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Germany

Works council elections in Germany reveal an upheaval

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They are the backbone of the trade unions in the German workplace. Works councils are often found in traditional enterprises in the metallurgy, chemical and energy sectors, but the situation is already much worse in the service sector, and start-ups have virtually no representation of workers' interests.

"Voting for strong works councils - more democracy in the enterprise!" is the slogan that social democratic organisations are now using. In fact, according to the union-friendly WSI institute, only ten per cent of companies have a works council and, for 28,000 companies, 180,000 mandates are awarded. This is about the same number of mandates as in municipal politics. Yet the upcoming works council elections are virtually ignored by the media.

The exceptions confirm the rule: in February, the election of the works council of the subsidiary of the American automotive group Tesla in Brandenburg made the headlines. The owner of the group, Elon Musk, is well-known to be an opponent of unions. This is why the IG Metall union has also described this choice as a "positive sign". But reservations were also expressed, as the elections were not held during the rotation period but, prematurely, on 28 February. And this advanced date excluded workers in production from voting.

Only management employees who had been with Tesla for at least six months were able to cast their ballots. A day later, on 1 March, at least a few production employees could have voted. The IG Metall union has nevertheless promised to fully support the "management" works council. However, they will "carefully ensure" that the committee commits itself to all 12,000 future employees.

The Reichstag bloodbath

The demonstration of 13 January 1920 in Berlin has gone down in history as the "bloodbath in front of the Reichstag building". By noon, employees of most of Berlin's major companies had stopped working, including at AEG, Siemens and Daimler.

More than 100,000 workers finally gathered in front of the Reichstag at a session of the Weimar National Assembly on the works council law. Instead of mere participation, they demanded the "right of total control over the management of the enterprise" by workers, employees and civil servants in all private and public enterprises. The demonstration was repressed with machine gun fire, killing several dozen people. The next day, President Friedrich Ebert (SPD) decreed a state of emergency, many members of the USPD and KPD were arrested, and more than forty newspapers were banned.

Today, a works council has a say in working hours, hiring, dismissal, health protection and remuneration. The importance of a works council for workers is therefore undeniable. But for many company boards and managements, this already goes too far. In start-ups, for example, where the boss and employees know each other, the simple fact of launching an election to the works council is perceived as a vote of no confidence. However, the representation of interests by a works council is a right guaranteed to employees.

The methods of combating works councils are manifold: they range from the complete prevention of elections through intimidation and the dismissal of employees even before they take place, to the splitting of existing committees and the moral harassment of active works councils.

In recent years, law firms have specialized in union busting or mobbing (harassment) of works councils. For example, Schreiner & Partner is known throughout Germany for advising entrepreneurs who see works councils as a problem. The law firm offers seminars entitled: “In the future without a works council: how to avoid, dissolve and re-elect the works council”, “the dismissal of ‘disruptive’ workers”, “how to creatively design reasons for dismissal.”

Other managements hire new human resources managers, often also lawyers, to rid the company of unwanted employees. These are not only private companies but also public companies, which finance these lawyers with taxpayers' money.

Blows for employees

It is common for employers' lawyers to trigger veritable avalanches of lawsuits against workers and the works council. Complaints almost never have a chance of success, but they do result in burden and stress for the accused, sometimes even depressive illnesses.

In the field of environmental and human rights, as well as against critical journalists, this type of action already has its own name: SLAPP. This term means Strategic Lawsuit Against Public Participation. They are spreading more and more – as for example during the opposition to the construction of the Lobau tunnel in Vienna, with the intention of nipping the political participation of civil society in the bud.

Several organizations are mobilizing for a European legislative initiative that would sanction this practice, as already exists in the United States. At company level, these SLAPPs have also been practiced for years but trade unions have not yet been involved in the legislative initiative launched by the European Commission which set up a group of experts in early 2021.

One thing is certain: employers and union busting endanger individual health, human rights and democracy. It is important to publicly denounce these practices of company management.

A small victory was achieved thanks to the information work of recent years. According to Article 119 of the Law on the Organization of Enterprises, obstructing works councils has so far been a prosecuted offence on the basis of a complaint and punishable by imprisonment – but it was only prosecuted if works councils or trade unions filed a complaint.

According to the agreement establishing the “traffic light” coalition which now governs Germany, this should change: “We consider in the future the obstruction of democratic co-management as an offence prosecuted ex officio,” it says. This means that prosecutors will have to investigate employers as soon as they become aware of a case of impediment or manipulation of works council elections, obstruction of committee work or preferential or unfavourable treatment of works council members because of their function.

The effectiveness of this bill will, of course, depend heavily on the staffing and financial resources of the institutions responsible for identifying and prosecuting these crimes prosecuted ex officio.

But it is not the legal debate that is central, it is the resistance within the company. And not only in the context of the work of works councils. It is also a question of involving and organizing staff beyond the activity of the works council, for example in the form of works groups and trade union committees of representatives.

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Recent examples show that organization within the company is worthwhile: Wikus-GmbH, the largest European producer of hacksaws for users in the steel sector, which employs more than 500 people, has been without a works council and collective agreement for sixty years. The directors had even hired the infamous law firm Schreiner & Partner. This was of no use to them: after a collective dismissal in 2020 and job competitions in the aftermath, an IG Metall trade union committee of representatives was created and, a few months later, an extraordinary election of the works council was held.

Source: [l'Anticapitaliste](#) from SOZ-Ä»<https://www.sozone.de/>].

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