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Hans-Böckler-Stiftung (Hrsg.)

Employment, working conditions and company organisation

Regulation via company agreements

edition der
Hans **Böckler**
Stiftung

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CONTENTS

INDUSTRIAL RELATIONS IN GERMANY – PLAYERS AND INSTRUMENTS

Germany has a »dual system« of employee representation: trade unions and works councils – or in the case of public administrations, personnel committees. The unions negotiate with the employer associations on the most important variables related to working conditions – in particular on pay and working time – and they do so on a broad front, in some cases on a regional basis or for an entire industrial sector (e.g. metalworking industry, retail trade, chemical sector). Strictly speaking, the resulting agreements only formally apply to trade union members and members of the employer associations, but in the past they have effectively determined working conditions in the entire sector concerned.

In recent years – particularly in the eastern states of Germany – there has been a tendency for companies to withdraw from employer associations, with the result that increasing numbers of companies are no longer bound by such collective agreements.

Works councils and personnel committees established under German law are elected at regular intervals by the entire workforce of a company. They are answerable to the workforce and, according to the law, have to work together with the employer on a basis of mutual trust. However they also work closely with the trade unions.

They are responsible for regulating working conditions in the company within the framework laid down by statutory or collectively agreed regulations, and they do so by concluding agreements or arrangements with the employer. In principle, such agreements can cover all aspects of company life, but according to the law, collective agreements have priority: pay and aspects of working conditions regulated by the parties to collective agreements are therefore not permitted to be the subject of company-level agreements.

One problem for workforce representatives is the decline in the number of companies that have works councils. Over the last twenty years, the proportion of employees in private industry represented by works councils has shrunk from 50 % to 40 %. Nevertheless, in recent years works councils and personnel committees have managed to use their co-determination rights to conclude agreements on many company issues and thus improve social standards for employees. In many cases in-company co-determination has even been extended beyond the statutory minimum.

The Hans Böckler Foundation – the German Trade Union Federation's research, advisory and training foundation – has evaluated more than 1,500 company agreements concluded by management and workforce representatives in all sectors of industry. Together with analysis of collective agreements, this is an important method used by the Foundation to monitor the way industrial relations and working conditions for employees are regulated. The Foundation's archive on this subject at present covers some 4,000 company agreements. The 1,500 evaluated in this study dealt with such issues as company modernisation, modification of corporate structures and changes in employment conditions.

This brochure presents a summary of the project's results on the following issues:

- Securing employment
- Teleworking
- Further training
- Environmental protection
- Group work
- Flexible working time
- Performance-related pay
- Outsourcing

The agreements came into being under the prevailing conditions for workforce representation in Germany and therefore cannot necessarily be directly transferred to the context of other countries. They should, nevertheless, be of interest to workforce representatives from other parts of Europe: the problems they face are similar, and European Works Councils are concerned to find common solutions to the issues involved.

The sequence of contributions to this brochure has been chosen deliberately ***Securing employment*** and ***teleworking*** are topical issues at European level: the European Union has made *securing employment* one of the central goals of its European Employment Strategy. And the development of *teleworking* is an issue that the European Council and Commission are monitoring with great interest and even included in the agenda for the Lisbon summit in March 2000.

Further training is an issue that the European Trade Union Confederation has made a central focus of its information strategy for European Works Councils.

In-company environmental protection has become an issue for workforce representatives in companies in many countries.

Group work plays an important role in corporate reorganisation processes, especially in Anglo-Saxon and Scandinavian countries.

Flexible working time and performance-related pay are undoubtedly an issue in many European states; company-level agreements in Germany are very heavily influenced by the system of collective agreements.

Outsourcing – transferring internal services to external companies or hiving-off the departments concerned into independent units – is an increasingly relevant topic, especially in Germany. It is undoubtedly an important issue for the exchange of information within European Works Councils.

SECURING EMPLOYMENT

Securing employment has always been an important issue for works councils and has featured in many company-level agreements. However, from the seventies onwards, the influence works councils were able to exert was largely confined to retrospectively cushioning redundancy measures by drawing up company »social compensation plans«. Thus policy consisted mainly of reacting to acute problems and crises as they arose in individual companies or sectors.

For some time now, the effectiveness of such compensation plans – despite their success in the past – has been declining. The reason is that the statutory scope for financing them has been reduced, early retirement schemes are no longer an option because of the low average age of the workforce, and companies are either unwilling or unable to draw up redundancy schemes because of the expense involved.

Parallel to this development, structural change has altered the way works councils perceive their role: they are increasingly moving from mere reaction to company crises towards a more active employment policy based on the concept of »co-management«. The new principle is to be »pro-active« rather than »reactive«. One outcome has been the signing of large numbers of company agreements on securing employment. This study evaluated 139 such agreements from 111 companies. Most of them dated from after 1996, when the national alliance for jobs collapsed and many works councils and personnel committees decided to take up employment policy as an issue at company level.

COMPANY CRISES

Most of the agreements relate to manufacturing industries in sectors that are undergoing crisis, traditional industries or public administrations. Few relate to private service-sector companies or new industries. The typical triggers for these agreements are cost-cutting exercises, increased pressure from competitors, consolidation of public spending and threatened redundancies. Most of the agreements do not constitute comprehensive »alliances for jobs« – their aims are much more modest: to stabilise the situation within the company and ensure that present levels of employment are main-

tained. Despite often representing painful compromises, they bear the unmistakable signature of the works councils.

It is possible to differentiate between three broad categories of agreement, although the lines between them are by no means clear-cut:

- Firstly there are agreements containing measures to secure employment but no binding obligations on the part of the employer. These account for about 10 per cent of those examined.
- Most of the agreements relate to one or several measures aimed at securing jobs or introducing internal changes and contain binding agreements to maintain employment levels, usually in the form of an explicit undertaking by the employer not to introduce compulsory redundancies.
- Then there is a small category of strategic agreements in which more or less complex changes are agreed on in order to ensure the future of a company location or employment levels in the medium term – even with a view to further developing them. Here the employer makes an explicit and binding undertaking to maintain employment levels for a particular period of time. These account for just under 15 per cent of agreements and originate largely from major industrial companies mainly in the metalworking and chemical sectors, public companies or public administrations.

