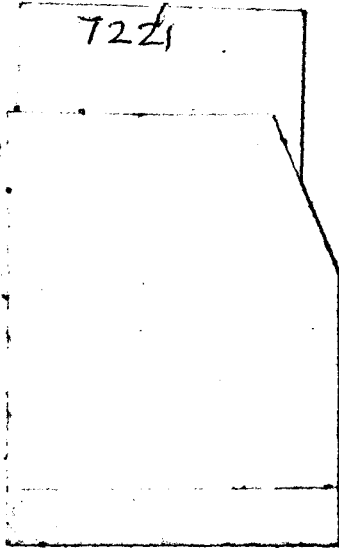


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THE WORKS COUNCIL

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THE WORKS COUNCIL

*A GERMAN EXPERIMENT IN
INDUSTRIAL DEMOCRACY*

By

C. W. GUILLEBAUD

FELLOW OF ST JOHN'S COLLEGE
CAMBRIDGE



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PREFACE

The present volume is the result of a number of years' close study of the German Works Councils. I have spent a portion of each year since 1919 in Germany investigating at first hand the operation of the Works Councils Act. I am glad to have this opportunity of thanking the many Government officials, employers, members of Works Councils, Trade Union officials and others with whom I have discussed this problem, for the unfailing courtesy with which I have been received and for the time that they have sacrificed in assisting me in my researches.

There is a certain danger that the writer of a monograph on a particular institution may, without realising it, come to identify himself too closely with the fortunes of the institution which he is studying, and may thereby be led to adopt an uncritical attitude towards it. I have endeavoured throughout to guard against this danger and to treat the efforts and achievements of the Works Councils impartially, though with that measure of sympathy which is necessary if the workings of an essentially human institution are to be understood and appreciated.

The writing of this book was completed in December 1926, at a time when the Reports of the German Factory Inspectors were not available for 1926. The detailed study of the Works Councils has therefore not been carried beyond the middle of that year. But the Reports of the Factory Inspectors, which were published in 1927, and other information that I have been able to procure, show that the Works Councils were functioning throughout 1926 in very much the same way as in the preceding year, while the general economic environment remained substantially unaltered.

PREFACE

It was originally my intention to make a comprehensive survey of the Shop Steward movement, Whitley Committees, and voluntary Works Councils in England, in order to make a detailed comparison of conditions and tendencies in the two countries. I collected a good deal of material for this purpose, but found subsequently that the time at my disposal was insufficient to enable me to carry out this plan, and I have been compelled to confine myself to Germany. I hope, however, that it will be found that the history of the German experience with statutory Works Councils will provide material of value for those who are concerned with this side of the labour movement in England.

I wish to express my gratitude to Mr I. L. Evans for helping me with the proofs, and to my aunt, Mrs Alfred Marshall, for reading the whole of the manuscript and for providing the index.

C. W. GUILLEBAUD

ST JOHN'S COLLEGE

CAMBRIDGE

July 1927

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APPENDIX I

Act to establish Works Councils. February 4, 1920

L. GENERAL PROVISIONS

§ 1. In order to safeguard the common economic interests of employees (salaried and wage-earning) as against the employer, and to support the employer in the efficient conduct of his business, Works Councils shall be constituted in all establishments normally employing not less than 20 persons.

§ 2. In establishments where less than 20 persons, but not less than five persons entitled to vote, are normally employed, of whom not less than three are eligible for election in accordance with §§ 20 and 21, a Works Steward shall be elected.

Where such establishments employ not less than five wage-earning and five salaried employees entitled to vote, a common Works Steward may be elected. If an agreement cannot be arrived at by the majority of each group, the wage-earning and salaried employees shall each elect a Works Steward.

§ 3. In establishments which employ not less than 20 out-workers (Section 119 *b* of the Industrial Code), who usually work for the same firm and do not themselves employ others, a special Works Council shall be constituted for the out-workers. Detailed regulations shall be drawn up by the Federal Minister of Labour, subject to the approval of a Committee of the Reichstag consisting of 28 members.

§ 4. Sections 1 and 2 shall apply to establishments in agriculture and forestry and subsidiary undertakings, provided that only permanent employees are taken into account in reckoning the number of persons employed. In such establishments a Works Steward shall not be elected unless at least 10 persons are regularly employed, of whom not less than three are eligible for election under §§ 20 and 21.

§ 5. The formation of bodies representative of persons employed by ocean and inland navigation undertakings shall be dealt with in a special Act.

§ 6. In order to safeguard the special economic interests of wage-earning and salaried employees as against the employer, Councils of wage-earning and of salaried employees shall be constituted in every establishment where both wage-earning and salaried employees are represented on the Works Council.

§ 7. In establishments where two Works Stewards are elected, each of them shall represent the special interests of the group by which he is elected.

In establishments where only one Works Steward is elected, he shall represent the common interests of both, and also the special interests of each group.

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§ 8. The right of the economic associations of wage-earning and salaried employees to represent the interests of their members shall not be affected by the provisions of this Act.

§ 9. For the purposes of this Act, the term establishments shall include all public and private establishments, businesses, and administrative establishments.

Subsidiary establishments or departments of an undertaking, which are linked together either by management or industrial process, shall not be deemed to be separate establishments, provided that they are situated within the same commune or in adjacent and economically interdependent communes.

§ 10. For the purposes of this Act, the term employees shall include wage-earning and salaried persons other than members of the employer's family.

The following shall not be deemed to be employees:

- (1) Public officials, and persons awaiting permanent appointment as officials.
- (2) Persons who have not taken up an occupation primarily for the sake of remuneration, but mainly for the sake of physical health, vocational training, moral improvement or education, or who are actuated by motives of a charitable, religious, scientific or artistic nature.

§ 11. For the purposes of this Act, the term wage-earning employees shall include all persons who work for remuneration in the services of others or who are employed as apprentices, but shall exclude salaried persons.

The term wage-earning employees shall further include out-workers (§ 3), resident in the same commune as the establishment or in an adjacent economically interdependent commune, who work mainly for the same firm and do not themselves employ others.

If a special Works Council is constituted for out-workers under § 3, these shall be excluded from calculations of the number of employees in the works.

§ 12. For the purposes of this Act, the term salaried employees shall include all persons who work for remuneration in any of the occupations specified in § 1, paragraph 1, of the Salaried Employees' Insurance Act, even if they are not compulsorily insured. Further, the term salaried employees shall include apprentices who are going through a regular training for one of these occupations, and persons employed in offices on work of a subordinate or purely mechanical nature.

For the purposes of this Act, the term salaried employees shall not include directors and legal representatives of public and private corporations and associations, nor managers and executive officers of businesses, in so far as they have independent power to appoint or dismiss the other employees in the establishment or its branches, or in so far as they hold a power of attorney or general authority to take action.

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§ 13. The Federal Government may decide, by Order, for public authorities and enterprises of the Reich as well as for the public bodies which come under Federal supervision in respect of the conditions of employment of their officials, that certain classes of permanent officials and persons awaiting permanent appointment as officials shall be considered as wage-earning or salaried employees for the purposes of this Act.

For the public authorities and enterprises of the individual States, communes and federated communes, as well as for the public bodies which come under the supervision of the individual States in respect of the conditions of employment of their officials, the necessary regulations may be made by the Governments of the said States.

Where this is done, § 78, paragraphs 8 and 9, §§ 81 to 90 and 96 to 98 shall not apply.

In the same way it may be determined that certain groups of employees, who have a prospect of being raised to the grade of officials or who are employed by public authorities on the same or similar work to that performed by permanent officials and persons awaiting permanent appointment as officials, shall not be regarded as employees for the purposes of this Act, provided always that they enjoy the same rights as officials in the constitution of the officials' representative bodies (Officials' Councils and Committees).

§ 14. In cases where the employer is not a single individual, the rights and duties of employers under this Act shall be assigned

- (1) In the case of private corporations and associations, to the legal representatives thereof.
- (2) In the case of the Federal Government, the States, communal unions, communes and other public bodies, to the chiefs of each department, subject to the provisions to be laid down by the supreme Federal authority for the undertakings of the Reich, and for public bodies which come under its supervision in respect of the conditions of employment of their officials, and by the central State authority for all other bodies.

An employer may be represented by any person empowered to act on his behalf.

II. CONSTITUTION OF WORKS REPRESENTATIVE BODIES

A. Works Councils (Councils of Wage-earning and of Salaried Employees)

1. *Composition and Election*

§ 15. A Works Council shall consist:

In establishments with not less than 20 and not more than 49 employees, of three members.

In establishments with not less than 50 and not more than 99 employees, of five members.

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In establishments with not less than 100 and not more than 199 employees, of six members.

The number of members shall be increased:

In establishments with not less than 200 and not more than 999 employees, by one for every further 200.

In establishments with not less than 1000 and not more than 5999 employees, by one for every further 500.

In establishments with not less than 6000 employees, by one for every further 1000.

The total number of members shall in no case exceed 30.

The Councils of wage-earning and of salaried employees shall consist of the wage-earning and salaried members of the Works Council respectively. Even if there are in either case only one or two members, such members shall have the rights and duties of a Council for wage-earning or salaried employees. If the number of wage-earning or of salaried employees is so great that either can claim more representatives on its Council, on the basis of calculation specified in paragraphs 1 to 3 above, than it has on the Works Council, a corresponding number of supplementary members shall be added.

If an establishment for which a Works Council has to be set up has fewer employees who are eligible for election than the number of Works Council members required under paragraphs 1 to 3 above, the Works Council shall consist of three members; provided that if less than three employees are eligible, Works Stewards shall be elected.

§ 16. If both wage-earning and salaried persons are included among the employees, each group shall be represented on the Works Council in proportion to its relative numbers at the time of fixing the date of the election.

Each group shall have at least one representative.

Minority groups shall be represented as follows:

For a group of not less than 50 and not more than 299 employees, at least two members.

For a group of not less than 300 and not more than 599 employees, at least three members.

For a group of not less than 600 and not more than 999 employees, at least four members.

For a group of not less than 1000 and not more than 2999 employees, at least five members.

For a group of not less than 3000 and not more than 5999 employees, at least six members.

For a group of 6000 or more employees, at least eight members.

The numerical proportions shall be determined by the Election Committee, in accordance with the regulations for the management of elections, on the proportional representation system (§ 25).

A minority group shall not be represented if it does not include more than five persons, unless they constitute more than one-twentieth of the employees of the establishment.

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§ 17. Members may be allotted to groups otherwise than as provided in § 16, if a majority in each group voting separately by secret ballot so decides.

If a group includes fewer eligible persons than the number specified in § 16, it may elect members of the other group as its representatives.

§ 18. Those members and supplementary members (§ 15, paragraph 4) of a Works Council who are wage-earners shall all be chosen at the same election by the wage-earning employees of the establishment from among their own ranks by direct ballot vote on the system of proportional representation, and shall hold office for one year, and the members and supplementary members who are salaried employees shall be similarly elected by the salaried employees. Members shall be eligible for re-election.

