

DECENTRALISATION OF COLLECTIVE BARGAINING IN GERMANY: FRAGMENTATION, COORDINATION AND REVITALISATION*

by Thomas Haipeter, Steffen Lehndorff

From the 1990s, decentralization has become an important feature of German industrial relations. While the overall institutional architecture of collective bargaining has not been changed, some of its crucial elements have got under heavy pressure. In major parts of the service sector, the impact of national or regional bargaining has been weakened by the *de facto* abolition of the extension of sectoral agreements.

Equally important, starting from the East German metalworking in the early 1990s and gradually spreading to manufacturing and service industries in the whole country, with particular vigour in the first half of the 2000s, local derogations from sectoral agreements came close to call into question the rationale behind sector-wide collective bargaining. Thus, the overall feature of the decentralization process until the mid-2000s could be characterized as a trend towards weakening and fragmentation. The endangering of collective bargaining entailed in this process, however, triggered a countermovement of stricter coordination with the unions, and strengthening of local bargaining capacities. The latter includes initiatives for a greater involvement of trade union rank and file. The present article provides an overview on these changes and their contradictory implications, and highlights the experience gathered in the metalworking industry and in the hospital sector.

A partire dagli anni Novanta, il decentramento è diventato un importante elemento caratteristico del sistema delle relazioni industriali in Germania. Se l'impianto istituzionale generale della contrattazione collettiva non è cambiato, alcuni dei suoi elementi fondamentali sono stati sottoposti ad una forte pressione. Negli ambiti più significativi del settore dei servizi, l'impatto della contrattazione di livello nazionale e regionale è stato indebolito dall'abolizione di fatto dell'estensione degli accordi di categoria.

Di pari importanza, le deroghe di livello locale rispetto agli accordi di categoria – proprie inizialmente del solo comparto industriale metalmeccanico nella Germania dell'Est al principio degli anni Novanta, poi diffuse gradualmente ai comparti manifatturiero e dei servizi nell'intero paese, con particolare slancio nella prima metà degli anni Duemila – sono quasi arrivate a mettere in discussione la *ratio* alla base della contrattazione collettiva di settore. La caratteristica generale del processo di decentramento fino alla metà degli anni Duemila può essere quindi descritta come una tendenza verso l'indebolimento e la frammentazione. Tuttavia, la minaccia che questo processo comportava per la contrattazione collettiva ha innescato una spinta di senso contrario verso un coordinamento più stretto con i sindacati e verso un rafforzamento delle capacità della contrattazione di livello locale. Quest'ultima include iniziative a favore di un più ampio coinvolgimento della base sindacale. Il presente articolo fornisce una panoramica di questi cambiamenti e delle loro implicazioni contraddittorie, ed evidenzia l'esperienza maturata nel comparto industriale metalmeccanico e nel settore ospedaliero.

1. INTRODUCTION

From the 1990s, decentralisation has become an important element in German industrial relations. By and large, the basic features of the institutional architecture of

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collective bargaining have remained unchanged. Its procedures and contents, however, are in flux. The overall feature of these changes can be characterised as a broader trend of weakening and fragmentation. While in general, 'win-win' has not been the objective of changes in the system they may imply a process of empowerment of local bargaining capacities. What can be observed in particular is that, in some cases, decentralisation has triggered initiatives for a greater involvement of trade union rank and file.

In the present report we provide an overview on these changes and their sometimes contradictory implications. After a broad brush overview on their economic and political background in the 1990s and early 2000s, we cover the most important contributions of collective bargaining at various levels to the stabilisation of the German labour market in the present crisis (PAR. 2). In the 3rd and 4th paragraph we focus on decentralisation of collective bargaining in the metalworking industry and in the hospital sector. Each of the sectors is representing a specific variant of decentralisation, a coordinated or organised decentralisation in the former and a fragmenting decentralisation in the later case. We will analyse how the unions cope with the challenges going along with decentralisation. In both industries the unions have developed new forms of coordination and collective bargaining that have proven to be a necessary precondition for preventing decentralisation from becoming a driver of erosion of collective bargaining.

2. HISTORICAL BACKGROUND: CHANGES IN THE GERMAN SYSTEM OF INDUSTRIAL RELATIONS SINCE THE 1990s

2.1. *Political background*

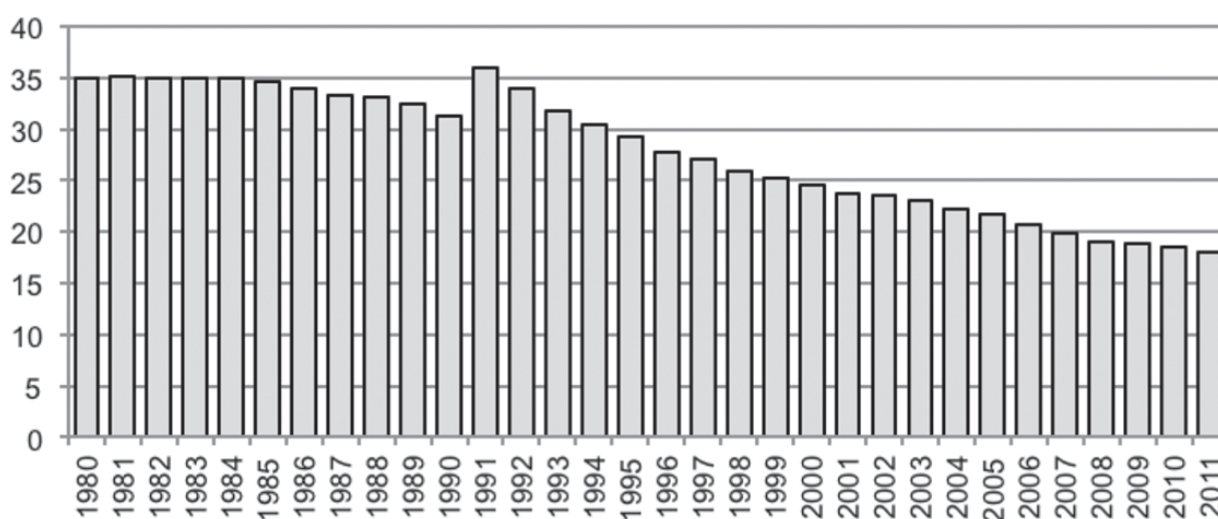
The industrial relations system which used to be a cornerstone of the , 'traditional' or 'classical' German model of capitalism from the 1950s to the 1980s was based on sector-wide collective agreements (mostly, if not always, at regional levels) concluded between strong trade unions and employers' associations that covered the vast majority of companies in a given industry. As wages were taken out of market competition, the only way firms, including the export-oriented manufacturing sector with its many medium-sized family-owned manufacturing firms (*Mittelstand*), could obtain competitive advantages was by improving quality and efficiency. For this reason, specialisation in high-quality, high-value products became a question of survival at an early stage. The member unions of the German trade union confederation and the employers' associations worked very closely with each other on coordinating their collective bargaining policy. Works councils provided a separate channel of workers' interest representation ('dual channel' system of interest representation), based on general elections within establishments. Works councils have codetermination rights with regard to hiring, dismissals, training, or overtime work and have the right to bargain except on those matters that are usually covered by collective agreements. The division of labour between works councils and unions was intended to take conflict out of the workplace. Müller-Jentsch (1991) coined the term 'conflictual partnership' to characterise the two-way recognition of interests involved.