NECESSARY COMPROMISES

The agreements document a mutual process of give-and-take between the parties involved. From the employees' point of view is it important that most of the agreements represent a binding undertaking on the part of the employer to refrain from compulsory redundancies for a period of time – usually between two and four years. Such concessions are, however, »bought« by works councils or personnel committees at the price of concessions on working time, supplementary pay rates or voluntary company social security payments. In addition, many agreements also cover issues related to the further development of company organisation, human resources or in-company further training.

If one takes a closer look at the detail of these agreements, it emerges that most of the concessions made by the employers relate to maintaining the status quo in terms of employment levels and social protection for the core workforce by avoiding redundancies and taking on trainees on completion of training. Few agreements contain measures to further develop the plant by expansion or investment

in equipment, research or training facilities. And agreements to recruit new staff are rare exceptions.

Balancing up the »give-and-take« are agreements to reduce the quantity of work on offer from the company – an issue apparently brought into the discussion by the works councils. Such agreements cover early retirement, reductions in working time without compensation, promotion of part-time working, long-term voluntary leave of absence or reductions in overtime working.

Then, of course, there is the issue of cutting company operating costs: reducing supplementary pay rates and voluntary social security payments, cutting absenteeism and sick leave, and even extending working hours without extra pay.

Finally, very many of the agreements aim to achieve greater flexibility of company operations – modifying working structures and their organisation, developing human resources and providing further training, but also establishing conditions for internal transfers and flexibilising working time.

The following overview highlights the instruments used by such agreements:

Agreements	**Concessions by employers**
Reduction of work available *Old-age regulations* *Shorter working time* *Part-time working* *Voluntary redundancy* *Leave of absence* *Reduced overtime working* *Short-time working*	***Securing present employment levels*** *No compulsory redundancies* *Trainees taken on after training* *Salary grading maintained* *No outsourcing* *Retention of company location*
Reduction of costs *Pay* *Social security payments* *Overtime bonuses* *Reduced absenteeism* *Inclusion of breaks* *Extension of working time*	***Further development of company*** *In-company training retained* *Investment* *Expansion of location* *R&D investment*
Flexibilisation of company *Organisational development* *HR development/further training* *Transfers* *Flexibilisation of working time*	

Most agreements aim to preserve company locations and secure existing employment levels amongst the core workforce, but a closer look at the varied provisions on human resources and organisation reveals that they also contain the seeds of lasting change,

internal development, improvement of the company's market position, long-term security or even the development of new areas of employment. However, realisation of these possibilities cannot be achieved by one-off provisions in the agreements – what is required is detailed follow-up by the parties to the agreement. Only then will the true scope of the opportunities available emerge.

RELATIONSHIP BETWEEN COMPANY ALLIANCES AND COLLECTIVE AGREEMENTS

In many cases it was collective agreements between trade unions and employers on securing employment levels that provided the trigger for in-company agreements. Recent collective agreements often contained flexibility clauses with regard to working hours or pay, and company-level agreements can draw on these. In addition, some parties to collective agreements have also signed framework agreements on securing jobs at sectoral level, and these have to be implemented within the individual companies. Thus the collective and company levels complement one another.

Our study of company agreements, however, also reveals that their highly differentiated provisions on company organisation and human resources – which have a potential impact on development of the plants concerned – could only be drawn up on the basis of a detailed familiarity with conditions within the plant(s). Compared with other countries in Europe, company co-determination structures in Germany are potentially useful in this respect. The provisions of sectoral collective agreements in Germany cannot penetrate right down to the level of plant organisation – that is a matter for regulation within companies.

DOWNWARDS SPIRAL?

Agreements on securing employment offer scope for works councils to become involved in the process of modernising plants. Many agreements even involve a partial limitation of the traditional autonomy of company decision-making: the employer abstains from the option of compulsory redundancies and agrees to retain training facilities or launch investment programmes. Such constraints are based on voluntary agreement, are of limited duration and are linked to concessions on the part of the employees. There is a direct quid pro quo involved here: employers' willingness to partly

limit their entrepreneurial freedom is contingent upon the workforce representatives accepting structural changes that often involve painful sacrifices.

With the spread of company agreements, the fear is sometimes expressed in trade union circles that this could lead to a downwards spiral: works councils, faced with difficult situations, make more and more concessions until they have no weapons left. The game then continues at the level of collective agreements.

This is referred to as »concession bargaining« – a reference to developments in the USA in the 80s. But the situation in the USA is completely different to that in Germany:

- there are no sectoral collective agreements,
- inasmuch as there are any collective agreements at all, these are concluded by plant trade unions at company level,
- faced with economic problems in the 80s, the trade unions made concessions in the form of direct reductions in nominal wages with no changes to working conditions.
- Corresponding binding agreements by employers were rare.

This development clearly led to a downwards spiral and the impact spread also to non-unionised companies – which are in the majority in the USA. In Germany, on the other hand, collective agreements provide a safety net when it comes to reductions in material provisions – and this demonstrates how important industry-wide agreements are as a fall-back position when company-level agreements are being concluded.

One thing is important: agreements to secure employment in Germany have to be viewed against the background of a specific corporate culture, as they build on a tradition of co-operation between the two sides of industry. Company alliances to secure jobs or even to extend employment on the basis of mutual give-and-take are only possible if there is a basis of trust: as always in life, genuine alliances are only possible where there is trust. This is the crucial difference between »concession bargaining« and a corporate culture based on participation and co-determination by workforce representatives.

For information on this issue please contact:
Winfried-Heidemann@boeckler.de
Fax: ++49-211-77.78.188

An evaluation of 68 company agreements reveals that teleworking is still a relatively new concept for German companies and public administrations. Management and workforce representatives are cautiously investigating this form of work organisation, but teleworking is at present confined to individual projects operating in isolation from normal company activities.

The great caution with which both sides of industry approach this issue can be seen from the company agreements evaluated, which cover a wide variety of points:

- criteria for selecting the employees (e.g. ability to work independently and take on responsibility for one's actions)
- requirements for the workplace (e.g. size of room, position)
- status of employee
- amendment to employment contract
- reimbursement of costs
- liability issues
- telephone use
- data protection
- integration into company processes
- Human Resource development
- principles for managers of teleworkers.