If the number of persons employed is temporarily increased by more than 100 per cent., but in any case by not less than fifteen, including three who are entitled to vote, the persons temporarily employed shall ballot for a representative, who shall be a member of the representative body for the establishment where such exists. In default of a representative body, the said representative shall have the status of a Works Steward.

If the number of temporary employees exceeds 100, a new Works Council may be constituted on a resolution to that effect adopted by a majority of the employees entitled to vote. In agriculture, forestry and subsidiary establishments, under the same conditions, the temporary employees shall ballot for two representatives, who shall be members of the representative body for the establishment.

§ 19. The representatives of wage-earning and of salaried employees shall be chosen at a single election for all employees, if the wage-earning and salaried employees who are entitled to vote so decide before each election by a two-thirds majority in each group voting separately by ballot.

The constitution of Councils of wage-earning and salaried employees under § 6, and the provisions of §§ 15 and 16, shall not be affected by the above provision.

§ 20. All male and female employees who have attained the age of 18 years and who are in possession of civic rights shall be entitled to vote.

Persons who are entitled to vote shall be eligible for election if they have attained the age of 24 years and are German citizens, have completed their vocational training and have, on the day of the election, been employed for not less than six months in the establishment or undertaking and for not less than three years in the branch of industry or occupation in which they are engaged on the said day.

An employee shall not be eligible for election in respect of more than one establishment.

§ 21. If an establishment or an undertaking has been in existence

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less than six months, the requirement as to duration of employment therein shall be deemed to be satisfied by any person who has been employed in the said establishment or undertaking since its foundation.

The requirement as to six months' employment in the establishment shall not apply in the case of temporary employees in any establishment in which it is the rule to employ some or all of the employees during part of the year only.

If in any establishment there is not a sufficient number of employees who are eligible for election under § 20, paragraph 2, the requirements as to six months' employment in the establishment and (if necessary) also as to three years' employment in the industry or occupation may be waived in respect of the said establishment.

Disabled persons, as defined in the Order dated 9 January, 1919 (R.G. Bl. p. 28), who owing to their disablement are obliged to adopt a new occupation, shall be exempt from the requirement as to three years' employment in the same branch of industry or occupation.

§ 22. In the composition of a Works Council regard shall be had so far as possible to the various occupational groups of male and female employees in the establishment.

§ 23. A Works Council shall, not later than four weeks before the expiry of its term of office, appoint by a simple majority vote an Election Committee consisting of three persons entitled to vote, and appoint one of these three to be chairman.

If the Works Council fails to fulfil the above obligation, the employer shall nominate an Election Committee consisting of the three senior employees who are entitled to vote, on which both wage-earning and salaried employees shall be represented if both are employed in the establishment. The Election Committee shall in this case appoint its own chairman.

The same rule shall apply in the case of a newly-established undertaking, or one in which the prescribed minimum number of employees for the constitution of a Works Council is attained for the first time.

The Election Committee shall, immediately upon its appointment, make preparations for the election, which shall take place within six weeks of its appointment.

§ 24. Wages or salaries shall not be reduced on account of loss of time due to the exercise of electoral rights or to activities as members of an Election Committee. Clauses in agreements which are contrary to this provision shall be void.

§ 25. Detailed regulations as to election procedure shall be issued by the Federal Minister of Labour, subject to the approval of a Committee of the Reichstag consisting of 28 members.

2. Procedure

§ 26. If a Works Council consists of fewer than nine members, it shall appoint a chairman and vice-chairman from among its members by a simple majority vote. If the Works Council includes both wage-

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earning and salaried employees, the chairman and vice-chairman may not belong to the same group.

§ 27. If a Works Council consists of not less than nine members, it shall elect a Works Committee from among its own members according to the principle of proportional representation. If the Works Council includes both wage-earning and salaried employees, the members of the Works Committee shall not all belong to the same group. The Works Committee shall appoint a chairman and vice-chairman from among its members in accordance with the provisions of § 26, *mutatis mutandis*.

§ 28. The chairman or his deputy shall represent the Works Council in negotiations with the employer and before the Conciliation Board.

§ 29. The Election Committee shall convene the Works Council, not later than one week after its election, to make the appointments specified in §§ 26 and 27. The chairman shall convene all subsequent meetings, and shall draw up the agenda and conduct the proceedings. On the demand of not less than one-fourth of the members of the Works Council, the chairman shall call a meeting and shall place on the agenda the subject brought forward by them for consideration. The same procedure shall apply if a meeting is demanded by the employer.

The employer shall only be present at meetings to which he is invited and at meetings called at his request. He may take the chair at such meetings.

An appeal shall not be made to the Conciliation Board until the matter in dispute has been discussed with the employer at a meeting to which he has been duly invited and of the agenda for which he has been notified, or unless he or his representative has failed to attend the said meeting though duly invited.

§ 30. A Works Council shall meet outside working-hours as a rule and whenever possible. The meetings shall be private.

When it is necessary to hold a meeting during working-hours, the employer shall be given adequate notice.

§ 31. At the request of one-fourth of the members of a Works Council, one official of each of the economic associations of employees represented thereon shall be invited to attend meetings in an advisory capacity.

The employer may require that one official of each of the economic associations to which he belongs shall be invited to attend in an advisory capacity meetings at which he is entitled to be present.

§ 32. A resolution of the Works Council shall not be valid unless all the members have been summoned to the meeting and notified of the agenda, and unless at least half the members of the Council are present. Members may be represented by their substitutes in accordance with § 40.

Resolutions shall be passed by a simple majority vote of the

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members and substitutes present. In the case of an equality of votes the resolution shall be deemed to be defeated.

§ 83. Minutes shall be kept of every meeting of the Works Council, stating at least the text of resolutions and the majority by which they are passed, and shall be signed by the Chairman and one other member.

If the employer has made a statement in the course of a debate, the minutes thereof shall be submitted to him for signature. He shall be furnished with a copy of the minutes of any proceedings in which he is entitled to take part.

If those wage-earning or salaried members of the Works Council, who find themselves in the minority as a group, regard a resolution passed by the Works Council on a matter affecting both wage-earning and salaried employees as gravely injurious to important interests of the employees whom they represent, the said members shall be entitled to express their views in a special resolution and to present the same to the employer.

§ 84. Other provisions respecting procedure may be embodied in standing orders drawn up by each Works Council for itself.

§ 85. Members and substitute members of Works Councils shall fulfil their duties without remuneration, as honorary functions. Unavoidable loss of working-time shall not be made a ground for reduction of wages or salary. Any agreement to the contrary shall be void.

§ 86. The necessary expenses arising out of the proceedings of the Council, including allowances for personal expenses where necessary, shall be borne by the employer, unless other provision is made for them under a Collective Agreement. He shall place rooms and other office requisites at the disposal of the Works Council for its meetings, interviews and current business, regard being had to the scope and nature of the establishment and the duties imposed by law upon the Council.

§ 87. It shall not be lawful for contributions to be collected from the employees and used for any of the purposes of Works Councils.

§ 88. Sections 29-37 shall apply correspondingly to the procedure of Works Committees, and § 26 (first sentence) and §§ 28-37 to the procedure of the separate Councils of wage-earning and salaried employees.

8. Termination of Membership

§ 89. Membership of a Works Council shall be terminated by resignation therefrom, by the expiry of the contract of employment, or by loss of eligibility.

At the request of the employer, or of not less than one-fourth of the employees entitled to vote, the Regional Economic Council, or, where none exists, the Conciliation Board, may resolve that the membership of a representative be terminated on account of gross misfeasance of duty.

Termination of membership of a Works Council shall entail

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termination of membership of the separate Councils of wage-earning and salaried employees.

§ 40. If a member retires, a substitute (as provided for in the Election Regulations) shall take his place. Similarly substitutes may attend in place of members who are temporarily detained.

Substitutes shall be chosen in rotation from among the eligible but not elected persons belonging to the same list of nominations as the members replaced.

§ 41. At the request of the employer, or of not less than one-fourth of the employees entitled to vote, the Regional Economic Council, or, where none exists, the Conciliation Board, may resolve that the Works Council be dissolved on account of gross misfeasance of duty.

§ 42. If the total number of members and substitutes of a Works Council falls below the number of members of the Works Council required under §§ 15-16, steps shall at once be taken to hold a new election.

The same rule shall apply in the case mentioned in § 41, and also on the retirement of the whole Works Council. In the cases referred to in this paragraph substitute members shall not be called on to serve.

§ 43. If a new election of the whole Works Council is necessary, the members of the existing Council shall remain in office until the new Council is constituted.

In the case specified in § 41 the Regional Economic Council, or, where none exists, the Conciliation Board, may convene a temporary Works Council.

§ 44. Sections 39-41 shall apply correspondingly to termination of membership of a Council of wage-earning or salaried employees.

Termination of membership of a Council of wage-earning or salaried employees shall entail termination of membership of the Works Council.

A new election shall not be necessary if the number of supplementary and substitute members of a Council of wage-earning or salaried employees falls below the number required under § 15, paragraph 4.

If a Council of wage-earning or salaried employees is dissolved or retires, a new election shall be held to appoint members of the said Council who are also members of the Works Council, and as many supplementary members as before, for the remainder of the term of office of the Works Council. Section 43 shall apply correspondingly.

4. Works Assemblies

§ 45. A Works Assembly shall consist of the employees of one establishment.

If on account of the nature or magnitude of an establishment it is impossible to hold a meeting of all the employees together, the Works Assembly shall be held in sections.

§ 46. The chairman of the Works Council shall be entitled to call a

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Works Assembly, and shall do so on the demand of the employer or of not less than one-fourth of the employees entitled to vote.

The employer shall be notified of any meeting held at his demand. He shall be entitled to appear at the said meeting, or to send a representative, and to take part in the proceedings either in person or through his representative, but not to vote.

A Works Assembly shall, as a general rule, take place outside working-hours; the consent of the employer shall be required if, in urgent cases, it is necessary to depart from this rule.

§ 47. One official from each of the economic associations of employees represented in the establishment shall be entitled to take part, in an advisory capacity, in a Works Assembly.

§ 48. A Works Assembly may forward requests and proposals to the Works Council. The meeting shall deal only with matters within its competence.

§ 49. Sections 45-48 shall apply correspondingly to separate Works Assemblies of wage-earning and salaried employees.

B. Central Works Councils

§ 50. If several establishments of a similar nature or forming part of the same economic process and belonging to the same proprietor are situated in the same commune or in neighbouring and economically interdependent communes, a Central Works Council may be constituted in addition to the Councils for individual establishments, if resolutions to that effect are adopted by the separate Councils.

§ 51. Under the aforesaid conditions a Common Works Council may be constituted instead of a Central Works Council, to take the place of the Councils for individual establishments.

The employees in any one of the associated establishments, who are entitled to vote, may withdraw from the arrangement on passing a resolution by a simple majority vote not later than six weeks before the expiry of the term of office of the Common Works Council.

