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MISCELLANEOUS SERIES

# WORKS COUNCIL MOVEMENT IN GERMANY

By **BORIS STERN, Ph. D**



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## WORKS COUNCIL MOVEMENT IN GERMANY

### INTRODUCTION

The outstanding feature of the postwar development in the labor movement of Europe and America has been the rapid growth of the works council movement. Were one to include among the systems of workers' representatives the Russian soviets, which have completely socialized Russian industry, and the American shop committees, hardly a country would remain which has not been affected by this movement.

In spite of the multitude of forms which the idea of workers' representation has taken in the various countries, one can clearly distinguish two separate types of works councils:

1. Voluntary workers' representation, organized in individual establishments by the employers themselves or by the employers in agreement with the unions.

2. Compulsory workers' representation, organized in all industries of a country on the basis of special national legislation.

To the first group belongs the entire shop committee movement in the United States and Canada, the Whitley councils and other systems of workers' representation in England, and the *Conseils d'usine* in France and in Italy. The various systems of workers' representation included in this group are different not only in the separate countries, but also in the individual establishments within the same country. They differ in name as well as in their method of organization and in their functions. Perhaps the one common characteristic of the entire group is the fact that all the systems of workers' representation are intended to allow the workers some degree of participation in the regulation of wages and working conditions.<sup>1</sup>

The second type of workers' representation, which is the subject matter of this study, embraces the works councils in Austria and Germany and the shop committees in Czechoslovakia and in Norway. Due to their geographic position and to the similar ethnic, cultural, and social developments in Austria and in Germany, the systems of workers' representation established in these two countries are, with a few minor exceptions, uniformly similar. A very large percentage of the population in Czechoslovakia is of German descent, and the works council law of Czechoslovakia is a very close imitation

<sup>1</sup> Committees organized in connection with safety and welfare work in American establishments, which accord to their employees no voice in the determination of wages and other working conditions, are not included here.

of the corresponding laws in Austria and in Germany. Norway is the only country among those mentioned, with a culture and nationality different from the German, which has adopted a compulsory system of workers' representation, although one different in many important respects from the works councils in Austria and Germany and from the shop committees in Czechoslovakia.

The chief characteristics of this group of workers' representation are, of course, its compulsory feature, its general application to all industries within a country, and the influence which it exerts upon other social and industrial institutions. During their four years of existence since 1920, the works councils in Germany have been called upon to deal with a wider range of social and industrial problems than have those in the other countries mentioned. The German system of workers' representation has therefore been selected as the subject of this study, descriptions of the systems of the other three countries following those of Germany for the purpose of comparison.

In preparing this study the author received much valuable assistance from numerous workers' and employers' organizations in Germany, and is glad to utilize this opportunity to express his sincere thanks for their cooperation. He is especially grateful to Ministerialrat Dr. Georg Flatow, the adviser to the Prussian Minister of Trade and Commerce, to Mr. Clemens Nörpel, secretary to the German Federation of Socialist Trade Unions, and to Mr. Erich Lübbe, chairman of the United Works Council of the Siemens-Schuckert Electrical Works at Berlin. Special thanks are also due to Miss Cecilia Razovsky and to Dr. Willard L. Thorp for assistance in the organization of the material, and to Profs. Henry R. Seager and Wesley C. Mitchell, of Columbia University, New York, for reading and criticizing the manuscript. Last, but not least, the author is indebted to Mrs. Malcka R. Stern for the literary quality of the work.

## Chapter I.—ORIGIN OF WORKS COUNCIL MOVEMENT IN GERMANY

Although a direct product of the 1918 revolution, the works council movement in Germany had its origin in two entirely distinct and independent sources:

1. The various shop committees that had existed in Germany prior to the revolution, and

2. The workers' and soldiers' soviets,<sup>1</sup> patterned after the Russian model, which arose spontaneously throughout the country in the first days of the revolution.

Of the two movements, the second played a more important rôle during the first year immediately after the revolution. During this period the idea of works councils was first developed and finally embodied in the Weimar constitution and in the works council law of February 4, 1920. As the revolutionary ardor gradually subsided and the new workers' representatives settled down to work, it became evident that the nature of their duties and responsibilities bore an unmistakable resemblance to those of the shop committees that had existed before the revolution. What the revolution did for the workers' representatives was to enlarge their sphere of activities and give them a social and legal background such as the shop committees had never enjoyed.

The first attempt to introduce workers' representation in industry on a large scale was made by the industrial commission of the revolutionary Parliament in Frankfort, on February 20, 1849. Strangely enough, the plan presented by this commission was in its main conception and even in many details very similar to the one incorporated in the law of February 4, 1920—nearly three quarters of a century later. The plan provided that in each factory a shop committee be organized, consisting of a member and a master from each independent group elected by the workers, and the owner of the factory or his representative. The duties of the committee were to be—

1. To mediate in all disputes between the employer and his workers.

2. To accept or reject the factory rules prepared by the employer.

3. To establish and regulate a sick benefit fund.

4. To oversee the minors working in the factory, assuming responsibility for their school attendance.

5. To represent the factory in the district interfactory council.

The duties of the interfactory council were to be—

1. To approve and oversee the various factory regulations in the district.

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<sup>1</sup> Arbeiter und Soldaten Räte. The correct translation of this phrase is workers' and soldiers' councils, but the term "soviets" has been used throughout the book in order to emphasize their close similarity to the Russian model and at the same time to distinguish them from the existing works councils and wageworkers' councils organized on the basis of the works council law of February 4, 1920.

2. To fix the hours of work and the length of the notices of dismissal.

3. To fix the number of apprentices in proportion to the number of journeymen employed, and to examine them at the close of the apprenticeship period.

4. To supervise all the sick-benefit funds in the district.

5. To represent all factories in the district board of industry.

6. To elect from its members a board of mediation, presided over by one versed in the law, to decide disputes among the workers themselves as well as disputes between workers and employers.

This plan was too novel and too radical even for the revolutionary period of 1848. It was not adopted by the parliament and soon fell into complete oblivion. But the idea of shop committees did not disappear with the plan. It was again taken up in the seventies by some of the liberal professors, the "Socialists of the chair," and under their influence was actually carried out in the Ruhr district. In 1890, the "Verein für Soziale Politik" authorized Prof. Max Sering, who is still on the faculty of the University of Berlin, to investigate the activities and extent of the shop committee movement in Germany.<sup>2</sup> Professor Sering found two kinds of shop committees prevalent at that time: Those which had been established before 1889, and those organized in 1889 and 1890 as a result of the big general strike in the German coal industry.

The first group of shop committees was found almost exclusively in the industrial district of Dusseldorf, under the supervision of the "Left Rhine Union for Common Welfare," founded in 1888. The committee of elders (*Ältesten Kollegium*) organized in a textile factory at Munchen-Gladbach in 1873, may serve as an example of this kind of workers' representation. The name "Ältesten Kollegium" was applied to the executive committee of the sick-benefit fund association in the factory, consisting of eight representatives of the workers and four representatives appointed by the employer, one of whom was the chairman of the committee. The qualifications required of the workers' representatives were: 24 years of age, membership in the sick-benefit fund, and employment in the factory for not less than two consecutive years. The duties of the committee were to supervise the factory regulations, to receive the complaints of the workers because of bad materials, lack of machinery or safety devices, and to be in full charge, with disciplinary powers, of the education of the minors and the moral standards of all the workers. The women in the factory were accorded the same rights as the men and some of them were even elected to membership on the committee of elders.

The committee had the right to make its own decisions and to pass resolutions, but these could become effective only when passed upon and signed by the employer. Its functions were limited strictly to such problems as affected the common interests of the workers and the employers. The regulation of wages, for instance, was not placed under the jurisdiction of the committee of elders because the problem of wages was looked upon as an individual matter—the interests of the worker and the employer being naturally opposed.

<sup>2</sup> Even before this was done the editor of the "Arbeiterfreund" in Berlin made a similar study of the shop committees, but from a general and more theoretical point of view.

Similar organizations of workers' representatives existed in more than 30 different factories throughout the country, and some of them survived the war and even the revolution and were changed into works councils after the works council law was passed on February 4, 1920.<sup>3</sup>

The years 1889 to 1891 were a period of big strikes and general labor unrest in Germany. This period also marked the birth of some of the larger unions, which at once entered the industrial field with an extensive program of organization among the dissatisfied workers. To counteract this move of the unions and to keep them out of their shops some of the employers decided to concede a few of the demands of their employees by organizing shop committees in the factories. The majority of these shop committees were unsuccessful and were soon abandoned, chiefly because of the strict limitation of their functions to a few unimportant questions in the field of workers' welfare, and because of the lukewarm attitude of the employers.

But the big strikes and the growth of the unions in 1889 exerted still another influence upon the development of the shop-committee movement in Germany. Up to that time shop committees were very rare in the mining industry, and the striking coal miners demanded the organization of such committees to adjust their controversies with the employers.<sup>4</sup> The strikers sent a delegation to the Kaiser, Wilhelm II, who approved their demands, and on May 18, 1889, the mine owners and the workers signed the so-called Berlin protocol, which granted the mine workers the right to organize shop committees in the mines. The Kaiser emphatically declared himself in favor of the shop-committee movement in his speech of February 4, 1890, before the Reichstag. He said:

In order to protect the interests of the workers and to establish permanent peace in industry, there must needs be created a legal body in which the representatives of the employers and the workers should get together to regulate their common affairs.

In response to this speech a resolution was brought into the Reichstag calling for the organization of compulsory shop committees in all the larger industries throughout the country. It is significant that the principal opponents of this resolution were the members of the Social Democratic Party. Their leader, August Bebel, denounced the shop committees as a tool of the employers for the further enslavement of their workers. It was because of the opposition of the Social Democrats that the compulsory phase was eliminated from the legislation, and the new industrial regulation order of June 1, 1891, provided only for voluntary organization of shop committees in shops employing 20 or more workers.