MUTUAL ADVANTAGE

In almost all company and service agreements, the parties involved are concerned to develop teleworking to the mutual advantage of both company and employees. From the company's point of view, the economic benefits are perceived as being related to cost-savings in terms of office space and equipment, more flexible use of the labour force and improved customer service.

The advantages for the employees are seen to be as follows: greater personal freedom, working according to an individual's needs and performance curves, and better

scope for carrying out family duties. Much stress is put on the improved compatibility of private and professional goals.

Some agreements also reflect management's fear that employees may abuse the greater degree of freedom offered by teleworking. This can be clearly seen in regulations that only permit activities to be carried out on a teleworking basis in cases where work performance can be measured and monitored. This unfortunately ignores the fact that teleworking is not compatible with a culture of mistrust, constant monitoring and strict hierarchical company structures.

Even workforce representatives have certain reservations about teleworking. They fear that those affected will lose out in terms of training, poor working conditions liable to damage their health, excessive work demands, and inadequate scope for returning to their normal duties when a period of teleworking is over. Workforce representatives are thus concerned as far as possible to eradicate such risks through drawing up appropriate arrangements.

It is often pointed out that teleworking can lead to types of employment that no longer fit into the scope of traditional work contracts or that result in outsourcing of entire departments within companies. However such tendencies were not found in the agreements examined. On the contrary – the norm would seem to be that employees change to teleworking *within* the scope of their normal employment and their status as employees is not affected.

However, teleworking can nevertheless not be equated with »normal work«, and the agreements examined provide for the special features of this kind of working to be covered by additional contracts. Only a few agreements, however, lay down satisfactory standards for such contracts, and it is clear that this is an area in which more work is required.

TELEWORKERS AS PART OF THE WORKFORCE

It is in the interests of both parties that teleworkers should not be isolated from the day-to-day life of the plant. Managers are usually required by the agreements to maintain regular contact with teleworkers, incorporate them into the work of their section and keep them informed about the scope for further professional development. The individuals concerned should take part in work briefings and departmental and plant meetings.

Theoretically, teleworkers can increase their autonomy in four areas:

1. by allocating total working time to in-company and telework according to their own needs,
2. by largely determining the timing of the teleworking element themselves,
3. by determining work processes according to their own ideas,
4. by influencing the way that work is *allocated* (e.g. by agreements on goals or in the form of work packages) and *delivered* (fixed or flexible deadlines).

Agreements deal above all with the first two points; the third one is not mentioned and the fourth is usually left to regulation between the teleworker and his/her superior.

One of the most important issues in the agreements is the question of working hours. Teleworkers are granted considerable freedom to balance in-company and telework and decide what they do at their teleworkstation. Only in very few cases are they required to maintain a regular presence or availability at their teleworkstation. However there is a difference between companies that are newly introducing teleworking and those that have operated such a system for some time. The latter push for greater availability.

Usually the agreements do not mention the sensitive question of monitoring of performance and behaviour. If it is mentioned, then usually the agreement either outlaws direct or technological monitoring of performance and behaviour of teleworkers or subjects it to explicit regulation between management and works council. To ensure adequate performance by the teleworker, companies use formal agreements on goals in addition to direct discussion of work. This is an instrument that is new to teleworking but has now become fairly common in the field. It is theoretically possible for it to be used in the long term to achieve a step-by-step improvement in performance.

Poor organisation of teleworking or inadequate self-regulation by the individuals concerned can result in excessive demands being made on them and even damage their health. There is still a lack of satisfactory provisions for such cases. It is rare for employees to be given any training in effective self-management so as to combat this danger.

As teleworkstations are not »under the eye« of the managers responsible or the workforce representatives, it is possible for serious breaches of standards of working conditions and health and safety regulations to occur. Despite paying lip service to comprehensive protection of workers, the agreements do little to actually convert these good intentions into actions. Much remains to be done in this area in the future.

WHEN THE PC CRASHES...

Software or hardware problems experienced by teleworkers cannot easily be solved by calling in the company IT specialist. System crashes, slow reaction times, incompatibility of regular updates, virus attacks, false installation of software or communications problems can all effect an individual's performance. In many cases it remains to be clarified how employees can be protected from such problems and avoid the resulting downtimes and negative appraisals or assessments. Provisions for deciding who is responsible for resolving such problems in organisational and technical terms are also inadequate.

Agreements tend to put great stress on questions of liability – as can be seen from the sheer extent of regulations on this topic. Employees are usually only held responsible if they have displayed gross negligence. However, a lack of precision in the agreements means that there are still considerable residual risks for employees.

NEGOTIABLE COSTS

As far as the cost of setting up and operating a teleworkstation is concerned, the agreements provide for a wide range of possibilities. What is uncontroversial is the principle that any costs related to data-transfer, basic technical equipment and maintenance should be met by the company.

Provisions vary considerably, however, when it comes to the costs related to an individual's home. Some companies are generous and shoulder a proportion of these, but at the other extreme some companies or administrations try to save money and refuse to meet any additional costs. Most companies reach a compromise and operate with monthly lump sums of varying size. Necessary furnishings are usually supplied by the company or administration. If the employee uses his/her own furniture, some companies cover a proportion of the costs.

When it comes to teleworking, workforce representatives face a dilemma:

- on the one hand they are required to strongly support the principle that employees should have the scope and freedom to help shape their working time and work organisation;
- on the other hand, they have to ensure that the progress made in terms of collective protection for employees and rights to participate in shaping their working conditions over the past century is not negated.

It is a tightrope act that involves deciding when to support individual employees and when standards have to be preserved or further developed.

Because of the problem of access to home workplaces, works councils and personnel committees find it more difficult to protect the interests of teleworkers than in the case of company-based employees. Company arrangements display few ideas on possible new forms of representation. Provisions are still very vague both with regard to physical access to teleworkstations and – even more so – when it comes to electronic links with teleworkers (e.g. via Internet, Intranet[1] or email). Representatives are usually given a right of access to domestic teleworkstations, but common-sense dictates that »inspection« of a large number of geographically dispersed workstations in people's homes is unlikely (and perhaps would not be welcomed by the individuals concerned). There is a need for greater clarity as to how traditional work and employment standards (e.g. in terms of industrial safety regulations) can be maintained by workforce representatives.

