest between workforce and management. Councils can act as co-management directly on social affairs and personnel policy; in other matters they can only indirectly challenge managerial authority and the existing power relations at the workplace. For example, the council can hold up decisions on staff movements where it has veto rights, or it can withhold consent on overtime where it has co-determination rights, in order to obtain concessions on other issues.

Being subject to a general peace obligation, works councils cannot call strikes, but they may appeal to an internal arbitration board, called a *conciliation committee*, which is chaired by an outsider, or to the labor court.

There is no doubt that the works council is the most important and most effective institution of the German co-determination system.⁴ Representation on the supervisory boards of large companies has mainly a supportive and supplementary function for the works council (Bamberg et al. 1987). Three-quarters of the elected workforce representatives on supervisory boards in firms under the jurisdiction of the 1976 Co-determination Act are also works councillors (Witte 1980). Being represented on the supervisory board enables the works councils of large companies to get more reliable information about economic matters and the firm's strategic goals.

The results of negotiations between the works council and management are laid down in "works agreements." In large enterprises there exist hundreds of works agreements which are sometimes extensive documents regulating the details of wage systems, working conditions, and the like. Works councils that do not negotiate works agreements are usually in a weak position. One of the rare studies on works agreements shows that 80 percent of firms with 200 or more employees had written works agreements in the early 1980s (Knuth 1982). More than four-fifths of them regulate issues on which councils have enforceable co-determination rights. However, among manufacturing firms

4. There are three different forms of representation at the board level in Germany: (1) equal representation in the coal and steel industry (*Montanmitbestimmung*) under legislation from 1951, (2) subparity representation in companies with more than 2,000 employees under the Co-determination Act of 1976, and (3) one-third representation in companies with 500 to 2,000 employees under the Works Constitution Act of 1952.

For the unions *Montanmitbestimmung* is the most important model of co-determination since it provides for full parity and uncontested union representation on the supervisory board. Also, one member of the executive board, the "labor director," is appointed solely by the supervisory board representatives of the employees. But coal and steel is a declining sector with no more than 30 companies and fewer than half a million employees. Subparity representation covers more than 500 companies with a total of about 4.5 million employees. It remains below full parity even though 50 percent of the supervisory board members are workforce representatives; this is because the chair, who is appointed by the shareholders, has a casting vote, and at least one employee representative must be elected from among *leitende Angestellte*. The third form of representation is the weakest and covers roughly 1,400 companies with about one million employees.

with more than 2,000 employees, 85 percent had formal bilateral regulations on matters not covered by legal rights to co-determination (Witte 1980).

In 1989 a special law was passed allowing *leitende Angestellte* (see n. 2) to elect separate representative committees (*Sprecherausschüsse der leitenden Angestellten*). Neither the unions nor the employers' associations were in favor of a second legal representative body at the workplace. Regardless of their concerns about frictions between the two institutions, the Free Democratic party, junior partner in the coalition government, was able to gain the legislation as a boon for its client organization, the Union der leitenden Angestellte (ULA), which had lobbied for separate committees since the 1960s. The ULA represents some 48,000 middle managers, roughly 10 percent of the total, mainly in the chemical, metal-manufacturing, and electrical industries.

The first elections to the new *Sprecherausschüsse* took place in 1990. Election may be held in establishments with at least 10 eligible voters if requested by a majority of these. A survey by the IW covering 568 committees with 2,854 members reports a turnout of 88 percent. More than 80 percent of those elected did not stand as candidates of a trade union or professional association, and only 3 percent of the elected members were women (Niederhoff 1991).

3.3 Works Councils and Unions

As legal institutions works councils are formally independent of unions and have their own constituency, being elected not by union members only but by the entire workforce of an establishment. Nevertheless, most works councillors are loyal union members with close ties to their union. In practice unions and works councils depend on each other. Unions supply works councils with information and expertise through educational courses or furnish them direct advice through union officials. Works councils, in turn, are pillars of "union security": union members are usually recruited by works councillors who are, contrary to the legal provisions, often regarded as workplace union representatives.⁵ This makes the works councils indispensable for the unions and adds to their power vis-à-vis union officials and headquarters. That power, in turn, is checked by the fact that election and reelection to a works council usually depends on being nominated on a trade union list.

