The Decentralisation of Collective Bargaining

in the German Metalworking Industry

Niels-Erik Wergin
London School of Economics

Presented at the 7th Conference on International Human Resource Management, University of Limerick, Ireland, 4-6 June 2003.


Work in progress, comments very welcome!

Niels-Erik Wergin
Basil Blackwell Teaching Fellow
London School of Economics
Dept. of Industrial Relations
Houghton St, GB-London WC2A 2AE
t: +44 (0)20 7955 7919
f: +44 (0)20 7955 7424
e: n.wergin@lse.ac.uk
w: http://personal.lse.ac.uk/wergin
Abstract

The German model of industrial relations is at a crossroads. It has long been praised for its stability and resilience, but it is questionable in how far that still is a correct description. The German system of sectoral collective bargaining has come under increasing pressures in recent years, and has changed considerably as a result: It has become more differentiated and decentralised, and its coverage is decreasing. This might affect the role of Works Councils. In a more decentralised system, under the impact of changed macroeconomic conditions, they might abandon policies based on solidarity and opt to behave like Japanese-style company-unions instead, putting their companies (and, crucially, their companies' workforce) well being above values such as solidarity. This behaviour on the side of Works Councils might, in the worst case, initiate the end of the German model of industrial relations as we know it.

Whether or not this will happen, considerable changes have happened already, notably a decentralisation of collective bargaining, which has had major repercussions on relations between unions and Works Councils. This paper evaluates these changes by concentrating on the German metalworking industry. It assesses their impact on the relations between IG Metall and Works Councils.

The paper begins by giving a brief overview of the German model of industrial relations in general and of industrial relations in the metalworking industry in particular.

Table of Contents

1) Introduction ........................................................................................................................................3

2) The German Model of Industrial Relations ..................................................................................4
   2.1 Collective Bargaining ..................................................................................................................5
   2.2 Co-Determination .......................................................................................................................7
   2.3 Separate Tasks? ..........................................................................................................................8

3) Industrial Relations in the Metalworking industry ........................................................................9
   3.1 The Metalworking Industry .........................................................................................................9
   3.2 Collective Bargaining in the Metalworking Industry .................................................................11

4) Challenges to the German Model of Industrial Relations ..............................................................13

5) Decentralisation of Collective Bargaining in the Metalworking Industry ..................................16
   5.1 Decreasing Coverage by Sectoral Agreements .........................................................................16
   5.2 Organised De-centralisation: De-centralisation via Opening Clauses ......................................18
   5.3 Disorganised De-centralisation: Illegal Undercutting ..............................................................21

6) The Consequences of De-centralisation .......................................................................................21
   6.1 IG Metall’s Collective Bargaining Policy ..................................................................................21
   6.2 Works Councils Behaviour ........................................................................................................25
   6.3 Other Factors ..................................................................................................................................35

7) Conclusion ........................................................................................................................................27
1) INTRODUCTION

The German model of industrial relations is at a crossroads. It has long been praised for its stability and resilience, but it is questionable in how far that still is a correct description. The German system of sectoral collective bargaining has come under increasing pressures in recent years, and has changed considerably as a result: It has become more differentiated and decentralised, and its coverage is decreasing. This might affect the role of Works Councils. In a more decentralised system, under the impact of changed macroeconomic conditions, they might abandon policies based on solidarity and opt to behave like Japanese-style company-unions instead, putting their companies (and, crucially, their companies’ workforce) well being above values such as solidarity. This behaviour on the side of Works Councils might, in the worst case, initiate the end of the German model of industrial relations as we know it.

Whether of not this will happen, considerable changes have happened already, notably a decentralisation of collective bargaining, which has had major repercussions on relations between unions and Works Councils. This paper evaluates these changes by concentrating on the German metalworking industry. It assesses their impact on the relations between IG Metall and Works Councils. First of all, however, I will give a brief overview of the German model of industrial relations in general and of industrial relations in the metalworking industry.
2) THE GERMAN MODEL OF INDUSTRIAL RELATIONS

The ‘German model’ of industrial relations is based on five elements (Müller-Jentsch, 1985, 1995, quoted in Jacobi et al., 1998: 190ff). The most important one is the dual structure of interest representation: employees’ representation through Works Councils at the plant- and company-level is formally separated from collective bargaining at sectoral level. Fürstenberg (1987: 165) called co-determination and collective bargaining the ‘two main processes of industrial relations’ in Germany. They will be described in more detail in the following two sections. The interplay of those two levels of interest representation is crucial for the topic discussed here, the decentralisation of collective bargaining.

The second feature of German industrial relations is ‘juridification’ (Verrechtlichung), that is, the high importance of labour law. Foreign observers have often commented on the high degree of legal regulation of industrial relations in Germany. Gourevitch et al. (1984: 92) e.g. stated that Germany’s industrial relations system is regulated by ‘an unusually dense web of legal rules and regulations’ (cf. also Maitland, 1983: 74). This starkly contrast with the concept of ‘voluntarism’ in many Anglo-Saxon industrial relations system.

A third characteristic of the German model is the ‘intermediary’ character of these institutions (Müller-Jentsch, 1985): the Works Council, as prescribed in the works constitution, must explicitly consider the company’s economic goals. Unions, too, more than in many other European countries have become ‘mediators’ between the interests of labour and capital.
Two final features are the degree to which unions, Works Councils and employers’ organisations encompass their constituencies; and the high degree of centralisation and coordination of collective bargaining policies (*Tarifpolitik*).

### 2.1 Collective Bargaining

In comparison to current practice in the United Kingdom, collective bargaining in Germany is very centralised. It takes place predominantly at the national or regional level, where trade unions and employers associations negotiate sectoral collective agreements (*Flächentarifvertrag*) for an entire trade or industry.¹

Sectoral agreements prescribe minimum terms and conditions that are legally binding for all employers who are members of the employers’ organisation that negotiated that agreement. These minimum terms and conditions may, according to the ‘favourability principle’ (*Günstigkeitsprinzip*) be improved on, but not undercut.

The importance of sectoral collective agreements – and, thus, multi-employer collective bargaining – is indicated by the fact that these agreements have covered a large share of employees as well as companies. In the 1980s, more than 90% of all work contracts in Germany were determined in their content by collective agreements (*Berghahn/Karsten, 1987: 75*). Commitment towards sectoral collective bargaining was ‘not only high but also remarkably stable’ (*Hassel/Schulten, 1998: 498*) throughout the 1980s, while a decline of collective bargaining took place in other countries, such as the UK (*Traxler,*)
It can thus be argued that the Flächentarifvertrag is the central institution of the German collective bargaining system.

Collective bargaining in is regulated by the Collective Agreements Act (Tarifvertragsgesetz) by Article 9 of the Basic Law. At the heart of these regulations lies Tarifautonomie. This term denotes the right of trade unions, employers and their organisations to negotiate terms and conditions of employment independently, in bilateral negotiations, without state interference (Berghahn/Karsten, 1987: 70f). Apart from setting certain minimum standards, government institutions cannot set rules concerning the substance of collective agreements.