The problem of contact between trade unions and teleworkers also raises certain questions. What are the implications for employee access to trade union information so that they can make use of their constitutional right to join a trade union? How are unions to recruit members? In what form can legally sanctioned strikes be organised?

For information on this issue please contact:

Lothar-Kamp@boeckler.de
Fax: ++49-211-77.78.188

1 internal company networks/databases

FURTHER TRAINING IN COMPANIES

In Germany, works councils and personnel committees have far-reaching co-determination rights when it comes to further training provisions within the company. The importance of in-company further training has increased of late, particularly in connection with organisational changes, new technologies, corporate strategies and European competition.

The 290 company and service agreements from companies and administrations in all sectors that were evaluated provided answers to the following questions:

- What methods are used for planning in-company training?
- What agreements are reached on the timing and funding of further training?
- How is training possible within the framework of new working structures – for example in the case of group work?
- What role does further training play in the development of new skills and in human resources development in general?
- How are claims to individual support for further training formulated in the agreements?

The results were as follows: works councils and personnel committees have a considerable say in the shaping of further training provisions within companies. This is an area where there is far-reaching scope for co-determination inasmuch as *in-company* further training so far has not been regulated by many collective agreements – with the exception of a few company agreements.

One further important result is that further training in companies has increasingly become an issue that dealt with in conjunction with other company matters – for example in combination with organisation, human resources development, environmental protection and employment. Development and utilisation of human resources is also an important issue for vocational training nowadays.

A comparison with an evaluation of company agreements dating from 1989 shows that the topics dealt with in those days have remained relevant, and are largely related to regulating formal company training provisions such as are found mainly in large-scale companies:

- *Company training planning:* these include methods of identifying needs (more recently, the way employees are involved in the process), selection of participants for further training and, in individual cases, also the budget.

- *Timing and funding of further training:* further training required by the company is in principle regarded as an integral part of normal working hours and is funded by the company. However, further training is increasingly also being used to satisfy personal interests that go beyond the actual needs of the company. Because of this, many agreements provide for individual employees to make their own contribution, either in the form of time or money; the term used in the European context for this is »co-investment«.
- *Right to training:* many agreements establish employees' right to participate in the training provisions within a company, but there is an almost complete lack of detail as to the precise nature of these rights – for example in terms of days per year.
- *Promoting further training for individuals:* in many companies, the conditions are laid down under which the company will also provide individual measures for personal further training either in the form of financial support or work release.

NEW TYPE OF FURTHER TRAINING

More recent agreements also include regulations covering the provision of a »new type of further training« such as can be observed in many countries of Europe:

- *Human resources development and skills development:* this is not primarily a matter of specialist skills but rather methodological and personal skills, social and communicative ability, willingness to work together with others, operate autonomously and take responsibility for one's own learning processes. The agreements lay down the instruments to be used to promote such skills: for example personal reviews, performance evaluation or agreements on goals. Further training itself takes place very close to the workplace or even as part of the work process, supported by a »coach« who provides the necessary supervision and advice.
- *Plant and work organisation:* when it comes to new forms of work such as group work or project organisation, specific forms of further training become necessary and these are laid down in the agreements.
- *Environmental protection:* this plays an increasingly important role in companies and acquiring the necessary skills forms an integral part of workplace training programmes.

Agreements on *securing employment* in companies also cover the issue of further training. There is one striking feature of these: further training is largely related to the development of skills and qualifications in connection with changes in company organisational structures and the introduction of greater flexibility.

These new aspects of human resources and skills development largely feature in agreements from the computer industry and computer services, the chemical industry, the banking sector and public administrations.

However it also emerges that there are a number of unsolved problems in this context, as the »new type of further training« is only partially covered by company agreements. Neither has the overall question of access to further training yet been satisfactorily solved. But the agreements do offer new scope in this respect, in addition to the traditional forms of access:

- *Advertising of the further training provisions on offer:* Some agreements oblige companies to advertise the training that is on offer and provide details of the scope for individuals to apply to take part. This can facilitate access.
- *Methods of identifying training needs:* Some recent agreements provide for participatory or »communicative« ways of identifying needs involving the employees themselves.
- *Human resources development and staff appraisal interviews:* Modern approaches to human resources development also provide ways to involve employees in identifying their own training needs, and this offers a new form of access.
- *Company organisation projects:* in which – for example in relation to changes in work organisation – participation in further training is more or less a prerequisite for an individual to continue his or her duties.

Despite these promising possibilities, access to further training is not yet genuinely open. Furthermore there is no guarantee that the »new« skills that have been acquired as part of informal further training processes, can be transferred to and recognised on other labour markets within the company or elsewhere. Even access to formal, recognised qualifications is not guaranteed. This, too, is an important issue for European works councils.

For information on this issue please contact:

Winfried-Heidemann@boeckler.de
Fax: ++49-211-77.78.188

ENVIRONMENTAL PROTECTION IN COMPANIES

Many of the agreements on environmental protection originate in the chemical sector. The reason for this is an initiative launched by the social partners in the chemical industry in 1987. In a joint communiqué they recommended companies to inform works councils about environmental issues, discuss these with them and for this purpose also to make use of the economic committee – a works council body set up for discussion of the economic affairs of the company. Within the space of a few years, more than 50 agreements were concluded on the basis of this recommendation.

Since then, the ecological and social context has changed. At the very latest since the environmental summit in Rio de Janeiro in 1992, the international community has started to concern itself with the growing problem of global environmental degradation and has developed specific recommendations for states, industry and society. Thus *Agenda 21,* which was signed by more than 170 countries, requires employees in companies and trade unions to be involved in the process of ecological change and improvement.

ENVIRONMENT COMMITTEES

Since the early 90s, increasing numbers of companies in Germany have agreed to set up their own environment committees in which company and works council experts work together. These committees gather information relevant to environmental matters from the individual plant and/or the entire company. In all recent company agreements the works council is involved in the joint environment committee. Some agreements even provide for this body to be based on equal representation of both parties. The issues dealt with by such committees include:

- Corporate environmental policy.
- Environmental goals.
- Environmental programme.
- Reducing material and energy flows.
- Reducing pollutants.