The first cracks in the German employment model became visible at the end of the 'golden age' of post-war capitalism. As in many other Western industrialised countries, there emerged influential calls for a radical market or liberal approach. However, it was not until German unification that the balance of power changed substantially. In the course of the rapid privatisation process in the East German Länder, it became obvious that this

crucial element of the old German model had not taken root in the Eastern part of the country. While it was primarily the large West German manufacturing companies that stuck to industry-level bargaining, these were small in number compared to the small and medium-sized West German outsourced subsidiaries and home-grown small East German firms, the bulk of which either left the employers' associations or did not join them in the first place.

Thus the shock of German unification and its economic and political consequences triggered a rapid change in the political climate. The political and economic elites, along with key opinion formers, now shared the belief that the only way of solving Germany's problems was to adopt the harsh prescriptions of neo-liberalism. These were held to include restricting the earnings of the vast majority of workers, cutting back on welfare state benefits and government expenditure as a share of GDP, and deregulating the labour market, giving priority to company-level arrangements geared to undercut industry-wide collective agreements. The turn of the political tide proved to be particularly harmful for the trade unions. They started to lose members in the 2nd half of the 1980s, a trend which accelerated (after a shift upwards due to the partial integration of East German unions with high density rates in 1990) from the mid-1990s. On the eve of the crisis net union density had dropped to 18% which is below EU-27 average (European Commission, 2012).

Figure 1. Net trade union density, Germany 1980-2011*



* Western Germany before 1990.

Source: ICTWSS Database.

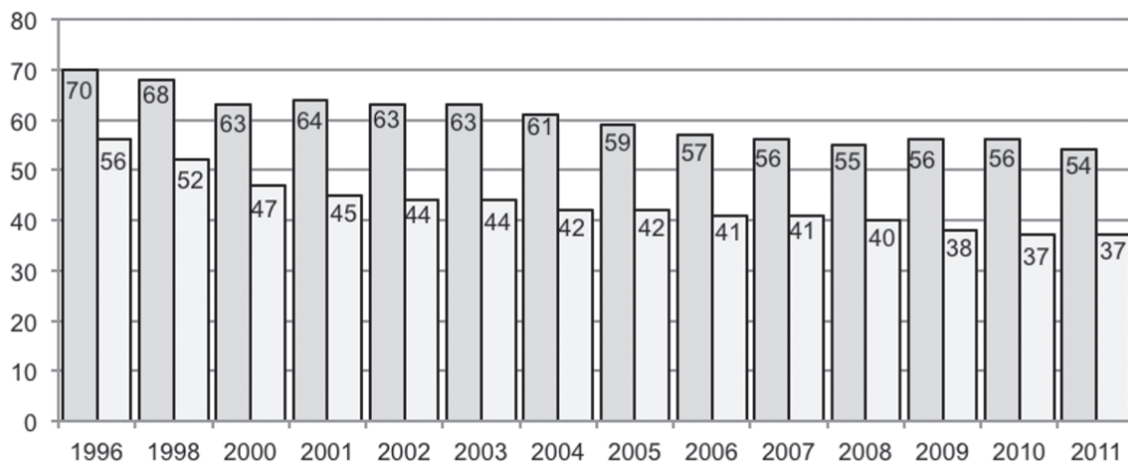
2.2. Overall trends in collective bargaining before the crisis

Despite some important innovations (major reforms of the pay grading and remuneration systems in the public service and in the metal industry, for example), by far the dominant trends within the German industrial relations system are those leading to its erosion. The

associations representing capital and labour, and with them the institutions responsible for sustaining the industry-wide collective agreement system, show a decline in membership and coverage. It should be noted that Germany is by far not the only country where trade union membership has declined over recent decades. What is less common, however, is a drop in membership roughly at a similar pace experienced by employers' associations. Moreover, some of these associations established a special option for employers to join the associations without being forced to submit to collective agreements (Haipeter, Schilling, 2006).

As a consequence and other than in most EU-15 countries, coverage by collective agreements declined along with trade union decline and the declining membership of the employers' associations (for what follows cf. Ellguth, Kohaut, 2012 and ICTWSS Database). While in the mid-1990s about 76% of German employees were covered by collective bargaining (78% in the West and 68% in the East), coverage dropped continuously to an average of roughly 60% in 2011 (61% in the West and 49% in the East)¹. The majority of these workers are covered by sector-level collective agreements; in 2011, firm-level agreements covered 7% of West German and 12% of East German workers, a share which has not changed dramatically since the mid-1990s (FIG. 2). The numbers are even lower if one excludes the public sector. Looking at private sector employees only, 48% of West German and 30% of East German workers were covered by sector agreements in 2011.

Figure 2. Coverage of employees in West and East Germany by sector-level collective agreements (1996-2011, in %)



Source: IAB Aktuell 1 giugno 2012 (IAB Establishment Panel).

It is true that the absence of coverage may, to some extent, be outweighed by the existence of a works council, i.e. the second pillar of workers' interest representation. However, the overall share of workers in establishments with works councils is also

¹ As small firms are underrepresented in the employers' associations, the share of firms covered by collective agreements is much lower, namely 34% in Western and 21% in Eastern Germany (Ellguth, Kohaut, 2012).

dropping, with no major East-West gaps in this respect. While it is stable at the very level of roughly 90% in large establishments (500+ employees) and at a low level of roughly 10% in small establishments with less than 50 employees, it has been on the decline in medium sized establishments from about 70% in the mid-1990s to some 60% in 2011. As a consequence, 34% of all West German workers in the private sector were neither covered by any collective agreement nor represented by a works council in 2011, in private services it were even 39% (the respective numbers for East Germany are 47% and 41%) (Ellguth, Kohaut, 2012).

Given this overall picture, the lack of institutional defences in the German industrial relations system against outsiders intent on undercutting collectively-agreed labour standards becomes decisive. Moreover, the scant defences that once existed have been demolished by political intervention. Firstly, at the instigation of the employers' associations, the state has virtually given up using its power to declare collective pay agreements generally binding. Secondly, the privatisation of publicly-owned companies and the competitive tendering for public services have given rise to competition between companies covered by collective agreements and those without coverage. Thirdly, as a result of budgetary pressures, bargaining structures in the remaining areas of the public sector have become fragmented. It is only over the past few years and in a limited number of industries that minimum wages have been extended by the Federal Ministry of Labour. However, the introduction of a general statutory minimum wage is a project of the new government.

2.3. Interaction with 'labour market reforms'

The changes within the system of collective bargaining have interacted with other changes in the labour market, most notably with the substantial changes in labour market regulation over the past ten years. As in many other countries, precarious employment relationships such as agency and temporary work and fixed-term employment have increased over the fairly long term. One German particularity, however, is the boom in marginal part-time jobs for which the German tax and social security system offers considerable incentives (so-called mini-jobs). This segment now accounts for around one fifth of all employees and has made a considerable contribution in recent years to the development of a low-wage sector (Bosch, Kalina, 2010).

The increase in precarious employment relationships and the dynamic of the low-wage sector were given a decisive boost by the labour market reforms within the co-called 'Agenda 2010' in 2004 ff.. Originally, their main intention was to modernise job placement services. It was not long, however, before there was a shift of focus towards the introduction of new labour market policy instruments, the purpose of which was to increase the pressure on the unemployed to accept job offers. This was to be achieved by simultaneously reducing benefit levels and strengthening controls and sanctions. This same shift of emphasis applies to the centrepiece of these labour market reforms, namely the restriction of entitlement to unemployment benefit to one year. Anyone remaining unemployed for more than a year now receives a means-tested flat-rate benefit roughly equivalent to what used to be known as social assistance (Knuth, 2007).