As a result of this law, the development of the shop committee movement in Germany was considerably accelerated, but not sufficiently to justify the radiant hopes aroused by the enactment of the law. In 1894, the district of Dusseldorf again reported the highest number of shop committees, namely 285 organizations, representing

<sup>3</sup> In his book, "The Constitutional Factory," Mr. H. Freeze describes the activities of the shop committee in his factory since its organization in 1884 up to the time of its replacement by a works council, and draws a comparison between the two kinds of workers' representation.

<sup>4</sup> The chief demands were an increase in wages and a shortening of the shift.



19 per cent of all the factories in the district; Magdeburg reported 67 shop committees, Frankfort on the Oder 43, and Coblenz 27. The first reports of the activities of the new organizations were very favorable. It seemed as if a means had finally been discovered to span the gap between the workers and the employers. The most favorable reports came from lower Bavaria, where about 30 shop committees were given a wide range of activities from the very start, and their rights expanded as time went on. These actually succeeded in averting a number of strikes by settling many a dispute concerning wages, hours, and so forth. Much was also accomplished in the field of workers' insurance, factory hygiene, and workers' welfare in general.

Similar reports came from a few of the shop committees in Frankfort on the Oder, but many others were reported later as being indifferent or as complete failures. The causes for these failures have been attributed to both sides, but chiefly to the employers.<sup>5</sup> It was charged that, while accepting the workers' committees as a convenient means of introducing into their shops the factory rules which were required by the new Code of Industrial Regulations, the employers were not far-sighted enough, or were averse to providing the committees with sufficient rights and duties to keep them continually busy. The result was that once the factory regulations were approved, the shop committees had nothing else to do, and did not even assemble for months at a time. One reason for the lukewarm, when not actually antagonistic, attitude of the employers toward the shop committees was the fear that this might open a way for the introduction of socialist propaganda in the shops. Furthermore, the members of the committees were not acquainted with their duties and dared not speak out for fear of arousing the displeasure of the employer.

It was therefore to be expected that the workers would lose all their respect for and confidence in their committees. It must not be overlooked that very often the failure of the shop committee could be directly attributed to the workers who expected their representatives to secure all their demands, however extravagant. This caused Professor Stieda to conclude his speech before the Evangelical Social Congress in Berlin, in 1898, as follows:<sup>6</sup>

The shop committees, although theoretically a step forward in the relationship between the employer and his employees, have proved untenable in practice, as the workers are not yet socially and intellectually ready for such an experiment.

Others, however, did not share this pessimistic view. They called attention to the success of the shop committees in Bavaria and on the Rhine, and maintained that the success was due to the employers who knew how to deal with the workers' representatives in a manner which actually created a community of interests between themselves and their employees. It was further argued, that wherever the attitude of the employer was of this nature, the shop committees flourished. The number of these, although admittedly small, was nevertheless large enough to enable the defenders to conclude that, given a more socially minded employer and a better educated class of

<sup>5</sup> H. Koch: "Arbeiterausschüsse," München-Gladbach, 1907; Professor Stieda: "Arbeitsordnung und Arbeiterausschüsse" in the Handwörterbuch der Staatswissenschaften, volume 1.

<sup>6</sup> Minutes of the Evangelical Social Congress, Berlin, 1898, cited by Heinrich Koch.

workers, the shop committee would prove a satisfactory medium for mutual understanding between employers and their employees.

In spite of numerous failures of workers' committees in the nineties and the hostile attitude of the majority of employers and trade-unions, the idea of shop committees made considerable headway in the first decade of the twentieth century. Successful organizations were reported in the German General Electric Works and in other large plants in Berlin and in Hamburg. In 1904, the famous social reformer, Ernst Abbé, organized a system of workers' representation in the Zeiss Optical Works at Jena. This system, because of the liberality of the employer and the earnest attitude of both sides, proved very successful and soon became the model form to be followed by a number of other large industries. In 1906 the Government industrial inspectors reported over 10 per cent of all the shops and factories with more than 20 employees as having some kind of workers' representation, and altogether there were more than 1,000 such shop committees throughout the country.

The attitude of the Imperial Government to the idea of shop committees had been favorable from the very start. In 1892 shop committees were organized by a Government decree on all the railroads in Prussia; Bavaria, Saxony, and Baden soon followed suit. Similar shop committees were organized on the railroads and in the post and telegraph services in Wurttemberg. In 1904 the rights of these committees were extended and in 1905 the minister of the German railroads publicly declared the work of the shop committees a success and still further amplified their functions on the railroads.<sup>7</sup>

In March, 1905, in spite of the opposition of the mine owners, a law was passed providing for the compulsory establishment of shop committees in all mines having 100 or more employees. The workers' representatives were given the following rights:

1. To participate on equal terms with the employers in the management of the mutual aid funds.
2. To take up and discuss with the employers all the complaints and demands of the workers.
3. To choose for each mine a trustee, who, at the expense of the employees, should supervise the weighing of the coal and the wage accounts of the workers.

In the meantime, the attitude of the socialist trade-unions toward the idea of shop committees underwent a revolutionary change. Instead of denouncing them as the chief support of the factory despotism, or the "Herrim Hause" spirit as it was designated in Germany, the socialist unions suddenly recognized in the shop committees a valuable tool toward furthering their aim of overthrowing the capitalist system, and became the staunchest supporters of the shop committee movement.

It was due to their pressure that the national service act of December 5, 1916, provided for the compulsory establishment of shop committees in all factories and plants employing 50 or more workers. These were given broad functions, including the right to appeal to the newly organized boards of adjustment which were established by the same act. The revolutionary decree of December 23, 1918, extended the organization of shop committees to all establishments

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<sup>7</sup> Soziale Praxis, 1906, No. 22.

with 20 or more employees and considerably widened their scope of activity. This decree was repealed by the works council law of February 4, 1920, which finally replaced the shop committees by the new institution of works councils.

But the transition from the shop committees to a system of works councils was not peaceful—the two institutions were bridged by the Russian soviet revolution of November, 1917, and the German revolution of November, 1918.

The soviets arose in Russia during the revolutionary days of 1905, as a spontaneous fighting organization of the working class. This form of organization is to be explained, first, by the absence of a free trade-union movement in Russia prior to 1905, and, second, by the necessity for the Russian workers to fight their battles simultaneously on two fronts. The trade-unions in western Europe as well as in the United States are primarily economic organizations, and the political struggle of the workers is carried on by means of a political party and the ballot. The Russian workers, prior to 1905, did not possess any political rights whatever, and even the organization of trade-unions for economic purposes alone was, with a few exceptions, forbidden by the Czarist Government. When the revolution broke out direct mass action in the form of soviets was, therefore, the only means available for the politically untrained Russian workers.

The same thing occurred in 1917, but this time a precedent was at hand, and the victorious proletariat soon possessed in the soviets a strong and effective organization. Local soviets dotted the entire country; these were organized into district soviets, which converged into one central all-Russian soviet, with all political and industrial powers concentrated in its hands.

Even before the revolution broke out in Germany, the idea of soviets or councils had already found numerous converts among the German workmen and soldiers. Secret workers and soldiers' soviets were organized on the various German fronts and in a number of factories, but openly the workers' and soldiers' soviets began to be active on the 8th of November, 1918, the first day of the German revolution. In Germany, as in Russia, they became the leading force of the revolution and with the slogan "Alle Macht den Räten—All powers to the soviets" proceeded to concentrate in their hands the political powers of the country. But while in Russia the machinery of the soviets fell into the hands of the Bolsheviki,<sup>8</sup> who are still guiding the destinies of Russia in the name of the soviets, the development in Germany took a decidedly different turn.

The beginning of the revolution saw the formation of workers' and soldiers' soviets in all of the larger cities in Germany and the concentration of the former Imperial Government into the hands of the Berlin Soviet, which corresponded to the Central All-Russian Soviet in Petrograd. The executive committee of the Berlin Soviet elected from its midst six members who became known as the people's representatives, and temporarily constituted the highest Government office in Germany. Three of the members were from the Independent Socialist Party, which was not satisfied with a mere political overthrow of the Kaiser's Government and demanded the imme-

<sup>8</sup> Now the official Communist Party of Russia.

ciate social revolution and a confiscation of all industries in favor of the workers' and soldiers' soviets. The other three members belonged to the Majority Socialist Party, which was at least temporarily satisfied with the political results of the revolution and counseled moderation and conservatism in the industrial field.

The first serious clash between the two parties took place in the first general congress of the German workers' and soldiers' soviets, in Berlin, December 16 to 20, 1918. It was on the question of a national assembly. The extreme left, following the example of Russia, wanted no national assembly whatsoever and insisted on a "Dictatorship of the proletariat," based upon a system of workers' soviets. The more moderate middle group wanted a government of workers' soviets, first, to realize the most important socialist demands of the workers and afterwards to convoke a national assembly to continue the work begun by the workers' soviets government. The Majority Socialists on the right, however, stood firmly by their decision that no economic reforms were to be undertaken until a national assembly should have been called and a democratic constitution formulated.

The street riots during the months of December, 1918, and January, 1919, in Berlin and other centers resulted in favor of the Majority Socialists. The three Independent Socialists resigned from the Government, and the new Government proclaimed on February 25, 1919, that—

No member of the Government intends or ever intended to have a system of workers' soviets in any form incorporated either in the constitution or in the Government machinery.\*

This proclamation was met with a series of general strikes throughout the country, and the Government was finally forced to retract its proclamation of February 25, and replace it by a new one of March 7, 1919, namely:

The workers' soviets are recognized as the representatives of the economic interests of the workers and as such will be incorporated in the constitution. Their rights and functions will be definitely specified in a law to be especially issued for this purpose.<sup>9</sup>

In its second proclamation the Government drew for the first time since the revolution a clear distinction between the political and industrial fields and placed the functions of the workers' soviets in the industrial field. The same plan was followed by the National Assembly at Weimar. Article 165 of the German constitution, adopted on August 11, 1919, contains a skeleton outline of the form of government which was to be established in the economic field, and its relations to the political government. It reads as follows:

The workers and the salaried employees are called upon to cooperate with their employers on a basis of equality in regulating wages and other conditions of work, and in furthering the development of the forces of production. The organizations of either side and their mutual agreements shall be recognized.