A Common Works Council shall be constituted under the conditions specified in paragraph 1, in the case of establishments for which a representative body under §§ 1, 2 and 62 could not otherwise be formed.

§ 52. A Council for an individual establishment, or the employer, may propose the substitution of one or more Common Works Councils for the Central Works Council, in any case in which material simplification of business procedure would result therefrom without injury to the interest of employees. If the individual Works Councils do not all pass resolutions agreeing thereto, the Regional Economic Council, or, where none exists, the Conciliation Board, shall decide as to the proposal.

The employees entitled to vote in any one of the associated establishments may propose the dissolution of the Common Works Council on passing a resolution by a simple majority vote not later than six

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weeks before the expiry of the term of office of the Council. If resolutions agreeing thereto are not passed in all the works concerned, the Regional Economic Council, or, where none exists, the Conciliation Board, shall decide as to the proposal.

§ 58. Sections 50-52 shall apply to establishments carried on by communes and federated communes, even if they do not form part of the same economic process, but they shall apply to establishments carried on by other public bodies only in so far as they belong to the same branch of industry.

§ 54. For the purpose of electing a Central Works Council two electoral bodies shall be formed, one consisting of all the wage-earning members and the other of all the salaried members of the individual Works Councils. Each of these electoral bodies, under the direction of the three senior chairmen of the individual Works Councils, shall elect by ballot from among its own members its allotted number of members of the Central Works Council, on the principle of proportional representation. The number of members of the Central Works Council, and the constitution of the same, shall be determined in accordance with §§ 15 and 16.

Separate Councils of wage-earning and of salaried employees shall not be formed within a Central Works Council.

§ 55. Sections 26-37 shall apply correspondingly to the procedure of a Central Works Council.

§ 6. A Central Works Council shall be elected for one year.

Sections 39 and 41-43 shall apply correspondingly to the termination of membership of a Central Works Council.

The withdrawal of a member from a Central Works Council shall entail his withdrawal from the individual Works Council. The converse shall also apply.

In both cases the member who has withdrawn shall be replaced by his substitute on the individual Works Council.

§ 57. In undertakings in which Central Works Councils exist, the Works Assemblies of individual establishments shall be substituted for the Works Assembly of the undertaking.

C. Works Stewards

§ 58. A Works Steward (§ 2) shall be elected for one year by the employees entitled to vote, on a simple majority of votes by ballot. He shall be eligible for re-election.

Sections 20-21 and 23-25 shall apply correspondingly to the election of a Works Steward, with the following modifications of § 23, namely, that an election officer shall be substituted for the Election Committee and that the period of four weeks provided for in § 23, paragraph 1, shall be reduced to one week.

§ 59. Sections 28 and 35-37 shall apply correspondingly in respect of a Works Steward.

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§ 60. Section 39, paragraphs 1 and 2, and § 43 shall apply correspondingly to the termination of service as a Works Steward.

D. Special Representative Bodies

§ 61. In undertakings and administrative departments carried on by the Federal Government, States, and federated communes, which extend over a considerable part of the Reich or of a State or into several communal areas, the constitution of individual and Central Works Councils and the determination of their respective powers and duties in relation to the form of the undertaking or administrative department shall be regulated by Order.

The said Order shall be issued by the Federal or State Government concerned, after consultation with the economic associations of the employees in question.

The said Order may also determine which parts of an undertaking or administrative department shall be deemed to be separate establishments in the sense of § 9, paragraph 2.

§ 62. A Works Council shall not be constituted, or, if already existent, shall be dissolved, if special difficulties are encountered in respect of its constitution or activities on account of the nature of the establishment, and if some other body representative of the employees of the establishment already exists or may be constituted on the basis of a Collective Agreement declared to be binding on all concerned. The said representative body shall have the powers and duties of a Works Council under this Act.

If such a Collective Agreement lapses, the representative body set up in accordance with paragraph 1 of this Section shall remain in office until a new Collective Agreement has been concluded and declared to be universally binding, or until a Statutory Works Council has been elected.

§ 63. If it is proposed that a Collective Agreement be declared to be binding on all concerned, the Federal Ministry of Labour may, on a proposal from persons entitled to put forward the same (§ 8 of the Order of 23 December, 1918, R.G. Bl. p. 1456), order the postponement of the election of Works Councils for establishments within the scope of the said Agreement, pending a decision as to its binding nature.

§ 64. If the said Agreement does not cover all the employees of an establishment, a representative body shall be constituted in accordance with the provisions of this Act for the workers to whom the Agreement does not apply, in order to safeguard their interests.

§ 65. If in an undertaking for which a Works Council is constituted there exists an officials' representative body (Officials' Council or Committee) for the public officials belonging thereto, the Works Council and the officials' representative body may meet for the joint consideration of matters of common interest which are within the competence of both bodies.

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The chairman of the Works Council and of the officials' representative body shall preside in turn at alternate joint meetings. The sending out of notices of meetings and the drawing up of the agenda shall be carried out jointly by the two chairmen.

The Federal Government may issue more detailed regulations for the public authorities and undertakings of the Federal State and public bodies, which come under federal supervision in respect of the conditions of employment of their officials, and the Governments of the individual States may likewise issue regulations for the public authorities and undertakings of States, communes, federated communes and public bodies, which come under the supervision of the said Governments in respect of the conditions of employment of their officials.

III. POWERS AND DUTIES OF WORKERS' REPRESENTATIVE BODIES

A. Works Councils

§ 66. It shall be the duty of the Works Council—

- (1) In establishments which serve economic purposes, to support the managing body with advice, and thus to co-operate in securing the highest possible standard of production and the maximum degree of working efficiency.
- (2) In establishments which serve economic purposes, to co-operate and assist in the introduction of new labour methods.
- (3) To guard the establishment against disturbances, and especially—without prejudice to the rights of economic associations of wage-earning and salaried employees (§ 8)—to appeal, in case of disputes between the Works Council, the whole body of employees or any group or part thereof, and the employer, to the Conciliation Board, or some other organ of conciliation or arbitration selected by agreement, in any case in which a settlement cannot be arrived at by negotiation.
- (4) To supervise the execution of awards affecting the establishment as a whole which have been accepted by both parties, and which have been promulgated by a Conciliation Board or some other organ of conciliation or arbitration selected by agreement.
- (5) To come to an agreement with the employer as regards works rules applicable to all employees and amendments thereof, subject to the terms of existing Collective Agreements, in accordance with § 75.
- (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 grievances in question by negotiation with the employer.

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- (8) To take measures to prevent accidents and injury to health in the establishment, and to support the factory inspectors and other officials in the task of combating these dangers by means of suggestions, advice and information, and to co-operate in the execution of the provisions respecting the regulation of industrial conditions and the prevention of accidents.
- (9) To participate in the administration of pension funds and housing or other welfare schemes attached to the establishment; in the last case, however, subject to the proviso that existing statutes of administration or existing testamentary dispositions do not prevent such participation or provide for the representation of the employees in some other manner.

§ 67. Section 66 (1) and (2) shall not apply to establishments which serve political, trade union, military, denominational, scientific, artistic or other similar purposes, in so far as the application of these paragraphs would conflict with the essential aims of those establishments.

§ 68. The Works Council shall endeavour in carrying out its duties to prevent either party from making demands and taking measures which are contrary to the interests of the community.

§ 69. The management of the establishment shall put into force any decisions arrived at in agreement with it. The Works Council shall not have the right to interfere with the management of the establishment by issuing orders on its own initiative.

§ 70. In an undertaking where a Control Board (*Aufsichtsrat*) exists, and where provision has not been made under any other Act for similar representation of the employees thereon, one or two members of the Works Council shall be appointed delegates to the Control Board in accordance with the provisions of a special Act to be issued hereafter on this matter, in order to represent the interests and claims of the workers and to put forward their opinions and desires in respect of the organisation of the undertaking. The said representatives shall have the right to attend and to vote at all meetings of the Control Board, but shall receive no remuneration other than repayment of out-of-pocket expenses. They shall be bound to preserve secrecy in respect of confidential matters communicated to them.

§ 71. A Works Council in an establishment which serves an economic purpose shall, for the purpose of fulfilling its duties, be entitled to require the employer to grant to the Works Committee, or, where none exists, to the Works Council, access to all transactions of the establishment which affect the contract of employment or the activities of the employees, and to the wages books and information required in connection with the carrying out of existing agreements, in so far as business or trade secrets are not endangered thereby and legal provisions do not forbid the same.

The employer shall further make a quarterly report on the position and progress of the establishment and of the industry generally and,

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in particular, on the output of the establishment and on anticipated requirements in respect of labour.

The members of the Works Committee or Works Council shall be bound to preserve secrecy in respect of confidential matters communicated to them by the employer.

§ 72. In an establishment in respect of which the owner is bound to keep accounts, and in which there are normally not less than 300 employees in all or 50 salaried employees, the Works Council may require that, every year from 1 January, 1921, onwards, a balance sheet for the establishment and a profit and loss statement for the past business year shall be presented for the inspection of the Works Committee, or, where none exists, the Works Council, and explained to the same, not later than six months after the end of the said business year, in accordance with a special Act dealing with this subject.

The members of the Works Committee or Works Council shall be bound to preserve secrecy in respect of confidential matters communicated to them by the employer.

§ 73. Sections 70 and 72 shall not apply to the establishments specified in § 67, if they would conflict with the essential aims of the establishment.

Undertakings or establishments may, on application, be exempted by the Federal Government from the obligations imposed under §§ 70 and 72, if important national interests necessitate such exemption.

In the cases specified in paragraphs (1) and (2), the Works Committee, or, where none exists, the Works Council, in any establishment for which a Control Board exists, shall be entitled to bring before the said Control Board proposals and recommendations in respect of the conditions of employment and the organisation of the establishment, and to make representations thereon to the Board through one or two delegates. The chairman of the Control Board shall, at the earliest possible moment, call a meeting and place the subjects thus raised on the agenda. The representatives of the Works Council shall have the right to speak and to vote at the said meeting.

§ 74. If, in consequence of the extension, reduction, or suspension of the establishment, or of the introduction of new technical processes, or new methods of organising or performing work, it becomes necessary to engage or dismiss a large number of employees, the employer shall communicate with the Works Council (or the Works Committee, where such exists, if any confidential communication is involved), as far as possible in advance, as regards the nature and scope of the necessary engagements and dismissals, and of the means for avoiding hardship in the latter case. The Works Council or Works Committee may require that the said information be communicated to the Central Employment Bureau or to an employment exchange designated by the latter.

§ 75. If general works rules are agreed upon under § 66 (5), the employer shall submit to the Works Council the draft of all provisions

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thereof not based upon existing agreements. If an agreement cannot be arrived at as to the said draft, either party may appeal to the Conciliation Board, whose decision shall be binding. The decision shall, however, not be binding in respect of the duration of working-hours.

The same procedure shall apply in respect of amendments of the rules of employment.

