Derogation Clauses and the System of Collective Bargaining

Deviant Collective Bargaining Agreements in the German Metalworking Industry 2004-2006

Thomas Haipeter

Derogation Clauses in the German Metalworking Industry

Factors of erosion of the system of industrial relations:

- **Weakening of collective bargaining actors:**
  - Organisational density of unions and employers’ associations
  - Employers’ associations without membership obligation to apply collective bargaining agreements

- **Decreasing coverage of collective bargaining agreements**

- **Growing competition between collective bargaining standards and between union and non-union sectors**
  - Service industries
  - Temporary work

- **Uncontrolled ("wild") decentralisation**
Derogation Clauses in the German Metalworking Industry

**Derogation Clauses:** Shortfalls of collective bargaining norms:
- Legitimised by collective bargaining actors
- Negotiated by collective bargaining actors (at least unions) in form of a collective bargaining agreement

Pandora’s box for uncontrolled erosion or instruments of re-vitalisation of collective bargaining?

- Metalworking Industry one of the leading sectors concerning implementation
- 850 deviant collective bargaining agreements between 2004 and 2006
- Interviews with collective bargaining experts from union and employers’ associations

German topic, but:
- Derogation clauses and shortfalls also in other European countries
- International repercussions

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Derogation Clauses in the German Metalworking Industry

Development of derogation clauses in the metalworking industry:
- 1993: Hardship clauses (Eastern Germany)
- 1995 (and the following): Recapitalisation clauses (Western Germany)
- 2004: Collective bargaining agreement of Pforzheim
  - Improvement of innovation capacity, competitiveness and investment conditions for firms
  - Employment protection or creation of new jobs

Union’s motives:
- External: Pressure from red-green government (threat of opening clauses by law)
- Internal (1): Growth of wild decentralisation on plant level
- Internal (2): In-transparency of practice of recapitalisation clauses (competencies, number of agreements, contents)
Derogation Clauses in the German Metalworking Industry

**Problems** of derogation practice after Pforzheim – Siemens and others
(working time extension plus works councils going it alone)

**Coordination rules** by union:
- Obligation to report negotiations to headquarters and acceptance of agreements by headquarters
- Negotiations by local union level controlled by the regional administration level (Bezirke)
- Organisation of membership participation obligatory (collective bargaining commission, ballots about start of negotiations and acceptance of agreement, continuous information of members)

**Procedural Effects**:
- Transparency of agreements (number, contents)
- Standardisation of processes
- New forms of decentralised collective bargaining and membership participation (implementation depends on regional strategies of union)

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Analysis of Deviant Collective Bargaining Agreements

Spread of Deviant Collective Bargaining Agreements

- 2004: 167
- 2005: 412
- 2006: 271
- Gesamt: 850

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Deviation Rate (Shares of DCBA in all Plants Organised by Employers’ Associations 2006)

<table>
<thead>
<tr>
<th>Total (850 agreements)</th>
<th>20.2%</th>
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<tr>
<td>Without agreements expired</td>
<td>10.5%</td>
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Analysis of Deviant Collective Bargaining Agreements

Topics of Material Concessions, Shares of all DCBA

- Working Time
- Wages
- Framework Agreement
- Miscellaneous

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Topics of Working Time, Shares of all DCBA with Working Time Concessions

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Shares of Concessions by Enterprises, Shares in all DCBA

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Results

Problems and achievements:

**Problems:**
- Dominance of working time extensions
- Different practices concerning membership participation

**Achievements:**
- Strengthening of transparency
- Standardisation of processes (negotiations, decisions, controlling)
- Decrease in number of d.c.b.a.
- Improvements in negotiating concessions of enterprises

- Improvement of control of deviant collective bargaining by union
- Derogation clauses can be a contribution to handle problems of the collective bargaining system

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Results

Successful union control coupled with substantial changes in the corporatist collective bargaining system of the metalworking industry:

- New architecture of the system:
  - Latent or manifest competition between bargaining norms
  - Control of deviances continuous task for union

- New logic of collective action of associations:
  - Growing importance of membership logic (vs. logic of influence): More room of manoeuvre for enterprises (employers’ associations) and more membership participation (unions)

- New logic of interaction
  - Weakening of “partnership in conflict” (mutual recognition of interests) because enterprises can enforce concessions (power asymmetry because of internationalisation, financialisation…)
  - Union reacts by trying to improve its capability of conflict by membership participation
  - Reduction of power asymmetry may promote resurgence of partnership, but locally based