The workers and the salaried employees shall for the prosecution of their economic interests, receive legal representation in the works councils, in the district workers' councils organized in each economic district, and in the central workers' council for the entire country.

District workers' councils and the central workers' council shall be combined with the employers' representatives into district economic councils for

\* Wilhelm Rümer: Die Entwicklung des Rätegedankens in Deutschland, 1921, p. 10.

each economic district and into a national economic council for the entire country. The district and the national economic councils shall be so constituted as to include also representatives of the consumers and all important professional groups in proportion to their economic and social importance.

All bills of fundamental importance on social and economic questions must be submitted by the National Government to the national economic council before being introduced in the Reichstag. The national economic council is entitled to initiate bills of its own and if the National Government objects to them, it must nevertheless submit them to the Reichstag, with an explanation of its attitude. The national economic council may then appoint some of its members to defend its bill before the Reichstag.

Functions of control and administration may be transferred to the workers' or economic councils within the sphere of activity assigned to each. The organization and the aims of the various councils and their relations to the other social institutions are placed exclusively under the jurisdiction of the Nation and are to be regulated by special laws.

The first step in the realization of the program outlined in this article was made in the works council law, passed on February 4, 1920.

## Chapter II.—HISTORY AND NATURE OF WORKS COUNCIL LAW

### IMMEDIATE PREDECESSORS

Even before the adoption of the Weimar constitution on August 11, 1919, there existed in the various German States separate works council laws which anticipated to a large degree the scope and the contents of the national law of February 4, 1920. The works council law of Bavaria, passed on April 22, 1919, provided for workers' representation in all establishments having a minimum of 10 employees. The works councils were given a voice in all matters directly affecting the employees, including employment and dismissals. They were also granted the right to cooperate with their employers in testing the quality of raw materials and machinery purchased, and in general to assist the management in keeping order and discipline in the establishment. Somewhat similar were the works council laws passed in some of the other States and principalities, such as Anhalt, Brunswick, and Thuringia.

But more significant and illustrative of the spirit of the times in which the works council law was drafted is the series of collective agreements which were concluded in the spring of 1919 in some of the most important industries of Germany. These were also approved and made compulsory by the Government.

The first collective agreement containing a more or less detailed outline for the organization of a system of works councils in industry affected the coal industry. The general coal strike in the first week of March, 1919, was settled by a conference of the employers with the representatives of the strikers, presided over by the minister of labor. The conference resulted in an agreement signed by both sides on March 15. It consisted of two parts.<sup>1</sup>

Part one dealt with the general principles for the establishment of a system of works councils in the coal industry, namely:

1. Election of wageworkers' and salaried employees' representatives in all mines.
2. Election of an executive committee to carry on the current activities of the works councils.
3. Recall of any workers' representative by a majority vote of the employees.

The second part contained temporary rules governing the rights and activities of the workers' representatives, to be effective until a general works council law should be passed. These temporary rules were:

1. The works council represents all the wageworkers and salaried employees of the establishment.
2. The members of the works council are to cooperate with the management in determining wages and other conditions of work.

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<sup>1</sup> Reichsanzeiger, March 20, 1919, No. 65.

3. The workers' representatives have the right to inspect all records concerning the processes of work, so long as no industrial or trade secrets are thereby endangered.

4. They are to confer with and assist the management in securing the highest possible efficiency of production in the industry.

5. Rules for hiring and discharging employees shall be agreed upon between the employers and the unions, and it shall be the duty of the works council to see that the agreement is carried out by both parties.

6. Office and meeting rooms for the works councils must be provided by the employers. In joint meetings the employer or his representative is to preside.

7. The executive power to carry out all the decisions and agreements is left exclusively in the hands of the employers.

A month later came the general strike of the salaried employees (foremen, engineers, office workers, etc.) in the entire metal industry of Berlin. The strike was settled by a conference between the Association of Metal Employers of Berlin, the three metal workers unions,<sup>2</sup> and the representatives of the strikers. Again the minister of labor presided. The strike was precipitated by the refusal of the employers to grant the demands of the salaried employees that their representatives be given a voice in all cases of employment and dismissal of salaried employees. The agreement of April 8, 1919, provided:

1. That the management of each establishment notify the representatives of the salaried employees, each time a new salaried employee is hired. Exceptions are allowed only in the employment of higher officials and such employees as are required by law to be recorded in the Commercial Register.

The representatives are entitled to protest within a period of five days the employment of any salaried employee who, in their opinion, might endanger the interests of their constituents or the establishment as a whole. Political activities, membership, or nonmembership in any kind of organization may not be considered grounds for a protest.

The protest must be supported by documentary evidence prepared by the representatives and presented to the management simultaneously with the protest. Should the employer disagree with the representatives on a case of employment, they are then entitled to appeal to the board of adjustment in the district. The decision of the board of adjustment is final.

2. That the management of each establishment notify the representatives of the salaried employees each time a notice of dismissal is given to a salaried employee. The same exceptions are allowed as in the case of employment.

The representatives are entitled to protest the dismissal if they consider it contrary to the interests of their constituents or to the establishment as a whole; or if the dismissal constitutes an unfair disadvantage to the employee, not justified by his behavior while employed, or by the economic conditions in the industry.

The protest does not, however, have the effect of an immediate recall of the dismissal. It must first be taken up for consideration in a joint session between the management and the representatives. In case of disagreement, the final decision is left with the district board of adjustment.

<sup>2</sup> The Socialist, Christian, and Hirsch-Dunker.

Similar collective agreements were made between the banks and insurance companies and their employees on April 17; between the brewery employers of Greater Berlin and the brewery workers' union, and between the organizations of the office workers and lower officials of the municipality of Berlin and the city government, on April 30, 1919.

#### PASSING OF WORKS COUNCIL LAW

Coincident with the establishment of works councils in the separate States and industries, the minister of labor proceeded to draw up a plan for the national works council law. On May 15 it was presented for the first time to a conference of representatives of labor unions and employers' associations. The employers objected most strenuously to the provisions of the draft which gave the workers a voice in all cases of employment and dismissal, similar to that which the miners and the Berlin salaried employees won after their strikes in March and in April, 1919. The employers further objected to the clause granting the works councils the right to inspect the wage records, to request from their employers yearly reports on the financial and economic conditions of the establishment, or to send their delegates to the company's board of directors. They declared that they could not bear the responsibilities for the management of the works if such wide and far-reaching powers were given to the works councils. The latter were, in the opinion of the most conservative employers, merely an unproductive element representing but an additional burden on industry.

At the other extreme were the more radical representatives of the workers, especially the independent socialists and the communists. They maintained that the draft of the law did not grant sufficient powers to the works councils, that some of its provisions were too indefinite, and requested that the works councils be empowered not only to advise or assist the employers but also to have an equal voice with them in all phases of management in the plant.

In August, 1919, the proposed law was submitted for consideration to the National Assembly at Weimar and was turned over to a committee especially appointed for this purpose. The committee held 29 sessions during the period from August, 1919, to January, 1920. Its work was exceedingly difficult. The two extremes, the communists and the independent socialists on the left and the nationalists on the right, both of which were opposed to the coalition Government made up of the Socialist, Democrat, and Center parties, did everything in their power to block the work of the committee. Within the coalition parties, the socialists were determined to gain as much as possible for the workers' cause, while the other two parties, which were closer to the employers, attempted to strip the law of the provisions which the employers themselves tried but failed to eliminate in their direct conferences with the Government and trade-unions.

More than once the Government was on the verge of a complete collapse because of disagreement on one point or another. Numerous provisions of the law were compromised, for example: The right of the works councils to pass judgment upon the hiring of employees was completely eliminated, but the similar right in cases



of dismissal was retained, although considerably weakened, as the employers were given the choice between reinstatement of the discharged employee and the payment of damages. Again, although the law provided that annual financial statements be presented to the works councils, and their delegates to the company's board of directors be accorded an equal right with the other members of the board, these two rights were in effect sidetracked by a further agreement that they be regulated by special legislation to be formulated later.

The weakening of the law was met with an outburst of opposition on the part of the workers. Delegation after delegation was sent to the committee in charge of the law, and large mass gatherings took place before the Reichstag, where the law was being considered in its new form. On January 13, 1920, during the second reading of the law in the Reichstag, over 100,000 workers stormed the building and were repulsed only after the police shot into the crowd, leaving 42 persons killed and 105 wounded.

In its present form the law was passed on January 18, 1920, by a majority of 250 to 63. It was signed by President Ebert on February 4, to become effective from the first day of its announcement, on February 9, 1920.

#### CONSTITUTIONAL GOVERNMENT IN INDUSTRY

The works council law when passed was not meant to be an independent unit, but rather a part of a comprehensive legislative scheme, the skeleton of which was outlined in paragraphs 3, 4, and 5, of article 165 of the Weimar constitution.<sup>3</sup> The scheme provided for a parliamentary form of government in the industrial field similar to and parallel with that of the political State.

The lowest unit of this government, corresponding to the political community, was to be the establishment itself, the mine, the factory, the office, and the like. The works council, assisted by the economic organization of the workers, the trade-union, was to represent the interests of the employees, while the employer himself or the manager, assisted by the employers' economic organization, the association of employers in the trade, was to represent the interests of the employer.