§ 76. In an establishment where more than 100 persons are employed, the Works Council may arrange for regular hours for interviews on one or more days in each week, when employees can make requests and complaints. If the hours for interviews fall within working-hours, the arrangement must be made by agreement with the employer.

§ 77. One of the members of the Works Council shall be invited to attend any enquiry into an accident which is undertaken at the works by the employer, the factory inspector or any other official concerned.

B. Councils of Wage-earning and of Salaried Employees

§ 78. It shall be the duty of the separate Councils of wage-earning and of salaried employees, or, where none exist, of the Works Council—

- (1) To see that legal provisions for the benefit of employees, Collective Agreements, and also decisions, accepted by the parties, of a Conciliation Board or of any other organ of conciliation or arbitration agreed upon, are carried out in the establishment.
- (2) To take part, in conjunction with the economic associations of the employees, in the fixing of wages and other working-conditions, in so far as these are not already regulated under Collective Agreements, in particular as regards—
 - the fixing of contract and piece-rates of wages or the bases for fixing such rates;
 - the introduction of new methods of remuneration;
 - the fixing of working-hours, with special regard to extensions and reductions of normal hours;
 - the regulation of holidays; and
 - the removal of grievances relating to the training and treatment of apprentices in the establishment.
- (3) To come to an agreement with the employer respecting works rules or regulations of service affecting a group of employees, within the terms of existing Collective Agreements, and in accordance with § 80.
- (4) To investigate grievances and to endeavour to secure their removal by negotiation with the employer.
- (5) To appeal in case of disputes to the Conciliation Board, or to any other organ of conciliation or arbitration agreed upon, if the Works Council refuses to appeal.
- (6) To take measures to prevent accidents and injury to health of

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members of their group in the establishment, and, in connection with the said action, to assist industrial inspectors and other officials concerned, by means of suggestions, advice and information, and to co-operate in the carrying out of the provisions respecting the regulation of industrial conditions and the prevention of accidents.

- (7) To do their utmost, by means of advice, suggestions and intervention, to influence the employer and their fellow-workers in the defence and on the behalf of persons disabled in the war or by accidents, so as to ensure for such persons employment on work suitable to their strength and capacities.
- (8) To come to an agreement with the employer as to the general principles for the engagement of employees in each group in the establishment, in accordance with §§ 81-83, in so far as this matter is not regulated by existing Collective Agreements.
- (9) To intervene in cases of dismissal of employees in each group, in accordance with §§ 84-90.

§ 79. Sections 68-69 shall apply correspondingly to separate Councils of wage-earning and salaried employees.

§ 80. Section 75 shall apply correspondingly to works rules or other regulations of service agreed upon for a group of employees under § 78 (8).

The determination of penalties provided for in § 184 b (4) of the Industrial Code shall be carried out by the employer jointly with the Council of wage-earning or of salaried employees. In case of dispute the Conciliation Board shall decide.

If the works rules in force were issued before 1 January, 1919, new rules shall be issued within three months after the date on which this Act comes into operation.

§ 81. The general principles agreed upon under § 78 (8) shall include a proviso that the engagement of an employee shall not be dependent upon his political, military, religious or trade union activities, or on his membership or non-membership of any political, religious or trade society, or any military organisation. They shall not include any proviso whereby engagement is made to depend upon a person's sex.

The provisions of paragraph 1 shall not apply to the establishments specified in § 67, in so far as the application of this paragraph would conflict with the essential aims of these establishments.

If an engagement is based upon obligations imposed by law, by a Collective Agreement, or by the decision of a Conciliation Board, or of any other organ of conciliation or arbitration agreed upon, the said obligations shall in every case have precedence over the general principles.

The employer shall decide independently, in accordance with the guiding principles, without either the co-operation or the supervision of the Council of wage-earning or of salaried employees, as to the engagement of individual employees.

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§ 82. In case of an infringement of the principles agreed upon, the Council of wage-earning or of salaried employees may protest against the same within five days after receiving information thereof, but in no case later than fourteen days after the person concerned has taken up his employment.

The reasons for the protest and the evidence in support thereof shall be adduced by the Council of wage-earning or salaried employees in the course of the negotiations with the employer.

If a settlement is not arrived at by the said negotiations, the Council of wage-earning or of salaried employees may, within three days after the ending of the same, appeal to the competent Conciliation Board or to any organ of arbitration agreed upon.

A protest against an engagement and an appeal to the Conciliation Board or organ of arbitration shall not have suspensory or annulling effect.

§ 83. The decision in proceedings before the Conciliation Board as regards a protest shall be final. The person whose engagement is challenged shall be heard before the decision, so far as circumstances permit. If it is decided that a contravention of the principles agreed upon has been committed, it may at the same time be provided that the person engaged be deemed to be given notice of dismissal from his employment as from the date on which the decision becomes enforceable, the legal term of notice being duly observed. The decision shall have the force of law in respect of the employer and employee concerned.

§ 84. An employee who is given notice by his employer may, within five days after the date of the notice of dismissal, protest against the same and appeal to the Council of wage-earning or salaried employees—

- (1) if there is ground for suspecting that notice was given on account of the sex of the person concerned, on account of his political, military, religious or trade union activities, or on account of his membership or non-membership of any political, religious or trade society, or any military organisation;
- (2) if the notice was given without any reasons being stated;
- (3) if the notice was given as a consequence of the employee's refusal to undertake regularly some work other than that agreed upon at the date of his engagement;
- (4) if the dismissal appears to be unjust and involves hardship which neither the conduct of the employee nor the circumstances of the undertaking can justify.

If an employee is dismissed without notice for any reason which legally justifies termination of employment without observance of the period of notice, a protest may be based upon the alleged absence of any such reason.

§ 85. The right to protest under § 84 (1) shall not apply to the establishments specified in § 67, in so far as the application of this

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paragraph would conflict with the essential aims of these establishments.

The right to protest shall not apply—

- (1) in cases of dismissal based upon obligations imposed by law, by Collective Agreement, or by the decision of a Conciliation Board, or other organ of conciliation or arbitration agreed upon;
- (2) in cases of dismissal necessitated by total or partial suspension of the work of the undertaking.

§ 86. In connection with an appeal, the reasons for the protest shall be stated, and evidence adduced in support thereof. If the Council of wage-earning or salaried employees considers that the appeal is justified, it shall endeavour to bring about an understanding with the employer by negotiation. If an understanding is not arrived at within a week, the Council of wage-earning or salaried employees or the employee concerned may appeal to the Conciliation Board within the next five days.

In the case specified in § 84, paragraph 2, the Conciliation Board shall stay proceedings if judicial proceedings are pending in respect of the dismissal or if either of the parties claims a stay of proceedings in order to procure a judicial decision. Proceedings shall take their course if the withdrawal of the complaint is not notified within four weeks of the making of the claim for a stay of proceedings, or if an enforceable judicial decision is pronounced to the effect that dismissal without notice was not justified.

A protest against dismissal and an appeal thereon to the Conciliation Board shall not have suspensory effect.

§ 87. The decision in legal conciliation proceedings as regards a protest (§ 84) shall be final.

If the decision is to the effect that the protest against dismissal is justified, the employer shall at the same time be ordered to pay compensation in the event of his refusal to re-employ the person concerned. Compensation shall be proportionate 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 not more than one-twelfth of the last year's earnings for each year, but shall in no case exceed six-twelfths in all. In reckoning compensation, due regard shall be had to the economic situation of the employee and the financial capacity of the employer. The decision shall have the force of law in respect of the employer and employee concerned.

The employer shall, within three days after receiving information that the decision on the conciliation proceedings has become enforceable, notify the employee, either verbally or by post, whether he elects to re-employ him or to pay compensation. In default of the said notification he shall be deemed to have refused to re-employ him.

§ 88. If employment is resumed, the employer shall be bound to pay the employee wages or salary for the interval between his dismissal

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and his re-employment, in any case in which dismissal has in the meantime actually taken place. Section 615, sentence 2, of the Civil Code shall apply correspondingly. The employer may further take into account statutory payments, which the employee has received during the interval out of the unemployment or poor relief funds, and shall in such case refund the amounts to the authorities by whom the payments were made.

§ 89. An employee shall be entitled to refuse re-employment with his former employer if he has in the meantime entered into a contract of service with another. He shall notify the employer of his refusal, either verbally or by post, immediately upon receipt of the notification from the employer provided for in § 87, paragraph 3, but in no case later than one week after receiving information that the decision on the conciliation proceedings has become enforceable. In default of notification the right of refusal shall lapse. If he avails himself of the right of refusal, and if dismissal has actually taken place, he shall be paid wages or salary for the interval between his dismissal and the date on which the decision in the conciliation proceedings became enforceable. Section 88, sentences 2 and 3, shall be correspondingly applicable.

§ 90. If in any case specified in §§ 81–89 the observance of the time limits is prevented by natural occurrences or other inevitable accidents, the *status quo ante* shall be restored in accordance with the detailed provisions laid down in the administrative regulations.

C. Central Works Councils

§ 91. If a Central Works Council exists in addition to the Councils for individual establishments, the latter shall have the powers and duties of Works Councils only in respect of the individual establishments which they represent.

The Central Works Council shall deal with matters common to several separate establishments and matters concerning the whole of the establishments or undertakings.

D. Works Stewards

§ 92. A Works Steward shall have the powers and duties assigned to Works Councils (Councils of wage-earning and salaried employees) under §§ 66, 78 (1) to (7), 71 and 77.

Sections 67–69 shall apply correspondingly.

IV. SETTLEMENT OF DISPUTES

§ 98. The Regional Economic Council shall decide in case of disputes concerning—

- (1) the necessity for constituting workers' representative bodies under this Act, the appointment and composition thereof;

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- (2) the right of any employee to vote or to become a candidate for election;
- (3) the establishment, competence and procedure of workers' representative bodies and Works Assemblies;
- (4) the necessity for expenditure in connection with the proceedings of workers' representative bodies;
- (5) all disputes arising out of elections provided for in this Act.

§ 94. If an undertaking or an administrative organisation extends beyond the area of a single Regional Economic Council, or comes under the supervision of a State Government in respect of the conditions of employment in connection with it, the State Government shall declare it to be within the competence either of the State Economic Council or of a Regional Economic Council. If an undertaking or an administrative organisation extends beyond the area of a single State, or comes under the supervision of the Federal Government in respect of the conditions of employment in connection with it, the Federal Economic Council shall decide.

V. PROTECTIVE AND PENAL PROVISIONS

§ 95. An employer or his representative shall not hinder employees in the exercise of their right to vote in elections of the workers' representative bodies, or in the acceptance and exercise of their legal functions as workers' representatives, or place them at any disadvantage on that account.

§ 96. An employer shall not give a member of a workers' representative body notice of dismissal or transfer him to another works without the consent of the said workers' representative body.

The said consent shall not be necessary—

- (1) in case of a dismissal based on obligations imposed by law or Collective Agreement or by a decision of a Conciliation Board or of any other organ of conciliation or arbitration agreed upon;
- (2) in case of dismissal necessitated by the closing of the works;
- (3) in case of dismissal without notice for any reason which legally justifies termination of employment without observance of the period of notice.