The majority of works council members are elected on lists of unions affiliated to the DGB, although in some industries members of DGB unions make up only a minority of elected works councillors (table 3.2). Establishments with a majority of DAG or unorganized works councillors are usually found in the banking and insurance, retail, catering, hotel, and food processing industries. There are also some big companies in the computer and media industries, such as Siemens, IBM, Nixdorf, and Bertelsmann, with low union density of

5. IG Metall, the German metalworkers' union, estimates that 97 percent of all new members are recruited by works councillors.

about 10 to 15 percent—which, however, does not necessarily imply that union members are in the minority on the works council.

As to the different bargaining domains of unions and works councils, the activities of the latter generally relieve the unions of the representation of local and sectional interests. Grievances and local disputes are also usually settled by the works council in such a way that the union is relieved of the representation of particular group interests, allowing the union to concentrate on common interests, for example, higher wages and shorter working hours. Recent developments have brought about a modification of this general pattern of the division of labor between the two institutions as traditional demarcations have become blurred.

During the 1960s and 1970s it was usual for works councils in large companies to negotiate informally with management about additional wage increases after conclusion of an industrywide wage agreement, although this practice was not authorized by the law. Matters settled in collective agreements can legally be regulated by works agreements only if the collective agreement expressly authorizes supplementary work agreements by an “opening clause.”

As early as the 1970s, important collective agreements on working conditions and new technology made use of opening clauses, by mandating supplementary works agreements to allow for the flexible implementation of general, industrywide rules. The two most prominent examples were the 1973 collective agreement on “humanization of work” in the metal industry and the 1978 agreement on new technology in printing. Both laid down general rules on working conditions that were to be worked out in detail by works councils and management in supplementary works agreements. This tendency toward local co-determination complementing and supplementing union bargaining at the industry level increased with the flexible working hours policy of the 1980s. More than 10,000 works agreements were negotiated in the metal industry after the 1984 settlement that followed the strike for the 35-hour workweek. The downside of this is that works councils increasingly complain about the burdens imposed on them, demanding an extension of the services provided to them by the unions and more full-time works councillors. Unions, however, are short of staff for delivering extensive advice to works councils on their local activities.

In principle, a stable coalition between works councils and external unions has developed on the basis of a division of labor in the representation of interests that has been characterized by Streeck (1979) as a “contradictory unity.” Its stability requires that a sufficient number of loyal trade unionists are elected as works councillors. For this reason the results of the council elections are of primary importance for the unions. Challenges may come from two sides: from competing unions and unorganized groups mobilizing protest votes and from oppositional groups within the trade union itself that demand a more militant or, to the contrary, more moderate policy.

As to the first possible challenge, DGB-affiliated unions have been success-

Table 3.4 Union Representation on Works Councils by Industry, 1990 (%)

Industry	DGB	DAG and Others	Nonunion
Metal manufacturing	81.1	2.2	16.7
Chemicals	85.5	1.3	13.2
Construction	72.2	0.6	27.2
Retail, banking, and insurance	55.8	9.9	34.3
Mining and power generation	96.1	1.8	2.1
Food, drink, and tobacco	78.4	1.2	20.4
Textiles and clothing	82.6	0.9	16.5
Printing and publishing	76.3	3.2	20.5
Wood and plastics	83.1	0.2	16.7
Agriculture	52.9	2.8	44.3
Leather	82.7	1.0	16.3

Source: DGB.

ful in filling works council seats with their own members (table 3.2): according to union sources more than three-quarters, and according to the employers more than two-thirds, of all elected works councillors belong to a DGB union, showing a much higher rate of unionization among works councillors than among workers. Only two unions, in the retail, banking, and insurance sector and in the agricultural sector, have to concede large numbers of council seats to competing unions and unorganized groups (table 3.4).

Support for internal union opposition is quantitatively marginal. Alternative union lists are typically presented by active *Vertrauensleute* or militant union dissenters in large companies. They usually demand a break with “social partnership” and support more democratic nomination and election procedures. Since the early 1970s, challenges of this kind have emerged in large establishments of the automobile, steel, shipbuilding, and chemical industries. In several cases, oppositional trade unionists have scored spectacular successes. In a few establishments, foreign workers have also challenged the official union lists following complaints about underrepresentation.

On average in a large establishment, four or five lists of candidates compete at the works council election: two from the respective DGB-affiliated unions—one for the blue-collar constituency and the other for the white-collar group⁶—a DAG list for white-collar workers, a list of “independent” nonunion candidates, and sometimes a list from the Christian Union Federation (*Christlicher Gewerkschaftsbund*), a numerically unimportant splinter organization.