The next unit in the industrial field was the economic district, which was to be governed by the district economic council, made up of an equal number of representatives of capital and labor. The representatives of capital were to be elected, some by the individual employers in the district, and some by the district association of employers, while the representatives of labor were to be elected, some by the district organization of the works council (*Bezirksarbeitserrat*), and some by the trade-unions in the district.

Finally, the highest unit in the scheme was to be the nation itself, governed by the national economic council (*Reichswirtschaftsrat*), also made up of an equal number of representatives of labor and capital, elected on the same principles as to the district economic councils. In addition to the representatives of labor and capital, the district and the national councils were to contain representatives

<sup>3</sup> See Chapter I, p. 9.

of such trades and occupations as would otherwise not be represented, including the liberal professions and the organizations of consumers. All additional members were to be appointed by the political government of the district or the nation.

It is unnecessary to give a detailed account of the particular rights and duties of the various units, as, with the exception of the works councils, and a temporary national economic council, the functions of which are considerably different from those outlined in the plan, the whole scheme failed of realization.

### GENERAL ANALYSIS OF THE LAW

Technically, the works council law represents a very awkward and complicated piece of legislation, loose in its structure and full of repetitions and meaningless assertions. Very often a right granted to the works councils in the first part of an article of the law is completely nullified by a statement to the contrary or by a sweeping exception in the last part of the same article. It would seem that the framers of the law were afraid to commit themselves definitely by using clear language, and that they sought to hide behind phrases which are so ambiguous that after nearly five years of argumentation and discussions in the numerous legal and industrial magazines, after hundreds of decisions and interpretations have been made by the various boards of adjustments, by the lower and higher courts, and by the minister of labor, there are still hundreds of points on which the interpretation of the law is just as indefinite as when the law was first put into operation. )

And yet, in spite of its numerous faults and shortcomings, this law constitutes the most extensive and most important piece of social legislation ever passed in Germany before or since the revolution. It is often referred to as a skeleton code (*Rahmengesetz*), because it touches upon almost every phase of labor and social legislation, such as the Code of Industrial Regulations, the laws concerning collective agreements, labor exchanges, mediation and arbitration, the rehabilitation of wounded veterans, and others.

That both the employers and the employees realized the significance of this law can be seen not only from the intense struggle which ensued before its passage, but also from the numerous commentaries published by representatives of both sides immediately after it became law. If one were to include as commentaries the separate guides issued by the unions and the employers' associations for the benefit of their memberships, one can count no less than 50 commentaries on the law.<sup>4</sup>

<sup>4</sup> Only a few of the more important commentaries can be mentioned here:

(a) The most popular of all and by far the most authoritative is *Der Kommentar zum Betriebsrätegesetz*, by Dr. Georg Flatow, the adviser to the Prussian Minister of Trade and Industry.

(b) The commentary by Dr. H. Brandt, which was published by the united employers' associations and is used as a guide by employers.

(c) The commentary by Doctor Dersch and the one written jointly by Doctor Feig and Doctor Sitzler are less partial but are too technical for popular use.

## Chapter III.—PURPOSE AND SCOPE OF THE LAW

The works council law is divided into six parts containing 106 articles:<sup>1</sup>

Part I.—General provisions (articles 1 to 14).

Part II.—Structure and organization of the works councils (articles 15 to 65).

Part III.—Rights and duties of the works councils (articles 66 to 92).

Part IV.—Arbitration of disputes (articles 93 and 94).

Part V.—Protection of the works councils (articles 95 to 100).

Part VI.—Practical application of the law and temporary measures (articles 101 to 106).

### AIMS AND OBJECTS

The objects of the new institution of works councils are definitely stated in article 1 of the law, which reads as follows:

In order to safeguard the collective economic interests of the employees (wageworkers and salaried employees) as against those of the employer, and to assist the latter in fulfilling the "economic aims" of the establishment, works councils are to be organized in all establishments having under normal conditions not less than 20 employees.

Thus at the very outset appears the dual nature of the law. First, the attempt to please the revolutionary working class by using the word "Betriebsräte"—the German translation for the Russian "soviet"—instead of the previously existing "Arbeiterräte," or shop committees, which correspond more to the evolutionary development in the labor movement of Germany. With the same purpose in view the law distinctly recognizes the existing clash between the economic interests of the employers and their employees, and places the interests of the salaried employees on the side of labor. In the second place the law strikes a new note in trying to bring employers and employees together, to have them cooperate for one aim—the "economic aim" of the enterprise in which both are vitally concerned. The economic aims of the enterprise are not, however, to be interpreted as synonymous with the profit-making interests of the owners, but rather with the highest possible efficiency of production, coupled with a maximum of economy.

This dual nature of the law appeared to be both its chief weakness and chief strength. The struggle in the legislative body before the law was finally formulated and passed was a mere echo of the real struggle outside. The employers frightened by the aggressive attitude of the workers' and soldiers' soviets which sprang up everywhere spontaneously with the revolution and which for a time, at least, actually held the political and industrial powers in their hands, saw in this law merely a legal sanction of what had heretofore existed only by the right of force. The revolutionary proletariat,

<sup>1</sup> A complete translation of the law is given in Appendix I. In order to avoid unnecessary repetitions and to present the plan of the works council organizations and their activities as they exist in actuality, the author was forced to abandon the divisions of the law as they appear in the statutes and to proceed with an analysis which corresponds more closely to the practical application of the law in industry.

on the other hand, which had by this time lost its battles on the political field as well as on the streets of Berlin and other large cities, saw in the same law merely a scheme intended to cool the revolutionary fervor of the masses.

Time has shown both sides to have been in the wrong. On the one hand, no common-sense employer will now seriously contend that his rights or powers have been greatly endangered by the law. To be sure, the spirit of the "Herrn im Hause"—the German expression for the absolute control of the shop by the employer—which for decades had dominated the German factories, is now gone, probably forever. But its disappearance was due chiefly to the rapid growth in power and membership of the German trade-unions, and the works council law can hardly be held responsible. On the other hand, the more intelligent employees, and there are many of them to be found in the trade-unions, maintain that although the law did stop short of granting the workers many rights which they had hoped to gain from the revolution, it is not altogether a bad law. They believe that, given better economic conditions for the country as a whole, and a working class better educated to the responsibilities placed on it by the law, it can and will become a power for good to the workers.

#### DEFINITIONS

Before proceeding with a further analysis of the law, some of the terms and definitions used should be explained.

1. The law recognizes as an establishment (*Betrieb*) "all industrial and commercial undertakings as well as all administrative offices of a public and private nature. Subsidiaries and constituent parts of an undertaking which are connected with one another through an administrative office, or by the process of production, and which are located within the same or neighboring economic communities, are not, however, to be counted as independent establishments." This distinction between a dependent and independent establishment is not explicit and leaves much room for discussion. Equally indefinite points are what constitutes an economic community, or whether a group of small shops belonging to the same owner and located in the same community are sufficiently connected industrially to make up but one establishment.

As it stands, however, a "Betrieb" may be a giant industrial plant employing tens of thousands of workers as well as a tiny shop of a single artisan; the office of a lawyer, as well as a theater or a trade-union. The definition makes no distinction as to the aim of the enterprise or the form in which it is organized. A factory belonging to a single owner or to a corporation is as much of an establishment in the sense of the law as the railroads belonging to the Government; in the same classification are to be found the office of the minister of labor, a cooperative store, or a large household.

2. All workers who sell their labor to others for a wage, a salary, or as apprentices, are recognized as employees. From these are excluded the relatives of the employers, all Government officials and candidates for Government offices; all persons who are employed not primarily for their economic gains, but because of other considerations such as health, vocational training, or for charitable, reli-

gious, scientific, and artistic purposes. Hospitals, houses of correction, schools, convents, artistic enterprises—all are counted as establishments and must have works councils to represent their employees. But such of their workers as are there for reasons other than mere gainful employment are not considered among the regular employees, even if they receive some remuneration for their work.

All employees are divided into two groups—salaried employees and wageworkers. In the group of salaried employees are included the following occupations:

(a) All employees in managerial and executive positions when the latter constitute their chief occupation.

(b) Minor industrial officials, engineers, foremen, and all other employees of a similar nature, irrespective of their previous training; all office clerks with the exception of those who are occupied with the lower and merely mechanical services.

(c) Trade and drug clerks.

(d) Stage and orchestra employees regardless of their artistic qualifications.

(e) Teachers and educators.

(f) All apprentices to any of the professions or occupations mentioned above.

All other employees and apprentices are regarded as wageworkers. These include also the home workers who live in the vicinity of the factory and whose work from the factory constitutes their chief occupation, but who do not themselves employ other labor.

3. An employer is the single owner of an establishment or the executive head of a private or public corporation. Either may be replaced by a legally empowered representative. In case of its own institutions, the Government may decide by a special decree which of the officials is to be regarded as an employer in the department concerned. It may also in the same way decide which of its own employees or of the employees of public corporations, whose services are subject to Government control, are to be considered as salaried employees under the jurisdiction of the law, or as Government officials who are not affected by the law.<sup>2</sup>

#### SCOPE OF THE LAW

The works council law covers all industries with the exception of river and sea transportation. With regard to this industry the present law merely states that the representation of the employees in this industry must be regulated by a special law. The reasons for this exception lie in the peculiar nature of the industry, namely, the requirement of strict subordination of sailors while on voyage, and the impossibility of organizing an efficient form of representation with the larger part of the employees not present at the place of employment. It is with this in view that the board of adjustment of Hamburg decided on May 15, 1921, that the exception applies only to enterprises whose ships are making distant and comparatively long voyages, but not to tugs and shore traffic, because their employees all live on land and enjoy a regular form of employment.

<sup>2</sup> The representation of the Government officials is now being regulated by special Government decrees, State or National, until a separate works council law will have been passed covering all the Government officials.

