



# The German Works Councils Act and its Significance<sup>1</sup>.

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THE Constitution of the German Republic provides in the last section (§165) of Part V (relating to Industry) that :

“ Workers and salaried employees shall be called upon to co-operate, with equal rights in common with employers, in the regulation of wages and conditions of labour, and also in economic development in general. The organizations of both parties and the agreements entered into by them shall be recognized.

“For the protection of their social and economic interests, workers and salaried employees shall be legally represented on Workers’ Councils (*Betriebsarbeiterräte*) in the separate factories, also on District Workers’ Councils (*Bezirksarbeiterräte*), grouped according to industries, and in a Federal Workers’ Council (*Reichsarbeitsrat*).

“The District Workers’ Councils and the Federal Workers’ Council shall combine with representatives of employers and other classes of the population concerned to constitute District Economic Councils (*Bezirkswirtschaftsräte*) and a Federal Economic Council, for the performance of general economic functions and for the purpose of co-operation in carrying out the socialization laws. The District Economic Council and the Federal Economic Council shall be so constituted, that all important vocational groups shall be represented thereon according to their economic and social importance.

“All bills of fundamental importance dealing with matters of social and economic legislation shall, before being introduced, be submitted by the Federal Government to the Federal Economic Council for its opinion. The Federal Economic Council shall have the right itself to propose such legislation. In cases where the Federal

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(1) For a fuller treatment of the history, provisions, and results of this Act and a comparison with similar Acts in Austria, Czecho-Slovakia, Norway and Luxemburg, see the International Labour Office *Studies and Reports*, Series B, No. 6, *Works Councils’ in Germany*.

Government is not in agreement with any such proposal, it shall nevertheless be bound to introduce it into the Reichstag, together with a statement of its own views. The Federal Economic Council may assign the support of such proposal in the Reichstag to one of its own members.

"Powers of supervision and administration in any matters within their jurisdiction may be conferred upon the Workers' Councils and the Economic Councils.

"It shall be the exclusive business of the Federal authority to regulate the composition and function of the Workers' and Economic Councils and their relations with other organs of social self-government".

The Works Councils Act is the first Act to be passed in order to give effect to these provisions. It was published as a draft on the August 9, 1919, after consultation with the representatives of the principal trade unions and employers' organizations, and, after consideration by the Federal Council, was submitted to the National Assembly for first reading on the August 21, 1919. After very careful consideration in the Social Legislation Committee of the National Assembly, it came before the Assembly for second reading on January 13, 1920, and for third reading on January 18. At the conclusion of the third reading, it was passed by 215 votes to 63. Besides the Conservatives, the representatives of the Independent Socialists, who had strongly opposed it as inadequate and as tending to restrict the freedom of action of the workers, voted against it. It acquired the force of law by promulgation on February 4, 1920.

#### ANALYSIS OF THE NEW ACT

##### *Purpose of the Act : the Works Councils System.*

The Act is arranged in 106 sections grouped in six parts. These parts may be summarized according to their subject matter as follows :

Part I is entitled "General Provisions", and sets forth the object of the Act and the principles and definitions regulating the constitution of works councils.

The object or scope of the Act appears from Section I : "In order to protect the general economic interests of employees (salaried and wage-earning) in relation to their employers and to support employers in effectively carrying on their businesses, works councils shall be constituted in all works normally employing not less than 20 persons".

Where less than 20, but not less than 5 persons, are ordinarily employed, of whom at least three are eligible for service on works councils, Section 2 provides that a works steward

(*Betriebsobmann*) shall be elected. Where in such undertakings at least five of the persons employed are wage-earning workers and five are salaried employees, they may elect a common works steward; if they cannot agree, the salaried and wage-earning employees shall each elect their own works steward.

Sections 11 and 12 of the Act define what is to be understood by wage-earning and salaried employees. Briefly stated, it may be said that persons employed at weekly or daily wages or for piece wages, and who are dismissible at short notice, are wage-earners, and persons employed at monthly or quarterly salaries and dismissible at longer notice are salaried employees, within the meaning of the Act.

According to Section 9, all public and private works, businesses, and administrative establishments, are "works" within the meaning of the Act.