The term Tarifautonomie is usually translated as ‘free collective bargaining’, a central concept in British Industrial Relations. However, the term ‘free collective bargaining’ has significantly different meanings in Britain and Germany. In Britain, this ‘cherished principle’ (Hyman, 2001: 67) ‘implies an adversarial model of Industrial Relations: an assertion of the rights of workers, through their unions, to pursue their interests as they saw fit’ (Kaiser, 1956: 182, quoted in Hyman, 2001: 119). The term Tarifautonomie, on the other hand, ‘denotes the mutual autonomy of unions and employers’ organizations as ‘bargaining partners’ (ibid.).

As opposed to collective agreements in Britain, collective agreements in Germany are not ‘binding by honour’ only, but can be legally enforced in labour courts.
2.2 Co-Determination

In Germany, workers at the workplace-level are represented by Works Councils (Betriebsräte). Works Councils are to be elected in any plant with five or more permanent employees. They are elected by all employees, regardless of union membership, as Works Councils are institutions of labour law, and not unions, namely the Works Constitution Act\(^5\). Unions can nominate lists of candidates, but those may have to compete with non-union candidates (Streeck, 1984: 306).

Works Councillors have wide-ranging rights to ‘co-determination’ (Mitbestimmung), in particular in the areas of manpower use and manpower policy, consultation and information. The former right is the strongest one.

Furthermore, Works Councils are responsible for supervising the implementation of collective agreements at the plant level, and they have the authority to conclude Betriebsvereinbarungen or works agreements at plant level with management\(^6\).

While Works Councils enjoy, as described, considerable rights, which are an important power resource, they are deprived of one of the ‘most traditional and familiar power resources’ (Kelly, 2002: 4) of trade unions: it is illegal for Works Councils to call strikes. This is known by the term ‘peace obligation’. Furthermore, Works Councils are under a legal obligation to co-operate ‘in good faith’ with management in the best interest of the firm (Streeck, 1984: 306), as laid down in the works constitution act. Works Councillors have internalised these principles, which one reason for the co-operative nature of German industrial relations.
This is not to say that Industrial Relations in Germany are a happy and harmonious affair. Both sides are well aware that they do have different agendas. As Hyman (1977: 109) points out, ‘(t)he suggestion that there is no conflict of interests within modern industry cannot be taken seriously’. A conflict of interests is inherent to the capitalist system. Yet, it is the case that Industrial Relations in Germany are far more co-operative (and thus less antagonistic) than in the UK. The very existence of the term ‘Social Partners’, which stands for Trade Unions and Employers’ Associations, is an indicator – this term does not exist in the Anglo-Saxon world.

The fact that German industrial relations are more co-operative than British industrial relations is not to say that the level of conflict in Germany is lower than in Britain: the way it is dealt with differs. Co-Determination provides an institution that allows to deal with conflict in a less antagonistic, more constructive way. Thus, the institutional set-up of German industrial relations is a central cause and prerequisite of the co-operative nature of German industrial relations.

2.3 Separate Tasks?

Within the dual system, both levels of interest representation are formally independent of each other: Works Councils are not – as opposed to the British shop steward organisation? – institutions of trade unions. It has been argued that this separation of tasks has kept conflict out of plants, as collective bargaining does not take place at the plant- or company-level, but ‘above’, at sectoral level.
In reality, however, both levels of interest representation are closely linked. They are mutually dependent, and complement each other: While Works Councillors are de jure not union representatives, most of them are active union members (IG Metall and other DGB unions regularly win about 80% of all Works Council seats\(^8\)) and thus are de-facto union representatives. That means, that in dealing with employers, unions’ policies are important. Unions, on the other hand, train Works Councillors, and support them with economic information and legal advice.

3) **INDUSTRIAL RELATIONS IN THE METALWORKING INDUSTRY**

3.1 **The Metalworking Industry**

The metalworking industry is central to the German economy in terms of employment and turnover. Altogether, well above 50% of all industrial employment is in the metalworking industry. Its sub-sectors automobiles and mechanical engineering are – next to chemicals – the leading sectors of the German export industry.

Industrial relations in the metalworking industry, more than anything else, still represent the notion of a ‘German model’ (Schulten, 1997b: 6). Collective bargaining and co-determination, the two basic institutions of German industrial relations, are well established in the metalworking industry. If changes are occurring even in the metalworking industry, where the German model of industrial relations is most established, one can assume that a change of the
whole model is likely. The metalworking industry is a critical case in this respect.

The sector’s union, the IG Metall, has been the most important and – until the creation of ver.di (the united services union) – by far the biggest German union. Equally, the sector’s employers’ organisation Gesamtmetall is the biggest member of BDA (the Association of German Employers’ Organisations).

IG Metall has often been a trendsetter in collective bargaining policies, such as for the introduction of the 35-hour week (Berghahn/Karsten, 1987: 23f) or the so-called ‘4-day-week’ at Volkswagen.

The current situation of the metalworking industry is precarious: After the so-called post-unification boom in the early 1990s, the German economy went into recession in 1993. Metalworking was particularly hard hit. Between 1992 and 1995, more than 650,000 jobs were lost in west Germany, a decrease of about one sixth (16%), while more than half a million jobs were lost in the east, a decrease of almost two thirds (64%) (Gesamtmetall, 2000).

Table 1 about here

With the beginning of the recession, employers began the so-called S tandortdebatte, a discussion about the allegedly decreasing attractiveness of Germany as a location (‘Standort’) for making business. Gesamtmetall saw the Standortdebatte as an opportunity to push through the ‘turn in collective bargaining policies’ they had demanded since long. They threatened with the ‘exodus’ of their members for the case that their demands for a flexibilisation
and decentralisation of collective bargaining wouldn’t be accepted. This debate, together with the recession, had considerable impact on the collective bargaining system: The sectoral agreement, the core of the German collective bargaining system, got into a crisis of legitimacy unknown before (Bahnmüller, 2001: 3).

3.2 Collective Bargaining in the Metalworking Industry

In the area of collective bargaining, the metalworking industry acts as a role-model: other unions often oriented themselves by collective agreements in the metal sector, and major innovations in collective agreements such as the 35-hour week originated in the metal sector and then spread to other sectors.

In the metalworking industry, collective agreements are negotiated at regional level and cover (as opposed to most other industries) the whole industry, which includes 10 sectors such as the automobile, machine tool, electrical and computing industries.

Negotiations take place between IG Metall’s regional organisations (Bezirke) and regional metalworking employers’ organisations, which are organised in the national employer’s association Gesamtmetall. There are no other major players involved, as both organisations have almost complete monopolies over their potential constituencies.

The reason for this is, on the union side, that the German Trade Union Congress DGB organises employees according to the principle ‘ein Betrieb, eine Gewerkschaft’ (one company, one union), which means that only one DGB-union is organising employees in any one company. Until recently, the
white-collar workers union DAG, which was not member of the DGB, also organised employees in the metalworking industry. Yet, in 2001 DAG merged with 4 DGB unions to form the new union ver.di, which is member of DGB (Scheele, 2001).

Therefore, the only union which still organises employees at the same plants as IG Metall is the Christian Metalworkers’ Union Metall (CG Metall), which has, however, never played an important role in collective bargaining until recently, when CG Metall concluded collective agreements in the east-German metalworking industry, which had some impact on IG Metall, as those agreements undercut the terms and conditions of IG Metall’s agreements (Zagelmeyer, 1998; EIRO, 1999, 2000).