Officials of unions represented in an establishment have legal rights of access to the establishment and may attend works council meetings after giving

6. The Works Constitution Act treats blue-collar and white-collar workers as separate groups, each of which elects its council members by separate secret ballot. It is also possible, however, to hold a joint election if this is approved by a majority of each group. This is the usual practice in two-thirds of the establishments with works councils.

notification to the management. They must also be invited to attend council meetings if requested by one-fourth of the members of the council.

Unions also have their own representational body at the workplace, at least in the most important industries and establishments. This is called the *Vertrauensleutekörper*, the assembly of elected or appointed union stewards (*Vertrauensmänner* or *Vertrauensfrauen*). Usually union stewards are elected by the union members in a department or work group of between 30 and 50 workers. Their functions are limited and mostly include services for the organization, such as information and instruction for union members, recruitment, and the distribution of union material. Stewards are also expected to support the unionized works councillors. In many cases, *Vertrauensleute* are both the messengers of the works council and the mouthpieces of work groups. In cases of conflict with the employer, they function as informal organizers of industrial action.

In the past IG Metall and other unions tried to build up the *Vertrauensleute* as a counterweight to the *Betriebsräte*, causing rivalry and conflict between the two. In the late 1960s and early 1970s, there were strands of internal union opposition with militant *Vertrauensleute* as their backbone. Especially in IG Metall and IG Chemie (the chemical workers' union), rank-and-file activists organized unofficial strikes, opposed established works councils, and became the representatives of discontented groups among the membership. But the rivalry between *Vertrauensleute* and *Betriebsräte* ended with a victory for the latter. This was due to the firm legal establishment of the works councils and, not least, their strategic position for the recruitment of union members. Today it is no longer control but support of council activities that unions expect from *Vertrauensleute*. Since most unions have made the unionized works councillors *ex officio* members of the *Vertrauensleutekörper*, in most establishments the executive committee of the *Vertrauensleute* is dominated by works councillors.

In recent research covering 33 establishments with more than 300 employees in the North Bavarian engineering industry, Schmidt and Trinczek (1991) distinguish three typical patterns of division of labor between unions and works councils:

Works councillors of *type A* (fewer than 20 percent) see themselves primarily as union activists and more as representatives of the working class as a whole than of a particular workforce. Their loyalty to the union is nearly unshakable, many of them simultaneously holding office in union committees on the local, regional, or national level. Whenever the union calls for industrial action, they lend their support by initiating warning strikes and imposing overtime bans. Recruiting new union members is a job of great importance for them, but even stronger emphasis is placed on safeguarding and supporting the organization and activities of the *Vertrauensleute*, whose resolutions are loyally respected.

Works councillors of *type B* (about one-half of the sample) consider the interests of the workforce and the firm to be just as important as those of the

union. In principle, while being loyal members of their union, they always look for possibilities for compromise and mediation between conflicting demands. Where compromise seems impossible, they side with the workforce. Unlike type A, they are not strongly committed to the union line on warning strikes and overtime bans. But they do take seriously the recruitment of new union members, regarding it as a duty to the union in return for its services. Considerably less priority is given to supporting the *Vertrauensleute*.

Works councillors of *type C* (roughly 30 percent) have an instrumental orientation toward the union. They have no ideological barriers against attending educational courses offered by employers or "independent" institutions. For them, the interests of the workforce, or even the firm, come first since the firm's prosperity is seen as the fundamental basis of their policy. Often they complain about the union's poor knowledge of the particularities of their situation and about the one-sidedness of the union's political orientation. Low union density in their establishments is a comfortable argument for them to back their claim of being representatives of the whole workforce and not of a union. No special effort is invested in union recruitment, and little support is provided for *Vertrauensleute* activities.

3.4 Works Councils and Employers

German works councils are elected by and composed of employees only. They meet with the employer at least once a month. The employer bears all the costs of a council's activities. According to a survey by the IW, the average cost of the works constitution, including council elections, conciliation committees, and labor courts, amounts to DM 440 per employee per year. The bulk of this (DM 285) pays for the day-to-day activities of the works councils (Niederhoff 1987b). In large companies, works councils have not only their own offices but also secretarial staff, and sometimes even expert staff with university degrees.

All companies with more than 100 permanent employees must set up a finance committee (*Wirtschaftsausschuß*). Its members are appointed by the works council, and it may also include senior executives. Its monthly meetings are appointed by the works council, and it may also include senior executives. Its monthly meetings are attended by the employer, who must inform the committee in full and in good time of the financial affairs of the establishment and their implications for employment and long-term personnel policies.