In undertakings employing at least 20 home workers, a separate works council must be established for these persons (Section 3).

Section 6 provides that, in addition to the general works councils, separate councils of wage-earning and salaried employees must be established, to represent the separate interests of these two classes in relation to the employer.

Of greater interest is Section 8, which provides that the *right of economic associations* (trade unions) to represent the interests of their members, *shall not be affected* by the provisions of the Act.

### *Composition and Procedure of Works Councils.*

Part II (Sections 15 to 65) deals with the composition and procedure of the Councils. As regards the size of the works councils, section 15 provides that they shall vary in an ascending scale, from three members in undertakings employing from 20 to 49 persons, to the maximum number of 40 members. Wage-earning and salaried employees must be represented thereon *in proportion to their numbers* (Section 16), but provision is made for a minimum representation of minorities. Where the majority of each group by separate secret ballot so determines, modifications may be made in the distribution of members between the groups (Section 17). Similarly, Section 18 requires that each group shall elect its representatives on the works council from its own members, but Section 19 allows the common election of the works council by *all* employed persons, where the wage-earning and salaried employees entitled to vote previously agree thereto by separate secret ballots. All employed persons of at least 18 years of age, without distinction of sex, are *entitled to vote*, and all persons of at least 24 years of age, who have been

engaged in their occupation for three years and employed in the undertaking concerned for six months, are eligible (Section 20). In undertakings, which have been established less than six months, employment therein since their establishment is sufficient.

When the works council consists of less than nine members, it elects from its number a Chairman and Vice-Chairman (Section 26); when it consists of nine or more members, it elects a committee of five members (Section 27), who elect a Chairman and a Vice-Chairman from their number. If the works council includes both wage-earning and salaried employees among its members, the Chairman and Vice-Chairman, must not, in either of the above cases, be chosen from the same group.

The meetings of the works councils are convened by the Chairman, who draws up their agenda and conducts the proceedings (Section 29). The Chairman must convene the council, whenever at least one-fourth of the members require it, and also whenever the employer so requests. The employer may attend any meeting to which he is invited and also those convened on his proposal. The meetings must take place ordinarily, and whenever possible, out of working hours (Section 30). If it is necessary to hold them during working hours, previous notice must be given to the employer.

Representatives of trade unions interested are entitled to attend the meetings of the works council when one-fourth of the members of the Council so require, with the right to speak, but not to vote. The employer may likewise require a representative of any association, to which he belongs, to attend meetings, in which he himself is entitled to take part (Section 31). Minutes must be kept of all proceedings of the works council, containing at least the texts of all resolutions and the majority by which they were passed, and any statement or explanation made by the employer in connection with the proceedings, and must be signed by the Chairman and one other member (Section 33).

The members of the works council perform their duties gratuitously, but unavoidable loss of working time may not be made a ground for reduction of wages or salary (Section 35). The actual costs of the sittings and any allowances which may become necessary, are, so far as no provision to the contrary is contained in any collective agreement, to be borne by the employer, who has also to provide the necessary room for holding meetings (Section 36).

Where appropriate, the provisions of the foregoing Sections apply also to the proceedings of the works committee, and of the separate councils of wage-earning and salaried employees (Section 38).

The Chairman of the works council *may* on his own initiative, and *must* on the demand of the employer or of at least one-fourth of the employed persons entitled to vote, convene

a works meeting (Section 46). This consists of all the persons employed in the undertaking, and must be held in the form of sectional meetings, in cases where the nature or size of the undertaking makes it impossible to hold a simultaneous meeting of all the persons employed (Section 45).

A representative of every trade union represented in the undertaking may take part in the works meeting, with the right to speak, but not to vote (Section 47). The works meeting may present requests and proposals to the council and may only deal with matters within its jurisdiction.

The provisions relating to the works meeting of all persons employed, apply also to separate works meetings of wage-earning and salaried employees.

Several Sections (50-57) contain provisions for the constitution of *Joint Works Councils*, in the case of a number of undertakings in the hands of a single owner, or of a corporation in the same commune or in several neighbouring and economically interdependent communes.

