

Works Constitution Act (October 11, 1952)

Abstract

As mentioned in the correspondence between Konrad Adenauer and Hans Böckler, the compromise that Chancellor Adenauer negotiated in 1950/51 preserved co-determination on a basis of a parity model for the coal and steel industries but not beyond. At the same time, the two sides of industry and politicians were anxious to establish a law that gave workers and their representatives a measure of participation in the running and development of companies of all sizes. Accordingly, a Works Constitution Act [Betriebsverfassungsgesetz] was hammered out and finally put in the statute book on October 14, 1952. After some general introductory clauses, the following paragraphs discuss the composition and terms of election of a works council. The third section lays down the rules by which the works council conducts its business, followed by a fourth section that summarizes the rights and duties of the works council, covering social and welfare policies, personnel and economic matters. Section 5 finally deals with the rule and its implications that one third of the members of the supervisory board must be employees and workers. With the benefit of hindsight, it may be said that the Works Constitution Act did give the workforce important rights of information and consultation and together with the Co-determination Law for the coal and steel industry is generally seen as a system that helped forge compromises between “labor and capital”. It facilitated the settlement of labor disputes before the unions resorted to strikes followed by lockouts by the employers. In short, the system secured the relative peace that West Germany enjoyed in the postwar decades if compared, for example, to Britain where “them-and-us” attitudes continued, and no form of co-determination was ever instituted. Nor did Britain adopt a “partnership” ideology, promoted by liberal entrepreneurs and the employers’ association that was responsible for negotiating wages and work conditions at the level of individual federal states.

Source

FIRST PART

General regulations

I

Works councils shall be formed in the establishments in accordance with this Act.

§ 2

The duties of trade unions and employers’ associations shall not be affected by this Act.

PART TWO

The works council

FIRST SECTION

Composition and election

§ 6

All employees who have reached the age of 18 and are in possession of their civil rights are entitled to

vote.

§ 7

All eligible voters who have reached the age of 21, have been employed by the company for one year and have the right to vote for the German Bundestag are eligible. In exceptional cases, the requirements of one year's service in the company and the right to vote for the German Bundestag may be waived if an agreement is reached between the majority of the employees and the employer.

[...]

§ 9

The works council shall exist in companies with As a rule

5 to 20 employees entitled to vote: one person (chairman of the works council),
21 employees entitled to vote up to 50 employees from 3 members,

51 to 150 employees from 5 members,
151 to 300 employees with 7 members,
301 to 600 employees with 9 members,
601 to 1000 employees with 11 members,
1001 to 2000 employees from 13 to 17 members,
2001 to 3000 employees from 15 to 19 members,
3001 to 4000 employees from 17 to 23 members,
4001 to 5000 employees from 19 to 25 members,
5001 to 7000 employees from 21 to 29 members,
7001 to 9000 employees from 23 to 31 members,
over 9000 employees from 25 to 35 members.

§ 10

[...]

(4) The sexes shall be represented within the groups in proportion to their numbers.

§ 13

(1) The works council shall be elected by secret and direct ballot.

[...]

§ 19

(1) The election of the works council may not be hindered by anyone. In particular, no employee may be restricted in exercising the right to vote and stand for election.

The election of the works council may not be influenced by inflicting or threatening disadvantages or by granting or promising advantages.

The employer shall bear the material costs of the election. Necessary absence from work as a result of exercising the right to vote, participating in the works meeting referred to in §16 or serving on the election committee shall not entitle the employer to reduce the employee's remuneration.

§ 20

[...]

(2) Employees under the age of 18 shall elect a youth representative body in establishments employing at least five young people. This shall exist in establishments with

5 to 50 young employees from one youth representative,
51 to 100 young employees from 3 youth representatives,
more than 100 young employees from 5 youth representatives.

Employees from the age of 16 to 24 may be elected as youth representatives. Paragraph 1 sentences 2 and 3 apply accordingly.

[...]

THIRD SECTION

Management

§ 27

(1) The works council shall elect a chairman and deputy chairman from among its members. If the works council consists of representatives of both groups, the chairman and his deputy shall not belong to the same group.

(2) The Chairman of the Works Council or, if he is prevented, his deputy shall represent the Works Council within the framework of the resolutions adopted by it.

§ 28

If the Works Council has eleven or more members, it shall elect three committee members from among its members by a simple majority of votes. The committee members, together with the chairman and the deputy chairman, shall form the works committee. This committee shall conduct the day-to-day business. The works committee must consist of members of the groups represented in the works council (§ 10).

[...]

§ 37

(1) The members of the Works Council shall perform their duties unpaid as an honorary office.

(2) Missing working time which, according to the scope and nature of the business, is necessary for the proper performance of the tasks of the works council shall not entitle the employer to reduce the remuneration.

(3) Members of the Works Council shall be released from their professional activities if and to the extent that this is necessary for the proper performance of their duties in view of the scope and nature of the business.

PART FOUR

Employee participation and co-determination

First section

General

[...]

§ 51

The employer and the works council shall ensure that all persons working in the company are treated in accordance with the principles of law and fairness, and in particular that no different treatment is given to persons on the grounds of their origin, religion, nationality, origin, political or trade union activity or attitude, or gender. Employers and works councils shall refrain from any party-political activity in the workplace.

§ 52

(1) Decisions taken jointly with the works council shall be implemented by the employer unless otherwise agreed in individual cases. The works council may not intervene in the management of the enterprise by unilateral action.