While collective bargaining takes place at regional level, both IG Metall’s and Gesamtmetall’s headquarters play a central role in controlling coordinating the content and pace of negotiations across regions. As a result, sectoral agreements are identical to a large degree across regions, with certain exception for East Germany. The advantage of the regionalised bargaining structure is that IG Metall can target a region where they are in a strong bargaining position to agree a so-called ‘pilot-agreement’ (*Pilotabschluss*). In the metalworking industry, the pilot agreement is usually negotiated in Baden-Württemberg, in the southwest. The pilot agreement is subsequently transferred to other regions, where it is implemented more or less unchanged, with some exception for the eastern-German regions.

The implementation of collective agreements is the responsibility of the individual company’s management and Works Councils, the so-called
Betriebsparteien (literally: ‘company parties’), subject to the Works Constitution Act\textsuperscript{10}. Works councils can agree plant agreements (Betriebsvereinbarungen), but the ‘favourability principle’ (Günstigkeitsprinzip) stipulates that such agreements must not undercut the provisions in the collective agreement – unless the collective agreement itself allows such deviations by means of opening clauses (cf. chapter 5.3). Additional payments benefits above the collectively agreed pay scale, so-called übertarifliche Leistungen, on the other hand are possible, and, in fact are the rule in bigger companies\textsuperscript{11}.

4) CHALLENGES TO THE GERMAN MODEL OF INDUSTRIAL RELATIONS

Industrial Relations in Germany in general, and collective bargaining in particular, have come under increasing strain because of changes in the political and socio-economic environment. Those changes include increasing economic integration/globalisation, increasing unemployment, new forms of working organisation, the fact that social partners are losing members, growing influence of neo-liberal ideologies, and finally because of the situation in East Germany.

First, increasing economic integration opens employers new possibilities which put labour in the defence, as it transcends the scope of national bargaining systems and potentially makes regime-shopping and social dumping possible. This, it is claimed repeatedly (e.g. Martin/Schumann, 1996) will erode organised industrial relations.
In fact, the German economy is actually benefiting from the increasing internationalisation of the economy (Dörrenbacher/Nuding, 1996), and therefore ‘one cannot say that globalization *as such* is undermining the principal foundations of the German model including its system of centralized collective bargaining’ (Hassel/Schulten, 1998: 495). However, globalisation challenges branch-level collective bargaining on a micro-economic level: many MNCs have established cross-border production networks in which German plants compete directly with those in other countries. Continuous comparison of cost and productivity levels intensifies competition between those plants, and makes employees in those plants subject to concession bargaining. ‘Recently there has been a growing number of cases where management has forced concessions from Works Councils by way of threatening cross-border) relocation of production’ (ibid: 496). This leads towards increasingly enterprise-bound collective bargaining, which contrasts with branch-level collective bargaining (Marginson/Sisson, 1998).

The debate on Globalisation had a major impact on industrial relations in Germany in the context of the so-called ‘Standortdebatte’, a debate on Germany as a location (*Standort*) for economic activity. The German model was accused of being too expensive and over-regulated to compete on world markets. The system of collective bargaining was in the focus of the debate (Hassel/Schulten, 1998: 494), and has been accused as being too rigid (Bispinck/WSI, 1999).

A second challenge to the German model of collective bargaining is the high level of unemployment, which weakens the position of labour and in-
creases the likelihood of employee representatives at the enterprise level accepting terms and conditions below the collectively agreed standards in the sectoral agreement.

A third threat to the German collective bargaining system are new forms of working organisation which do not fit into the traditional, taylorist work classification in collective agreements.

A fourth challenge is that trade unions as well as employers organisations are losing members, which weakens the organisational foundations of sectoral collective bargaining. The implementation of collective agreements is dependent on strong organisations that are able to ensure the acceptance of agreements by their members. For both unions and employers associations, unification reinforced the negative trend in density, which had already started before unification (Hassel/Schulten, 1998: 488).

Finally, the growing influence of neo-liberal ideologies undermines the acceptance collectively agreements, as ‘neo-liberalism tries to question all collective structures which may put obstructions in the way of pure market’s logic’ (Bourdieu, 1998: 132).

Yet, one has to notice that the ‘German version of neo-liberalism’ has never been as radical as Thatcherism and Reaganomics, but aimed instead at a slow transformation of the German model without questioning its fundamental structures (Esser, 1989). The resilience of the German model was thus one of its most remarkable features until the early 1990s.

The situation for industrial relations is particularly difficult in East Germany. Unification brought the transfer of the west German model of industrial
relations to the new, east German Länder (federal states), but sectoral collective bargaining has never become as stable as in the west, and has been widely eroded in some sectors (Schulten, 1997a: 2), among them Metalworking.

Gesamtmetall is much weaker in the East than in the West. In the East, only 35 per cent of companies are members of Gesamtmetall, down from 60 per cent in 1992. While most of the big companies are still member, most new companies and SMEs refuse membership. Equally, IG Metall organises a lower percentage of employees than in the west. Thus, the institutional basis for collective bargaining is weaker than in the West.

Because of those challenges, unions reluctantly agreed to employers’ demands to reform the system of sectoral collective bargaining, allowing more plant or company-specific solutions. It is noteworthy, in particular from a comparative perspective, that the large majority of employers does not want to abandon sectoral collective bargaining altogether (ibid.).

5) DECENTRALISATION OF COLLECTIVE BARGAINING IN THE METALWORKING SECTOR

5.1 Decreasing Coverage by Sectoral Agreements

One major indicator for the decentralisation of collective bargaining in the German economy is the decreasing importance of sectoral collective agreements.

While at the beginning of the 1990s, coverage of employees by sectoral agreements in West Germany was almost universal, unification brought an in-
crease in the number of companies refusing to comply with sectoral agreements. This is particularly the case in the east (EIRR, 2002a: 20). As a consequence, there has been a considerable decline in sectoral bargaining coverage. Between 1995-2000, coverage by sectoral agreements has steadily declined (cf. table 3) by 9.4 percentage points in the west, and between 1996-2000, it declined by 10.8 percentage points in the east. What is noticeable is that the rate of decline in both east and west has increased between 1998 and 2000. If the decline continues at this rate, sectoral agreements will apply to only a minority of employees soon (Behrens, 2002: 2f). Behrens (ibid.) claims that there is ‘still not a visible strategy which would help unions and employers’ associations to reverse this trend’.

At the same time, company-level bargaining has more than doubled between 1990 and 2000 (Kohaut/Schnabel, 2001). The number of companies covered by company-agreements has increased steadily from 2,550 in (BMA, 1999) to 6,415 (Behrens, 2002: 1; EIRR, 2002a: 20) in this period (cf. table 4, figure 1).

Tables 2-4 and figure 1 about here

These changes are result of changed collective bargaining policies. In metalworking, 1990 and 91 were the last years ‘under the traditional regime of collective bargaining (...) in which highly centralized forms of negotiations provided higher wages and social progress for the employees concerned’ (Hassel/Schulten, 1998: 501). The first signs of change appeared in the reces-
sion years 1992/93. Since then, collective bargaining in the metalworking in-
dustry has taken more and more the form of concession bargaining, and un-
ions, being in a weaker bargaining position than before (cf. chapter 4), came 
under increasing pressure to accept employers’ demands for a further decen-
tralisation of collective bargaining (Schulten, 1997a: 1).