Sections 58-60 regulate the election and proceedings of works stewards. Section 61 contains provisions for the creation of individual or joint works councils for undertakings and administrative departments of the Federal Government, the States, and federated communes extending over wide districts or several communal areas. The election and procedure of these councils, and their powers and duties, are to be regulated by Order.

Special mention should be made of the provision of Section 62, which enacts that a works council must not be established, or must be dissolved, in cases where, from the nature of the undertaking, special difficulties exist in the way of its constitution or activities, and where another form of representation for the persons employed in the undertaking exists, or is established, on the basis of any generally binding collective agreement.

In this Section (§ 62) the collective agreement appears as the *indispensable alternative to the works council*, where the latter is not practicable.

### *Powers and Duties of Works Councils.*

In Part III, relating to the *Powers and Duties of Workers' Representative Bodies* (Sections 66-92), the collective agreement is in several places given a preferential status. This Part deals separately with the powers and duties of (a) the works council (Sections 66-77), (b) the councils of wage-earning and of salaried employees (Sections 78-90), (c) the *Joint Works Councils* (Section 91), and (d) the works steward (Section 92,) all of which are identical as far as their social purpose is concerned and which only differ in so far as is inherent in the nature of the case.

From their nature, the duties of the works and other councils may be divided into specifically economic, and general social, duties, which latter again may be divided into such as relate to (a) *conditions of work*, (b) *labour disputes*, and (c) *welfare of the workers*. They have pre-eminently *supervisory functions*, as regards the observance and administration either of laws and Orders or of collective agreements. But rights of independent initiative are also conferred on the councils. They may enter into agreements of the most varied kind, but in doing so they must — this reservation perpetually recurs — *keep within the limits of existing collective agreements between the trade unions and the employers*. (See Section 66 (5), Section 78 (3), Section 81, etc). From another point of view the powers and duties of the councils may be grouped somewhat more briefly as follows :

1. Co-operation in the form of advice and assistance for the purpose of carrying out the *economic objects* of the undertaking ;
2. Co-operation as an equal right for the purpose of establishing *conditions of labour* ;
3. Influence in the engagement and dismissal of workers and employees.

The Act, at this point, sets out to define the work and functions of the Councils and to adjust them to varying circumstances; it is therefore much more elastic in its terms here than elsewhere. Thus the first Section of Part III, Section 66, defines the duties of the works council under nine aspects. These duties (given here in a somewhat abridged form) are :

1. In undertakings which serve economic purposes, to assist the management with advice, with a view to co-operating in attaining the highest possible standard and the maximum degree of economy in production.
2. To co-operate in the *introduction of new methods of work*.
3. To guard the undertaking against *disturbances*, and especially ("without prejudice to the rights of economic associations of wage-earning and salaried employees"), in case of disputes, when it is not possible to reach an agreement by negotiations, to appeal to the conciliation committee or some other agreed organ of conciliation or arbitration.
4. To supervise the execution of decisions issued by the conciliation committee and accepted by both parties.
5. To come to an agreement with the employer as regards rules of employment applicable to all employees and amendments thereof, subject to the terms of existing collective agreements.
6. To promote a good understanding among the employees themselves, and between them and the employer, and to intervene to safeguard the employees' right of association.
7. To receive complaints from the councils of wage-earning and salaried employees and to endeavour to secure the removal of the causes of such complaints.
8. To take action tending to prevent accidents and injury to health in the undertaking, and to co-operate in the carrying out of provisions respecting the regulation of industrial conditions and the prevention of accidents.

9. To participate in the administration of pensions funds, dwellings attached to the works, and other welfare arrangements, except where the regulations of such fund forbids such participation or where some other provision is made for the representation of the employees.

This statement of duties is completed by the provisions of Section 78, which also contains nine points, enumerating the duties of the separate councils of wage-earning and salaried employees. Certain of these duties are sometimes closely concerned with the regulation of conditions of labour. Where separate councils do not exist, these duties also are to be discharged by the single works council. The following are the most important :

To see that the legal provisions for the benefit of employees, collective agreements respecting conditions of employment, and decisions, accepted by the parties, of a conciliation committee, are carried out in the undertaking ;

In so far as these matters are not regulated by collective agreement, to assist, on the basis of an understanding with the economic associations of employees concerned, in determining wages and other conditions of labour, in fixing piece rates, in introducing new methods of remuneration, in regulating of working hours or modifications thereof, in regulating leave, in hearing complaints regarding the training and treatment of apprentices ;

To agree with the employer as regards rules of employment or other service regulations, subject to the terms of existing collective agreements ;

In so far as such matters are not regulated by existing collective agreements, to come to an agreement with the employer respecting general principles for the engagement of employees in each group in the undertaking ;

To intervene in cases of dismissal of employees in each group.