A survey of 315 works councils in the printing, publishing, electrical engineering, and ceramics industries shows what councils regard as the most important matters they must deal with; respondents could choose three out of a list of nine items (table 3.5). A cluster analysis divides the councils in three groups with typical clusters of priorities: (1) *traditional tasks*—34 percent of the councils mention personnel matters, classification into wage grades, and health and safety as their main set of activities; (2) *rationalization measures*—38 percent of the councils concentrate on technical change and further educa-

Table 3.5 Main Tasks of Works Councils

Tasks	Percentage of Councils
Personnel matters	68
Technical change	47
Health and safety	44
Classification in wage groups	42
Working hours	33
Overtime	26
Further training	15
Initial vocational training	9
Social benefits	7

Source: Hans-Böckler-Stiftung (1992).

tion; and (3) *working-time questions*—28 percent are mainly concerned with questions of working hours and overtime.

The three groups do not seem to correlate with structural variables like economic sector, size of company, or recent changes in employment level. It seems rather that each firm's specific conditions determine a council's main tasks. Plausibly, technical change often evokes activities for further training, and managerial efforts to attain greater flexibility call for council action on working time.

Overtime is a very important issue. Works councils usually do not refuse their consent when management wants employees to work longer; many employees like the extra pay. Since overtime is subject to co-determination, however, works councils frequently use it for package deals to get concessions from management on other matters. If a workforce reduction is in the offing, councils usually do not agree to overtime unless management reveals its plans and offers a "socially acceptable" solution. Sometimes councils ban overtime during wage negotiations if their union calls for it. In some industries, especially those organized by the metalworkers and the printers, most councils follow their union's line not to extend working time into the weekend; this does not preclude occasional extra Saturday shifts in manufacturing and regular Sunday shifts in newspaper editing and printing.

Legally mandated cooperation with the employer does not exclude conflict and disagreement, but in most cases cooperation and trust between works council and employer prevail. Employers' acceptance of the works council and its tasks has generally increased, and the uncertainties and resistance raised by the amendment of the Works Constitution Act in 1972 has largely disappeared in subsequent years. This is the general finding of a panel study investigating the labor relations of some 60 manufacturing firms between the mid-1970s and the early 1990s. The earlier survey (Kotthoff 1981), carried out shortly after the 1972 amendment, revealed a rather negative picture of works council relations with management. Effective interest representation was found in only

one-third of the establishments, while the in the others works council activities were classified as poor and insufficient. Fifteen years later, the follow-up study (Kotthoff 1993) showed a picture that had changed remarkably for the better: now in two-thirds of the establishments Kotthoff found effective interest representation. Improvements in labor relations have taken place in most establishments. Even under the stress of economic recession and pressures for industrial restructuring, the works constitution had become widely accepted as the most important piece of machinery for conflict resolution. Kotthoff concludes that management has come to accept what he calls the "spirit of co-determination."

Kotthoff's findings are confirmed by a recent study using qualitative interviews with 111 senior managers (Eberwein and Tholen 1990). No fewer than 96 percent of those interviewed had a positive attitude toward the activities of the works council. Managers valued in particular the council's collective voice function (table 3.6). Some even expressed the opinion that, "if the works council did not exist, it had to be invented."

Quite frequently, managers consciously take advantage of the confidence the works council commands among the workforce, asking it to share responsibility not only in difficult personnel matters but also for policies and strategies aimed at more ambitious goals. The advice given to employers by their research institute, the IW, is to consider the works council as a "factor of production" and as serving essential functions as an agent of information and communication. It saves time and money to cooperate with the works council as a partner and thereby improve the working atmosphere (Niedenhoff 1990).

If a company goes through economic difficulties, works councils usually cooperate with necessary adjustment measures. Among the most common ways of coping with slack demand is employment reduction by jointly approved early retirement schemes or financial incentives for voluntary redundancies. Tolerated and sometimes even supported by the works council, management in some mass production industries may also offer foreign workers from outside the European Community financial compensation for giving up their jobs—in the 1980s in addition to the incentives provided under the 1983

Table 3.6 **How Managers See the Works Council**

Response	Percentage of Managers
Important for management as a partner for discussion	50
Important for the representation of the interests of the workforce	29
Important for conveying information between management and workforce	11
Used as part of the personnel department	6
Useless, even damaging	4
Total	100

Source: Eberwein and Tholen (1990).

legislation to encourage foreign workers to return to their native countries. It is also true that, at times, works councils agree to temporary employment contracts for new hires if they fear a reduction of the workforce in the near future.