No decision has yet been made as to whether each ship is to be considered as an independent establishment, or merely as a part of one large ship transportation industry, as has been decided in the case of the taxicab business. Nor has a special law as yet been passed covering workers' representation in this industry.

In the case of home industries and agriculture and forestry, the law applies in a somewhat modified form. In the home industries (chiefly textiles and toy making) the law provides for the organization of a separate works council in each establishment having at least 20 home workers to whom the home work constitutes their chief occupation and who, in turn, have no employees of their own. The methods of election and the duties of the home workers' council are somewhat different from those of the regular works councils, due to the nature of the industry.

With regard to agriculture and forestry, the law applies, with the exception of a few minor legal details, which may be easily disregarded for the purpose of the present analysis.

With these few exceptions, it is hardly possible to imagine any kind of enterprise, industrial, commercial or other, which would not fall within the scope covered by the works council law.

## Chapter IV.—WORKERS' REPRESENTATION IN SINGLE ESTABLISHMENTS

### SHOP STEWARDS

The shop steward constitutes the simplest form of workers' representation established by the works council law. He is elected in all establishments having normally from 5 to 19 (inclusive) employees, of whom at least 3 must satisfy the election requirements prescribed by the law.<sup>1</sup>

The following table, taken from the latest German industrial census, of 1907,<sup>2</sup> represents the distribution of German industry in accordance with the number of workers employed in each establishment.

CLASSIFIED NUMBER OF EMPLOYEES IN GERMAN ESTABLISHMENTS, 1907

Number of employees in each establishment	Number of establishments	Total number of employees	Number of employees in each establishment	Number of establishments	Total number of employees
1 to 5.....	3, 146, 134	5, 383, 233	101 to 200.....	8, 513	1, 178, 094
6 to 20.....	220, 715	2, 137, 449	201 to 500.....	4, 349	1, 304, 819
21 to 50.....	49, 427	1, 551, 725	501 to 1,000.....	988	686, 237
51 to 100.....	17, 766	1, 239, 150	1,001 and over.....	506	954, 645

Establishments having less than five employees each are not required to elect a shop steward, while certain other shops are barred from workers' representation because of various legal technicalities, although they have more than five employees. The total number of workers employed in these shops who are thus excluded from the system of works councils is so large that it would almost justify the complaints of the trade-unions that the law left the majority of German workers without representation. In practice, however, the reports of the Government industrial inspectors whose duty it is to enforce the law,<sup>3</sup> show that the employees in the smaller shops do not seem to display any keen interest in electing representatives even when such are required by the law. As a rule, the reports continue, the workers in such shops are personally acquainted with their employers and actually deprecate the use of intermediaries. Even where, in response to the spirit of the times, a shop steward had been elected in 1920 and 1921, the elections have failed to take place in the subsequent years, partly because of the lack of candidates for the office, but chiefly because of the indifference of the workers who became tired of "useless" elections.

<sup>1</sup> Articles 20 and 21 of the works council law.

<sup>2</sup> Statistik des Deutschen Reichs, volumes 212 and 213. Since 1907 a considerable change has taken place in the distribution, but it has affected chiefly the larger plants, leaving the smaller ones more or less untouched.

<sup>3</sup> Factory inspection was first introduced in Germany in 1869. It was a part of the first industrial regulations order, which called for voluntary inspections only. In 1879 factory inspection was made compulsory and the inspectors became regular Government officials. Since then their functions have been repeatedly extended and now their duty is to supervise and enforce all the laws passed in the field of factory legislation.

If among the employees (5 to 19) there are at least five wage-workers and five salaried employees, each group is entitled to elect a shop steward of its own to represent the particular interests of the group. The two shop stewards combined represent those interests of the employees which are common to both groups. The wage-workers and the salaried employees may, however, agree to have but one representative, in which case the shop steward elected by a common vote of all the employees represents the common as well as the particular interests of the separate groups. The methods of election and the rights and duties of the shop stewards are with but a few minor exceptions very much the same as in the case of works councils.

### WORKS COUNCILS

The fundamental unit of organization of the workers' representatives is the works council. It is elected in every establishment of 20 or more employees to represent the interests of all the wage-workers and the salaried employees in the establishment. The first plan of the law did not contain any provisions for the separate representation of the two groups. But due to the pressure of the employers and especially of the salaried employees, the majority of whom are organized in other than socialist trade-unions, separate representation of each group was added to the works council. The result is that an establishment which is required by law to have a works council has, in reality, three kinds of workers representation:

1. A works council (*Betriebsrat*), to represent the common interests of the wageworkers and the salaried employees.

2. A wageworkers' council (*Arbeiterrat*), to represent the separate interests of the wageworkers.

3. A salaried employees' council (*Angestelltenrat*), to represent the separate interests of the salaried employees.

The relations between the two group councils and the works council constitute one of the most difficult problems arising from the law. The question as to whether or not the works council is a higher form of organization than the group councils has finally been decided in the negative. Each form of organization is now recognized as completely autonomous within its own particular sphere of activity. But the elections for the three organizations, which are carried on simultaneously and on a single ballot, still present a number of difficulties, the nature of which can best be illustrated by the following opposing decisions of two boards of adjustment in two similar cases:

Case 1: A firm in Ulm employed 670 wageworkers and 125 salaried employees. In 1920 the elections to the works council and to the group councils proceeded in the regular fashion. In 1921, however, the wageworkers elected their council as usual, but the salaried employees completely ignored the elections. They did not, however, legally give up their rights in favor of the wageworkers, nor did they express any desire to retain their previous representatives. The question arose whether the newly elected wageworkers' council could at the same time also function as a legal works council. The board of adjustment, which was called upon to settle the difficulty, decided that the wageworkers council could not func-



tion as a works council, and that it was not even a legal wageworkers' council, as the elections according to the law are for the works councils primarily, and if a works council was not elected, then the wageworkers' council was also nonexistent.

Case 2: During the general strike in the metal industry in Württemberg in the summer of 1920, the wageworkers of a motor company at Unterturkheim went on strike, while the salaried employees remained at their jobs. The result was that the wageworkers' council was dissolved, while the salaried employees' council was retained. When the strike was settled and work again resumed, it became necessary to elect a new works council. The salaried employees, in spite of the repeated requests from the election committee, refused to present a new list of delegates and did not participate in the elections. The works council was to be made up of 13 wageworkers and four salaried employees, but because of the refusal of the salaried employees to participate in the election, the election committee appointed 17 wageworkers to constitute the works council. The firm refused to recognize the new works council on the ground that the wageworkers had more representatives than they were entitled to by law, and the board of adjustment of Stuttgart was called upon to settle the dispute. It decided that the new works council was legal, but it must consist of only the 13 representatives to which the wageworkers were entitled. They were to perform the duties of a wageworkers' council and of the works council, but not the duties of the salaried employees' council.

Both decisions were binding in their respective cases, but because they mutually offset each other, their contribution to the general solution of the problem has been slight. Other decisions arising from similar situations followed, but here, too, some of them were made in accordance with the Ulm precedent, while others followed the example of Stuttgart. The problem is continually discussed in the magazines devoted to questions on labor rights, such as the "Neue Zeitschrift für Arbeitsrecht," but no final decision has as yet been reached. In the meantime the possibility of any one group of employees sabotaging the works council and thus interfering with the rights of the other group to have their legal representation, constitutes a real menace to the entire scheme of workers' representation and to the peaceful relations between the two groups of employees in the establishment.

#### MEMBERSHIP AND ELECTIONS

The total membership of a works council and of each group council must consist of 3 representatives in industries with 20 to 49 employees, 5 representatives in industries with 50 to 99 employees, and 6 representatives in industries with 100 to 199 employees. This number is to be increased by 1 for every 200 employees between 200 and 999, by 1 for every 500 employees between 1,000 and 5,999, and by 1 for every 1,000 employees from 6,000 and over. The highest number of representatives must not, however, exceed 30.<sup>4</sup>

<sup>4</sup> The maximum number of 30 representatives was found rather too small for the larger plants having 25,000 employees and more. To overcome this difficulty the works council and management of a firm employing normally about 30,000 workers, agreed to divide the entire plant into 15 sections. Each section was put in charge of two members of the works council, assisted by four additional delegates elected by the workers in the section. These additional representatives enjoy all the rights and privileges of workers' representatives, but are not officially considered members of the works council.

In accordance with the rule laid down above, the number of representatives in the works councils and in the separate group councils must be as follows:

Employees	Representatives	Employees	Representatives
200 to 399	7	5,000 to 5,499	19
400 to 599	8	5,500 to 5,999	20
600 to 799	9	6,000 to 6,999	21
800 to 999	10	7,000 to 7,999	22
1,000 to 1,499	11	8,000 to 8,999	23
1,500 to 1,999	12	9,000 to 9,999	24
2,000 to 2,499	13	10,000 to 10,999	25
2,500 to 2,999	14	11,000 to 11,999	26
3,000 to 3,499	15	12,000 to 12,999	27
3,500 to 3,999	16	13,000 to 13,999	28
4,000 to 4,499	17	14,000 to 14,999	29
4,500 to 4,999	18	15,000 and over	30

The number of members to be elected to the works council is determined regardless of the proportions of wageworkers and salaried employees existing in the plant. The minority group, which may be either the wageworkers' or the salaried employees' group, even though it consists of but 5 members, must have at least one representative in the works council. The total number of representatives from the minority group is determined according to the following:

Members	Representatives	Members	Representatives
50 to 299	2	1,000 to 2,999	5
300 to 599	3	3,000 to 5,999	6
600 to 999	4	6,000 and over	8

The other members of the works council are elected from the majority group, unless this group voluntarily concedes a larger representation to the minority than the minimum it is entitled to by law.