In the case specified in paragraph 2 (3), a protest may be made in accordance with § 84, paragraph 2, and § 86, paragraph 2.

If the dismissal of an employee without notice (paragraph 2 (3)) is pronounced by an enforceable judicial decision, or a decision of the Conciliation Board, to be unjustifiable, the dismissal shall be deemed to have been cancelled by the employer. Section 89 shall apply correspondingly.

§ 97. If a workers' representative body refuses its consent in any case in which the same is required, the employer may appeal to the Conciliation Board, whose decision shall take the place of the consent

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refused by the workers' representative body. It shall not take the place of the said consent in any case in which the Board determines that dismissal is a breach of the obligations imposed by § 95. The employer shall continue to employ the worker concerned until the Conciliation Board gives its decision.

§ 98. Sections 95-97 shall apply correspondingly to the representative bodies specified in §§ 62 and 63.

They shall apply to Works Stewards, subject to the proviso that a majority of the employees entitled to vote shall be substituted for the workers' representative body.

§ 99. An employer or his representative, who wilfully contravenes the provisions of § 95 itself or as applied under § 98, shall be punished by a fine not exceeding 2000 marks, or by detention.

A like penalty shall be imposed on an employer or his representative who wilfully contravenes the provisions of § 23, paragraphs 2 and 3.

An employer or his representative shall be liable to similar penalties if he wilfully refuses to grant the Works Council access to matters provided for in §§ 71-72, to furnish reports, to submit or explain wages books, information required in connection with the carrying out of existing Collective Agreements, and balance sheets or profit and loss statements, or if he wilfully neglects to fulfil these obligations in due time.

Any person who intentionally makes false statements or suppresses facts in the accounts, reports and surveys of the position of an undertaking furnished in discharge of his obligations under §§ 71 and 72, in order to deceive employees and with intent to injure them, shall be liable to imprisonment for not more than one year and to a fine not exceeding 10,000 marks, or to one of these penalties.

Criminal prosecutions shall be instituted only on demand of a workers' representative body. The suit may be withdrawn.

§ 100. Any person who, without authority, discloses confidential information or secrets of an undertaking or a trade which have become known to him through his membership of a workers' representative body, and of the confidential nature of which he has been notified, shall be liable to a fine of not more than 1500 marks or to detention.

Any person who commits the aforesaid offence for the purpose of obtaining pecuniary benefit for himself or another, or of injuring an employer, shall be liable to imprisonment for a period not exceeding one year. A fine not exceeding 3000 marks may be imposed in addition to imprisonment. If extenuating circumstances can be proved, the fine alone shall be imposed. In addition to the fine, the sum gained by means of the criminal action may be confiscated.

Prosecution shall take place only on demand of an employer. The suit may be withdrawn.

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VI. ADMINISTRATIVE AND TEMPORARY PROVISIONS

§ 101. The Federal Minister of Labour shall be empowered to issue administrative regulations under this Act, subject to the consent of the Federal Council and of a Committee of the Reichstag consisting of 28 members.

§ 102. The Workers' Committee shall discharge the duties assigned to the Works Council under § 23, paragraph 1, in respect of the first election, which shall take place not later than six weeks after this Act comes into operation; it shall appoint the Election Committee at a meeting convened by its chairman and held jointly with the salaried employees' Committee where such exists. Where no Workers' Committee exists, the salaried employees' Committee shall act in its place.

If the Committee of workers or of employees fails to fulfil its obligations, or in any case where the said Committees do not exist, the procedure specified in § 23, paragraph 2, shall be adopted.

The employer shall nominate the three senior employees entitled to vote to act as election officers for the first election of a Works Steward (§ 58, paragraph 2).

§ 103. The central authority for the State shall appoint another body to act as substitute for the Regional Economic Councils under § 98, pending the constitution of the said Councils. Pending the constitution of State Economic Councils and the Federal Economic Council, the State Government shall appoint another independent body to deal with cases under § 94, first sentence, and the Federal Government shall make similar provision for all other cases.

§ 104. The following amendments shall come into operation simultaneously with this Act:

- (1) Sections 7-14 of the Order respecting Collective Agreements, workers' and employees' Committees and the settlement of industrial disputes, dated 23 December, 1918 (R.G. Bl. p. 1456) are hereby repealed.
- (2) Section 19 of the above-mentioned Order shall be amended to read as follows: "Special Conciliation Boards may be constituted for State and Federal undertakings and administrations. The Federal Government shall issue an order respecting the constitution of the said Boards for Federal administrations and the State Governments shall likewise issue orders for State administrations".
- (3) Sections 20 *et seq.* of the above-mentioned Order shall be amended by the substitution throughout for the workers' and employees' Committees in establishments specified in § 1 of this Act, of the Works Council, or of the Councils of wage-earning and salaried employees under §§ 6 and 78; and in establishments specified in § 2 of this Act, of Works Stewards; and the representative bodies constituted under §§ 62 and 63 of this Act

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shall be substituted in the aforesaid sections for those constituted under § 12 of the Order.

- (4) Section 134 *a*, paragraph 2, and § 134 *b*, paragraph 3, of the Industrial Code shall be amended so as to assign to the employer jointly with the Works Council the responsibility for issuing the works rules and supplements to the same. The signature of the chairman of the Works Council shall be deemed to be the signature of the Council.
- (5) Sections 134 *d* and 134 *h* of the Industrial Code are hereby repealed.
- (6) Section 134 *e*, paragraph 1, of the Industrial Code shall be amended to read as follows: "The works rules and every supplement to the same, shall be transmitted in duplicate to the lower administrative authority within three days of their issue".
- (7) Section 18, first sentence, of the Order relating to a provisional Agricultural Labour Act, dated 24 January, 1919 (R.G. Bl. p. 111), shall be amended to read as follows: "In those undertakings in which there exists a Works Council, works rules shall be issued and posted up in a conspicuous place".
- (8) In references in other Acts and Orders and in Collective Agreements to workers' and employees' Committees, Works Councils or Councils of wage-earning or salaried employees under §§ 6 and 78 shall be substituted for the said Committees in the case of undertakings specified in § 1 of this Act, and Works Stewards shall be similarly substituted in the case of establishments specified in § 2 of this Act, and the representative bodies provided for in §§ 62 and 63 shall be substituted in the case of undertakings there specified.

§ 105. If the Act referred to in § 72 respecting the balance sheets of undertakings has not come into operation before 31 December, 1920, a balance sheet and profit and loss statement in accordance with the provisions of the Commercial Code shall be submitted to the Works Council.

§ 106. This Act shall come into operation on the day of its promulgation. The Acts of individual States respecting Works Councils shall be repealed on the same date.

Existing Works Councils, Councils of wage-earning employees established for special undertakings, and workers' and employees' Committees, shall be dissolved immediately upon the completion of the first election which takes place after this Act comes into operation.

APPENDIX II

Regulations governing Elections under the Works Councils Act

I. ELECTION OF WORKS COUNCILS AND OF COUNCILS OF WAGE-EARNING AND SALARIED EMPLOYEES (§§ 15-25 of the Act)

A. General Provisions

§ 1. *Management of elections. Calculation of time limits.* In the election of the Works Council the wage-earning and salaried employees shall elect separately their own representatives on the Works Council.

In the formation of the wage-earners' and salaried employees' Councils supplementary members shall be added to the wage-earning and salaried employee members of the Works Council. The number of members of the individual wage-earners' and salaried employees' Councils shall be determined in accordance with the same principles as those governing the members of the Works Council itself (§§ 15, 16 of the Act).

The management of the election shall be in the hands of the Election Committee (§§ 23, 102 of the Act).

The provisions of the Civil Code regarding the calculation of time limits shall apply correspondingly.

B. Preparation for Election

§ 2. *Register of elections.* It shall be the duty of the Election Committee to draw up a register of those entitled to vote, showing separately the wage-earning and salaried employees. Existing lists (sickness insurance lists, wages lists) may be used.

§ 3. *Writ of election.* The Election Committee shall issue a writ of election, not later than 20 days before the last day for voting (§ 10, para. 1). The writ of election shall state the number of Works Councilors and supplementary members to be elected from each group of the employees (wage-earners and salaried employees), and where the election register can be inspected; it shall state that objections on the ground of exclusion from the register are to be brought to the chairman of the Election Committee within three days after the register has first been posted up (para. 3) and, in order that lists of candidates shall be presented for each group of Works Council members, it shall state that only such lists of candidates will be accepted as have been handed in to the Election Committee not later than a week after the lists were first posted up, and that voting is confined to the accepted lists of candidates. It shall further be stated where the lists of

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candidates can be inspected by the electors after their acceptance (§ 6); where the electors can obtain the voting envelope, and also when and where (§ 10, para. 1) they can give up the voting envelope with their voting card. Finally the election writ shall state where the Election Regulations may be inspected. The election writ shall give the address of the chairman.

A copy or off-print of the election writ shall be posted up and kept in a legible condition, in one or more places accessible to all electors, to be designated by the Election Committee, until the last day for voting (§ 10, para. 1) or until the day on which it is announced that no voting will take place (§ 8, para. 2).

§ 4. *Decisions on objections to the register of electors.* The Election Committee shall decide as quickly as possible as to any objections against the register of electors. If the objection is held to be justified the register shall be altered accordingly. The objector shall be notified of the decision before the commencement of the time limit allowed for voting (§ 10, para. 1); the decision may only be contested if the validity of the whole election is contested.

§ 5. *Lists of candidates. Proposers.* Each list of candidates shall contain the names of at least twice as many eligible candidates as the number of Works Councillors and supplementary members to be elected by the group in question (wage-earners, salaried employees). In drawing up the lists regard shall be had as far as possible to the different categories of male and female employees in the establishment. The individual candidates shall be ranked under consecutive numbers or in some other recognisable order and designated by their family and Christian names, occupations and dwellings. Their agreement in writing to the appearance of their names on the list shall be appended.

The lists of candidates must be signed by at least three persons eligible to vote. If one of the signatories is not expressly designated as proposer of the list of candidates, each signatory may be regarded as proposer of the list. The proposer of the list shall be entitled and required to give to the chairman of the Election Committee any information necessary to avoid objections. If an elector signs more than one election list his name shall only be counted on the first list handed in and must be deleted from the other lists. If several lists of candidates are handed in at the same time, which are signed by the same elector, the signature shall be valid for that list which is designated by the signatory within a period of grace allowed him of not more than two days. If the signatory fails to do this the issue shall be decided by casting lots. If a list of candidates does not contain the requisite number of signatures, owing to deletion, the proposer of the list shall be given a time limit within which to procure the missing signatures. If all the signatures are deleted the list is invalid (§ 7, para. 1).

An amalgamation of lists of candidates is invalid.