(2) The works agreements shall be adopted jointly by the employer and the works council. They shall be recorded in writing, signed by both parties, displayed by the employer in a suitable place in the company and maintained in a legible condition.

[...]

§ 54

The works council has the following general duties:

- a) to apply to the employer for measures that serve the company and the workforce;
- b) to ensure that the laws, regulations, collective agreements and works agreements in force for the benefit of employees are implemented;
- c) to receive complaints from employees and, if they appear to be justified, to work towards their elimination through negotiation with the employer;
- d) to promote the integration of severely disabled persons and other persons in need of special protection into the company.

(2) The documents required for the performance of its duties pursuant to subsection (1)(b) shall be submitted to the works council upon request.

[...]

SECOND SECTION

Social affairs

§ 56

In the absence of a statutory provision or collective agreement, the Works Council shall have a say in the following matters:

- a) Start and end of daily working hours and breaks;

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- b) the time and place of payment of wages;
 - c) Establishment of the vacation schedule;
 - d) Implementation of vocational training;
 - e) management of welfare institutions whose scope is limited to the business or enterprise, regardless of their legal form;
 - f) questions concerning the order of the enterprise and the behavior of the employees in the enterprise;
 - (g) regulation of piece rates and piece rates;
 - h) Establishment of remuneration principles and introduction of new remuneration methods.

(2) If agreement cannot be reached on the above issues, the conciliation body shall make a binding decision to the extent that a settlement pursuant to Section 50 (3) cannot be reached.

§ 57

In particular, the following can be regulated by company agreement:

Measures to prevent occupational accidents and health hazards;

Establishment of welfare institutions, the scope of which is limited to the business or enterprise, regardless of their legal form.

[...]

THIRD SECTION

Personnel matters

§ 60

(1) In establishments with, as a rule, more than twenty employees entitled to vote, the works council shall participate and have a say in personnel matters in accordance with the provisions of this section,

(2) Personnel matters within the meaning of this Act are:

Hiring, regrouping, transferring, and firing.

(3) A transfer shall not be deemed to be the assignment of another job within the same independent operating department or the same company at the same location under the same working conditions if this does not involve a worse position for the employee. If, due to the nature of their employment relationship, employees are not normally employed at the same place on a permanent basis, the determination of the place where the work is to be performed in each case shall not be deemed to be a transfer within the meaning of this Act. Further details may be determined by collective agreement or works agreement.

[...]

§ 66

(1) The works council shall be heard prior to any dismissal.

Is it to be expected that in plants

- a) with usually more than 20 and less than 50 employees more than 5 employees,
- b) with, as a rule, at least 50 and less than 500 employees, 10 per cent of the employees regularly employed in the enterprise or more than 25 employees,
- c) with usually at least 500 employees, at least 50 employees can be hired or must be dismissed, the employer must inform the works council as early as possible and consult with the works council on the type and scope of the required hiring or dismissals and on the avoidance of hardship in the event of dismissals

[...]

FOURTH SECTION

Economic affairs

§ 67

In order to promote cooperation based on trust between the works council and the employer and to ensure mutual information in economic matters, an economic committee shall be formed in all companies with, as a rule, more than one hundred permanent employees.

The Economic Committee is entitled to be informed about the economic affairs of the company on the basis of the documents, provided that this does not jeopardize the company's trade and business secrets. The members of the Economic Committee shall maintain silence on matters which may affect the competitiveness of the enterprise.

Economic matters within the meaning of paragraph 2 include:

- a) Fabrication and working methods;
- b) the production program;
- c) the economic situation of the company;
- d) the production and sales situation;
- e) other processes which significantly affect the interests of the company's employees.

[...]

§ 72

(1) In the case of planned operational changes which may result in significant disadvantages for the workforce or significant sections of the workforce, the works council shall have a right of co-determination in establishments with generally more than twenty employees entitled to vote. Changes to operations within the meaning of sentence 1 are deemed to be:

- a) Restriction and closure of the entire operation or significant parts of the operation;
- b) relocation of the entire plant or significant parts of the plant;
- c) Merger with other companies;

d) fundamental changes in the purpose of the business or the business facilities, unless they are obviously due to a change in the market situation;

e) introduction of fundamentally new working methods, unless they obviously correspond to or serve technical progress.

(2) If a reconciliation of interests cannot be achieved, the employer or the works council may request an official body to mediate. If this is not done or if the attempt at mediation is unsuccessful, the employer or the works council may call upon a mediation body which, unless otherwise agreed, shall consist of two assessors and an impartial chairman. One assessor shall be appointed by the employer and one by the works council and, if possible, shall be drawn from among the employees. Both parties shall agree on the person of the chairman. If no agreement is reached, the chairman shall be appointed by the President of the Higher Regional Court. § Section 50 (4) sentence 3 and Sections 53 and 55 shall apply mutatis mutandis.

[...]

FIFTH SECTION

Participation of employees in the Supervisory Board

§ 76

(1) One third of the supervisory board of a stock corporation or a partnership limited by shares must be composed of representatives of the employees.

[...]

Source of the original German text: *Bundesgesetzblatt* Nr. 43, Bonn, 14. Oktober 1952, pp. 681–694.

Available online:

https://www.bgbl.de/xaver/bgbl/start.xav#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl152s0681.pdf%27%5D__1695244327396

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