Basically, there are two forms of decentralisation: organised and disorga-
nised decentralisation. The former takes place via opening clauses, while the 
latter is synonymous with illegal undercutting of the sectoral agreement.

5.2 Organised De-centralisation: De-centralisation via Opening Clauses
The works constitution act prohibits employers from concluding agreements 
with their Works Councils that undercut the pay rates or other terms and con-
ditions of the sectoral collective agreement, unless the latter explicitly pro-
vides for that (§77(3) BetrVG) (Fitzenberger/Franz, 1999: 439). Thus, if 
social partners wish to delegate certain areas of collective bargaining to the 
plant level, they have to state this explicitly in the sectoral collective agree-
ment. In order to do this, social partners introduce a so-called ‘opening clause’ 
that defines the scope and limits of plant level regulation into the collective 
agreement (Hassel/Schulten, 1998: 504). This is called ‘regulated decentralisa-
tion’ (ibid.) or ‘organised decentralisation’ (Traxler, 1995).

Opening clauses allow companies to deviate from the provisions in the 
sectoral collective agreements to a certain extent, under certain circumstances, 
or to waive part of the provisions (e.g. bonuses) altogether, if the social part-
ners at the company-level (or plant-level) agree to do so.
If Works Council and management wish to utilise an opening clause, they have to conclude a separate collective agreement for the respective plant or company (Schulten, 1997a: 3).

Basically, there are two types of opening clauses: those which automatically substitute the concerning sections of the branch-level agreement, and those which need the approval of the social partners at branch level (ibid.).

Regarding the scope and content of opening clauses, there are three categories of opening clauses: opening clauses on payments, working time, and clauses for particular groups of employees or companies (ibid.).

**Opening Clauses on Working Time**

One of the most common types of opening clauses are those on working time flexibility. They are widespread and have a longer history than those on pay. The collective agreement of 1984, which includes the step-by-step introduction of the 35-hour week, contains an opening clause allowing for plant-level negotiations on the distribution of working time. This was the price unions had to pay for the introduction of the 35-hour week (Steffahn, 1991; Hassel/Schulten, 1998: 504).

Currently, in the metalworking industry there are opening clauses which allow working time to be reduced, with a corresponding reduction in pay, in return for job guarantees, and there are those which provide for increased working time for up to 40 hours per week for a proportion of the workforce (Schulten, 1997a: 4; Hassel/Schulten, 1998: 504; EIRR, 2002b: 31).
Opening Clauses on Pay

Recently, opening clauses have been increasingly used in the area of pay in order to protect jobs. They are the most controversial ones as they affect the core of branch-level collective bargaining.

The most prominent opening clause in the metalworking industry in this respect is the so-called ‘hardship clause’, which was implemented in the sectoral agreements in the East German metalworking industry in 1993. It allows companies with big economical problems to pay their employees below the levels set by the sectoral collective agreement, if the employer dispenses with redundancies in this period (Schulten, 1997c). This hardship clause leaves all details to be agreed on local (EIRR, 2002b: 340).

Group-Related Opening Clauses

Finally, there are two types of group-related opening clauses, those affecting only certain types of companies and those affecting only certain groups of employees, such as newly-hired employees who have been long-term unemployed (Schulten, 1997a: 5).

Social Partners in the metalworking industry prefer the option of ‘regulated decentralisation’ (ibid.: 2). Yet, decentralisation has not only taken place regulated/organised way, as one may expect according to Traxler’s (1995) categorisation of Germany as an economy of ‘organised decentralisation’. At the same time as organised decentralisation is taking place, disorganised/unregulated decentralisation is taking place, too.
5.3 Disorganised De-centralisation: Illegal Undercutting

A complete opt-out from collective agreements is difficult, but possible. There are basically two ways to do this: the company resigns from the employers association, and is thus not bound any more to the collective agreement (with certain limitations), or it makes an agreement with the Works Council to undercuts the sectoral collective agreement while remaining in the employers association. Only the first possibility is legal, while agreements with Works Councils that violate collective agreements are illegal, and also strongly opposed by unions (Hassel/Schulten, 1998: 506).

Hassel/Schulten (1998: 507) state that whenever terms and conditions of collective agreements are undercut, the Works Council of that company (assumed one exists) has played a crucial role. This is because Works Councillors are the crucial link when implementing collective agreements because of their strong legal position. Because of their strong legal position, they can, if they wish, prevent that the terms and conditions laid down in the collective agreement are undercut. The very question is therefore if they want. Like union members, Works Councillors

‘have two loyalties, towards the company ant towards the union. Under the existing arrangement, this loyalty conflict was balanced by the rigidity of framework agreements with limited freedom for plant-level regulation. Without this framework, loyalty to the company increasingly outweighs the commitment to the union’ (ibid.).

6) THE CONSEQUENCES OF DE-CENTRALISATION

So, what are the consequences of collective bargaining decentralisation for IG Metall and works councils? How will works councils behave in a more decen-
tralised collective bargaining system? Before going into this question, I will analyse IG Metall’s collective bargaining policies.

6.1 IG Metall’s Collective Bargaining Policy

Streeck (1984: 304) describes IG Metall’s policy as solidaristic and class-based union policy, as opposed to policies that are made for the employees of certain companies. IG Metall’s aim is to achieve similar minimum terms and conditions of employment for all employees doing the same job throughout the industry. The branch-level collective agreement is the tool to achieve this.

Such a policy, and their acceptance by union members assumes a labour market with high external mobility (i.e. one where a worker who lost a job can easily find a new one), and, as a consequence, a low identification of workers with their present employer and its economic situation. It further requires that workers in weak firms do not collaborate with their employers in order to protect their jobs, but are willing to support the bargaining policies of their union. This is the weak point of branch-level CB:

Employees know that during an economic crisis there is a higher chance than normal to lose their job, and a lower chance than normal to find a new one. This is why an economic crisis enforces the links between employees and their present workplace. This situation can lead to increased willingness of employees to co-operate with management, the more the enterprise is perceived to be in a critical situation. Thus, the danger for IGM is ‘the integration of workers at the level of individual enterprises in co-operative alliances with
their employers’ (ibid.: 297), which Streeck calls Betriebsegoismus. At the hear of it lies, according to Streeck (ibid: 307) employment protection.

If this is the case, IG Metall, in its attempt to defend sectoral CB, has to fight a war on two fronts: against employers demanding further decentralisation, and against Works Councils and its own members who are no longer willing to follow IG Metall’s centrally co-ordinated bargaining policies.

As various authors have shown (e.g. Kotthoff, 1979; Miller, 1982), the existence of Works Councils actually encourages the emergence of Betriebsegoismus. The main reason for this is that a Works Council makes possible the negotiation, and, crucially the implementation of plant agreements. Why is that? Firstly, because a Works Council makes possible negotiations with few people on behalf of the entire workforce. This fact makes possible a smooth implementation of plant agreements.

Secondly, Works Councillors have a high credibility in and authority over the workforce, as they are elected by the workforce, without interference by the employer. A workforce is more likely to accept plant agreements if they have been negotiated on their behalf by ‘their’ Works Councillors. The fact that a Works Council has negotiated a plant agreement is most likely to give it a high degree of legitimacy among the workforce. If the union disagrees with this agreement, one can assume that most employees will rather take side with ‘their’ Works Councillors, whom they elected, than with their union, which is more distant.