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§ 6. *Notification and approval of lists of candidates.* The Election Committee shall give numbers and names to the list of candidates handed in, according to the order in which they were received and, so far as the lists are not invalid (§ 7, para. 1, sentence 1), shall forthwith inform the proposers of the list of any objections (§ 7, para. 1, sentences 2 and 3). A time limit shall be allowed for dealing with objections. Not later than three days before the beginning of the time limit fixed for voting, the approved lists of candidates shall be posted up or deposited, in a suitable manner, for the inspection of those taking part in the election. Until this takes place a list of candidates can be withdrawn by a declaration signed by all the signatories of the list.

If, in spite of an objection raised by the Election Committee, a declaration is not forthcoming or is not made in time, the name of the candidate concerned shall be deleted from the list.

§ 7. *Invalid lists of candidates.* Lists of candidates shall be invalid if they are handed in too late, or if they do not carry the requisite number of signatures. Those lists shall also be invalid on which the candidates are not shown in a recognisable order of sequence (§ 5, para. 1, sentence 3), if this defect is not corrected in time (§ 6, sentence 2).

If a proposed candidate is not designated in the manner required by § 5, para. 1, sentence 3, and if the proposer of the list does not carry out in time the instruction of the Election Committee to complete the list (§ 6, sentence 2), the name of the person whose designation is incomplete may be deleted.

§ 8. *Case in which no lists are valid. Election without polling.* If no valid list of candidates is handed in for the election of members of the wage-earners or of the salaried employees, this must be notified by the Election Committee (§ 3, para. 3) and an additional period of grace of one day, as from the date of notification, must be allowed for the handing in of lists. If a valid list of candidates is still not forthcoming, the Election Committee shall announce, in the same manner as is prescribed for the election writ, that no voting can take place (§ 3, para. 3).

If only one list of candidates is approved for the election of wage-earners or salaried employees, those candidates on it whose designation is valid shall be deemed to be elected, in the order in which their names appear on the list. Para. 1, sentence 2 shall apply correspondingly.

C. Voting

§ 9. *Voting cards and envelopes.* The elector may give his vote only for one of the approved lists of candidates (§ 6). The voting card must contain the ordinal number of the approved list. In place of, or in addition to the ordinal number, one or more names of the candidates on the list may be cited. Voting papers which are signed,

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which contain names from more than one list of candidates or which are ambiguous or which contain a protest or objection against all the candidates or which have an identification mark, are invalid.

The elector must give up his voting paper in a voting envelope. The envelopes, on which are written or printed the words, "Election for the Works Council of (name of establishment)", are to be obtained from the employer.

The voting envelopes shall be supplied to those entitled to vote, in accordance with arrangements made by the Election Committee.

If several voting papers are found in one envelope, they will only count as one vote if they are the same in all particulars, otherwise they shall all be deemed to be invalid.

§ 10. *Handing in of voting cards.* The elector shall, on the day appointed for voting, hand in his voting card in the open or closed voting envelope at the place appointed by the Election Committee, giving his name.

The person entrusted with the receipt of the voting envelope and the voting papers shall, in the presence of the voter, put the envelope into the box prepared for the purpose, and shall mark off the vote on the register of electors.

The box for voting papers must be locked by the Election Committee and so constructed that the envelope with the voting papers, placed inside the box, cannot be removed from it without the box being opened.

If members of the wage-earners and of the salaried employees are to be elected, the voting papers shall be given up separately for each group of employees.

D. Ascertainment of Election Results

§ 11. *General.* The result of the election shall be announced not later than the third day after the termination of voting.

§ 12. *Reckoning of votes cast for each list.* After the box or boxes containing the envelopes have been opened by the Election Committee, the voting papers shall be taken out of the envelopes and the votes cast for each list aggregated. At the same time the validity of the voting papers shall be investigated.

§ 13. *Distribution of vacancies between lists.* The votes given for the separate lists shall be placed in a row, side by side, and shall all be divided by 1, 2, 3, 4, and so on. The quotients resulting shall be placed in order of magnitude under the numbers of the first row. The division shall be continued until it can be assumed that no maximum numbers will appear, which are higher than those in the earlier rows which come into question for the allocation of seats.

From the numbers thus found, as many maximum numbers shall be extracted and placed in order of magnitude as there are members and supplementary members of the Works Council to be elected.

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Each list of candidates will receive as many seats as the quantity of maximum numbers which it contains.¹ If one maximum number is to be found in several lists, lots shall be cast to decide to which list the next seat falls.

If one list contains fewer candidates than the quantity of maximum numbers credited to it, the surplus votes shall be transferred to the maximum numbers of the other lists.

§ 14. *Order of candidates in each list.* The order of the candidates in each list is determined by the order of nomination on the list. If a person should be elected several times over, owing to his nomination on more than one list, he shall be deemed to be elected on the list for which his maximum number is the greatest. Where the maximum numbers are equal, the issue shall be decided by casting lots. On the other lists, the next candidate in order of nomination will take the place of the candidate already deemed to be elected.

§ 15. *Substitute members.* The candidates next in order after the elected members on each list are their substitute members, subject to the proviso, that the supplementary members belonging to the same list are at the same time the first substitute members for the Works Council.

§ 16. *Records of the Election Committee.* In so far as voting has taken place in accordance with §§ 9 and 10, the Election Committee shall record in writing the total number of the valid votes cast by each group of employees, the votes cast for each list, the resulting maximum numbers, their distribution amongst the lists, the number of votes declared to be invalid, and the names of the Works Councillors and supplementary members elected by each group of employees.

Similar procedure is to be adopted if the election has taken place without voting, in accordance with § 8, para. 2, sentence 1.

The records are to be signed by the Election Committee.

§ 17. *Notification to persons elected.* The Election Committee shall notify in writing the elected Works Councillors and supplementary members of the fact that they have been elected. If the person elected does not declare within a week that he declines election, he is deemed to have accepted.

In the event of refusal to accept election, the next person on the

¹ [If, for example, there were six vacancies and three lists for which a total of 260 votes were cast, of which 120 were for List I, 90 for List II, and 50 for List III, the result of the election would be as follows:

List I	List II	List III
Candidate 1 120	Candidate 1 90	Candidate 1 50
" 2 60	" 2 45	" 2 25
" 3 40	" 3 30	" 3 16½
" 4 30	" 4 22½	" 4 12½

In this case candidates 1, 2, 3 on List I, candidates 1, 2 on List II, and candidate 1 on List III would have been declared elected.]

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same list of candidates, who has not yet been elected, is deemed to be elected.

§ 18. *Publication of result of election.* As soon as the names of those elected are finally settled, the Election Committee shall announce them by displaying them for two weeks in the same place where the writ of election was posted up.

E. Disputed and Invalid Elections

§ 19. *General.* The validity of the elections may be disputed during the period for which the names are displayed (§ 18). Objections must be brought before the authorities mentioned in §§ 93, 94, 103 of the Act.

Decisions of the Election Committee may only be disputed by disputing the election as a whole.

If the whole election is invalid, the procedure for a new election must forthwith be set in motion.

§ 20. *Invalid elections.* The election is invalid if there has been any infringement of the essential provisions governing election procedure, and if a subsequent adjustment is not possible, and if it cannot be proved that the result of the election could not have been affected by the infringement.

§ 21. *Invalid elections of individuals.* The election of an individual is invalid, if he was ineligible at the time of the election and has not become eligible in the meantime.

The election of an individual is also invalid if he, or others on his behalf, have illegally (compare especially §§ 107 to 109, 240, 239 of the Criminal Code), or by giving or promising bribes, influenced his election, unless such action could not have affected the result of the election.

Section 17, para. 2 applies correspondingly.

F. Final Provisions

§ 22. *Preservation of documents. Expenses.* The election documents shall be kept by the Works Council until the termination of its period of office. •

The material expenses (provision of the Election Order, the voting envelopes, the necessary boxes for voting papers, etc.) shall be borne by the employer.

G. Special Provisions for Election of the Works Council by all Employees voting together (§ 19 of the Act)

§ 23. *General.* Sections 1-22 apply correspondingly, except in so far as the following sections provide otherwise.

§ 24. *Constitution of the Works Council.* The Works Council is elected by a single election for all the employees of the Works Councilors and substitute members.

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§ 25. *Writ of election.* In the writ of election (§ 3) the Works Councilors and supplementary members to be elected shall be enumerated separately as wage-earners and as salaried employees.

§ 26. *Lists of candidates.* In drawing up the lists of candidates (§ 5), it is to be noted that each group of employees must be represented on the Works Council in accordance with §§ 15, 16 of the Act.

§ 27. *Distribution of vacancies.* In the lists of candidates the wage-earners' seats, together with their supplementary members, are, in the first instance, distributed and then, by a separate count, the salaried employees' seats with their supplementary members. To each list of candidates as many seats are allotted from each group of employees as correspond to the maximum number falling to it on the separate count.

§ 28. *Order of candidates in each list.* In allocating the wage-earners' seats only those candidates belonging to the wage-earners' group, and in allocating the salaried employees' seats only those candidates belonging to the salaried employees' group, come in question.

II. THE ELECTION OF THE CENTRAL WORKS COUNCIL (§ 54 of the Act)

§ 29. *Management of the election, calculation of time limits.* The Central Works Council is elected by the vote of all wage-earning and all salaried employee members of the individual Works Councils, each group forming a separate electoral body for the election of its representatives on the Central Works Council.

The management of the election in each electoral body is in the hands of the Election Committee (§ 54 of the Act).

Section 1, para. 4 of the Election Order applies correspondingly.

§ 30. *Writ of election.* Time and place of the election shall be notified in writing, about 20 days before the election, to all those entitled to vote in each electoral body. The notification must state the number of the members to be elected and must point out, with reference to the handing in of lists of candidates, that only such lists can be considered as are handed in to the chairman of the Election Committee by a stated date, about a week after the issue of the writ of election, and that voting is confined to this list of candidates. The writ of election must give the name and address of the chairman of the Election Committee.

§ 31. *Lists of candidates.* Sections 5 to 8 of the Election Order apply correspondingly, but § 5, with the proviso, that only the actual number of members of the Central Works Council is to be nominated, and that two signatures to the writ of election are sufficient, § 6, with the proviso, that the written communication of the election lists to those entitled to vote takes the place of the posting up of the lists. This communication is to be enclosed with the voting envelope.

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§ 32. *Carrying out of the election.* The provisions of §§ 9 to 14, 16 to 22, apply correspondingly. A definite period of time shall be fixed for the election. All electors are entitled to vote who put in an appearance before the termination of voting. Substitute members (§ 15 of the Election Regulations) are not elected.

During the period of time allotted for voting any list of candidates may be withdrawn by those who have signed it provided that none of the electors who have appeared during the voting period objects, and new lists may be presented and withdrawn. Voting may also take place on the newly presented lists.

III. THE ELECTION OF THE WORKS COMMITTEE (§ 27 of the Act)

§ 33. The election of the Works Committee shall take place in the Works Council meeting convened for this purpose (§ 29 of the Act) under the management of the oldest Works Councillor. It is incumbent on him to ask for lists of candidates to be handed in and to point out that voting is confined to the lists. Two signatures to the list of candidates are sufficient. Lists handed in may be withdrawn by the signatories.