The separate wageworkers' council and salaried employees' council are made up of the corresponding group members within the works council. A careful analysis of the rules which determine the total number of members in the works council and their distribution between the two groups of employees will show that the separate group councils are in reality entitled to more members than their respective groups have in the works council. The additional members are elected by each group of employees and are called supplementary representatives. These are members of the separate group councils but do not belong to the works council.

The candidates for election from each group are nominated by lists. Each list must contain at least twice as many names as the total number of representatives to which the group is entitled and must be signed by at least three members of the group possessing the right to vote. In practice, the three major union organizations and the unorganized employees present as a rule separate lists of candidates. But with the growth of the communist influence among the members of the socialist unions, it often happens that these unions present two lists of candidates, the regular union list and a list of the opposition, made up by the communist members in the socialist unions.

The right to vote is granted to all adult employees, male and female, who are at least 18 years of age, and who have not been disfranchised by the civil authorities.

To be a candidate, however, one must be at least 24 years of age, a German citizen, a member of the trade for not less than three years, and in the present employment for not less than six months before the day of election. No employee can be elected in more than one establishment at the same time.

The six months' employment requirement may be set aside in cases of new enterprises which have been in existence for less than six months, or in industries which do not employ their workers the whole year round. If there are not enough workers eligible to be elected, or when rehabilitated wounded veterans have been nominated, both the three years' trade membership and the six months' employment requirement may be disregarded.

All workers' representatives are elected at the same time by a direct and secret ballot. They are distributed among the various lists on the principle of proportional representation. The elections are for a period of one year. Reelection from year to year is permissible.

The elections are arranged and the results announced by a special election committee, which must be appointed by the works council at least four weeks before the expiration of its term. This committee, too, must contain representatives from each group. Should the works council fail to do its duty, the committee must be appointed by the employer. Similar action must be taken by the employer when a new establishment has been organized. Loss of time because of exercising the right to vote, or performing the duties of an election committee must not be made the occasion for deduction of wages or salaries.<sup>5</sup>

*A concrete illustration.*—The following is a concrete illustration of an election to a works council, the distribution of the representatives between the wageworkers and the salaried employees, the proportional division among the various organizations that took part in the elections, and the formation of the separate group councils.

In March, 1923, at the time of the general works council elections, a plant employed 6,200 wageworkers and 1,625 salaried employees. In accordance with the regulations of the law, the works council was to be made up of 22 members, of whom not less than five were to be salaried employees, the remainder to be wageworkers. The wageworkers' council was entitled to 21 members, and the salaried employees' council to 12 members. The two groups of employees presented three lists of candidates each, and the results of the elections were as follows:

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<sup>5</sup> Article 95: Any interference by the employer or his representative with the rights of his employees to elect their representatives or to serve on the election committee, or in any way to put them at a disadvantage, is punishable by a fine of 2,000 marks (repeatedly changed with the progress of inflation) or by imprisonment.

## NUMBER OF VOTES AND OF MEMBERS OF COUNCIL ELECTED

Wageworkers	Votes	Members of council elected.	Salaried employees	Votes	Members of council elected.
Hirsch-Dunker.....	351	1	Nationalist Union.....	374	3
Communist.....	2,164	12	Communist.....	202	2
Socialist.....	1,608	8	Socialist.....	781	7
Void.....	45		Void.....	18	
Total.....	4,166	21	Total.....	1,375	12

<sup>1</sup> Per cent of wageworkers who participated in the election, 67.2.

<sup>2</sup> Per cent of salaried employees who participated in the election, 87.4

Out of the 33 workers' representatives thus elected, the election committee appointed the 17 wageworkers and the 5 salaried employees receiving the highest number of votes in their respective groups as members of the works council, leaving the remaining four wageworkers elected to become the supplementary representatives of the wageworkers' council, and the remaining seven salaried employees elected to become the supplementary representatives of the salaried employees' council.

It may appear from the example shown that the elections are really being held for the members of the group councils rather than for the works council. This discrepancy is due to the requirement that each group vote separately for its own members in the works council. But the two groups may have previously agreed by a two-thirds majority vote to have their elections in common. In this case all the employees vote for all the members of the works council, and the election procedure is much simplified. In practice, however, such agreements are still rare and can be found only where the two groups of employees belong to the same economic or political organization.

## EXPIRATION OF MEMBERSHIP AND RECALL

All the workers' representatives are elected at the same time for a period of one year. The elections generally take place about the middle of March. Should one member resign from office or withdraw from employment, he is succeeded by a substitute taken from the list of candidates for election. If there are not enough substitutes, or if the entire works council resigns or is recalled, new elections must take place.

A single member or the entire works council may be recalled only by a board of adjustment at the request of not less than one-fourth of all the employees or at the request of the employer.<sup>9</sup> The reasons for the recall must be definitely stated in the request and must constitute a "serious violation" of the official duties of the works council.

The term "a serious violation" (*gröbliche Verletzung*) is another of those unhappy phrases which the framers of the law, in their ardent desire to please both sides and not to infringe upon any of their rights, left entirely open. They did not give even a single

<sup>9</sup> Since October 30, 1923, the industrial and commercial courts are to act in such cases in place of the boards of adjustment.

example of what might constitute such a serious violation. Since the passage of the law a flood of articles has been written on this topic in the legal literature. Decision after decision has been made by the various boards of adjustment, but the field of possible interpretations is not yet exhausted.

It is true that many employers, eager to rid themselves of undesirable workers' representatives, have taken advantage of this provision as the most favorable means to that end. It must be admitted, however, that the workers' representatives often make themselves subject to recall through mere carelessness on their part. This is especially true of the more class-conscious members of the works councils, who are inclined to look upon their office as an instrument to further the class struggle rather than to bring about peaceable relations between the employer and the employee. They do not stop to consider whether their own acts or advice given to other workers would or would not constitute a serious violation of their duties.

One member of a works council was recalled by a board of adjustment in Berlin because of the following incident: A worker complained to him that instead of the expected raise of 30 pfennig, he received only one-half of it. The member hastily replied: "Then you must work accordingly." The employer requested the recall of this member on the ground that he was advocating sabotage, and the board of adjustment granted the request.<sup>7</sup>

Any member or the entire works council may be recalled for:

1. Encroaching upon the rights of the employer by counteracting his orders or the orders of his manager.
2. Calling and participating in a general assembly during working hours, without expressed permission of the employer.
3. Calling or participating in a strike without previously attempting to effect a conciliation by appealing to a board of adjustment.
4. Interfering with the constitutional right of the workers to organize by coercing them to resign from or to join any political or trade-union organization.
5. Refusing to sign the factory regulations as required in articles 75, 78, and 80 of the works council law, for no important reason except personal bias.
6. Refusing to cooperate with the other members of the council or with the other group council.

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<sup>7</sup> Sabotage, or passive resistance, as it is called in Germany, was practiced by German workers even before the war and is still used as a strategic method to secure favorable public opinion by converting a strike into a lockout. An example of this is the recent metal workers' lockout in Berlin on January 3, 1924.

## Chapter V.—OTHER FORMS OF WORKERS' REPRESENTATION

### UNITED AND JOINT WORKS COUNCILS

The works council law states that—

The works councils of a number of establishments belonging to the same owner and producing the same commodities or complementing each other in the process of production, have a right to organize a united works council, provided the establishments are located within one community, or within a group of neighboring and economically connected communities.<sup>1</sup>

There are two ways in which a united works council can be organized: It may exist side by side with the individual works councils, or it may completely replace them. In the latter case the individual works councils are dissolved, and the united works council is known under the name of joint works council.

Both the united and the joint works councils denote an attempt to have the workers' representatives organize along lines parallel with, and corresponding to, the organizations existing in trade and industry. The united works councils are most common in the larger industrial concerns, in the steel, electrical, textile, and other industries. The constituent parts of these concerns complement one another and constitute a vertical combination. The joint works councils are, on the contrary, prevalent in concerns the constituent parts of which represent a horizontal combination, such as department stores or bank branches, for example. Joint works councils are also to be found among the city employees and in those industries where the workers are prevented by the very nature of their employment from organizing separate works councils. A notable example of such an industry is that of the building trades, where the workers, although hired by the same employer, do not have a permanent place of employment but are continually being transferred from one building project to another.

This attempt to have the workers' representatives organize along industrial lines did not, however, go very far. The restriction to a single owner eliminates the possibility on the part of works councils of following the organizations of the German trusts and cartels. The constituent parts of these trusts, although to all intents and purposes knitted together into a single whole, retain their individual names and in the eyes of the law each constitutes a separate ownership.

In addition to the restriction of a single ownership, the limitation to one community makes it impossible for the workers' representatives of the various establishments belonging to the same owner but scattered in different localities, to organize into a united works council. Both restrictions are chiefly the product of the influence of the trade-unions on the works council law when passed. The German trade-unions are, with but a few exceptions, still organized

<sup>1</sup> Articles 50 to 58 of the works council law.

on a craft basis. In 1920, when the law was passed, they were still actively opposed to industrial unionism and feared that an industrial form of organization of the workers' representatives would undermine the prestige if not, indeed, the very existence of the unions.

Since 1920, however, a number of events have occurred which have brought about a change in the attitude of the unions toward an industrial form of organization. First, the struggle for supremacy between the unions and the works council<sup>2</sup> resulted in the complete triumph of the unions. Second, some of the stronger unions, for example, the metal workers', the textile workers', and the factory workers' unions, accepted the principles of industrial unionism and proceeded to reorganize accordingly. Finally, the congress of the socialist unions, in Leipzig in June, 1922, declared itself in favor of the industrial form of organization whenever and wherever possible.

With the support of the unions, some of the works councils, particularly in the metal industry, attempted to organize informally, if not legally, into federations corresponding to the trusts and cartels existing in the industry.