This development ‘is bound to result in a gradual erosion of the practice and principle of centralized joint regulation, making negotiations at the central level increasingly meaningless for the
workplace, and making the workplace increasingly autonomous vis-à-vis the central level’ (Streeck, 1984: 295).

According to Streeck (ibid: 306) and others, the decentralisation of CB, together with the changes in the socio-economic environment,

‘involve a gradual transformation of ... (Works Councils) into the nuclei of an emergent enterprise unionism – not necessarily in a formal and official sense but, more likely, de facto’ (ibid., emphasis in the original).

Thus, an erosion of centrally co-ordinated, sectoral CB would result in a ‘decapitation’ (ibid.: 295) of the central level of interest representation from the workplace-level. It would cut the links between the two levels of interest representation in the dual system. Works Councils actions would not be controlled by, and conditional upon sectoral agreements, negotiated at central level. They would, instead, be guided by market forces. Thus, decentralisation might result in a ‘return to the market’, which is the core of the neo-liberal campaign against co-ordinated market economies. This would destroy IG Metall’s ability to protect individual workers from the uncertainties of the market (ibid.: 294f).

The problem for the IG Metall, according to Streeck (1984: 292) is the following one: if they

‘permit the forces of the market to widen the disparities between their differently privileged member groups, (they) will sooner or later have to face their own disintegration as collective actors.’

According to Streeck (1984: 309), this ‘gradual “Japanization” (...) of German industrial relations’ is nothing less than the most serious organisational challenge German unions have ever faced. Thus, the survival of IG Metall as a central actor in German industrial relations depends essentially on its capacity to defeat this neo-liberal offensive.
6.2 Works Councils Behaviour

In the previous chapters, I have described that the decentralisation of collective bargaining in the metalworking industry is increasing. This process of decentralisation can be divided into two sub-processes: firstly, the opportunity for the decentralisation of collective bargaining is established. Secondly, this opportunity is exercised. This distinction is important because different actors are responsible for those two sub-processes.

Firstly, the legal opportunity for decentralisation has been established by the introduction of opening clauses into sectoral agreements. Those create the potential for organised decentralisation, whereas the opportunity for disorganised decentralisation – by illegally undercutting the sectoral agreement – has always existed. Social partners (i.e. IG Metall and Gesamtmetall, actors at the macro-level) have introduced opening clauses.

Secondly, in order to transform potential (legal) decentralisation into real, actual decentralisation, opening clauses have to be used. The ‘Betriebsparteien’, management and works council, actors at the micro-level, do this. In order to utilise an opening clause, works council and management might need the go-ahead of the social partners, but Works Councillors and management are the crucial actors who take the initiative and negotiate and implement the local agreement.

It has already been described why IG Metall has agreed to the implementation of opening clauses into sectoral agreements. Basically, IG Metall’s bargaining position deteriorated because of changed general conditions, economic
(recession, unemployment, globalisation et al.) as well as political. IGM reluctantly agreed to this in order to prevent worse for sectoral agreements.

But why do Works Councils agree to proposals by management to undercut the sectoral agreement (by means of utilising opening clauses), which results in a deterioration of the situation of employees? There are two main factors to consider here, a macroeconomic one, and a microeconomic one. The first one is situation of the economy, and the second one is the economic situation of the company in which the particular works council is active.

Firstly, it has already been argued that general economic and political conditions impact on the bargaining position of IG Metall at the macro-level. This equally applies to Works Councils.

In a phase of economic growth and low unemployment, no Works Council would be interested in undercutting the sectoral agreement. In a recession, however, they might. During a recession, there is an over-supply of labour. Furthermore, globalisation means that employers can utilise the threat to relocate production (whether this threat is a real one or not – it is difficult for a works council to assess this). In a situation like this, a works council might feel it has no choice but to reluctantly agree to undercut the sectoral agreement. I will call undercutting for this reason ‘situation one’.

Secondly, the economic situation of the particular plant is an important predictor for Works Councillors’ behaviour. The higher the perceived likelihood of their company going bankrupt, the higher is the possibility of the Works Council agreeing to proposals by management to undercut the sectoral
agreement in order to increase the competitiveness. I will call undercutting for this reason ‘situation two’.

Those two causal factors for the behaviour of Works Councils – the general economic and political conditions, and the situation of the company – are closely linked, but have to be distinguished, for analytical reasons. Situation two will usually occur in conjunction with situation one, while the opposite is not true: situation one might occur on its own. What does this mean?

If a company has economic problems, more often than not this will be caused by a recession\textsuperscript{16}. In a situation like this – economic problems of the company paired with a difficult macroeconomic and political situation – Works Councillors might be more willing to agree to proposals to undercut the sectoral agreement because they fear that the company will go out of business otherwise. As the macroeconomic situation is unfavourable, too, it would then be difficult for employees of that plant to find new jobs.

Yet, it might also be the case that the economy is in recession, but that the particular company is not in any particular danger of going bust, or having to lay off large numbers of employees. In a situation like this, Works Councillors would be unwilling to undercut the sectoral agreement, because they see no particular need to do so. On the other hand, the unfavourable general conditions still weaken their bargaining position, so they might have to reluctantly agree to undercut the sectoral agreement.

I argued that the reasons for which IG Metall, at the macro-level, and works-councils, at the micro level, give in to demands to establish and utilise opening-clauses respectively, are identical: they are to be found in the general
economic and political conditions. For Works Councils, the particular situation of their company is a second causal factor.

Yet, there is one crucial difference between the way IGM acts at the macro-level, and Works Councils at the micro level: IG Metal can be depicted as one unitary actor. Collective bargaining takes place within 21 regions, but there is a strong co-ordination in between the regions\textsuperscript{17}. The totality of Works Councils in the metalworking industry, on the other hand, cannot possibly be depicted as one unitary actor. There are huge differences between the companies in the metalworking industry, and between the economic situations they are in. As everywhere, there are those who do well, and those who don’t. This, for sure, affects the bargaining position of a works council.

Works councils do not act independently of each other; rather do their actions influence each other’s behaviour. When contemplating whether to agree to undercut the sectoral agreement, Works Councillors will take into consideration the likely behaviour of other Works Councils. But how can we analyse the behaviour of Works Councils, taking this into account?

Taylor (1976; in Lange, 1984: 101) and Hardin (1971, 1982; in ibid.), among others, have shown that the situation captured by the logic of collective action (Olson, 1965) is analogous to a multi-player prisoner’s dilemma game.\textsuperscript{18} I will apply this insight in order to explain\textsuperscript{19} Works Councils’ behaviour in the treatment of sectoral agreements.

In a multi-player PD game, there is one actor A, while all other actors are pooled together in the group ‘other players’. This assumes that ‘all other ac-
tors’ behave identical, like one single actor. This assumption, obviously, becomes the less realistic the more members this group has. While this model is a simplification, it is helpful for analytic purposes, as I will show in the following.

In the PD game analysed here, the players are ‘Works Council A’, a works council in any given company or plant ‘A’, and the totality of ‘all other Works Councils’.

As in a normal prisoners dilemma game, each player in a multi-player PD game (the group ‘all others’ being one player) can behave in two ways. Here, those two alternatives are 1) to undercut the sectoral collective agreement, and 2) to accept the sectoral agreement.