In addition, the pressure on recipients of the flat-rate unemployment benefit to accept any job irrespective of their level of qualification has been considerably increased. Moreover, wages up to 30% below the collectively agreed rate are now considered reasonable. This

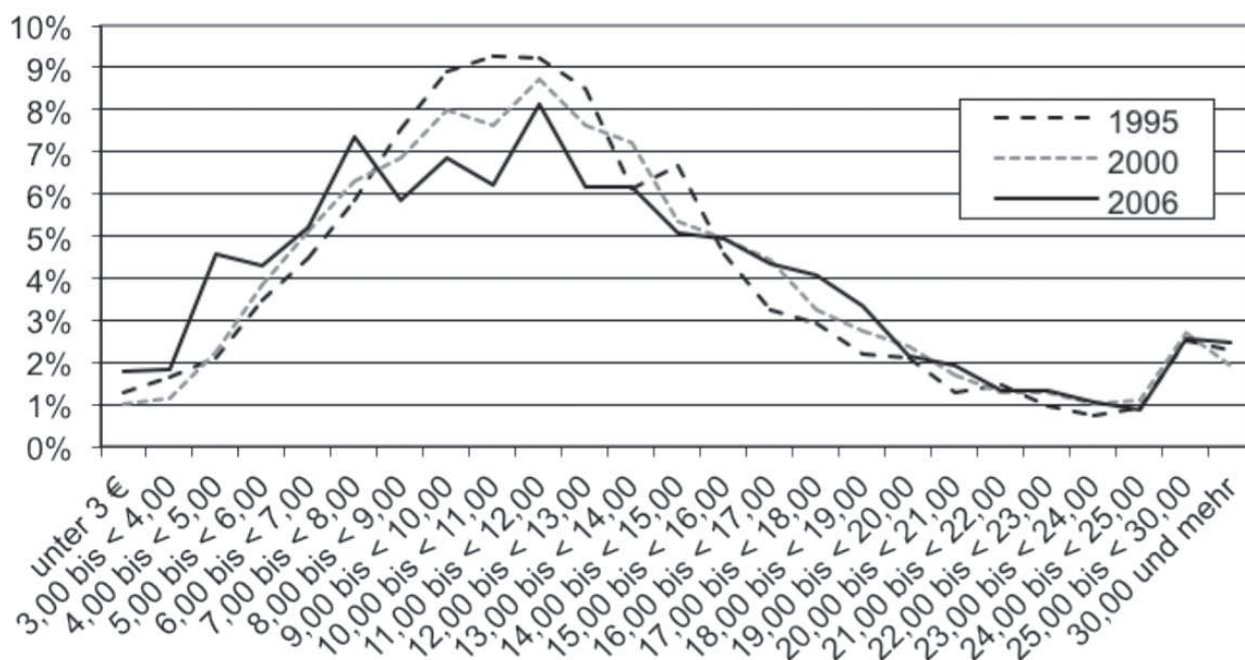
regulation has done much to encourage the development of a low-wage sector and at the same time is undermining the system of industry-wide collective agreements.

Moreover, the *de facto* abrogation by the German government of the European directive on equal pay in temporary agency work, which included an ‘unless otherwise agreed in collective bargaining’ clause, paved the way for dumping-level collective agreements in this sector (Weinkopf, 2009). The number of temporary workers doubled between 2000 and December 2010, reaching almost 3 per cent of all employees (BA, 2011). In 2006, temporary agency staff earned on average only just over half as much per hour as standard workers (Destatis, 2009).

2.4. Impacts of the upheaval in collective bargaining on wages before the present crisis

The gradual erosion of the collective bargaining system in interaction with the reforms, or deregulation, of other labour market institutions had substantial impacts on pay and working hours. In the decade prior to the crisis German workers experienced an overall stagnation, including periods of decline, of their (price-adjusted) average pay, which was a unique feature in Europe. Most notably, it was the growth of the low-wage sector which was behind the average. The number of employees earning less than two-thirds of median pay had risen by half since the mid-1990s, accounting for 22 per cent of all employees on the eve of the crisis (FIG. 3).

Figure 3. The rise of the low wage sector, Germany 1995/2000/2006*



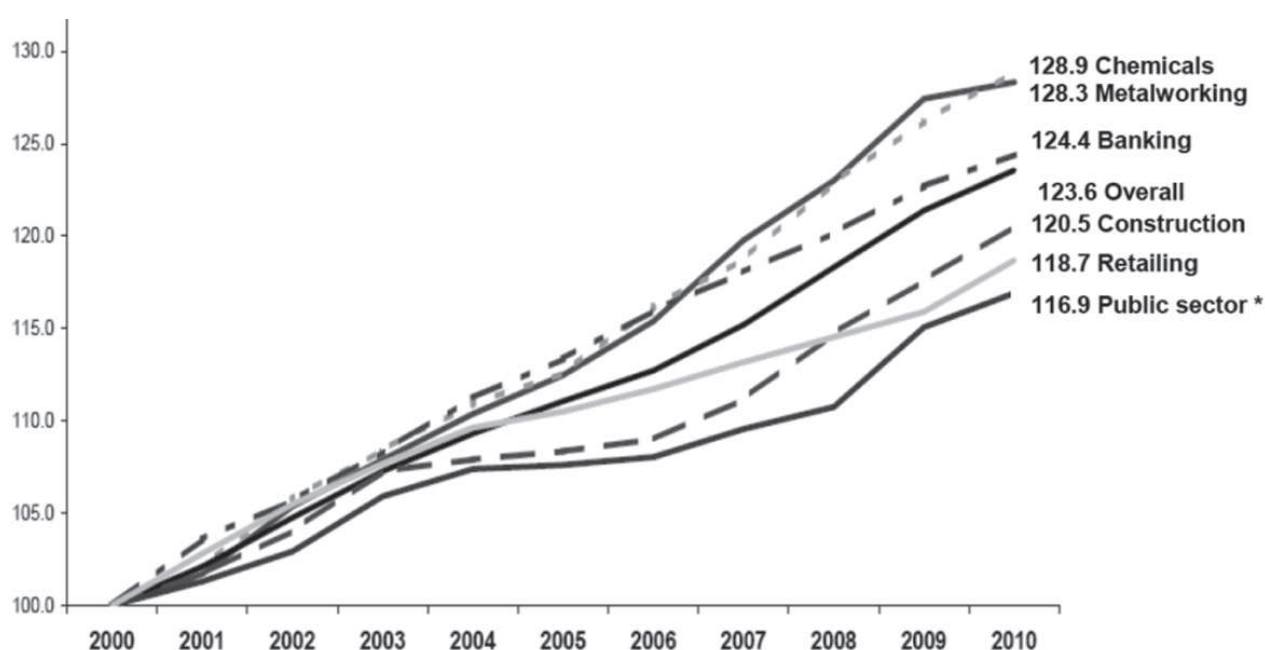
* Wage brackets as per cent of all workers.

Source: Bosch, Kalina (2010).