In general, works councils do not oppose management policies for the modernization and rationalization of production; in fact, they support such policies if they are convinced that they can improve the firm's potential for economic survival and success and if they are assured that two essentials are met: no involuntary dismissals and no wage reductions subsequent to internal redeployment (Kern and Schumann 1984). The way in which work organization and the production system were rationalized and modernized in German firms has improved the acceptance and strengthened the position of the works council in many companies. Although it is difficult to measure the economic effects of the works council, it is widely regarded as an important factor in accounting for the high productivity of German industry, contributing by creating and consolidating social consensus.

The 1972 amendment of the Works Constitution Act gave works councils information and consultation rights on changes in work processes, the work environment, and job design. A survey of 30 engineering companies showed that over 90 percent of the works councillors and over three-quarters of the managers were satisfied with the legislation (Kreikebaum and Herbert 1990). Although it does not offer strong participation rights, its practical relevance is highly appreciated by both sides, even though many works councillors would prefer full-blown co-determination rights in these matters.

There is no single pattern of labor relations across industries as far as rationalization and restructuring processes are concerned. Kern and Schumann (1984) found a number of differences between the automobile, machine tools, and chemical industries. But these are differences only of degree and in the intensity of information, consultation, and cooperation. In the chemical industry, the works councils regard themselves as partners of management and do not interfere in its modernization strategy; their activities are centered on social matters and health and safety questions. In the automobile industry, works councils are much more involved in the modernization of the production system. Their role has become strongly professionalized, and works councillors are very self-confident; they are also able to extract comprehensive information from management. The basis of cooperation in this industry is a broad understanding that the restructuring of production and the labor process must serve a double goal: to increase productivity and product quality on the one hand and to improve working conditions on the other. Finally, in the machine tools industry, labor-management relations are mostly based on informal arrangements, with management playing a leading role; works councillors are less professionalized and less informed. Nevertheless, as Hildebrandt and Seltz (1989) maintain, a pattern of high-trust labor relations prevails in this industry, at least in the Baden-Württemberg region where their research was conducted and where the industry's most important firms are located.

Unfortunately, there has been no systematic research about the relations between *foreign* employers and managers and their works councils. It seems that American and British managers especially find it difficult to understand the German co-determination system. If they try to ignore it and enter in guerilla warfare with the works council, they sooner or later have to "face the facts of life." Since the respective union pays special attention to such cases, foreign firms usually cannot avoid the formation of a works council. Ultimately, they have to come to terms with the reality of an institutionalized workforce representation system endowed with legally enforceable participation rights. Some foreign employers have decided to delegate this matter entirely to their German personnel directors, leaving them complete freedom in dealing with the works council.

As in several other countries, new forms of employee involvement and participation have been introduced in Germany as part of a more sophisticated approach to human resource management. Still, German-style "participatory management" continues to differ from the Anglo-American pattern in that it does not try to displace or erode institutionalized workforce representation, but rather is complementary to it. Quality circles and teamwork are the two main models of management-led employee participation. Quality circles are problem-solving groups aimed at improving personal work behavior and motivation as well as labor relations at the workplace. Work teams aim at improved utilization of workers' abilities and experience, and at improved informal social relations among employees (Malsch 1989; Beisheim, Eckardstein, and Müller 1991).

If some unions and works councils first rejected management-led participation, especially quality circles, today their position has changed. Now, union and works council representatives often go so far as to regard them as a first step toward "co-determination at the workplace." Since the mid-1980s several works agreements on quality circles have been signed specifying the circles' composition, procedure, and agenda, as well as the role of the works council in their governance. A first content analysis (Breisig 1991) of a small sample of works agreements on quality circles covered various big companies in the automobile and chemical industries. As a rule these companies have large blue-collar workforces and high union density rates. In other firms, quality circles and similar arrangements were established unilaterally by management because works councils were either uninterested or opposed.

The few available figures on quality circles indicate that they have greatly expanded during the 1980s. A group of researchers (Antoni, Bungard, and Kübler 1990) interviewed the personnel departments of the 100 largest companies (measured by sales) in 1985-86 and 1989-90. In the latter period, they found that quality circles and similar problem-solving groups had been established in 50 percent of the companies, as compared to 40 percent in 1985-86; another 11 percent were planning to establish them. Quality circles are to be found in production (38 percent of the firms), marketing (12 percent), R&D

(12 percent), and personnel and training (10 percent). Companies with quality circles had had them for eight years on average and still thought highly of them. Opposition to quality circles comes primarily from middle management; works councils were reported to be the least opposed. The latter finding is confirmed by Kotthoff's follow-up study, in which he noticed resentment of quality circles only among weak works councils. Strong works councils were found to be self-confident enough to accept a role in the institutionalization and regulation of quality circles.