- Reducing the quantities of dangerous materials used and the volume of waste produced.
- Carrying out company environmental audits.
- Provision of information about statutory regulations and the company's adherence to these.

In most cases the environment committee functions as a source of information, advice and to some extent also takes on a co-ordinating role. It is normally involved in the process of preparing decisions.

Several environmental laws[2] provide scope for the works council and workforce to be involved. The environment officers mentioned in these agreements – who are nominated by the company – have to keep company management and the workforce informed on environmental matters and draw up an annual environmental report. The works council has to be informed about the appointment and dismissal of such environmental officers. Almost all company agreements now allow for the works council to receive the environmental officer's annual report and discuss this with him. Some agreements include further details of the rights of the workforce to be kept informed. And a small number of agreements extend participation and co-determination rights to include the appointment and dismissal of the environmental officer.

GREATER INVOLVEMENT OF EMPLOYEES

The company agreements also increase the involvement of employees by:

- Providing for a regular flow of information about environmental protection within the company.
- Providing for training in environmental protection
- Providing scope for active involvement, for example in project groups on environmental protection
- Using the company suggestions system and/or the individual complaints system.

In recent years, new forms of participation within companies have developed. Experience shows that actively involving employees can help improve environmental protection in companies, for example by:

- Making suggestions on innovative production processes and products
- Reducing the quantity of environmentally hazardous materials used
- Reducing energy and water consumption

2 e.g. on water, imissions, recycling and waste management

Participation of employees and the works council cannot, of course, replace close monitoring of adherence to environmental regulations by the regulatory authorities. Neither can the works council force the company to make environmental investment which it is unwilling to make. And an environmental assessor brought in by the company in the context of the EU Eco-Audit cannot replace the activities of the regulatory authorities.

Since 1988, parallel to the company agreements mentioned above, the two sides of industry have also concluded company and sectoral collective agreements on environmental protection in which, amongst other things, the involvement of employees and their representatives in corporate environmental measures is laid down. In the last four years alone, agreements such as these have been signed by the trade unions in the construction sector, the food industry, the print and media and telecommunications sectors. The contents of these collective agreements are similar to company agreements. To sum up, new forms of participation have been developed that offer scope for improving company environmental protection. Although the number of agreements already signed is relatively low, they do offer models that could provide inspiration to other companies.

For information on this issue please contact:
Siegfried-Leittretter@boeckler.de
Fax: ++49-211-77.78.188

Despite their increasingly commercial orientation, the agreements contain evidence of a shift away from traditional Taylorism[3], a strengthening of the autonomy of work groups and an increase in direct involvement of employees.

This can be seen from the huge increase in the number of tasks taken on by work groups. In many cases they have a large degree of autonomy to regulate their own work and working times. They are responsible for:

- Steering processes.
- Processing orders.
- Monitoring plant capacity.
- Controlling current costs.
- Improving productivity.

Agreements on goals signed by the group and their immediate superior, combined with bonus systems, give them responsibility for their own work results in both quantitative and qualitative terms. And they also have certain further responsibilities:

- Organising group meetings and selecting the issues to be dealt with.
- Electing a group spokesperson.
- Ensuring the smooth running of work within the group.

Just under half the agreements lay down that employees can be directly involved in important matters, e.g. workplace organisation or distribution of tasks. One way of involving employees in decision-making processes is to incorporate them into project groups set up by management to plan, steer and implement group work. Greater rights of participation for groups and individuals go hand in hand with a broader range of activities and increased responsibility for plant processes and work results.

3 The term Taylorism describes a (scientific) approach to company operations that can be traced back to the engineer Frederick Winslow Taylor (1856-1915). This includes the systematic implementation of time and motion studies to establish planning goals (e.g. for piecework) and optimal standardisation of work processes. It also involves a maximum degree of division of labour aimed at minimising work input, training levels and wages, separation of planning, decision-making and implementation processes, central control of work processes through management and direct monitoring by supervisors.

Companies nevertheless find it difficult to leave Taylorism behind them. Since about 1995 the positive trend towards group work has been offset by two countervailing trends:

- Top management has recently tended to concentrate increasingly on active portfolio management[4] and at the same time reduce the strategic importance of work organisation. Middle managers have also tended to block the trend towards group work as they fear it will result in a loss of powers for them.
- Group work is increasingly oriented towards commercial criteria.

It remains to be seen which trend will eventually prevail: group work based on a culture of trust within the company that offers groups a large degree of autonomy; or group work that to some extent revives Taylorism and uses modern methods to control employees.

EMPLOYEE REPRESENTATIVES PLAY ACTIVE ROLE

In a third of the agreements examined, management functions were redefined. The trend is towards managers no longer bearing responsibility for planning and controlling work processes, this task being transferred to the group. »Hard« instruments such as »instructions« and »direct monitoring« are replaced by »soft« management methods such as coaching of groups with regard to achieving objectives, problem solving and application of methods and provision of advice as and when problems occur.

There are two factors that are responsible for this trend towards greater weight being given to the interests of the employees in agreements on group work:

- Efforts on the part on management to win the acceptance of employees.
- Direct influence exerted by workforce representatives and trade unions on the development of these concepts.

The agreements we evaluated tended to involve workforce representatives to a large degree in shaping and monitoring group work. In 40 % of cases this was achieved via parity-based bodies for conflict resolution or similar bodies provided with decision-making powers for planning and shaping group work. In addition to this, the involvement of workforce representatives in *non parity-based* steering groups is commonplace. However, not all agreements specifically define the tasks of these different bodies. Special co-determination processes and instruments are frequently laid down

4 This involves concentrating on the company's most profitable business segments, with less promising ones being rejected and other interesting ones acquired as appropriate

for group work. In some cases, works councils are given the right to form independent project groups with those members of the workforce affected. Generally speaking, group work would appear to be an area that is particularly well suited to co-management.

INTEGRATION NOT EXCLUSION

A number of provisions can be found in the agreements that are likely to cause conflict in practice. Thus some agreements explicitly state that the aim is to integrate into the groups older employees or those with low levels of training or low performance. At the same time, the performance of the groups is supposed to be improved by performance-related pay schemes (e.g. via group bonuses) and by agreements on goals. The latter can create group pressure that runs counter to the objective of integration.