The growth of the low wage sector reflects both the fragmentation within and

the weakening effects of collective bargaining. Looking at collective agreements, it is noteworthy to what extent differences in pay across industries increased over the past decade. Union influence is highest in industries exposed to globalisation pressures, and much weaker in industries dependent solely on the internal market or public budgets. While the collective bargaining actors in the core manufacturing industries have managed to agree wage increases slightly above inflation rates, real wages in large areas of the public and private service sectors are stagnating or even falling, due largely to the blocking of negotiations over long periods, for example in retail (FIG. 4).

Figure 4. Nominal wages as agreed in collective bargaining*

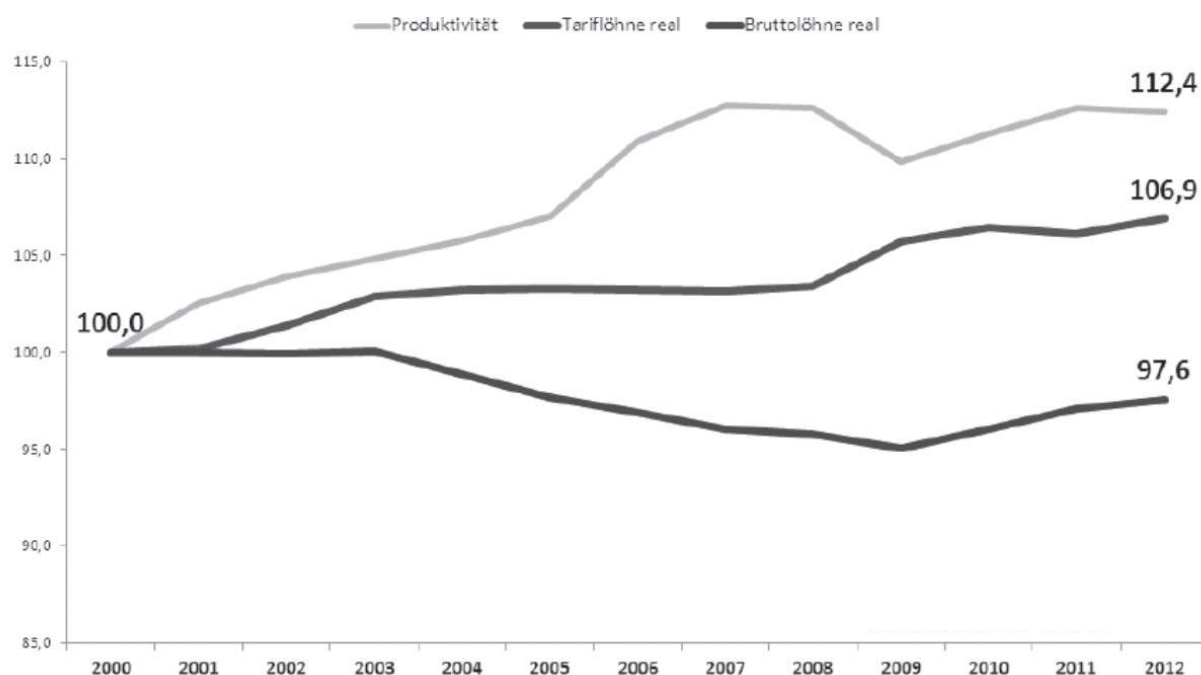


* West Germany, 2000-10.

Source: Bispinck (2012).

Beyond collective bargaining, however, there are growing low-wage sectors, such as food processing, without virtually any associations on either side in a position to negotiate. Moreover, powerful capital groups in outsourcing markets such as call centers and former monopoly markets such as mail services are actively fostering competition based on low wages, benefitting from either the absence of collective agreements or the existence of minority 'unions' geared to undercut pay levels agreed with DGB unions. In consequence, there is a *dual* trend of, first, diverging *agreements* on wages across industries and, second, of diverging developments of collectively *agreed* wages on the one hand, and of *actual* pay on the other (FIG. 5).

Figure 5. Productivity, real wages as agreed in collective bargaining and actual real wages (per employee, 2000 = 100)

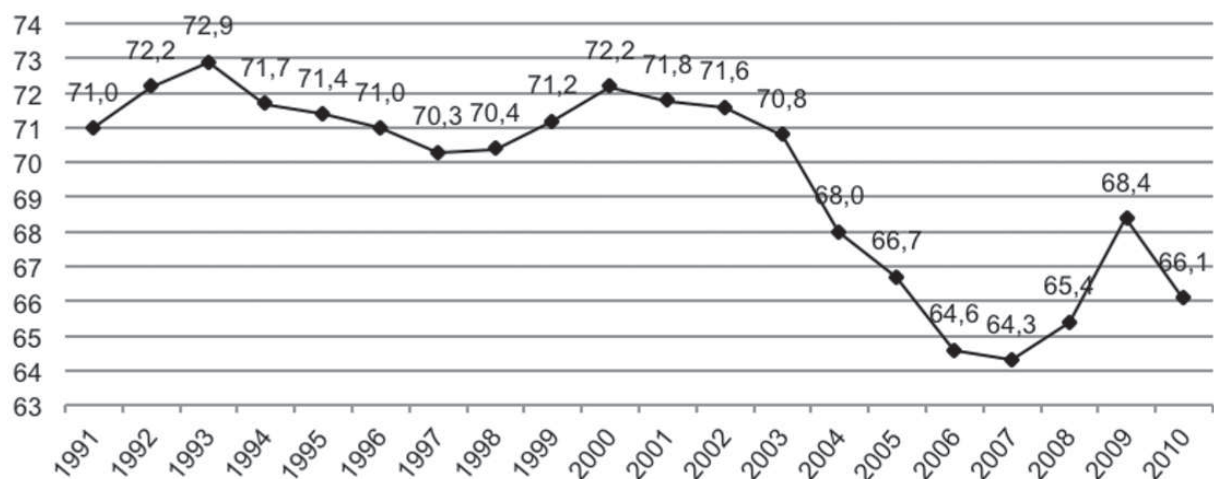


Source: Bispinck (2012).

Again, it is noteworthy to mention the fact that this so-called ‘negative wage drift’ has been an extraordinary development by European standards (European Commission, 2012, p. 31).

As indicated in FIG. 5, stagnating or even declining average rates of pay contrasted with labour productivity that was rising steadily (albeit not excessively) in the pre-crisis years. As a result, the adjusted share of wages and salaries declined by more than 6 percentage points from the start of the decade to the eve of the crisis (FIG. 6). This dynamic of mounting inequality was among the most pronounced in the EU (ILO, 2010).

Figure 6. Wage share, Germany, 2000-10 (percentage of GDP)



Source: ILO (2010).

2.5. *Fresh dynamics in collective bargaining since the beginning of the crisis*

The interaction of weakening and fragmentation of collective bargaining on the one hand, and stagnation or drop of average wages on the other, was interrupted by the crisis in 2008-09. Contrasting to many other European countries, the crisis sparked a reactivation of collaboration between collective bargaining actors at various levels, which, in turn, encouraged trade unions to take a more offensive stance in collective bargaining on wages from 2010. Both developments gave way to what over the past few years has been widely perceived as the 'German jobs miracle'.

The collapse of the German economy from September 2009 onwards was particularly dramatic owing to its extreme dependence on exports and was surpassed only in countries where financial and property bubbles were bursting. That made the stability on Germany's labour market all the more bewildering. In a nutshell, what had happened in 2008 and 2009 was this: whereas *before* the crisis the emphasis was put on deregulation and fragmentation of industrial relations institutions and practices, the stabilisation of the labour market and economy *during* the crisis was in fact attributable to a reactivation of those elements of the German model that had survived this upheaval in previous years.