The election is open.

The distribution of the elected amongst the lists of candidates shall take place in accordance with §§ 18, 14 of the Election Regulations.

Sections 19, 20, 21, paras. 1 and 2, apply correspondingly: the time limit for objections runs from the date of the election.

IV. THE ELECTION OF THE WORKS STEWARD (§ 58 of the Act)

§ 34. The Works Steward is elected by ballot on a simple majority at an election conducted by the oldest employee in the establishment. In the event of equality of votes lots must be cast.

Sections 19, 20, 21, paras. 1 and 2, apply correspondingly. The period of grace for objections runs from the date of the election.

If two Works Stewards are to be elected the person who conducts the election in each group of employees is the oldest employee in that group.

APPENDIX III

Act regulating the Construction of Balance Sheets and Profit and Loss Accounts of Establishments.

February 5, 1921

§ 1. The establishment balance sheet which is to be submitted in accordance with § 72 of the Works Councils Act of February 4, 1920, shall set out, in accordance with the legal provisions governing the preparation of the balance sheet of the undertaking in question, the separate items of the assets and the liabilities of the undertaking in such a way that the financial position of the establishment can be ascertained, without investigation of any other data. The statement of accounts shall not comprise any property belonging to the employer but not devoted to the purposes of the undertaking.

§ 2. For the purpose of explaining the balance sheet, information shall be given regarding the significance and inter-relation of the individual items. The information must be based on the data from which the balance sheet has been drawn up, such as the inventory, trial balance, cash account, overhead charges of production and marketing. The submission of the actual data from which the balance sheet has been drawn up is not obligatory. Reference must be made to any important changes which have taken place during the business year. If in the course of the business year any assets or liabilities have been transferred from funds devoted to the establishment to funds not devoted to the establishment, or *vice versa*, these shall be shown separately when the balance sheet of the establishment is submitted.

If an undertaking consists of more than one establishment the business position of the individual establishments shall be explained, when the balance sheet is submitted, in so far as the special conditions of the undertaking and of the separate establishments make this possible.

§ 3. The right to require the submission and explanation of the establishment balance sheet (§§ 1, 2) shall belong to the Central Works Council as well as to the individual Works Councils.

§ 4. The provisions of §§ 1 to 3 shall apply correspondingly to the establishment profit and loss accounts to be submitted in accordance with § 72 of the Works Councils Act.

§ 5. The submission and explanation of an establishment balance sheet as also of an establishment profit and loss account shall be required for the first time for the last business year preceding January 1 1921.

§ 6. This Act shall come into force as from February 1, 1921.

APPENDIX IV

Act regulating the Election of Members of Works Councils to Control Boards. February 15, 1921

§ 1. A Control Board, in the sense of Article 70 of the Works Councils Act of February 4, 1920, shall be taken to comprise any organ of a joint stock company, of a partnership based on shares, of a company with restricted liability, of a registered co-operative society, of a mutual insurance society and of a mining undertaking, which is described as the Control Board in the laws governing these undertakings, irrespective of the designation of such organ under the articles of association of the undertaking in question.

§ 2. If one or more Works Councils or Central Works Councils exist for the employees in one of the corporate bodies named in § 1, the election of Works Council members to the Control Board shall be regulated in accordance with the following provisions.

§ 3. Unless it is otherwise provided in the Works Councils Act or in what follows, the legal provisions which apply to the other members of the Control Board shall also apply to the Works Council members elected to the Board.

§ 4. Two Works Council members shall be elected, if in accordance with the articles of association of the undertaking in force at the time of the election, more than three Control Board members may be elected, or if both sections of employees (wage-earners and salaried employees) are represented on the Works Council. In all other cases one only shall be elected.

For each member to be elected two substitute members shall be elected to replace those whose membership of the Control Board may lapse.

§ 5. In corporate bodies which have a single Works Council or a Central Works Council this Council shall form the electoral body for the election of Works Council members to the Control Board, but where there are several Works Councils the sum of these shall constitute the electoral body, irrespective of whether they are partly combined into a Central Works Council.

All members of the electoral body shall be eligible for election who at the time of the election have been employed for one year in the undertaking and have not within the preceding two years been compulsorily retired by an award under § 89 of the Works Councils Act. The condition that members shall have been employed for one year shall be waived if the number of eligible persons is fewer than four times the number of members to be elected.

In the case of registered co-operative societies, § 9, para. 2 of the

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Act concerning co-operative societies shall only apply to the Works Council members to be elected to the Control Board if membership is open to them and can legitimately be attributed to them.

§ 6. The election shall take place by secret ballot and by a single majority vote of all those belonging to the electoral body. If two members are to be elected, the minority group of the employees (§ 16 of the Works Councils Act) may resolve by an equal or majority vote that a representative of their group shall be elected, provided that not less than two members of the electoral body belong to the group: in this event there shall be a divided election by each of the two groups of employees.

Re-election shall be permissible.

The Federal Labour Minister shall draw up detailed regulations for the electoral procedure.

§ 7. Membership of the Control Board shall lapse only through loss of membership of the Works Council to which the member belongs.

§ 8. If a Works Council member withdraws from the Control Board, a substitute member shall take his place in accordance with the provisions of the Election Order. If there is no substitute member available a new election shall be held.

§ 9. If a corporate body, which has been founded but has not yet been registered, has already a Control Board, Articles 1 to 8 shall apply correspondingly.

§ 10. This Act shall also apply to the workers' representative bodies described in § 62 of the Works Councils Act, if the representative bodies are constituted for the establishments of one corporate body only, and if they are composed of employees of this corporate body.

§ 11. The Act shall come into force on February 1, 1922. The first elections shall be held within three months of the coming into force of the Act.

APPENDIX V

The Questionnaire¹ of the "Bergwerks-Zeitung"²

Question 1. In what proportion in the year 1922 did the unproductive costs occasioned by the Works Councils stand to the total wages and salaries paid?

Answer. The question as to the unproductive costs to which the Works Councils give rise is answered differently by various works. In many cases, especially in the smaller and medium-sized works, there were no costs at all or else they were so slight as to be insignificant. Other works observe that, owing to the lack of data, they cannot give an exact return. According to some of the larger works, the costs consist chiefly of the earnings of the Chairman when released from productive work and, further, of the loss of working-time during meetings and interviews. To these should be added the costs arising from the action of the wage-earners' Council in keeping workers from their work, as has often occurred. In any case the costs occasioned by the activities of the Works Council are not inconsiderable.

Q. 2. What has been the nature of the co-operation with the Works Council?

A. The co-operation with the Works Council has been very varied. In the medium and smaller works there are fewer complaints than in the larger works. In individual cases, a relatively good co-operation is reported, which is chiefly attributed to the fact that older and experienced workers were elected to the Works Council. In larger works, especially in Dortmund, Gelsenkirchen, Bochum, Düsseldorf and Duisburg, the contrary was the case. Co-operation with the Works Council was confronted then by many difficulties, which were greater or less according to the political convictions of the members of the Works Council. The chief obstacles in the way of co-operation have arisen because the Works Council has been double-faced, and has said one thing to the management of the works and something quite different to the body of workers. It has also occurred that co-operation with individual members of the Works Council was better than with the whole Council. To sum up, it may be stated that the nature of the co-operation was dependent on the personal and political attitude of the members of the Works Council, and on their experience and age.

Q. 3. What was the composition of the Works Council? Were chiefly the older, more experienced workers, represented on it?

A. The composition of the Works Council was better in the medium and smaller works than in the larger ones. In the more rural districts also, where patriarchal relations still remain in some measure, it was mostly the older and experienced workers who were given mandates to the Works Council. The larger works have, for the most part, had an unfavourable experience of the Works Councils, since, frequently, it was not the best and most experienced workers, but the political agitators and demagogues, who were elected to the Councils. The electoral lists were almost entirely drawn up in accordance with political or Trade Union membership.

Q. 4. Has the Works Council been able to assist the works from the economic standpoint? Or has it damaged the works, and, if so, in what manner?

A. To this it can be replied that, only in very rare instances, can the

¹ See above, p. 115.

² *Deutsche Bergwerks-Zeitung*, November 18, 1924, and December 17, 1924.

APPENDIX V

Works Council be said to have been of positive value. Such value has consisted, chiefly, in the fact that reasonable Works Councils have been able, especially in small works, to prevent threatened strikes from occurring. Some works have had the experience that the co-operation of the Works Council in the fixing of piece-rates and in other negotiations, and also in preventing unrest, is of value, inasmuch as permanent representatives of the workers are less inclined to put forward extravagant demands than spokesmen who have been elected *ad hoc* in times of excitement. In general, however, the Works Councils have done more harm than good, chiefly because they have either stimulated strikes in certain cases, or else, on the outbreak of a strike, have kept themselves in the background in a cowardly fashion and have not opposed the radical elements among the workers with sufficient determination. On such critical occasions they frequently left the leadership entirely to the extremists. From the economic standpoint they have caused loss mainly through much waste of time by unnecessary meetings and discussions.

Q. 5. Has the Works Council accomplished anything of importance in labour matters, especially in the protection of labour against sickness and accident?

A. It was only reported in one case that the Works Council had achieved anything in the sphere of labour protection. For the rest, it is declared almost unanimously that its activities in this field have been entirely negative. In other labour matters also, no achievement can be recorded, since any suggestions made were based purely on political motives. Quite frequently proposals and demands have been put forward without any legal foundation and have therefore been rejected by the management of the works.

Q. 6. Has the Works Council abused its rights politically?

A. It is only very rarely that Works Councils have adopted the standpoint imposed on them by the Act, and have confined themselves to their proper legal functions. Virtually without exception, all the works, large and small, hold the opinion that the whole institution of the Works Councils has developed into a Trade Union or political party organisation. Their entire activities were governed by the policy of the Trade Unionists or politicians behind the scenes. The members of the Works Councils regarded themselves primarily as members of their party or their Trade Union, and saw in their office mainly the possibility of training leaders for socialisation to replace the existing leaders. Their activities on behalf of their fellow-workers were also almost exclusively determined by political considerations. To sum up, it may be said that, over most of the field, there has been an appreciable abuse of the rights of the Works Councils, due to their purely political or Trade Union bias.

Q. 7. Has the institution of the Works Council increased the interest taken by the workers in their work?

A. No firm reports that the interest of the employees in their work has been stimulated by the Works Council. On the contrary the opinion is almost unanimously expressed that, owing to the institution of the Works Councils, there has been an appreciable decrease in interest in the fortunes of the works, since the Works Councils are mainly concerned with extracting better conditions of wages and employment for their fellows, and have paid no attention to the fortunes of the works, as should have been their legal duty.

Q. 8. Have the relations of the worker to the employer or to those set above him improved or deteriorated as a result of the legal co-operation of the Works Council?