Experts regard 6 to 8 members as being the optimum size if social relations within the group are to be controllable, mutual reliability achieved and work or group-related problems solved. However companies often create larger groups, the average size being 10 – in extreme cases as many as 20 employees.

It is not possible to have group autonomy and at the same time *internal* supervisors. In the agreements, the group spokesperson does not usually have any disciplinary function but one can often identify a creeping trend towards this person taking on a supervisory role within the group.

The wide range of activities undertaken by groups usually mean that further training is necessary. This can clash with corporate cost-cutting strategies where these lead to cuts in the further training budget.

For information on this issue please contact:
Lothar-Kamp@boeckler.de
Fax: ++49-211-77.78.188

The issue of working time flexibilisation is of interest to both employees and employers. Although Germany still has a preponderance of traditional forms of working time, there is a clear trend towards newer forms.

This fact emerges from our evaluation of 903 agreements on forms of flexible working time. Employees have the following interest in working time arrangements:

- Securing jobs or expanding employment possibilities.
- Achieving greater personal control over working times.

From the point of view of the employers, the following are the most important aspects:

- Reducing costs, increasing efficiency and improving productivity.
- Enhancing their ability to respond to fluctuations in demand and customer wishes.
- Securing the future of the plant in crisis situations.

An overwhelming majority (68 %) of agreements examined related to well-established forms of flexible working time:

- Flexitime – a form of working time which enables employees to decide, within certain limits, when and how long they work per day. This gives them a considerable degree of control over their own working hours.
- Overtime – this goes beyond the working hours laid down by collective agreement or individual employment contracts and, provided certain conditions are met, earns an additional bonus.
- Part-time working – here employees regularly work less than the full number of working hours laid down in the relevant collective agreement (e.g. half-day working).

Almost a quarter of the agreements examined (24 %) involved the following new forms of flexible working time:

- Shift option – a general shortening of working time is organised – particularly in plants operating on a shift basis – in such a way that employees receive the weekly reduction in the form of complete working days or shifts off.
- Working time corridor – this enables the employer to distribute the working hours laid down in the collective agreement unevenly within certain upper and lower limits (for example between 40 and 30 hours per week when the collective agreement provides for a 35-hour week). These upper and lower limits are what form the »corridor«.

- Optional working time – here employees themselves can – within certain limits – select the length of time and the form or timing of their work. By working overtime an individual can save up time off towards a longer period of leave (sabbatical year).
- Block free time – here the amount of time worked and the payment received are separate: employees work longer hours than those for which they receive regular payment and the resulting time credits are added up and taken as time off in lieu, without any increase in the wage.
- Annual working time – this involves the volume of working time being laid down for an entire year. Once this has been worked, the employee can take time off with continued payment of wages or can work further hours under changed conditions.
- Trust-based flexitime – this is a very new and still rare form of working time arrangement whereby the employer largely relinquishes any control over employees' adherence to working times. What lies behind this is the realisation that what counts for a company is not the mere presence of its employees but their performance.

There is an increasing trend towards such new forms of flexible working time.

Many agreements introduce flexibilisation of working time in conjunction with measures to secure employment in the plant. The idea is that more flexible working time enables the volume of work to be adapted to changing conditions in the plant – for example enabling the company to cope better with fluctuations in orders. This can without doubt help stabilise the employment situation in a plant, but one should not expect such an approach to have any further impact on employment.

The second important objective for workforce representatives in this context is achieving a degree of control over their own working time. In the case of *flexitime*, employees can, within certain parameters, decide themselves when their daily work begins and ends and how many hours they will work on any particular day. In the case of *working time corridors* it is the employer or supervisor who initially lays down the actual working hours.

REDUCING DEPENDENCE OF EMPLOYEES

Workforce representatives have managed to establish a number of instruments in these agreements that effectively reduce the dependence of employees on employer decisions in relation to working time:

- Workforce representatives are involved in establishing specific working times through their right to be consulted, provide their consent or be involved in co-determining decisions.

- Changes in working times have to be notified in advance.
- Employees have individual rights of objection to the working times laid down by the employer.
- The working time corridor is subject to strict limits.
- The scope for employers to vary working hours is subject to time constraints.

Some agreements set up parity-based arbitration committees or other instruments in order, for example, to protect employees from unfavourable working times or excessive demands on the part of the employer. Furthermore a number of agreements try to strengthen the position of employees by giving them – especially in the case of the working time corridor – the right to object to specific requirements laid down by the employer. And finally, some workforce representatives have the right to be informed, consulted or even give their approval when specific working times are laid down for certain areas or individual employees.

Our evaluation shows that a wide range of arrangements have been agreed that aim to adapt working times flexibly to the particular requirements of plants and enable as balance to be achieved between the interests of employers and employees.

CLEAR DEFINITION OF OBJECTIVES

Plant regulations on working time aim to solve the following questions:

- What type of working time offers the best way of achieving employees' objectives?
- What form is best suited to the specific processes within the plant?
- What scope do collective agreements offer for regulating working time?
- What regulations are necessary for the particular plant?
- How far should flexible working time go?
- Who should reach the decision about laying down working times?
- What influence should the employees have on the process of laying down working times?
- How should working time be recorded?
- What instruments for regulating conflict are required?

For information on this issue please contact:
Hartmut-Klein-Schneider@boeckler.de
Fax: ++49-211-77.78.188

PERFORMANCE-RELATED PAY

Wage and salary levels in Germany are usually laid down in collective agreements at sectoral level. In some cases, though, they are covered by agreements signed between a trade union and an individual company. However, where no collective agreement exists, or an agreement expressly allows for supplementary company agreements, works council do have some scope to help determine pay rates within a company.

An examination of 127 agreements from 84 companies revealed a number of new approaches, arrangements and problems related to wages and salaries. Most of the agreements were concluded between 1993 and 1998 in the metalworking, banking and insurance, commercial, energy and water sectors, as well as public administrations.

BRIEF DEFINITIONS

The agreements covered the following forms of pay:

Piecework: payment according to volume of output. A standard time is calculated for completion of a task, and employees can influence their wages by the speed with which they work.

Premium bonus: a form of payment involving a bonus for performance over and above the minimum. This is calculated according to certain criteria, e.g. volume of work, quality, machine run times, energy savings, productivity, material utilisation.