Table 5 about here

Applying such a model, there are basically four options (cf. table 5):

1. Works Council A agrees to undercut the sectoral agreement, while Works Councils at all other companies decide not to undercut it.
2. All Works Councils, including Works Council A, decide not to undercut.
3. All Works Councils, including Works Council A, agree to undercut.
4. Works Council A decides not to undercut, while Works Councils at all other companies decide to do so.

Obviously, this is a very simple model, but it can help us understanding Works Councils’ behaviour.
The benefit of this model, and game theory in general, is that it does not assume that individual actions do not materially influence others, as much of economic theory does (Bannock et al., 1998: 171). The benefit of this model is that it shows how one party’s actions influence others.

In the first situation, ceteris paribus, company A’s competitive situation improves, thus it’s likely that jobs at company A will become more secure. On the other hand, the impact on the sectoral agreement will be minimal if only one company deviates from it (as long as company A is not a big and well-known company), and thus the workforce of company A can still enjoy the benefits of the sectoral agreement at a later stage: when the economic situation improves, Works Council A could force the company to return to the sectoral agreement at the next collective bargaining round (by simply not agreeing to further undercut the sectoral agreement, which is not possible without the Works Councils consent), and the workforce still enjoys the protection of the sectoral agreement in areas where the plant agreement doesn’t undercut it.

In the second situation, the sectoral agreement is not affected negatively in the short term, as all companies apply it\textsuperscript{21}. Yet, as opposed to situation 1, company A does not improve its competitive situation, and employment thus may be not secure.

The latter is also the case in the third situation – if all companies undercut the sectoral agreement, the relative competitive situation of company A does not change\textsuperscript{22}, as everyone undercuts the sectoral agreement. The sectoral agreement obviously becomes useless in this case – there’s no point in establishing regulations if no one complies with them.
The last situation is the least desirable from the point of view of workers at company A. If their Works Council decides not to agree to management’s proposal to undercut the sectoral agreement while everyone else does, than jobs at company A become even less secure than they already might be, as the competitive situation of company A decreases (ceteris paribus). Furthermore, the sectoral agreement, in this case, breaks down, as all companies but one disregard it.

Assumed plant A is in a difficult economic position, and the works council there has come to believe that there is an imminent danger of large numbers of employees being laid off, or the company going bust, which would be the most desirable situation out of the four depicted in this PD-game?

The starting position is situation two: everyone accepts the sectoral agreement.

Assumed further that Works Council A acts like a homo oeconomicus, and is not influenced by any other considerations, than situation 1 would be the most desirable one, while situation 4 would be the least desirable one: In situation one, job security for employees at plant A increases, and the collective agreement remains intact. While it is not currently applied at plant A (as it is undercut), it is still there as an option for better times. In contrast, in situation 4, job security decreases, and the sectoral agreement breaks down. In situations two and three, job security (which is believed to be low) does not change.

Thus, this model shows why Works Councils might choose to undercut the sectoral agreement. If a company is in a precarious economic situation, the
works council there might come to the conclusion that improving the company’s competitive situation by undercutting the sectoral agreement is the only way to prevent employees being laid off.

However, there is one big problem: this only works if only company A undercut the sectoral agreement, while all others (or at least most others) accept it. But other Works Councils of companies in problematical situations will make similar considerations, and might decided that they, too, want to improve the competitive situations of their plants in order to increase job security. With other words: they too want to end up in the same position as plant A in situation one. But this does not work: if everyone undercuts, than everyone ends up in situation three, rather than situation one, and situation three is even less favourable than situation two: job security does not improve, but the sectoral agreement breaks down, and thus everyone ends up in a worse situation than before.

Thus, even assuming that works council A acts like a homo oeconomicus; it would not necessarily be the most rational decision to undercut the sectoral agreement. As stated, if everyone undercuts, than everyone ends up in a worse situation than before. Thus, it would make sense for Works Councils to co-ordinate their behaviour, and to collectively agree not to undercut the sectoral agreement. If this is possible, and if Works Councils do trust each other, than it would be most rational not to undercut. On the other hand, if co-ordination is not possible, or if Works Councils do not trust each other, than undercutting would be the safest bet, because otherwise a works council who does not agree
to undercut the sectoral agreement might end up in the worst possible situa-
tion, in situation 4.

The problem here is that the model takes into account preferences at only
one point in time, and proceeds as if the individual makes only one choice,
once and for all. However, any given bargaining-round is just one in a series.
This means that actors are influenced by their experience (i.e. by the behaviour
of other actors in the past) as well as by assumptions about the future behav-
iour of other actors. It is, indeed, possible that a strategy that provides sub-
optimal results in the current bargaining round (or ‘game’) potentially makes
possible better results in the long run.23

In order to find out whether co-operation is possible, and, more impo-
tantly, whether Works Councils can trust each other, several collective bargain-
ing rounds have to be passed, as trust needs time to be established.

This interpretation of Works Councils’ behaviour has so far been based on
the assumption that Works Councils act egoistically and are exclusively inter-
ested in maximise (economic) utility – like a homo oeconomicus. This, how-
ever, is insufficient. For Works Councillors, in particular for unionised ones,
other considerations are important. Most Works Councillors in the metalwork-
ing industry (around 80%, cf. endnote 8) are trade unionists, and as such, their
thinking and their actions are influenced by other consideration than just eco-


33
Solidaric behaviour would exclude the pursuit of the economic well being of the own workforce if it negatively impacted on the economic well being of employees at other plants. However, as elaborated above, that is exactly what ‘situation one’ is about. It increases the job security of employees at plant A at the expense of employees at other plants.

Nevertheless, while the ideals of the labour movement do influence Works Councillors, so do microeconomic consideration as described above. The question now is: what is the balance between those two sets considerations? It is impossible to state this a priori, as this will differ from individual to individual. What can be said, however, is that microeconomic considerations will become more important when the economic situation of the own company turns precarious. Blood is thicker than water, the saying goes. With other words: if there is an imminent danger that colleagues will be made redundant, than microeconomic considerations (how can we improve our competitive situation to save those jobs) will become more important, and the ideal of ‘intra-sectoral solidarity’ (i.e. solidarity with workers at other plants, within the same sector) will become less important.

This is supported by empirical evidence: undercutting of sectoral agreements, legally (by means of opening clauses) as well as illegally has increased considerably in recent years in the German metalworking industry, in a time when the economic situation became more difficult (cf. chapter 4). This is particular the case in the east-German metalworking industry, where the situation is particularly precarious.
To cut a long story short: Works Councillors are certainly influenced by considerations as described above, however not exclusively. I will talk about other factors in the next chapter.

### 6.3 Other Factors

I assume that there are two main factors to consider when assessing how Works Councils will deal with a decentralisation of collective bargaining: their willingness to agree to plant agreements which undercut the sectoral agreement, and their ability to resist such agreements.

Firstly, the willingness of a Works Council to accept such agreements depends on the one hand on the importance of the values and ideals of the labour movement in general, and IG Metall’s collective bargaining policies in particular. This, in turn, is influenced by their involvement into interplant trade-union structures (which is likely to decrease their willingness to agree to such deals): the higher their involvement in such structures, the more important will IG Metall’s collective bargaining policies and the values of the labour movement be for them.