APPENDIX V

A. Only one or two works found themselves able to answer this question in the affirmative. Much the greater number hold that the relations have neither improved nor deteriorated. Some works report a deterioration, due to the extravagant claims of the Works Council, which had aroused in the workers hostility against the employer. Also, owing to the special protection which many Works Councils accord to the younger workers, on grounds of agitation, a wedge is often driven between the employer and his employees.

Q. 9. Do you see any further advantages in the existence of a workers' representative body within the works?

A. The great majority of the works reply to this question in the negative. A few, however, are of the opinion that a system of workers' representation, such as existed after the Auxiliary Service Act of 1916, has a real value. Many works hold that a workers' representative body has the advantage of preventing the management from being swamped by requests and proposals from the body of employees. Other works, again, regard the advantage as consisting in the existence of a single body with which all petty matters can be discussed and disputes resolved. It is emphasised, in this connection, that it has frequently occurred that requests and demands have been rejected by the Works Council and have never been brought before the management, with the result that conflicts between the management and the workers were avoided. Some works propose that Workers' Committees, as they existed before the war, should be re-introduced, as they were fully adequate for all purposes. In any case, not a single works considers the now existing Works Councils to be the appropriate form of workers' representation for both sides.

Q. 10. Has the Works Council been given too many rights by the Works Councils Act, and what amendments are desirable?

A. Many works take the attitude that the Works Councils Act should be entirely abolished. They are of opinion that the whole experiment has been a complete failure and should be withdrawn. Other works desire modifications in the Act in the shape of the abolition of Sections 66 (9), 80 para. 2, 84, 71, 96 and 74. All the works are unanimously of opinion that the rights, given to the Works Councils by the Act, go much too far and should therefore be withdrawn, or at least restricted to the exercise merely of economic and social activities.

The above document is of interest, chiefly for the light that it throws on the psychology of the employers and on their attitude towards the Works Councils. In interpreting these answers it must be borne in mind, firstly, that they come from employers who resent any interference with their rights to be unrestricted masters in their own house, and therefore their attitude contains a considerable element of prejudice; secondly, that the answers have been collated by an employers' newspaper with strong propagandist tendencies and the selection made is probably not free from bias; thirdly, that the Ruhr district has seen very troubled times ever since the Revolution, and that the proportion of communists in the ranks of labour and the Works Councils has been higher than in almost any other part of Germany;—hence the employers there have had to suffer much from "wild strikes" and labour unrest, which have often been fomented by the radical Works Councils.

APPENDIX VI

Table of Contents of Works Rules agreed in 1920 for the Rhenish-Westphalian Iron and Steel Industry¹

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¹ See p. 157 above.

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VII. PENALTIES

- § 50. Penalties for infringement of the rules.

¹ In the case of both § 32 (hours of work) and § 38 (wage rates) the hours and wages are those to which the worker is entitled under the ruling Collective Agreements.

APPENDIX VII

Allocation of Duties between the members of the Executive Committee of the Central Works Council for the German Railways¹

A. (Chairman)

1. General administration of the Central Works Council and representation of the same before the Railway Administration and the Public.
2. Preservation of the rights accorded by the Works Councils Order.
3. Execution and supervision of the rights and duties arising out of the provisions regulating hours of work.
4. Disciplinary and other works regulations.
5. Operation of piece-work and bonus systems in the stations.

B. (Vice-Chairman)

1. Deputy for A in regard to administration and representation of the Works Council.
2. General workshop questions.
3. Apprenticeship.
4. Execution of the Collective Wage Agreement.
5. Inspection of materials.
6. Inspection of the utilisation of scrapped material.
7. Scientific works management and reorganisation of the workshops.
8. Piece-work in the workshops (in conjunction with C).
9. Keeping of books concerning expenses to be refunded.

C.

1. Inspection of the condition of machinery, tools and similar equipment.
2. Measures for securing the profitable utilisation of scrapped material.
3. Supervision and control of the co-operation of the Works Councils in the allocation of hours of work in the individual machine shops.
4. Utilisation, training, examination and appointment of personnel.
5. Measures for securing a sound development of piece-work in the workshops.
6. Regulation of the taking on of temporary workers.
7. Regulation of the question of protective clothing.
8. Combating of thefts.
9. Appointments and dismissals.

D.

1. Keeping of all minutes.
2. Control and registration of documents.
3. Supervision of the execution of social legislation in the railway works and other undertakings.
4. Regulation and extension of measures for the promotion of hygiene and the prevention of accidents.
5. Conciliation proceedings, with special reference to decisions.
6. Free travelling.
7. Welfare work (provision of coal and potatoes, housing, leasing of land, sickness and pension funds, etc.).
8. Protection of railway stations.

¹ See above, p. 202.

APPENDIX VIII

Resolution of the 12th "Free" Trade Union Congress at Breslau, September 1925¹

The Congress holds that the active co-operation of the workers and their Unions in the process of production is essential under present conditions. The solution of the economic problems with which the country is faced can only be attained by means of the democratisation of the economic system, coupled with the rationalisation of labour and improvements in the technique and organisation of business.

The Trade Unions have in the past been successful in achieving a certain measure of economic democracy, as a result of their struggle for the collective determination of wages and working-conditions. For through the Collective Agreement the autocracy of the employer in his own establishment is broken. The Trade Unions must therefore continue to strive for the further improvement and perfection of Collective Agreements.

The Congress demands from the Reich, the Provinces and the Communes:

(i) Complete and unrestricted recognition of the Trade Unions which, as trustees of labour, should take part on an equal footing with the employers in the organisation and conduct of economic activities, in accordance with the letter and the spirit of Article 165 of the Constitution.

(ii) Speedy transformation of the Provisional Federal Economic Council into a real and organic economic Parliament; speedy erection of Regional Economic Councils in accordance with Article 165 of the Constitution.

(iii) Speedy erection of Economic Chambers for Industry, Commerce and Transport, Handicrafts and Agriculture, to be controlled and administered by employers and employees on equal terms.

(iv) Establishment, in accordance with Article 165 of the Constitution, of self-governing bodies for all industries, with suitable sub-divisions by districts and industrial groups.

(v) Introduction of a systematic statistical record of production, accompanied by scientific investigations into industry and commerce and their mutual relations, but especially into the causes of economic crises. The Trade Unions are to be associated in these tasks.

(vi) Facilities for workers to receive higher education, in order to be instructed in both the theory and practice of economics. Grants to be made to the educational establishments set up by the Trade Unions.

(vii) Maintenance of and increase in the numbers of the economic undertakings in the possession of the Reich, the Provinces, and the Communes; systematic growth of the system of supplying the needs of the population for important necessities by means of such public undertakings working for the common good.

(viii) Encouragement and support of autonomous productive undertakings operated in the direct interests of the community.

(ix) Systematic support of the Consumers' Co-operative Societies, especially by encouragement of productive undertakings on the part of these Societies.

(x) In conjunction with the Trade Unions, a systematic instruction and education of all male and female employees in establishments, especially of Works Councillors, in regard to the organisation and technique of the

¹ See above, p. 246.

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different works departments; the position as to the formation of combines and the special functions of the individual plants within a combine; the connections and agreements between different combines and their purpose and value; the purpose, nature, and consequences of price conventions, cartels, syndicates and similar organisations.

(xi) Extension of the right of co-determination of the Works Councils.

In putting forward these demands the Congress emphasises the fact that the just economic system promised by the Constitution, and the promised co-operation of the wage-earning and salaried employees in the management of industry and commerce, involve a fundamental transformation of the economic system, such as will organise, on a uniform basis, the economic forces that are split up into many isolated units in the capitalist system of exchange economy, and thus will make possible for the first time a control and management of industry in the form desired by the Trade Unions.

The Congress declares that the leadership of the German working classes, in all economic matters, must lie with the Trade Unions. The A.D.G.B., as the common organ of the German Trade Unions, is entrusted with the representation of the broad interests of the workers, which are synonymous with the interests of the greater part of the German people.

The Congress calls upon the workers to take up the fight for the democratisation of industry and commerce, which must be run on collective lines, for practical co-operation in the tasks of the democratic State and the democratic communes, and for the attainment of a dominating influence over legislation and administration in conjunction with the political representatives of the German workers. Political and economic freedom are the necessary conditions for the development of the cultural forces of the workers.

APPENDIX IX

The Legal Liabilities of Members of Works Councils

The legal status of a Works Council in German law is peculiar and is still the subject of controversy. The bulk of legal opinion inclines to the view that a Works Council is a corporation, but one divested of legal personality so far as German private law is concerned.¹ As it is not a legal person, the Council as a whole is not liable for any breach of contract or tort committed by one of its members and, if any action is taken by the Council, involving a tort, those members who voted against such action are exempt from liability. It has repeatedly been held that, if a Works Council injures the interests of one of the employees, e.g. by demanding his dismissal from employment, the employee concerned can bring an action for damages provided that he can produce direct evidence of injury. The action then lies against those members of the Council who are responsible for the injury and, further, against any employees who voted in favour of it, in the event of the Council having acted at the instance, for example, of a majority vote of a Works Assembly.

Again, a Works Council is not liable for torts committed by the employees whom it represents, unless the Council is guilty of the tort or responsible for its commission. The Works Council, as such, is unable to own property or to sue or be sued in the ordinary courts. If a Works Council makes purchases, e.g. of books, office equipment, food-stuffs, etc., which are not authorised by the employer and for which he is not held responsible under the Act, the Council, as such, cannot be sued, but the individual members then become liable and their property can be attached for payment of the debt. Where, as is often the case, the members of a Works Council acquire, out of their private means, books, etc., for the purposes of their office, the ownership of such objects is regarded as divided amongst all the members as co-proprietors, each member having unqualified ownership of his own theoretical share but only a communal share in the objects as a whole.² When the personnel of the Council changes, the objects acquired pass normally by tacit consent into the communal or collective ownership of the succeeding members of the Works Council.

Apart from their liability at civil law, the members of Works Councils are also liable, under the terms of the Works Councils Act itself, to fine or imprisonment if they deliberately reveal trade secrets

¹ Dersch, *Kommentar zum Betriebsrätegesetz*; Erdel, *Betriebsvertretungen*, pp. 61-68; Flatow, *Kommentar zum Betriebsrätegesetz*, 10th ed. p. 21.

² Cf. Flatow, *loc. cit.* p. 107.

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communicated to them in their capacity as statutory representatives of the employees.

The status of a Works Council in German public law is a different one, for it is undoubted that a Works Council is an entity in public law, but only in the sense that it is a statutory body set up to protect the interests of the workers. Hence it follows that "the rights and duties of the Works Council are not its own rights accruing to it as a Works Council, i.e. as a distinct person in public law, but the rights of the body of workers whom it represents".¹ Thus in the case of a "Works Agreement" (*Betriebsvereinbarung*) the Council itself is not strictly a party to the contract but appears only as the agent of the workers.²

¹ Derach, "The Legal Nature of German Works Councils" in *The International Labour Review*, February 1925, p. 174.

² It should be noted that the views of German legal authorities are by no means unanimous on this point.

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