As to teamwork, companies in the automobile industry in particular are profoundly restructuring production and work organization. Alarmed by the MIT study (Womack, Jones, and Roos 1990), which showed large productivity gaps with Japanese and even American automobile producers, nearly all German companies have started or are planning to introduce teamwork. Most ambitious of all is Opel, the German subsidiary of General Motors, which originally planned to involve all its employees in teamwork by the end of 1992. Daimler Benz (Mercedes) intends to restructure production work more gradually and to introduce teamwork for roughly 50 percent of the direct workforce by the mid-1990s. Volkswagen, which has an extended network of quality circles, called VW-Zirkel, started with semiautonomous working groups in some smaller establishments and is now on the brink of introducing this type of work organization at one of the six production lines in their main plant, Wolfsburg. In most companies, management and works councils have signed works agreements on teamwork providing for extra time for team discussions, the possibility for teams to elect a group spokesperson, and better pay for more integrated and more flexible work tasks.

The question of initial and further vocational training is of paramount importance not only for the economic success of the firm but also for the market situation and earnings prospects of its employees. German unions have always paid close attention to initial vocational training and have recently intensified their activities on further training. Unions played an active part in the modernization of the vocational training system in industries like building and construction and mechanical and electrical engineering (Streeck et al. 1987). Several unions have also negotiated collective agreements on further training and retraining that, according to Mahnkopf (1990, 7), serve as "a substitute for the lack of [legal] co-determination rights" in this area.

In Germany, apprenticeship training is regulated by the Vocational Training Act of 1969. Most apprentices, who account for roughly 65 percent of each age cohort, spend three years in a program that involves three or four days per week of on-the-job training and one or two days of education in a public vocational school. Training is administered by "chambers of commerce and industry" or "chambers of artisans," with compulsory membership of all employers and legally mandated participation of "employee delegates"—mostly unionized—who have a say in all training-related matters. Works councils also participate in the governance of the training system, as the law gives them consul-

tation rights on the establishment and equipment of training facilities and co-determination rights on the implementation of training programs and the appointment and removal of full-time training staff. In addition, councils supervise the employer's compliance with all applicable training regulations, in the same way in which they monitor compliance with other rules and statutes.

Works council participation rights in further training are still more extensive, partly because of the weaker legal regulation in this area. (It has already been mentioned that the unions try to fill this gap with collective agreements.) Under the Works Constitution Act, works councils have co-determination rights on the content and procedure of retraining and further training and on the selection of trainees; special employment contracts for trainees also need the consent of the works council. As Streeck et al. (1987, 21–22) point out, works councils as a rule take their participation rights seriously. Most works councils of larger firms have set up special training committees (*Bildungsausschüsse*). According to a survey of 315 works councils in four industries, training committees are found rarely in firms with fewer than 300 employees, but frequently in firms with more than 1,000 employees (table 3.7).

Works council training committees deal mostly with matters of apprenticeship training. For them this field is more manageable than the less structured and “newer” area of further training. Works councils are often not competent enough and lack the time to get into the subject deeply, and they need and expect more advice from their union. This, however, does not mean that they regard further training as a negligible matter or are unaware of its increasing relevance for survival and success in product and labor markets. In their daily activities, councils emphasize the general need for expanding opportunities for further training on and off the job, and they encourage workers to keep their qualifications up to date. They also negotiate with management on release from work for training and on the kind of training measures to be provided to specific groups of employees (Kühnlein and Kohlhoff 1991, 134). Discussions between works councils and managers on training-related questions are frequent; in the survey mentioned above, 80 percent of works councils reported

Table 3.7 Works Councils with Training Committees by Size of Establishment, 1989–91 (%)

Size of Establishment (number of employees)	Percentage of Councils
Up to 300	12
301–600	45
601–999	63
1000–1999	77
2,000 or more	88
All works councils	56

Source: Hans-Böckler-Stiftung (1992).

such talks. Written agreements, however, are less frequent: only 40 percent had negotiated works agreements on training matters, and the density of formal regulation was found to be unevenly distributed between industries (table 3.8).