On the other hand, Works councils willingness to sanction such agreement depends on Works Councillors’ perception of the economic and political situation in general, and the economic situation of their plant in particular. Whether this perception is correct is secondary. If management makes ‘their’ Works Council believe that they will relocate production, or (more realistically) withhold further investment, even though this is not actually true, than the Works Council will be willing to make concessions in order to prevent this perceived
threat, as elaborated in the previous chapter. This question of perception, in turn, is linked to the wider question of societal hegemony in the Gramscian sense: in a neo-liberal climate in which employers use the *Standortdebatte* (the debate on Germany as a location for making business) and the (linked) globalisation-debate, Works Councillors are more likely to believe such threats (of relocation etc.), whether they are true or not, and to make concessions as a result.

Secondly, the *ability* of a Works Council to prevent plant agreements undercutting sectoral agreements crucially depends on the Works Council’s bargaining position, which, in turn, is contingent upon its power resources. When a Works Council negotiates with management,

> ‘their relationship involves the threat of deployment of power and the outcomes of bargaining reflect the balance of power’ (Kelly, 1998: 9).

This refers to *relational* power. Relational power, as opposed to *structural* power is the ability of one party to get another party to do (or not to do) something (Strange, 1998: 24f). Relational power, obviously, is a central explanatory factor when examining the relations between management and works council.

However, when focusing at relational power at the workplace level exclusively, labours’ power may seem greater than it actually is. By focusing on a narrow range of contested workplace issues, one may, as the pluralists did, come to the wrong conclusion that there was a balance of power between capital and labour, as Fox (1974) and Hyman (1978) criticised (both quoted in Kelly, 1998: 134). Thus, in order to fully understand processes on the micro-
level, one has to take into account the general political and economic conditions.

This is where the concept of structural power becomes important. The possession of structural power, as usually defined in Political Economy, means hegemony in the Gramscian sense (Gramsci, 1967, 1975; both in Demirović, 1989: 69ff). It influences actors’ perceptions of what is possible, and what is not. Thus, we see that the first question (Works Councils’ willingness to cooperate with management) and the second one (Works Councils’ ability to resist management) are, in fact, related questions. Works councils' willingness to cooperate with management (however reluctantly) will increase if their perception of their ability to resist management’s demands decreases.

But let’s come back to relational power. Works councils' relational power, then, depends crucially on the support they get from the law, from IG Metall, and from their own constituency, that is, the plant’s workforce. I will briefly talk about these four points in the following.

Firstly, is it legal to undercut the sectoral agreement? Basically, this is illegal unless the sectoral agreement explicitly provides this opportunity by means of opening clauses (cf. supra). For sure, Works Councillors could agree to illegal undercutting of the sectoral agreement, as it happens already, in particular in East Germany. Yet if IG Metall does not tacitly agree, and learns about this plant agreement, it can challenge it in labour courts.

Secondly, in how far is IG Metall able to support their Works Councillors? IG Metall has got a large research department and can provide their Works Councillors with economic information and legal advice. Thus, if an
employer makes claims about, for example, lower working costs, and uses this to underpin his threat to withhold further investment, Works Councillors can check whether this is true.

More importantly, an employer might leave his employers’ organisation in order to be able to legally undercut the sectoral agreement (without the necessity to utilise an opening clause). In this case, IG Metall could call a strike in order to support their Works Council and to ‘convince’ the employer not to undercut the sectoral agreement. But, in order to do this, IG Metall needs a stable membership base in the concerned plant.

Finally, the Works Council’s bargaining position depends on the backing they get from their workforce. If management knows that their employees strongly support their Works Council, than the Works Council has a far better bargaining position than when management knows that many employees do not agree with the position of the Works Council.

Works Councils structural power resources, then, are dependent on all those who influence public opinion: The government and other political parties, Trade Unions and employers’ organisations, the press and others. I will not go into this, as this would lead to far, but it can be said that in the current climate, where neo-liberalism is hegemonial, works councils structural power resources are considerably lower than during times when the majority of society supported regulations limiting free markets.
7) CONCLUSION

Several authors argue that the further decentralisation of collective bargaining could question the foundations of the German model of industrial relations (e.g. Schulten, 1997a: 1), while others are more optimistic. The question this paper deals with is of central importance in this respect: how will the relations between workplace representatives and unions ‘outside the plant’ develop? Both sides, works councillors as well as full-time officers (i.e. trade union activists ‘outside the plant’) regard de-centralisation with mixed feelings: it might help to get the declining coverage rate of sectoral agreements under control, and thus help preserving one central, paramount element of the German model of industrial relations. But at which cost? In the worst case, the scope (i.e. the extent to which different topics are dealt with) of sectoral agreements will decrease so much that they become meaningless, while works councils develop into company unions, abandoning class-wide solidarity. In order to prevent this, IG Metall needs to maintain a strong link, based on intense and frequent communication with, and support for works councillors. If IG Metall, arguably the strongest German union, does not succeed to deal with this situation, with the problems posed by the de-centralisation of collective bargaining, then the German model of industrial relations as we know it is doomed to collapse.
APPENDIX: Sources for Figures and Tables

Table 1: Given employment figures are annual averages. The calculation basis for employment figures changed in 1998. Data for 2002: first quarter, average.


Table 2: Data excludes non-profit organisations, private households and public services.


Table 3: Data includes public services.


Table 4 and Figure 1: Source: Bundesministerium für Arbeit und Sozialordnung (BMA) 1999: Tarifvertragliche Arbeitsbedingungen im Jahre 1998. Bonn: BMA.

ENDNOTES

1 Trade unions may also conclude collective agreements with individual employers (so-called Firmentarifverträge or Haustarifverträge), but those are less important than sectoral agreements as they cover far fewer employees.


3 The relevant paragraph three reads as follows: ‘(3) The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful.’ Translation by Goethe Institut – Inter Nationes.

4 Government, however, indirectly intervenes in collective bargaining, e.g. by changing procedural rules or by means of tripartite alliances like the ‘alliance for jobs’.


6 Plant agreements may regulate all matters relating to the establishment, provided that no statutory or collectively agreed provisions exist. In order to protect collective bargaining
autonomy, it is unlawful for plant agreements to contain provisions on remuneration and other employment conditions which are regulated, or usually regulated, by collective agreements (Works Constitution Act §77(3)), unless the collective agreement explicitly provides this possibility for certain topics.

7 The shop steward movement was initially independent from unions, too (for very different reasons), but they were turned into union institutions eventually.

8 In the last works-council election in 1998, 80 per cent of all elected works councillors were members of DGB-affiliated unions (Di Pasquale, 2002), cf. also Streeck, 1984: 306.

9 When referring to the metalworking industry, I imply, for reasons of simplicity, that this includes the electrical industry. The full term, however, is ‘metalworking and electrical industry’ (Metall- und Elektroindustrie).

10 Plant agreements are regulated by §§77, 88 Works Constitution Act.

11 The right of the works council in negotiating übertariflichen Leistungen is provided for by §87(1), no. 10 Works Constitution Act.

12 own translation, emphasis in the original

13 This is the case even when the employer is not member of the employers’ organisation. If there is no opening clause, such contracts undercutting the sectoral collective agreement must be made individually with each employee (Fitzenberger/Franz, 1999: 439).