The government's stimulus packages in 2008 and 2009 were predicated on active cooperation with both the employers' associations and the trade unions. An informal type of 'crisis corporatism' (Urban, 2012) arose at all levels – from Chancellor Merkel's close contacts with individual union leaders to thousands of emergency coalitions formed at establishment level. The most prominent element of the latter were the local short-time working arrangements which were deployed to an extent that was perhaps comparable to the crisis of the mid-1970s (Herzog-Stein *et al.*, 2011). Other factors were the use of existing collective agreements on employment safeguards, an abandonment of overtime and a using-up of the credits accruing on working-time accounts, which in some cases had burgeoned in recent years (Bogedan, Brehmer, Seifert, 2011). The core commonality of these crisis responses was the emphasis on internal, rather than external, flexibility which was reflected in the remarkable drop in average hours worked per employee.

The rediscovery of traditional virtues of German industrial relations should not, however, obscure the fact that old strengths were marked by the more recent weaknesses. The contradictions and fragilities which had taken hold within the German model following the upheaval of the 1990s onwards persisted during the first part of the crisis and have remained present as something like a 'scarring effect' for the time being. While the implementation of short-time working and other forms of working-time reduction make a strong case for the vigour of collective bargaining in Germany, its very crisis is reflected in the importance of those individual working-time reductions which were based on prior working-time extensions beyond the norms stipulated by collective agreements. While it is true that the 'upward flexibility' of those years created additional leeway for 'downward flexibility' during the crisis, it should be kept in mind that the 'upward flexibility' reduced jobs growth in the pre-crisis period. Thus, the German 'jobs miracle' tells us as much about the persistent weakening and fragmentation of collective bargaining as it does about its vitality in core areas.

3. DECENTRALISATION OF COLLECTIVE BARGAINING: METALWORKING AND HOSPITALS

Compared to other advanced political economies, Germany is a forerunner with respect to decentralization of collective bargaining. Although decentralisation has been

identified as a common general trend in European industrial relations already in the early 1990s, the decentralization of collective bargaining has been developed in Germany in a unique and far reaching way. Unlike in Austria, where decentralization is confined to plant level specifications of collective bargaining norms e.g. concerning working time flexibility, and unlike in most of the Scandinavian countries, where part of the bargaining on wage increases is delegated to the plant level, Germany has been the only country for nearly two decades where it was possible to derogate from industry level collective bargaining on plant level. Decentralisation has taken two pathways in Germany, the coordinated decentralization by opening clauses in collective bargaining agreements on the one and so called wild or fragmenting decentralization by informal derogations or opting out of companies from the employers' associations on the other hand.

However, the division line between the two pathways is blurred. There is no guarantee that an opening clause in a collective bargaining agreement sets the pace for a coordinated form of decentralization. Decentral collective bargaining of derogations that is formally allowed by collective agreements can develop in a more or less uncontrolled or unorganized way if no coordination of local actors, in the German case management and works councils or the local union administration, is taking place by central units of the social partners. In this case collective bargaining agreements can be undermined on a large scale by the uncontrolled spread of derogations. In this way the formally organised decentralisation would lead to an uncontrolled erosion of collective bargaining. At the same time, wild decentralization can entail efforts of coordination if social partners, and especially the unions, try to develop coordinated strategies to strengthen the capabilities of local bargaining by mobilizing and recruiting members in local conflicts.

The two industry cases described in the following chapters are representing both dimensions of decentralization. The example of the metalworking sector shows that coordinated decentralization is, if at all, only to be achieved as a result of huge coordination efforts the union has developed after opening clauses have been implemented and a process of uncontrolled decentralization has started to threaten the norms of the collective bargaining agreements. The example of the hospitals shows, that a process of fragmenting decentralization initiated by privatisation and marketisation of the sector can be an impetus for the union to develop new strategies of local bargaining that can be regarded as a first step towards a new coordination. Despite the differences in the forms of decentralization in both industries, membership participation and membership recruitment are central elements of the unions' strategies.

3.1. Coordinated decentralisation in the metal industry. From hardship clauses to deviant agreements

Deviations from collective agreements, i.e. the undercutting of collectively agreed standards by individual firms in order to safeguard jobs have developed in the German metalworking industry since the 1980s. They used to deal with crises in individual firms but were not part of a more general trend towards the widespread use of such derogations or increased concession bargaining. This changed with the profound cyclical and structural crisis into which the metalworking industry was not alone in plunging at the end of the reunification boom in the late 1990s. Since then, the use of derogations has become widespread. The undercutting of industry-level agreements took two forms. The first was the negotiation of local agreements by the parties in firms experiencing economic difficulties ('restructuring agreements' in the West and 'hardship clauses' in Eastern Germany). To a

greater or lesser extent, these agreements were based on certain procedural rules which were to provide for some stability of the overall architecture of the bargaining system. In contrast to these forms of, by and large, controlled derogation of sector-wide agreements, the *informal* undercutting of these agreements by management and works councils at firm level became increasingly important. The latter type of agreement may be called ‘wildcat’ derogations as other than stipulated by the statutory framework of collective bargaining (laid down in the long-standing acts on collective bargaining and the so-called ‘works constitution’) the door to local deviations was not explicitly opened by the unions and employers associations at the sector level. These changes gave rise to the creation of a ‘grey area’ in which collectively agreed standards were undercut and which lacked both transparency and central control by the associations, irrespective of whether or not the negotiating parties had given it their blessing in ‘restructuring’ or ‘hardship’ clauses.

This situation changed in 2004 with the signature under the ‘Pforzheim Agreement’ by the negotiating parties in the metal industry. The negotiation of this agreement was to a certain degree a reaction on the political pressure that the then federal government had built up by threatening to introduce statutory ‘opening’ clauses which would have put an end to the priority of sector-level agreements typical for the collective bargaining architecture since the late 1940s. The agreement specified that derogation agreements were possible provided that jobs would be safeguarded or created as a result and they would help to improve competitiveness and ability to innovate, as well as investment conditions. In contrast to earlier restructuring agreements, the Pforzheim Agreement contained a number of provisions stipulating, among other things, that the measures should be scrutinised and negotiated by the bargaining parties at firm and industry level, that companies should make comprehensive information available and that the negotiating parties at industry level, rather than local management and works councils, should be empowered to conclude derogation agreements.

3.2. *The problem of control*

The procedural arrangements laid down in the Pforzheim Agreement quickly proved unsuited to controlling collective agreements. It soon became evident that the employers’ associations themselves had no interest in controlling derogations and in many cases were merely acting as advisers to companies engaged in negotiations. Consequently, it fell to the trade union to exercise control. However, IG Metall’s faith in its own ability to control derogations had already received a bitter blow shortly after the conclusion of the Pforzheim Agreement, as a result of high-profile cases such as the Siemens mobile phone division². At Siemens – and in several other cases – the works council had already agreed

² In June 2004, a plan by the German-based electronics group, Siemens, to move 2.000 jobs from Germany to Hungary was cancelled as a result of the conclusion of a ‘supplementary agreement’ by management and the local union at two mobile phone plants. The Siemens deal stipulated that from October 2004 average weekly working hours were increased to from 35 to 40 hours for full-time workers without any compensation in pay (Haipeter, 2009). The return to the 40-hour week in these plants, pushed forward as an explicit pilot model in 2004 by one of the largest and most powerful German companies, sparked a controversial debate on the alleged need to extend working hours in Germany in order to regain price competitiveness on export markets and to safeguard jobs in manufacturing. In the course of events, the substantial reduction in pay entailed proved to be a token in the sale of the establishments to the Taiwanese company BenQ which eventually closed down the two plants in 2007. Thus, the employment effect of the 2004 employment pact boiled down to a postponement of dismissals, while its impact on the architecture of the collective bargaining system in Germany could have easily turned out to be much more lasting. The changes in trade union approaches to local derogations described here in what follows may be regarded to a great extent as a reaction to this and comparable experiences.

to management's demand for a working time increase without a compensatory pay increase as the price for keeping production in Germany before the union had been even asked for its opinion or taken any part in the negotiations. However, the union could do very little as a negotiating party to counter the votes of the works council. This was a classic case of 'wildcat cooperation' between the parties at firm level.