Annual bonuses: these are paid on the basis of performance and/or results for the year in question. Bonuses are calculated on the basis of a performance assessment and also draw on quantifiable criteria such as contribution margin, turnover, number of new customers etc. Measurement and assessment are carried out in parallel.

Commissions: these are usually based on measurable results directly attributable to the individual concerned. This form of pay is largely used for customer-related activities in the commercial sector and is usually calculated as a percentage of turnover.

Performance bonus: this is an area of performance-related pay that is not measurable. Performance bonuses are based on regular – usually annual – in some cases stan-

dardised, assessment procedures involving an evaluation of performance over the previous period by an individual's superior or another person. The result is a monthly bonus payable for the period up till the next assessment. Performance bonuses are thus payable to individuals on the basis of past performance.

Job-specific and performance-related pay: is usually applied to staff members to whom the normal pay scale does not apply. It allows for the fact that individuals with very different levels of knowledge, experience, skills and willingness to perform can hold similar posts or carry out similar tasks. Employees appointed to similar posts do not receive the same salary – those bringing particular experience with them, taking on additional tasks or performing better receive a higher salary. Salaries are reviewed annually and raised by a »basic amount« related to general levels of pay increase, plus a performance-related amount calculated on the basis of an appraisal.

Profit-sharing bonus: this involves sharing in the success of the company.

For years, traditional forms of performance-related pay such as piecework or premium bonuses have been supplemented within companies on the basis of the provisions of collective agreements. New forms such as performance bonuses are now increasingly being used, and new approaches have also been developed, such as job-specific and performance-related pay. Furthermore, new, flexible forms of pay such as annual bonuses or profit-sharing bonuses have been added to traditional ones.

The agreements evaluated mainly contained annual bonuses, followed by bonuses, performance bonuses, piecework systems, commission and (as yet) rare forms such as job-specific and performance-related pay.

The intention and declared goal of both parties within companies is:

- To create additional performance incentives.
- Performance-related pay also often assumes a steering function – the idea being that it can be used to promote certain human relations or organisational goals.
- Finally it is supposed to be an instrument for increasing efficiency and improving co-operation.

THE PROBLEM OF COMPARABILITY

The main problem of performance-related pay is the fact that it is difficult to compare different performances or results with each other, record or measure them and attribute them to individuals or groups.

The agreements examined provide very pragmatic answers to these questions. There is often no attempt to clearly differentiate between performance and results, for exam-

ple in terms of the individual's ability to influence these. The only exception is traditional forms of performance-related pay such as piecework, where this is an important criterion.

One area the agreements focus on is calculation of the share of an individual or a group in performance or results. This is measured where possible. However, individual contributions to overall performance are often impossible to calculate in modern work processes, and the two parties frequently agree on sophisticated procedures for assessing performance.

One increasingly popular method is management by objectives, with employees committing themselves to reaching certain goals and pay being related to the extent to which they succeed. To determine the extent to which goals are met, the agreements again resort to methods of measurement and assessment.

The agreements provide answers to the following questions:

- How can workforce representatives influence the process of establishing and modifying performance expectations and requirements?
- How can they be provided with a degree of control over performance requirements?
- How can the preconditions for performance – e.g. size of work groups – be taken into account?
- How can impairment of employee performance through age or illness be allowed for?
- How can top performance be encouraged without being expected of all employees?
- How can employees' rights of complaint be guaranteed? What is the most efficient and unbureaucratic way to deal with complaints and conflicts?
- What is the most efficient and practicable way of ensuring workforce representatives have the right to receive information, be consulted, participate in decision-making, and intervene in and monitor relevant processes?
- How can company-level provisions be harmonised with collective agreements?

A number of fundamental questions such as, for example, the definition of performance, the motivating or demotivating impact of such pay schemes, and the relationship between performance-related pay and organisational and human resources development are not answered in the agreements. Actual practice within companies focuses on three aspects in particular:

- Functionality – i.e. feasibility of the objectives of such pay schemes,
- Acceptance levels amongst the workforce,

- Ease of implementation by those responsible within the company.

For information on this issue please contact:

Hartmut-Klein-Schneider@boeckler.de
Fax: ++49-211-77.78.188

Outsourcing was not, in the past, an area over which workforce representatives had any influence and decisions tended to be made by management alone. In recent years, however, works councils and personnel committees have been increasingly successful in having an impact on this area.

The 62 agreements examined can be divided into two categories of equal size:

1. A good 50 per cent of agreements are restricted to dealing with the consequences of outsourcing decisions for the employees affected.
2. In the case of the other 50 per cent, provisions allow for intervention at the earlier stage of *decisions* on outsourcing. This involves standardisation of the process by which the commercial viability of in-house manufacture is evaluated in comparison with outsourcing.

The motives leading to conclusion of these two categories of agreement probably differ accordingly. Whereas statutory provisions already require the *consequences* of outsourcing to be dealt with jointly by works council and management, documents establishing a procedure for involvement in *decisions* related to outsourcing are a result of voluntary agreement between management and workforce representatives.

Standardising procedures for future *decisions* on outsourcing is an ambitious undertaking, as it involves defining processes that have to take into account unknown factors. Both the time-scale and criteria agreed on have to allow for all eventualities related to the actual outsourcing issue when it arises. The following description concentrates on the contents of agreements on *decisions* about outsourcing.

ESTABLISHING GOALS

Virtually all the agreements examined laid down goals, with a third of them identifying competitiveness and employment as the top priorities. In such cases, there is clearly a consensus between the two parties that outsourcing may improve the economic efficiency of a company but needs to be examined in terms of its impact on the existing workforce.

In public administrations or companies, outsourcing is identified as a way of modernising operations while at the same time maintaining existing employment levels. Such agreements refer without exception to the problem of dwindling public resources. We also find liberalisation/deregulation of competition in some sectors cited as a reason for concluding the agreements.

LIMITATION TO ESSENTIAL CASES

What detailed arrangements are made with regard to outsourcing? Most of the agreements cover all tasks that are outsourced. But there then usually follow restrictions of various kinds. Thus, involvement of workforce representatives is limited to cases that could lead to redundancies or major restructuring. And there is often a further restriction to *existing* tasks. Such formulations mean that *additional or new* tasks in the company are excluded from the agreement. And frequently the agreement only applies to *ongoing or regular* outsourcing. The agreements usually allow for capacity peaks to be covered through outsourcing.