14 De jure, employers are not allowed to influence the election of Works Councillors. De facto, several employers try to do so nevertheless.

15 Quite the opposite, Works Councils would be tempted to negotiate higher wages for employees at their plant/company than the sectoral agreement provides for (übertarifliche Leistungen). This does not pose a problem for the system of sectoral agreements, as those allow for payments above the going rate. In fact, such payments have been quite common in larger companies.

16 Of course, companies also go bankrupt during economic boom phases, because of mismanagement, but this is not the rule.

17 Still, it is a simplification to depict IGM as a unitary actor, but I argue, considering the coherence of collective bargaining policies across the regions, including the introduction of opening clauses, that this simplification is justified. The differences that exist between the east and West German regions have been agreed at central level, and are not a result of different regions pursuing different bargaining policies un-coordinated from each other.

18 In a multi-player prisoners’ dilemma game, there can be, as opposed to a normal prisoners’ dilemma game, which involves two players, a potentially unlimited number of players.

19 Lange (1984: 101ff) uses the model of a multi-player prisoners’ dilemma game to explain a different, but somehow related problem: why groups of workers might decide to defect from regulated wages in order to secure higher wages. However, the outcomes he considers are different from the ones I am interested in: he looks at ‘pay-offs for groups’, while I look at job security and the impact on the sectoral agreement.

20 In this case, all others either undercut or accept the sectoral agreement.

21 In the long term, it might be negatively affected for other reasons.

22 Assumed everyone undercuts the sectoral agreement by the same margin, and disregarding companies outside the area of validity of that and other, identical sectoral collective agreements (that is, in most cases, only companies outside Germany; yet, in certain areas, sectoral agreements in east and west Germany differ).
On the other hand, in an economic unstable period, predictions about the future (and about future behaviour of other actors) are less certain that in a period of stability, and thus Works Councillors might come to the conclusion that a bird in the hand is worth two in the bush.

Kelly, writing about Britain, talks about unions, not Works Councils. In Britain, employees at the enterprise level are represented by unions (full time officers or shop stewards), not by Works Councils. But his statement equally applies to Works Councils as labour’s representatives at the enterprise level. The ability of Works Councils to ‘deploy power’ is likely to be smaller than that of their union, as they are not allowed to use industrial action by law. Yet, this law can be bypassed e.g. for short ‘warning strikes’ – the Works Council just has to call it ‘employee meeting’ rather than strike. Furthermore, the Works Council has entirely legal means short of strike at its disposal, such as working to rule or the rejection of overtime work, to which Works Councils have to agree.
References


45
Table 1: Employment in the Metalworking Industry, 1970-2002

<table>
<thead>
<tr>
<th>Year</th>
<th>West Germany</th>
<th>East Germany</th>
<th>Germany (total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>4276</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>3908</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1980</td>
<td>3900</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>3673</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>4031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>4078</td>
<td>815</td>
<td>4893</td>
</tr>
<tr>
<td>1992</td>
<td>3970</td>
<td>428</td>
<td>4398</td>
</tr>
<tr>
<td>1993</td>
<td>3649</td>
<td>344</td>
<td>3993</td>
</tr>
<tr>
<td>1994</td>
<td>3382</td>
<td>313</td>
<td>3695</td>
</tr>
<tr>
<td>1995</td>
<td>3314</td>
<td>292</td>
<td>3606</td>
</tr>
<tr>
<td>1996</td>
<td>3212</td>
<td>274</td>
<td>3486</td>
</tr>
<tr>
<td>1997</td>
<td>3135</td>
<td>260</td>
<td>3395</td>
</tr>
<tr>
<td>1998</td>
<td>3209</td>
<td>274</td>
<td>3483</td>
</tr>
<tr>
<td>1999</td>
<td>3205</td>
<td>279</td>
<td>3484</td>
</tr>
<tr>
<td>2000</td>
<td>3221</td>
<td>291</td>
<td>3512</td>
</tr>
<tr>
<td>2001</td>
<td>3270</td>
<td>306</td>
<td>3576</td>
</tr>
<tr>
<td>2002/I</td>
<td>3216</td>
<td>308</td>
<td>3523</td>
</tr>
</tbody>
</table>

Table 2: Companies Covered by Sectoral Agreements, 1995-2000

<table>
<thead>
<tr>
<th>Year</th>
<th>Investment</th>
<th>Goods</th>
<th>Economy-wide</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>West 58.5%</td>
<td>East 34.9%</td>
<td>West 51.8%</td>
</tr>
<tr>
<td>1997</td>
<td>West 58.2%</td>
<td>East 34.9%</td>
<td>West 49.0%</td>
</tr>
<tr>
<td>2000</td>
<td>West 41.7%</td>
<td>East 16.8%</td>
<td>West 45.4%</td>
</tr>
</tbody>
</table>

Table 3: Employees Covered by Sectoral Agreements, 1995-2000

<table>
<thead>
<tr>
<th>Year</th>
<th>West</th>
<th>East</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>72.2%</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>69.2%</td>
<td>56.3%</td>
</tr>
<tr>
<td>1998</td>
<td>67.8%</td>
<td>50.5%</td>
</tr>
<tr>
<td>2000</td>
<td>62.8%</td>
<td>45.5%</td>
</tr>
</tbody>
</table>
Table 4: Companies with Company Agreements, 1990-98

<table>
<thead>
<tr>
<th></th>
<th>West</th>
<th>East</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>2,100</td>
<td>450</td>
<td>2,550</td>
</tr>
<tr>
<td>1991</td>
<td>2,300</td>
<td>850</td>
<td>3,150</td>
</tr>
<tr>
<td>1992</td>
<td>2,422</td>
<td>1,178</td>
<td>3,600</td>
</tr>
<tr>
<td>1993</td>
<td>2,562</td>
<td>1,403</td>
<td>3,966</td>
</tr>
<tr>
<td>1994</td>
<td>2,689</td>
<td>1,445</td>
<td>4,134</td>
</tr>
<tr>
<td>1995</td>
<td>2,924</td>
<td>1,588</td>
<td>4,512</td>
</tr>
<tr>
<td>1996</td>
<td>3,081</td>
<td>1,652</td>
<td>4,733</td>
</tr>
<tr>
<td>1997</td>
<td>3,293</td>
<td>1,685</td>
<td>4,978</td>
</tr>
<tr>
<td>1998</td>
<td>3,606</td>
<td>1,765</td>
<td>5,369</td>
</tr>
</tbody>
</table>

Figure 1: Companies with Company Agreements, 1990-98

Table 5: Behaviour of Works Councils in a Multi-player Prisoners’ Dilemma Game

<table>
<thead>
<tr>
<th>Treatment of Sectoral Agreement</th>
<th>Short-term Impact</th>
<th>Short-term Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>by Works Council A</td>
<td>by all other Works Councils</td>
<td>on Job Security</td>
</tr>
<tr>
<td>1 undercut</td>
<td>accept</td>
<td>increases</td>
</tr>
<tr>
<td>2 accept</td>
<td>accept</td>
<td>none</td>
</tr>
<tr>
<td>3 undercut</td>
<td>undercut</td>
<td>none</td>
</tr>
<tr>
<td>4 accept</td>
<td>undercut</td>
<td>decreases</td>
</tr>
</tbody>
</table>