The union executives concluded from this experience that effective control required tight internal procedural standards from the very beginning. Consequently, coordination guidelines were drawn up during 2005 which specified the procedural arrangements, including duties to inform and decision-making competences, linked to the negotiation of undercutting agreements. The guidelines included the following points. Firstly, applications to negotiate undercutting agreements were to be submitted to the union's area headquarters (which is the organisational equivalent of the regional employers' associations) and to be decided on by officials at that level on the basis of extensive information about the company in question. Secondly, officials at area headquarters could give local union branches the power to conduct negotiations. Thirdly, negotiations were to be supported by firm-level collective bargaining committees, whose role was to ensure that union members took part in the negotiations. Finally, the outcome of the negotiations was to be communicated to the union executive at federal level, which had to authorise and take responsibility for the agreement.

According to collective bargaining experts on both sides, the union executive's coordination guidelines actually did lead to extensive standardisation of procedures between and within the unions' collective bargaining areas, which are largely coextensive with the spheres of application of the industry-wide collective agreements. The requirements regarding information flows and decision-making competences have now become part of established collective bargaining practice. Thus the internal coordination guidelines drawn up by IG Metall subsequent to the Pforzheim Agreement formed the basis for a new way of dealing with derogations from the industry-wide collective agreement, which is now accepted by the employers' associations as well. According to experts from both collective bargaining parties, standardisation has also led to a professionalisation of the bargaining procedures, which has moderated disputes and enabled the two sides to engage in businesslike discussions. At the same time, a new form of transparency can be observed with regard to the extent and contents of derogations. The union headquarters now have a comprehensive database on the derogation agreements and their contents. Even more importantly, it has been possible to increase actual control over derogations. According to the experts of union and employers' associations, the wildcat decentralisation, which had been increasing up to 2004 but could not be quantified because of its informal nature, has been curtailed in the course of the standardisation of derogation procedures. While success in exerting procedural controls is undeniable, the actual substance of the derogations remains to be explored (see for what follows Haipeter, 2009).

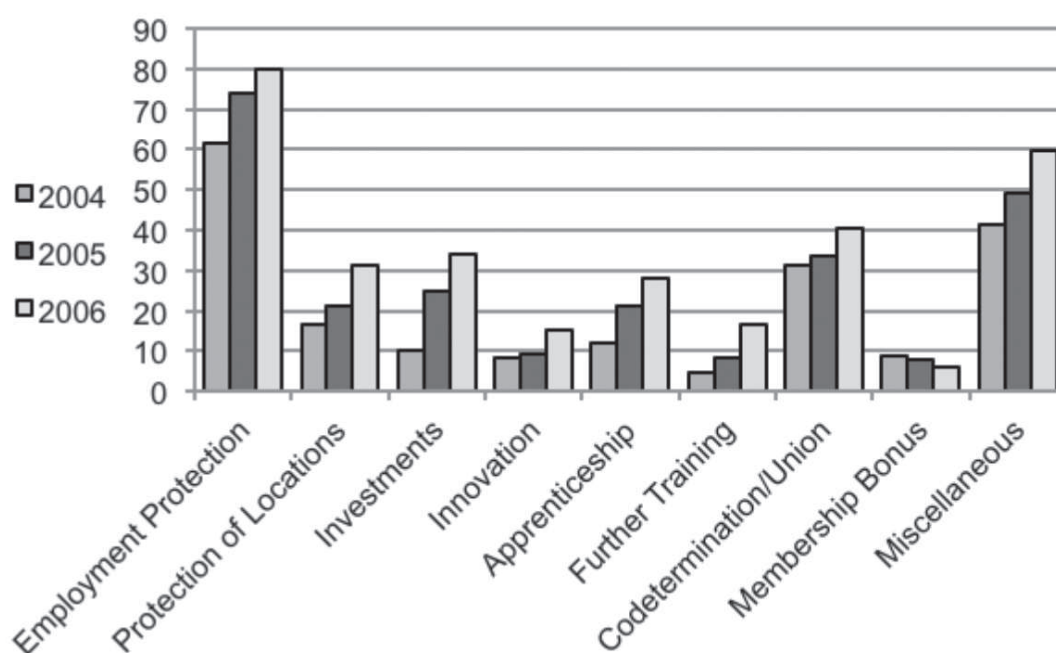
3.3. Deviant agreements: concessions and counter-concessions

Between the signing of the Pforzheim Agreement and the end of 2006, a total of 850 derogation agreements had been concluded in the metalworking industry. Of these, 412 or almost 48.5% were concluded in 2005, 271 (32%) in 2006 and 167 (about 20%) in 2004. In 2006, excluding the agreements that had expired by then, a good 10% of firms in the sector bound by collective agreements had negotiated a valid derogation from the relevant agreement. The real substance of the derogation agreements lies in the *material concessions*

they provide for. The material concessions are clearly dominated by two topics or issues, namely working time and wages. For the union, the most sensitive issue related to working time and the derogations in general is undoubtedly the *extension of working time*. In 2006, however, the share of agreements on the extension of weekly working time declined, which suggests that trade union control of the substance of derogations has improved. Further evidence pointing in this direction is the decline in the average length of weekly working time extensions (as a weighted arithmetic mean based on the upper cut-off point of the hour intervals) from 3.7 hours in 2004 to 3.3 hours in 2005 and 2006.

As important as the concessions are the *counter-concessions* offered by employers made in the agreements. The most prominent trend as far as the counter-concessions are concerned is the continuous rise across the board in various issues addressed (FIG. 7). The increase in the rate of counter-concessions can be interpreted as an important indicator of improved union control over the substance of the counter-concessions.

Figure 7. Share of counter-concessions broken down by issue in all deviant agreements (metalworking industry)



Source: Haipeter (2009).

3.4. Decentralised bargaining and trade union revitalization

The importance of the consequences of derogations for the union's collective bargaining policy and its role as an actor in the collective bargaining system can hardly be overstated. At first sight, derogations from the industry-wide collective agreement appear to be a defensive reaction on the part of trade unions. In German metalworking, too, derogations have been accepted by the trade union with the aim of curbing further erosions of

collective agreements due to wildcat decentralisation. In fact, the defensive interpretation applies to the starting point of more recent IG Metall approaches to derogations. However, a more offensive approach has gained relevance over recent years, that is, regarding local negotiations on derogations as a launch pad for a *membership involvement and organising initiative* geared to strengthen union density. The crucial link between derogations from collective agreements and membership mobilisation/organising is turning local bargaining into a *trade union policy of collective bargaining at firm or establishment level*. Local collective bargaining is increasingly being regarded as an opportunity to make a virtue out of a necessity.