The works councils of a steel trust have thus organized a federation of works councils. These are mostly located in a number of small towns in the Ruhr, and represent altogether over 40,000 workers. In the new organization, the members of the works councils, although belonging to the various trade-union organizations, namely, the Socialist, the Christian, the Hirsch-Dunker, the Unionist, and the Syndicalist, are all working together in a single body. Similar experiments have been made by the works councils of other trusts which operate plants and commercial offices all over Germany and employ large numbers of workers.

Attempts were even made to organize the federated works councils in the metal industry in the Ruhr into some kind of loose combination. This federation of federated works councils would presumably correspond to the combinations in the industry brought about by means of "gentlemen's agreements," which bind together such large trusts as the Stinnes concern and the German General Electric Works, or both of these with the Krupp and Otto Wolff trusts.

Most of these schemes and organizations broke down, however, before the force of inflation, as the rapid depreciation of the German mark in 1922 and 1923 played havoc with the treasuries of the unions which supplied the funds for the experiments. Nevertheless, the tendency of the works councils to parallel industry remains and is characteristic of the new alignment in the German labor movement caused by the new institution of works councils.

#### SPECIAL KINDS OF WORKERS' REPRESENTATION

All government enterprises, such as the railroads, the post office, the telephone and telegraph, and all administrative offices of the National, State, and municipal governments are entitled by law to organize special kinds of workers' representation for their employees.<sup>3</sup> The form of representation is drawn up by the authori-

<sup>2</sup> See Chap. XI, pp. 64 to 68.

<sup>3</sup> Article 61.

ties in charge of the enterprise or office, in cooperation with the economic organizations of the employees concerned.

Based upon this provision, the various departmental chiefs proceeded to issue decrees regulating the organization of workers' representation within their departments. Of special interest are the regulations of the works councils in the post office and in the railroad departments. Although drawn up at different times, the provisions for the organization of works councils in these two government enterprises were patterned after the same model and can therefore be considered together. The regulations provided for:

1. Local representation (a shop steward or a works council) for each post office and every railroad station in the country. Where there are not enough employees at the station to entitle them to elect a shop steward, a number of smaller stations in the immediate neighborhood are allowed to combine and form a joint works council.

2. District works councils for every post office and railroad district, respectively, located at the seat of the authority in charge of the district. In the post office the number of representatives in a district works council must not exceed 12, while on the railroads the maximum was put at 15. In the case of the railroad, also, provisions have been made for the train and shop workers to have proportional representation in the district works councils.

3. One central works council with a maximum membership of 15, to represent all the employees in the post office, and one central works council with a maximum of 25 members to represent all the employees on the railroads. As in the case of the district works councils on the railroads, the train and shop workers are allowed proportional representation also in the central works council.

The difference between this kind of workers' representation and the regular forms prescribed by the law is significant. In their usual forms the shop steward, the wageworkers' council, the salaried employees' council, the works council, and the united works council are each restricted to a definite sphere of activity where they retain their absolute independence. The united works council, whose activity is limited to problems affecting the entire firm, has no more right to invade the field of the wageworkers' council (whose authority is supreme over problems affecting the wageworkers of a single plant of the firm) than the shop steward has to invade the field of a joint works council. In the post office and on the railroads this autonomy of the separate units of workers' representation was completely abandoned. A district works council has not only the right to pass upon problems affecting the post office or railroad employees in their respective districts but also may invade the field of any local works council within its district and even reverse a decision made by the lower unit. This is equally true of the central works councils, which not only have the jurisdiction over problems concerning all the employees of the post office or the railroads, respectively, but also are authorized to decide any matter affecting a single district or a single local. The difference is illustrative of the high degree of centralization of control existing in the German post office and on the railroads.



The regulations for the establishment of works councils in Government enterprises and in the various administrative offices do not, however, apply to the Government officials (*Beamten*) in these enterprises or in the offices of the Government. The officials were altogether excluded from the works council law<sup>4</sup> and were supposed to be covered by a special law. This so-called officials' council law (*Beamtenrätegesetz*) never went beyond its draft stage, in spite of the pressure of the various unions into which a large percentage of the officials have been organized since the revolution. Decrees for the formation of officials' councils have been issued by the various departmental chiefs, but these are only temporary and can be recalled at any moment at the discretion of the head of the department.

Special forms of workers' representation may also be organized in such private undertakings as do not lend themselves readily to the establishment of the regular works councils. In this group are included the building trades, the roof makers, the chimney sweeps, and the entire field of forestry and logging. The scattering of these workers in their various places of employment and the short duration of their jobs in any particular place makes it exceedingly difficult, if not impossible, to organize regular works councils as prescribed by the law. The special kinds of representation for these workers are to be agreed upon between the economic organizations of the employers and employees in the industry concerned and are to be made part of the general collective agreement existing in the trade. It is also required that these agreements for a special kind of workers' representation in private undertakings be declared binding for the entire country, otherwise these enterprises are compelled to organize regular works councils.<sup>5</sup>

#### WORKS ASSEMBLIES

Finally there is one more kind of workers' representation existing in all establishments, large and small, private and Government. This is the works assembly. The assembly (general assemblies for all the employees, wageworkers' assemblies for the wageworkers, and salaried employees' assemblies for the salaried employees in the establishment) is summoned by the chairman of the works council, either at his own discretion, or at the request of not less than one-fourth of the employees, or at the request of the employer. The assembly must meet outside of regular hours of work, with the exception of the meetings called at the request of the employer and in cases of special emergencies recognized and approved by the employer, in which case he also bears all the expenses involved.

The definition of a "special emergency" has been the cause of a number of disputes between the works councils and the employers. In 1920, while still under the spell of the revolution, the workers were prone to seize every dispute, no matter how insignificant, as a pretext for a general meeting. The employers proceeded to dock them for all the time spent on unauthorized assemblies, and the boards of adjustment upheld their action. This and the gradual

<sup>4</sup> See Ch. III, p. 17.

<sup>5</sup> The right to declare an agreement as binding for the entire country is exercised by the minister of labor at the request of either party concerned. All such agreements are published in the regular issues of the *Reichsarbeitsblatt*.

decline of the revolutionary zeal among the workers had a sobering effect upon them. The general assembly meets now as a rule outside of the regular hours of work, usually immediately after work.

In the establishments which are too small to have a shop steward,<sup>6</sup> the general assembly enjoys all the rights of a shop steward. In all other establishments the rights of the general assembly are limited to the voicing of an opinion and to the passing of resolutions for the works council. The latter, although required by law to carry out the wishes of the assembly, can not be compelled to do so and can not even be directly recalled by the general assembly.

The narrow limitation of the rights of the general assembly was the cause of considerable criticism of the law by the rank and file of employees, a criticism which is still advanced by the more radical groups of workers. But practice has proved this criticism to be unjust. Although theoretically the most democratic and ideal form of representation, the general assembly, especially in the larger plants, is too unwieldy and can not function effectively. It provides an excellent platform for rhetorical speech makers, but these have not always worked for the best interests of the employees or of the establishment as a whole.

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<sup>6</sup> If they have less than five employees, or if they have somewhat more than five employees, but are barred by legal technicalities from electing a shop steward.

## Chapter VI.—PROBLEMS OF ORGANIZATION

### BUSINESS PROCEDURE

The current business activities of the works council are carried on by its two chairmen, one from the wageworkers and one from the salaried employees.<sup>1</sup> If the works council has more than eight members, its affairs are taken care of by an executive committee of five members, including the two chairmen. The executive committee or the two chairmen alone have the full power to represent the council before the employer or before a board of adjustment.

The first session of the works council must be called by the election committee not later than one week after the elections have taken place. All other sessions are called by the majority chairman who prepares the agenda and presides at the meetings. Special meetings of the works council must be called at the request of either the employer or of not less than one-fourth of all the employees in the establishment.

In addition to the sessions to which the employer is invited, he has a right to participate in all sessions which he himself initiates. He may also preside at the session of the works council. This provision has brought out a curious clash, very far-reaching in its effect, between a principle and the requirements of common sense. The law provides that the employer may under given circumstances participate in the meetings of the works council, but does not make it obligatory for him to attend a session when invited. It also provides that in joint sessions the works council may offer the chairmanship to the employer but does not make it obligatory for it to do so. As a result of this laxity of the law, there arose a number of disputes, of which the following may serve as an illustration:<sup>2</sup>

A shipbuilding company at Gestemunde requested of its works council that in all sessions in which the management was to participate the chairmanship be given to the representative of the firm. This request was made a *sine qua non* for the firm's participation in the joint sessions. The works council refused the request. The case went to a board of adjustment, which merely decided that there was no way of compelling the employer to attend the sessions of the works council, and that the two parties must agree among themselves as to who should preside at the meetings. The Socialist Metal Workers' Union, to which the majority of the workers of the firm belong, called the attention of the minister of labor to this impasse and requested a final decision. This was rendered on May 11, 1920, and reads as follows:

The chairmanship remains in the hands of the works council unless it voluntarily offers it to the employer. The employer can not, however, be compelled to attend the sessions of the works council, otherwise the works council law would have had to provide the means by which this should be accomplished.

<sup>1</sup> The desire to give adequate representation to the minority group has led to an over-emphasis of its rights. Thus, if it happens that the minority has but one representative in the works council, this member must be elected to the executive committee and must also become one of the two chairmen of the works council.

<sup>2</sup> Der Betriebsrat, 1920, No. 9, p. 91.

So much for the legal side of the question. In practice the works councils, as a rule, refused to give up the chairmanship and the employers, who would not take part in meetings presided over by one of their employees, stubbornly stayed away from the sessions of the works councils. The result is that up to this time no actual joint sessions are known to have taken place, unless the council voluntarily offered the chairmanship to the employer. Thus the most important point of contact between the two parties was sacrificed to a principle, with the workers decidedly on the losing side.