As regards the last point, Sections 81-83 contain more detailed provisions. According to these Sections, the general principles agreed upon must provide that the engagement of any person shall not be made "dependent on his political, military, religious, or trade union activities, or on his membership or non-membership of a political, religious, or trade society", and "they shall not include any proviso whereby engagement is made to depend upon a person's sex". Nevertheless, by virtue of the same Section (81), engagements based upon obligations imposed by collective agreement or the decision of an agreed organ of arbitration, have precedence over any such principles. Section 82 and 83 regulate the procedure in relation to infringement of the principles and to protests against dismissals.

Section 84 confers upon employed persons the right to lodge complaints with the councils of wage-earning or salaried employees against notice of dismissal by the employer, and the following Sections regulate the proceedings in regard to such complaints and the claim of the employed person to compensation in case the notice of dismissal is found to be unjust and the employer nevertheless refuses to continue the employment. "Compensation shall be proportionate",

says Section 87, "to the total number of years during which the said person has been employed in the undertaking, and shall be reckoned at the rate of one-twelfth of the last year's earnings for each year, but shall in no case exceed six-twelfths in all." Proper regard must be had to the economic position of the complainant and the employers' *ability to pay*.

If an unjust notice has already resulted in the dismissal of the complainant and he is afterwards reinstated, the employer is bound to pay him wages or salary for the time elapsed between such dismissal and the reinstatement (Section 88).

A number of other provisions relating to the powers and duties of the works and other councils are merely developments of the Sections already dealt with; they represent no important extension of the foregoing provisions, and may therefore be passed over here. Part IV (Sections 93 and 94) regulates the *Settlement of Disputes*; Part V (Sections 95 to 100) contains *Protective and Penal Provisions*; and Part VI (Sections 101 to the end) *Administrative and Temporary Provisions*.

#### *Works Councils and Control.*

Many of these Sections are interesting from the point of view of social legislation, but, with one exception, they contain no principles new to social and economic legislation. The one exception relates to the *right conferred on the works' councils or works committees, as the case may be, to representation on the Control Boards of Joint Stock and other companies: to information regarding the transactions of the undertaking specially affecting the persons employed therein, and regarding the position of the undertaking and its probable labour requirements: to inspection of the balance sheet and Profit and Loss Account of the undertaking: and to previous information in regard to the contemplated engagement or dismissal of large numbers of workers.* These rights are defined in Sections 70 to 74, the most important provisions of which are the following :

Section 70 provides that in undertakings, in which a Control Board exists, *one or two members of the works council shall be appointed to the Control Board*<sup>2</sup>, to represent the interests and

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(2) The Control Board (*Aufsichtsrat*) is a body elected by the shareholders in General Meeting and exercising large functions of control, including those exercised by the auditors of an English Company and others of a much wider character. It appears to have much greater power than the "Commission de Contrôle" of a French Company, but is not identical with the Board of Directors of an English Company; the latter is rather analogous to the "*Vorstand*," except that the powers of the *Vorstand* are limited by the controlling powers of the "*Aufsichtsrat*." (Note by the Translator). (See the German Code of Commerce (*Handelsgesetzbuch*), Book II, Part III, *passim*).



claims of the employed persons and to put forward their opinions and desires *as to the organization of the undertaking*. They are to have the right to sit and *vote at all meetings* of the Control Board, but receive only a refund for expenses; they are bound to observe secrecy in regard to confidential communications made to them.

Section 71 empowers the works council to require the employer to disclose to the works committee, or, when no such committee exists, to the works council itself, all transactions of the undertaking affecting *the employment contracts or the activities* of the persons employed therein and to produce to such committee or to the council, as the case may be, the *wages' sheets* and all *information necessary* in connection with the carrying out of existing collective agreements. Further, the employer has to *furnish every quarter a report* on the position and progress of the undertaking and of the industry in general and on the output of the undertaking and its labour requirements in particular.