The basic idea behind collective bargaining at firm level is to use company agreements to involve members in local labour disputes and bargaining to a greater extent than they have hitherto been involved in centralised collective bargaining and thus make the trade union more attractive to current and potential members and increase union density at the workplace. Thus collective bargaining at firm level has some of the characteristics of a participatory organising strategy. The associated increase in the union's legitimacy through the 'discovery of members' (Dörre, 2008) can manifest itself in various forms. These include individual members' involvement in collective bargaining committees, the continuous provision of information to members (other than non-members) through meetings and, above all, a membership ballot on the acceptance or refusal of the outcomes of local bargaining. The trade union officers interviewed agree that the union has been more successful in recruiting new members and, more generally, in consolidating its organisational power once these participatory practices have been implemented. As a result, it will also be in a better position to control the undercutting of collectively agreed norms and to prevent firms withdrawing from the industry-wide collective agreement (or at least to negotiate a company agreement in the firms in question).

In close connection to this experience and at roughly the same time, IG Metall launched a campaign flagged as 'better, not just cheaper'. It aims at turning the tables when it comes to relocation of operations and undercutting of collective agreements by trying to set product and process innovation on the bargaining agenda within the respective firms. As our own research (Haipeter *et al.*, 2011) into the implications and outcomes of this campaign confirms, the dynamics involved in these approaches may lead collective bargaining parties onto new territories. While the ambiguities involved in the process of derogation from industry standards by decentralised bargaining must not be neglected the innovative aspect here is the potentials of greater firm-level trade union activism and membership mobilisation as a driver towards a 'high road' orientation of firms, including SMEs, in which competitiveness is based primarily on process and product innovation, rather than deteriorations of pay and labour standards.

3.5. *Fragmented decentralization in the hospital sector. Privatisation and marketisation*

Collective bargaining relations in Germany's hospital sector over the past decade have been marked by two developments: the ongoing privatisation of some hospitals and the strengthening of market-oriented forms of control in the statutory funding arrangements for hospitals (Greer, Schulten, Böhlke, 2011).

The privatisation has come about through the sale of public hospitals to private businesses and the strengthening of market-based forms of control resulting from the introduction of Diagnose-Related Groups (cf. below Löser-Priester, 2003). In the early 1980s, the aim of expanding hospital care was abandoned and replaced with the aim of

containing costs within the hospital sector. To this end, two measures were developed in the course of the decade and implemented into national law. On the one hand, the mixed funding of investment costs was ended and the federal states were assigned responsibility for making investment funds available, whereby they were awarded subsidies in other areas by the federal government, which equated to the volumes they had invested thus far. Secondly, the covering of primary costs through hospital and nursing charges paid by health insurance companies was modified in such a way that the hospital and nursing charges now needed to be negotiated between the hospitals and the health insurance companies and that health insurance companies no longer automatically covered the cost increases. In particular the abolishment of the mixed funding system has proven to be a long-term structural problem, because the federal states have not invested the funds that became available through the federal subsidies into hospitals but have utilised them for other purposes. This marked the beginning of an investment backlog in public hospitals which has continued into the present day.

The early 1990s saw the introduction of the Health Care Structure Act (*Gesundheitsstrukturgesetz*) as a means of further cutting costs, which was then supplemented by the introduction of the DRG system in 2003. As a result of these reforms, hospital funding has departed from the actual costs and instead is based on Diagnose-Related Groups. Hospitals now reap a profit if the actual treatment costs remain below the DRGs; in turn, they make a loss if the opposite case occurs.

As a consequence of this legislation, the number of hospitals and hospital beds fell, as did the length of patient stays and bed utilisation (Bode, 2010). The number of people employed in the sector remained stable overall, with a relative increase in the number of doctors compared to non-doctoral staff, of which health care professionals and nurses make up the most important group.

These changes in hospital funding along with the introduction of market-based control elements through profit and loss accounts and DRGs provided the central driving forces behind the move towards privatisation, because, on the one hand, the possibility of reaping profits created the prerequisites for privately-owned hospitals. On the other hand, the long-term drop in investments led to public hospitals requiring high levels of investments. In order to meet this high investment demand, privatisation seemed to be an easy way that would not burden the public budget.

These days, the number of private hospitals exceeds that of public hospitals and is only just behind the number of institutions run by non-profit organisations (i.e. church charities, etc.). Based on the number of beds, however, private institutions still lag far behind their public counterparts, because they are usually smaller in size. Among private organisations, there is a discernible and distinct process of concentration into a few large private hospital operators. The three largest organisations by far, Helios, Fresenius, Rhön and Asklepios, have each succeeded in significantly increasing their sales over the past decade.

On top of this comes the organisational privatisation, which entails transforming public hospitals into private legal entities that allows them to reap profits. For years now, the majority of public hospitals have been transformed into private legal entities (Schulten, Böhlke, 2009, p. 102). Lastly, a third form is functional privatisation brought about by outsourcing services to external service providers or internal subsidiaries. Here, too, it can be said that the outsourcing of cleaning operations and canteens, but also laboratories or car pools, has become a very widespread practice (*ibid.*, p. 103).

3.6. Fragmentation of collective bargaining

Both privatisation and the new financing structures are having a significant impact on the sector's collective bargaining system. In private companies, cost pressure combines with profit goals; however, even in public institutions, cost pressure within the DRG system has brought about a realignment in the collective bargaining policy. In the 1970s and 1980s, the "idyllic world of collective bargaining agreements" in hospitals was marked by the dominance of collective bargaining agreements in the public sector, which applied to all public hospitals and all employee categories and were also used in non-profit organisations. This has changed fundamentally since the 1990s. Private and privatised hospitals have stepped away from the public services collective bargaining agreements. In some cases, they either have company-specific collective bargaining agreements, which cover every hospital owned by the respective company, or plant-specific collective bargaining agreements for individual clinics, where the standards between the clinics belonging to the same company may differ considerably and which may even exist side by side with clinics that have no collective bargaining arrangements. In some cases, there are even companies whose clinics have no collective bargaining arrangements at all. Non-profit and public hospitals continue to be bound by public services collective bargaining agreements or apply them. Here, too, however, pressure on the collective bargaining standards is growing, which, in certain cases, has resulted in the funding organisation taking their hospitals out of the public services collective bargaining agreement and, for example, no longer accepting negotiated pay increases. Moreover, derogations from collective bargaining agreements are applied in public hospitals in the shape of "reorganisation or emergency collective bargaining agreements". Unlike in the metalworking industry, no official collective bargaining opening clauses exist. However, the public services union ver.di has introduced a formal procedure which provides for each individual case to be reviewed and approved by the management board and which, to all intents and purposes, is handled restrictively (Wiedemuth, 2007).

In all three hospital groups – public, non-profit and private – a further change pervades the collective bargaining landscape: the outsourcing of services and changes in their collective bargaining standards. This can occur in several ways, whether through the outsourcing of activities to an external service provider from a different service sector with lower collective bargaining standards, which usually takes over hospital employees, or through the establishment of a subsidiary which either does not use a collective bargaining agreement or uses a different one from the service sector or another sector with lower collective bargaining standards. A transition to temporary work is also possible. All in all, the hospital sector shows signs of a clearly fragmented collective bargaining landscape (see also Brandt, Schulten, 2008).