In the 1960s and 1970s most unions negotiated "protection against rationalization" agreements. These were basically defensive, providing for financial compensation if retraining measures for workers threatened by redundancy were not possible. Since the late 1970s some unions—among them those representing metalworkers, printers, construction workers, and chemical workers—have fought, and sometimes even struck, for collective agreements taking a more forward-looking approach. The most extensive regulations of this kind are contained in an agreement for the metal industry in Baden-Württemberg (the famous Lohn- and Gehaltsrahmentarifvertrag I). The agreement commits the employer to ascertain regularly the establishment's skill needs, given ongoing and future technological and organizational changes, and to consult once a year with the works council on the matter. The works council for its part is to assess the training needs from the perspective of the workers and is entitled to discuss the results and its related proposals with the employer. Subsequent to this, the employer must put forward a skill development plan (*Qualifikationsplan*) for the establishment.

Three and a half years after the agreement had been signed, a research team found that there was still a considerable discrepancy between rules and reality: two-thirds of the managers and three-quarters of the works councils were not aware of the existence of a *Qualifikationsplan* (Bahn Müller, Bispinck, and Schmidt 1992, 347). Still, the general conclusion suggested by the body of existing research is that unions and work councils know the increasing necessity of further training for firms and employees and that they want to participate more actively in this expanding field but need more competence, time, and experience.

Table 3.8 Works Agreements on Training Matters by Industry, 1989–91 (%)

Industry	Percentage of Firms
Printing	44
Electrical engineering	49
Ceramics	17
Publishing	17
All works councils	40

Source: Hans-Böckler-Stiftung (1992).

3.5 Works Councils and Workers

Being representative bodies, works councils are influenced by their constituents mainly through the selection of their members.⁷ The high turnout at council elections (table 3.9) shows that workers are keenly interested in their results. A comparison with other elections reveals that turnout in council elections is second only to the general national election (Niedenhoff 1987a). In the late 1950s and 1960s participation oscillated around 75 percent; in 1975, after the amendment of the Works Constitution Act, it jumped to over 80 percent; and in 1990 it fell again by several percentage points (table 3.9). As a rule, participation among blue-collar workers is slightly higher than among salaried employees, and the drop in turnout in 1990 was less significant for the former group.

The Works Constitution Act stipulates that wage earners and salaried employees must be represented on the works council according to their relative numerical strength (section 10). Nothing, however, is said about the representation of women and foreign workers. Both groups are clearly underrepresented, although their shares in works council seats have slightly increased recently (see table 3.1). The traditional social profile of works council members is male (about 80 percent) and native German, with a standard full-time employment contract as a skilled worker or as a supervisory and technical staff member. In fact, for some of its members, the works council serves as a career ladder for political and professional advancement. Experienced council members may either move on to political office in a party, a union, or a local council or change over to a management job. The latter is more likely among white-collar works councillors. Some recent studies recognize that white-collar employees have become more accepting of collective interest representation through the works council—a pattern that has been observed especially in high-tech enterprises (Kotthoff 1992).

A problematic relationship continues to exist between works councils and foreign workers. Of a representative sample of the foreign population in Germany (Friedrich-Ebert-Stiftung 1981, 1986), only one-third of the foreign workers regarded the activities of their works councils as satisfactory. Works councils were perceived as unfamiliar with the problems of foreign workers, and as mainly representing the interests of the German workforce or the employer. In fact, foreign workers generally run a higher risk of redundancy than German workers. Their rate of unemployment is higher, and dismissals are twice as frequent as among German workers (Jaeger 1989). Studies about employment reduction in the automobile (Dohse 1976; Dombois 1982) and the steel and coal industries (Schäfer 1985) found that under the threat of mass

7. Councils are, however, legally required every three months to call a "works meeting" of all employees, to which the council must report on its activities.

Table 3.9 Turnout at Works Council Elections (%)

Year	Percentage Turnout
1959	73.4
1962	76.2
1965	73.9
1968	73.5
1972	72.1
1975	79.1
1978	81.3
1981	79.9
1984	83.7
1987	83.3
1990	78.4

Source: IW.

redundancies the works councils do not actively oppose, and often tacitly approve, "soft" discriminatory measures aimed at filtering out foreign workers from outside the European Community, especially if this can help them avoid redundancies among German workers.

3.6 Outlook

Co-determination, we said at the outset, is a learning process; more precisely, it is a process during which individual and corporate actors learn to take into account the strategies and goals of their counterparts and thereby modify their own strategies and goals. The practices, rules, and institutions that emerge from their antagonistic, competing, or joint actions differ from their individual goals; they are the combined result of all the various actors' intentions. In this sense, the industrial relations system can be understood as an institutional order that is—partly tacitly and partly explicitly—negotiated and adjusted to changes in the balance of power and in environmental conditions.