In undertakings, whose owners are obliged by law to keep company accounts and in which there are at least 300 persons or 50 salaried employees, the works councils have power, under Section 72, to require that a *balance sheet and profit and loss account* for the past financial year shall be furnished and explained to the works committee or the works council, as the case may be, not later than six months after the end of the financial year. False statements or misrepresentations by suppression of facts may, under Section 99 of the Act, be punished by *imprisonment for not more than one year* and by *fine not exceeding 10,000 marks*.

Sections 70 and 72 do not apply to undertakings with political, religious, scientific, or other similar objects, and undertakings may be exempted by the Federal Government from the obligations imposed by these Sections, if important national interests so require. In such cases, however, the works councils have the right, where a Control Board exists, to lay before it proposals and wishes regarding conditions of work and the organization of the undertaking and to be represented by one or two delegates, who have the right to speak and vote at the meetings of the Control Board convened to consider such proposals or wishes (Section 73).

Whenever the *engagement or dismissal* of a considerable number of persons is rendered necessary by the extension, reduction, or cessation of the undertaking, or by the introduction of new technical processes or new methods of organizing or performing work, the employer is bound, as long as possible before such engagements or dismissals take place, to consult the works council, or, where confidential communications are involved, the works committee, in regard to the nature and scope of such engagements or dismissals and the means for

*avoiding hardship* in cases of dismissal. The Works Council may require proper information to be given to the Central Inquiry Office or to an employment exchange indicated by such Office.

#### GENERAL CHARACTER OF THE WORKS COUNCILS ACT.

Such are the provisions of the Act, which on its introduction was vehemently opposed both by the extreme Right and the extreme Left in the National Assembly. Employers' organizations, led by the Federation of German Industry (*Reichsverband der deutschen Industrie*), characterized it as a ruinous onslaught on the essential conditions of industrial enterprise, and threatened the cessation of industry if it were accepted. The extreme Left wing of the Socialist parties on the other hand, the Communists and the Independent Social Democrats, opposed it as a treacherous patch-work, which, in the garb of make-believe rights, laid fetters on the workers and constituted a betrayal of the gains won by labour in the days of Revolution. Violent battles were at the same time waged round it even by those parties and industrial organizations, which were in essential agreement with the measure, or recognised its fundamental principle as an inevitable demand of the times, but these were mostly concerned with questions of detail. Thus the bourgeois parties of a Liberal shade strongly opposed the provision which obliged the employer to produce his balance sheets and account books to the council of employees<sup>2</sup>; while the representatives of the workers would under no circumstances dispense with this obligation. The result was a compromise, by which the proposal of the workers, that is, of the Social Democrats, suffered some modification, and was hemmed about with certain rules, obligations to secrecy, etc., but was in substance accepted. And so with various other provisions.

The Act is a compromise, in keeping with the fact that it was passed by an Assembly, which was elected after a political Revolution effected by the working class, and in which the workers' parties had so large a representation (185 out of 421), that no Government could be formed against them, but yet did not command a majority of votes. It establishes a new principle in the sphere of economic legislation, a principle, which, carried out in its entirety, would accomplish a social revolution — the conferring of equal rights on the workers in the conduct of undertakings; but it only partially brings into application this principle as a reform, not overthrowing the old order, but leading the way to a new.

<sup>2</sup> I regret the necessity of using this ambiguous word, but German legal phraseology provides no other word covering both wage-earning workers and salaried employees.