For the trade union ver.di, three problem scenarios have resulted from the aforementioned developments: firstly, the conclusion of derogations from collective bargaining agreements; secondly, the negotiation of company-specific and plant-specific collective bargaining agreements, and, thirdly, the conclusion of separate collective agreements for outsourced employee groups. The trade union has, above all, developed two strategies to meet the challenges posed by this fragmentation: on the one hand, the organisation of public campaigns against hospital privatisation, especially in the shape of citizens' initiatives, and, on the other hand, new participation and mobilisation strategies in conflicts surrounding company-specific, plant-specific or outsourcing collective bargaining agreements. These strategies are referred to as "conditional collective bargaining policy"

(*bedingungsgebundene Tarifpolitik*). The latter case is the one that is the subject of the plant case study below.

3.7. Conditional collective bargaining policy

The concept of a conditional collective bargaining policy has been developed as part of the collective bargaining policy for private hospitals and is meanwhile acknowledged there and throughout the ver.di organisation as a successful instrument of trade union collective bargaining policy. To this end, both training courses and standards have been developed with the aim of extending and simplifying the use of the concept. In this context, “conditional” means that trade union strength in the plant must be a prerequisite before the trade union is able and willing to act. Thus, if the trade union lacks the organisational strength, raising the rate of unionisation is made a precondition for the trade union’s collective bargaining initiatives.

“Here, our principle is: trade union strength comes first, then, secondly, comes our capacity to act and engage in conflict, and only thirdly come negotiations and outcomes as a service for our members. This is a reversal of the conventional approach. There, a collective bargaining agreement was negotiated first and it was hoped that people would then join the trade union as a sign of gratitude” (collective bargaining expert with the trade union).

When this precondition has been met or created, the trade union begins distributing information on collective bargaining standards and comparisons with collective bargaining agreements in other sectors. This is followed by a written poll among only the members of the trade union – and not the entire workforce at the plant or company – asking whether they believe a new collective bargaining agreement should be negotiated and which issues and demands are most critical to that end. If there is interest in a new collective bargaining agreement, the demands and strategies are drawn up and presented to the members at a meeting of members at which the collective bargaining committee will be elected. During the negotiations, members are kept informed of how the talks are progressing. Should negotiations result in a potential agreement, the members are asked again to assess the outcome and to decide whether it should be accepted or rejected.

This ideal process also happened in the plant referred to in this case study. There, new members were recruited first and then they were polled to determine potential demands for the collective bargaining process. The response was poor, however. The works council and local trade union official believed this to have been fear on the part of the employees that they would lose their jobs. To their mind, the first step that therefore needed to be taken was to dispel the employees’ fear. Only then was a second poll carried out during which the employees were also informed of the different wage levels in the public services collective bargaining agreement.

“We linked the poll to a systematic comparison of the wages negotiated under the public services collective bargaining agreement. And many people then said: I’m not happy with the idea that I earn so much less for the same work. Less money and fewer holidays, no shift allowances and so on. And people then said that we should do something about it. They then told us all the aspects that were important to them and we built our collective bargaining demands around them” (works council).

The demands were materialised during two meetings of members. After the employer had rejected the demands, the trade union launched its first industrial action initiatives.

These initially ranged from having works council members carry placards and picket outside the main gate in their free time. However, since the employer still refused to enter into negotiations despite the great response to the action, the trade union ultimately called a strike. Here, too, the turnout was good. Although the company promised to pay a bonus to anyone breaking the strike, only a handful of employees took up the offer. Ultimately, the strike had the desired effect and the employer consented to the negotiations because the canteen and car pools are critical services within the organisational procedures of the hospital.

“That meant then that patients couldn’t be transported, no deliveries could be made, e.g. to the lab, that meals couldn’t be distributed. We actually have a lot of ways in which we can influence the situation. The canteen and car pool quite simply provide important functions to the hospital and can bring everything to a standstill” (works council).

4. CONCLUSIONS: CHALLENGES AND RESPONSES

Opening collective bargaining agreements to plant-specific derogations raises fundamental questions about how collective bargaining standards can be maintained. From the 1990s the German metalworking industry has been at the centre of decentralisation trends in collective bargaining. The major example for this tendency is the process of firm-level ‘derogation’ or ‘deviation’ from industry-wide agreements which has been particularly relevant in the metal industry from the beginning of the 2000s.

Deviations from collective agreements, i.e. the undercutting of collectively agreed standards by individual firms in order to safeguard jobs have developed in the German metalworking industry since the 1980s. They used to deal with crises in individual firms but were not part of a more general trend towards the widespread use of such derogations or increased concession bargaining. This changed with the profound cyclical and structural crisis into which the metalworking industry was not alone in plunging at the end of the reunification boom in the late 1990s. Since then, the use of derogations turned into an increasingly widespread undercutting of industry-level agreements. This situation changed in 2004 with the signature under the ‘Pforzheim Agreement’ which stipulated, among other things, that the derogations should be scrutinised and negotiated by the bargaining parties at firm and industry level, that companies should make comprehensive information available and that the negotiating parties at industry level, rather than local management and works councils, must be empowered to conclude derogation agreements. However, the process of decentralization proved to be an uncontrolled one, undermining the binding power of industry level collective bargaining. In this situation the union developed two new strategies: Coordination of and membership participation in collective bargaining. Both have been highly successful.

Fragmentation has been a crucial element of collective bargaining in the German hospital sector over the past decade. While in metalworking, which is widely perceived as a flagship example of in this regard, decentralisation has been a matter of local derogations from industry standards, a process which has been increasingly controlled by the collective bargaining parties (cf. our case study report on the metal industry), decentralisation in the hospital sector has evolved as an uncontrolled process of disorganisation of industry-wide bargaining structures. What was formerly an integral part of the centralised bargaining structures of the public service turned into a fragmented landscape of (regional) sector

agreements, local firm-level or establishment-level agreements, separate agreements in local subsidiaries, and a large array of establishments without any bargaining coverage. The drivers behind this process have been privatisations, 'new public management' techniques emulating free-market competition within organisations, and the overall cost pressures in both private and public health services.

Like in the metalworking industry, this has been the background for a new collective bargaining strategy developed by ver.di which is the largest (both public and private) service sector trade union. The strategy which is called a 'conditional bargaining approach' aims at reinforcing the organisational power or membership base at local level as a platform for a greater capacity to act as a local bargaining actor or party.

Both in the case of metalworking and hospitals, the mobilisation of members in collective bargaining at firm or establishment level can be regarded as a form of union revitalisation or strategic unionism which takes advantage of the institutional features of the German system of collective bargaining (Frege, Kelly, 2003). Thus, membership participation in local conflicts over the derogation from industry standards may be regarded as a choice for unions in a situation where the architecture of collective bargaining has been destabilised in the face of employment insecurity. There are at least three lessons to learn from the experiences made in Germany as a forerunner country of decentralized collective bargaining. First, although decentralization can take place in different forms, either coordinated or fragmented, the differences between these forms are blurred. Coordinated collective bargaining is far from being a coordinated process automatically, and fragmentation can be a seed for the development of new forms of coordination. However, second, in either case coordination will take place if and only if the unions actively try to strive for it. They have to develop new strategies of coordinating local collective bargaining within their organisations and, if possible, with the employers' organisations. And third, among these strategies membership participation in local conflicts plays a prominent role, both as an instrument of legitimacy for the unions and as an instrument of increasing the organizational and the bargaining power of the unions.

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