In the German case, the dual system of interest representation was shaped over more than half a century during which its actors, institutions, and levels of rule making changed in their relevance and function according to the prevailing constellations of economic, political, and social forces. The strains of contemporary changes in the world economy and in the organization of production have not only not destroyed the dual system but have confirmed its stability and flexibility. Nevertheless, certain remarkable institutional changes and shifts have occurred.

Today, the position of the works council is much stronger than it was in the 1950s and 1960s. In response to economic and technological change, the major German unions have developed a coherent workplace strategy (*Betriebspolitik*) under which they try to attain qualitative objectives—on matters like work organization and training—through the works councils. The links between

works councils and unions are today largely ones of mutual support; only a minority of works councillors regard themselves as union agents. While the ties between unions and their members are becoming looser, the relationship between works councils and unions seems to be growing closer. If, as can be expected, the tendency toward a "disaggregation of industrial relations" (Crouch 1986) continues, the responsibilities of the works councils will continue to expand; this, in turn, will increase the demand for union support and expertise. The unions of the future will, therefore, be less bargaining machines than support organizations for the works councils.

After a period of skepticism of and opposition to employer-sponsored participation and involvement schemes, many works councils now actively cooperate with the kind of human resource management that usually accompanies comprehensive restructuring of production. If the rationale for this is that works councils will increasingly move into the role of co-manager, two other developments could reinforce this. One is the gradual change in the composition of works councils in favor of technical staff and salaried employees. Their professional interests and attitudes are more easily reconciled with managerial goals. The other, ironically, is the transformation in East German companies. Since there is no tradition in East Germany of open conflict, the works councils that replaced the old workplace union committees (*Betriebsgewerkschaftsleitungen*) have difficulties finding their new role as "conflict partner," particularly since the struggle for economic survival drives them into collaboration with management to a much higher degree than their colleagues in the West.

As is widely known, the German industrial relations system is highly formalized and representative, with industrial unions and works councils accustomed to acting on behalf of the workers (*Stellvertreterpolitik*). Today these traditional actors face the emergence of work groups and production teams. While previously participation, co-determination, and collective bargaining were exclusively the business of representative institutions, now, with a larger space for more actors and a greater variety of patterns and coalitions, centrifugal tendencies are likely to become more effective. Sooner or later the structural characteristics of the German model may be modified, and the dual system might give way to a triple system, with sectoral bargaining between trade unions and employers' associations, enterprise negotiations between work councils and management, and direct participation by work groups with elected team leaders. As a result the highly formalized and strongly representative model may be softened and weakened. And there is no guarantee that the integration of the formal and representative institutions with the emerging decentralized and more informal structures will succeed.

Following major changes in the division of labor in the world economy, businesses have adopted a global perspective. Multinational mergers and joint ventures and the restructuring of the logistical chain between producer, supplier, and distributor threaten to undermine the participation rights of works councils set up for spatially unified business units within a national territory.

How can a works council exercise participation rights in an establishment for which the relevant decisions are made elsewhere? It is true that efforts are made to set up multinational European works councils, but so far their participation rights are much weaker than those of German councils and more like those of German finance committees (*Wirtschaftsausschuß*), which have information and consultation rights only. As far as the new logistics is concerned, there are discussions about adjusting the co-determination system to the new networks between producer, supplier, and distributor. In some cases working parties of the various works councils have been created to look into the problems.

Finally, the challenge of German unification is putting the established system under considerable stress. The transfer of institutions and the extension of organizational domains from the West to the East has proceeded with fewer frictions than expected. But industrial relations practices cannot be transferred so easily. The handling of industrial disputes, labor law cases, and joint conflict management demand experience and skill, which were not cultivated under the authoritarian Communist regime. It is true that the "social partners" played a major role in the transformation from a command economy to a social market economy and in the process built something like a new *Arbeitsgemeinschaft*.⁸ The social and economic problems that demand to be solved may, however, exceed their capacities. Both sides may thus feel permanently tempted to abandon their joint understanding and return to adversarial strategies.

It is also true that the old *Betriebsgewerkschaftsleitungen* in East German workplaces have been replaced by works councils. But their activities greatly differ from those of their counterparts in the West. Works councils in the East are above all concerned with the economic survival of their firms and collaborate closely with a management that must still learn its proper role. Also, many foreign investors acquiring companies from the government privatization agency, the Treuhandanstalt, lack experience with the German co-determination system. It is still likely that in the long run, the outcome in the East will gravitate toward the strong pattern of the West. But it is quite possible that the East will not end up simply as a copy of the West and that the copying will not leave the original untouched.

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