*Works Councils and the old Workers' Committees.*

The provisions of the Act have certain points of contact with already existing legislation. On the one hand, the works councils, councils of wage-earning and salaried employees, represent, in a substantially more complete, and from the workers' point of view improved, form a development of the old workers' committees in factories and workshops. These had already been defined in the *Gewerbeordnungsnovelle* of 1891 (amending the Industrial Code), and had been made obligatory for mines by the Act of 1905, while the Act of 1916 relating to National Service (*Vaterländischer Hilfsdienst*) made them so for all undertakings engaged in such national service; they had in some respects followed tendencies hostile to the Trade Unions and in others preserved a neutral attitude towards them. But it was not until after the Revolution of November 1918, by the Order of the Council of People's Representatives of December 23 of that year relating to Collective Agreements and to Committees of Workers and Employees, that duties were entrusted to these committees, which brought them into positive relations with the trade unions. The present Act introduces the provisions of this Order of the revolutionary period, in a much extended form and with a much wider application, into the regular legislation of the Republic. The councils established by it have more comprehensive functions and greater rights than the old committees, and by various provisions of the Act will be brought into direct organic connection with the trade unions. They thus, to a certain extent, develop the voluntary work of the trade unions themselves. The Act gives them functions, which the progressive trade unions have hitherto exercised through their delegates, agents, and the like, and does so, not for the purpose of superseding the trade unions, but of assisting them as auxiliary bodies.

*Works Councils as Auxiliaries to the Trade Unions.*

It is no exaggeration to describe the councils as being auxiliary to the trade unions. We have seen how careful the Act is again and again to provide that the arrangements made by the works councils must be subject to the terms of the collective agreements entered into by the trade unions with the employers; and how it prescribes that, where no such collective agreements exist, the councils shall make agreements fixing wages, &c., in consultation with the "economic associations of wage-earning and salaried employees" concerned, that is, the trade unions. We have noted how the councils are called upon to see that the agreements entered into by the trade unions with the employers are observed and that the rights of the industrial organizations are not prejudiced; and how, in important negotiations with the employers, they may invite

representatives of the trade unions, and, on the demand of a fourth of the members of a council, must invite them, to attend in an advisory capacity. Taking all this into consideration, no one will regard it as an exaggeration to say that this Act, more insistently than any similar measure, adopts the trade union principle, which is that the works councils shall in all essential respects be subordinate to the trade unions.

This is undoubtedly, even from the point of view of economic policy, a great advantage. Separated from the trade unions, the works councils would be in danger of degenerating at some time or other into organs of industrial particularism, of making more or less anti-social concessions to the individual interests of particular undertakings or of a group. This intimate connection with the trade unions will prevent any such aberration. By their expansion into great industrial groups the trade unions, on their side, are protected from fostering a narrow corporate spirit, which, wherever it finds a home, is bound to produce effects injurious to the national economy and therefore anti-social. Many workers are undoubtedly still inclined to regard and to carry on the class struggle solely from the point of view of their own interests in a narrow vocational group. There have always been strikes — and they were often the fiercest strikes — which were really directed against the community, far more than against a particular group of employers. The trade union movement of today, the movement of great industrial federations linked together in national general federations, is protected from such aberrations and constitutes an increasingly effective counterforce against their occurrence. Its leaders are able to take a general view of the condition and needs and also of the possibilities of the whole field of industrial activity, and are therefore well fitted to stand beside the works' councils as counsellors in all controversial questions. It was they, too, who provided the Government of the Republic with the most important material for the preparation of the Bill; just as it was their elected members in the National Assembly (sitting, so far as they were and are Socialists, with few exceptions, on the benches of the old Social Democratic Party) who carried on the real struggle against the opponents of the Act and displayed the greatest tenacity and energy.

The opposition of the radical wing of the Socialist group to the Act is based principally on the fact that the Act fails to realize the system of political workers' councils which hovered before them as the desirable goal; that it is not in their sense revolutionary, but, on the contrary, directs the works and other councils to agreements with the employers, and in cases of serious differences of opinion provides for settlement by the arbitration of joint committees. This is the ground, among others, for the reproach that it enslaves the workers. But the arguers forget that the Act only sets up

the works councils as auxiliary organs, for the representation of the economic interests of the workers; these organs, as is evident from the foregoing, can only complete the great trade union movement, not prejudice it, since the Act charges them with the observance and execution of agreements made by the unions.

The Act is the first step towards the realization of those paragraphs of the Constitution of the Republic quoted at the beginning of this article. Bills for the realization of the rest of those provisions have long been in preparation, but, owing to the dissolution of the National Assembly and the overburdening of the new Reichstag with urgent tasks of every kind, it has not been possible to present them.

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