Application of the agreement is often also restricted to cases that affect the *overall employment situation* in the company. Outsourcing that has no negative impact on jobs can thus be decided on by the management alone. Such restrictions reveal the fact that the parties concerned have from the outset considered the specific situation of companies where outsourcing is not a problem and those where it constitutes a decision of importance for its future.

INSOURCING AS AN OPTION FOR WORKFORCE REPRESENTATIVES

It is interesting to note that some of the agreements extend the scope to cover insourcing as well. This is seen as involving both *retrieval* of tasks formerly outsourced and also the development of *extra* tasks or the acquisition of *additional* orders. Insourcing can help secure jobs or even expand employment within a company. Involvement of workforce representatives in selecting and examining tasks to be taken over by the company offers considerable scope for active involvement of the works council or personnel committee. Formally this represents a strong participatory right in the commercial affairs of the company.

OUTSOURCING: FROM HIVING-OFF TO THE FORMATION OF SUPPLIER GROUPS

The agreements also lay down *how* tasks are to be outsourced – i.e. what forms of outsourcing are to be selected. This clearly demonstrates the fact that »outsourcing« is a general term covering a wide range of measures involving *utilisation of external sources*[5]. Thus there is a whole series of possible gradations between full in-house manufacture and full outsourcing. The agreements often cover outsourcing in the classic sense – i.e. relinquishing of in-house manufacture in favour of buying in the services required. But there are also other forms of outsourcing such as the hiving-off of internal departments, the formation of supplier groups or cooperative ventures, or the formation of centres. These various forms of outsourcing differ, amongst other things, in their impact on employment – and here both the short and medium term consequences have to be taken into account.

Thus the formation of centres can, in some circumstances, herald redundancies if it emerges that the units thereby created are not operating economically compared with their competitors. And full outsourcing usually entails loss of the jobs involved, whereas hive-offs usually entail poorer pay conditions.

A central point in the agreements consists of the criteria for allowing outsourcing to take place, on the basis of which the final decision is taken.

EXAMINING ECONOMIC VIABILITY

The wide variety of criteria included in the agreements shows just what an ambitious task it is to try to identify in advance the factors to be considered in reaching a sensible decision. In virtually all the agreements *economic viability* is an important criterion for deciding whether outsourcing should or should not be permitted. This is usually viewed in terms of cost advantages. Many agreements also detail the cost categories, in some cases according to frequency[6], in others according to type[7].

The purpose of detailing all the costs involved is to avoid making wrong decisions when comparisons are being drawn up. Inadequate calculation of costs can result in an internal department emerging in such a poor light compared with an external supplier that outsourcing seems inevitable. However, it is important to include those costs gen-

5 Oursourcing = outside resource using.
6 One-off costs and regular costs
7 Overheads, levies, cost of reducing capacity, cost of compensatory payments, cost of placing and monitoring orders etc.

erated by the outsourcing itself – e.g. the monitoring and coordination costs – as well as those engendered by compensation schemes when redundancies occur.

In addition to the costs, the agreements also identify many *qualitative criteria* that have to be taken into account in making outsourcing decisions. Thus many strategically important aspects have to be examined, such as the impact on product quality, risks to the company's core business, the danger of a loss of expertise or of future flexibility. Thus works councils and employers stress the fact that cost savings per se do not ensure company survival and maintenance of competitiveness.

ENSURING SOCIAL ACCEPTABILITY

The agreements also lay down criteria aimed at ensuring the greatest possible degree of *social acceptability with regard to the workforce in the company that is considering outsourcing.* The idea is to act quickly to save employees from negative consequences of such decisions. In extreme cases the interests of the employees are catered for to such an extent that outsourcing is only permitted if the quality and number of jobs is not (substantially) affected.

Social acceptability with regard to the employees of the external company also plays a role in the agreements. Such provisions aim to protect the workforce of the external companies to which the orders are to be given. They consist largely of requirements for the external supplier to adhere to statutory regulations and collective agreement provisions. A demand for certain minimum social standards to be adhered to is also articulated. Foremost in the minds of those formulating such criteria is the distorting effect that different pay rates and working conditions can have on competition. This, in turn, protects employees in their own company.

POSSIBILITY OF CORRECTION

In a good third of the agreements we found reference to the possibility of correction of internal performance. The internal department is thus given an opportunity to optimise its operations if cost comparisons come out in favour of the external supplier. The final decision is then only made on the basis of the (possibly) revised data. For workforce representatives, such a possibility has both advantages and disadvantages. On the one hand, the internal supplier has a greater chance of winning the contract, but on the other hand, such optimisation usually comes hand in hand with rationalisation mea-

sures that can increase the employees' workload and in some cases lead to redundancies.

INVOLVEMENT OF WORKFORCE REPRESENTATIVES

How are workforce representatives involved in the decision-making process? More than half the agreements we examined did not lay down any decision-making process but merely contained general clauses or declarations of intention. The other half laid down relatively precise procedures and participation rights for workforce representatives along the following lines:

1. Provision of information by management to workforce representatives about the planned outsourcing prior to the start of negotiations with the external company.
2. Availability and explanation of important documents (assessment of economic viability, impact on workforce and others as appropriate).
3. Possibility of workforce representatives putting forward suggestions on how to optimise internal procedures.
4. Discussion involving workforce representatives and possible examination of suggestions.
5. Decision-making with or without involvement of workforce representatives.

In some cases, the individual steps are laid down precisely, including timings and deadlines for objections to be raised. Sometime, too, provisions are made for a project group or joint committee to be formed.

It is worth noting that some agreements provide for works councils and personnel committees to be granted co-determination rights that go beyond their statutory right to receive information. This shows that some company managers are interested in achieving a cooperative approach to commercially necessary restructuring processes, or are so concerned to ensure smooth implementation that they allow the works council to exert an influence on the decision-making process. These represent highly demanding new tasks for works council and personnel committee members.

For information on this issue please contact:
Susanne-Gesa-Mueller@boeckler.de
Matthias-Mueller@boeckler.de
Fax: ++49-211-77.78.188

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