Some of the most hostile employers refused to have anything whatever to do with their workers' representatives, by absolutely ignoring them. Other employers continue to have business relations with their works councils, but instead of coming to the meetings of the council they merely invite the two chairmen or the entire executive committee to their own office and there transact the necessary business in a semi-official manner. The works council then takes up the problems suggested by the employer at its regular session, and the decisions are relayed to the firm, either in the same manner as the propositions were made or by mail or telephone. Most of the larger plants have organized a legal department (*Soziale or Arbeitsrechtliche Abteilung*) which is used as a means of communication and as a buffer between the employer and the workers' representatives.

The sessions of the works council must take place outside the regular hours of work. Only members of the council are permitted to attend. At the request of one-fourth of the total number of employees in the establishment, one delegate from each union having members in the establishment may be admitted to the sessions, but in an advisory capacity only. Similarly a delegate from the employer's economic organization must be admitted at the request of the employer, but only to sessions in which the employer himself has a right to participate.

In case of necessity the meetings of the works council may take place during the regular hours of work. Due notice must be given to the employer of all such sessions that take place during working hours. In spite of the fact that the law does not require it, the employers found it advantageous to both sides to permit the works councils to meet at more or less regular intervals during working hours, the works councils merely being required to notify the management of such sessions.

A meeting of the works council is lawful only when a written announcement of the order of business has been sent to all the members of the council. Half of the membership constitutes a quorum. The decisions are made by a majority of the members present. All sessions of the works council must be recorded. The decisions and votes must be recorded as passed and must be signed by the chairman and some member of the council. If the employer has taken part in the meeting, he too must sign the minutes and is given a duplicate copy. The representatives of the minority group, if they regard a decision of the works council as a serious injury to the interests of the group they represent, are entitled to express their opinion in a minority resolution and present the same to the employer.

## COSTS AND EXPENSES

The office of a workers' representative is honorary and the members of the various councils are required to serve without any remuneration. Their duty is first and foremost to do the kind of work for which they were originally hired and for which they continue to receive the usual wages or salaries even after having been elected to office. No deductions, however, from their pay are permitted for the "necessary loss of time" spent in performing the duties of a workers' representative or in special consultation hours which are to be arranged in all establishments having 100 and more employees.<sup>3</sup> During these hours the chairman or any other member of the works council must be in the office in order to receive the complaints or the suggestions of the workers.

The phrase "necessary loss of time" is not defined by the law and this deficiency caused various difficulties which can best be illustrated by the following two decisions rendered by the Mannheim Board of Adjustment in two very similar cases:<sup>4</sup>

1. The members of the wageworkers' council are not entitled to receive pay for the time lost by them on account of difficulties in the plant during which the entire plant was at a standstill. It was not contested by the firm that during this time the members of the wageworkers' council did everything in their power to bring about an agreement between the employees and the firm, but the office of a workers' representative is not remunerative and as the entire plant was not at work, the members of the council did not lose any time and are, therefore, not entitled to receive pay for it.

2. The firm must pay the members of the works council for the two hours during which a demonstration took place in the plant. The members of the works council did not participate in the demonstration, but, in accordance with their duties, were busy in conference between the rebellious employees and the manager. There were a few other workers in the plant who also did not participate in the demonstration and who were paid for the work done during these two hours. Were the members of the works council not to be paid for the time lost in the conference, it would place them at a special disadvantage merely because of their being workers' representatives.

The correctness of the two decisions from a legal point of view is not questioned here. The two cases are presented in order to show on what circumstantial factors the definition of a "necessary loss of time" may depend.<sup>5</sup>

To avoid the numerous complications arising from the different interpretations of the time lost by members of the various councils, the employers of a great many of the larger concerns reached a definite understanding with their works councils as to the exact amount of time the members might require each week in order to perform their official duties as workers' representatives. The total amount of "free" time agreed upon includes the time spent in sessions held during the hours of work, but does not include the special consultation hours which must be specified separately. The usual custom has been to free entirely from daily factory routine one or both chairmen and sometimes even the entire executive committee of the works council; to subtract their time from the total free time agreed upon and to divide the difference among the other members of the council. The workers' representatives are allowed

<sup>3</sup> Article 76 of the works council law.

<sup>4</sup> Das Schlichtungswesen, 1921, No. 10.

<sup>5</sup> For other cases see the reports of the Government Industrial Inspectors, 1920 and 1921.

to leave their jobs in the factory at any time. They are merely required to report to their superiors before they quit working and when they again resume it.

In addition to the free time, the employers also carry all the necessary costs of the business management of the works councils, including the personal expenses incurred by the members while performing their duties. The employers must also provide convenient quarters for the meetings, for the consultation hours, and for the transaction of the current affairs of the councils, as well as the necessary writing materials and literature.

The problem of office expenses seems to have caused very few disputes. The employers, as a rule, have been willing to provide their works councils with satisfactory headquarters. Some of the very large concerns even pride themselves on the elegant and spacious offices fitted out for their workers' representatives and use them as a means of advertising. In such cases the offices are perfectly equipped, and the works councils have at their disposal not only telephones and typewriters but also one or two stenographers and other office assistants.

The total annual costs of the entire institution of works councils to the employers have not as yet been ascertained. Individual employers, however, have attempted to make an estimate of their expenses incurred in connection with the system of workers' representatives in their plants.<sup>6</sup> These range from about 21 marks per single employee per annum for the 50,000 employees of a large concern in Berlin, in 1921 (average value of the dollar about 75 marks), to 93 marks per head for another concern having about 5,000 employees in the same year. In the district of Merseburg, Prussia, the largest plant, with 15,364 employees, calculated its expenses for 1921 to have been about 350,000 marks, or about 23 marks per single employee, while a smaller plant in the same district, with but 800 employees, incurred during the same year a total expense of 87,600 marks, or somewhat over 105 marks per single employee.<sup>7</sup>

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<sup>6</sup> These costs include not only the direct expenses of the works council but also such expenses as were caused by the maintenance of legal departments and advisers to interpret the works council law and by the numerous litigations before the boards of adjustment or labor courts in disputes arising from the law.

<sup>7</sup> Reports of the industrial inspectors, Merseburg, Prussia, 1921.

## Chapter VII.—FUNCTIONS OF WORKERS' REPRESENTATIVES

### GENERAL DUTIES OF WORKS COUNCILS

The duties of works councils are:<sup>1</sup>

1. *To advise with the management for the purpose of securing the highest possible efficiency and the greatest economy of production in the plant.*

The abstract nature of this requirement makes it necessarily void of any practical significance. Besides, it presupposes a class of employers willing to consult their workers' representatives on matters which do not directly affect the interests of the employees and which, until very recently, have been the undisputed domain of the owner of the establishment.

Indeed, the obligation on the part of the workers' representatives to assist in the management of the works seems naïve in view of the stubborn fight the employers put up against the passage of the works council law and their strong and persistent efforts to confine the activities of the works councils strictly within the limits of the law. On the one hand, there is no provision in the law compelling the employers to consult their workers' representatives if they do not desire to do so. On the other hand, the works councils are expressly denied the right to interfere in the management of works on their own initiative. Wherever attempts have been made by works councils, without being asked, to impose their views upon an unwilling employer, they were reprimanded by the legal authorities for overstepping the bounds prescribed to them by law.

Cases are not rare, however, where the employers found it to their advantage to apply to their works councils for assistance in industrial difficulties, and where they actually obtained the desired cooperation. One large sawmill in the district of Königsberg petitioned the Government for the extension of a canal which would enable the mill to get its supply of logs by a direct water route. The petition of the firm was rejected, because the Government felt the extension was costly and too complicated. The employer called a meeting of the workers' representatives and explained to them that unless the Government granted the extension of the canal the mill would be forced to shut down because of the irregularity of the supply of logs and because of the large expenses incurred in transporting them from the source of supply by a combined water and rail route. The works council immediately sent a special delegation to the Government authorities and succeeded in procuring for the firm the desired extension of the canal.<sup>2</sup>

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<sup>1</sup> Article 66 of the works council law.

<sup>2</sup> Reports of the Industrial Inspectors, Prussia, 1921, pp. 20, 21.

Similarly the management of a large locomotive plant appointed the chairman of the wage workers' council as a member on the special commission formed to keep the works continually supplied with the necessary railroad cars. The workers' representative proved so efficient in his work on the commission that the company gave him a vote of thanks and made him chairman of this commission.

*2. To cooperate with the management in the introduction of new methods of work.*

There are two ways in which the workers' representatives may cooperate with their employers in the introduction of new methods of work. They can help the employer introduce the methods devised by the management or they may offer suggestions of their own.

In the first case, the functions of the works councils are more or less indirect. The German labor movement has long been on record as not opposing the introduction of new machinery or new processes of work, and there are very few disputes to be settled on this score. The workers' representatives are merely required to help the management in adjusting the difficulties and problems which naturally arise as a result of the changes in the technique of production. These problems include the dismissal of those employees who have become superfluous because of the changes made, their replacement by a different group of workers, rearrangement in the hours of work, etc. Whether arising out of changes in the technique of production or from other causes, these problems supply the chief routine occupation of the workers' representatives.

In the matter of making suggestions of their own, the works councils have up to the present time made but very little progress. They have been hampered by the general indifference of the workers to such problems and by the hostile attitude of many employers. The majority of the employees, as some of the workers' representatives admit with regret, are interested solely in the immediate questions of wages and hours of work and pay little or no attention to problems of technique and machinery. Should some of them happen to be more ingenious and think of a new scheme or invent a new piece of machinery, they prefer to take it directly to the management, which, as a rule, offers to pay premiums for any practical suggestion coming directly from an employee but not through the works councils. The latter are, therefore, deprived of any opportunity to do valuable work in this connection.

*3. To safeguard the industry against disturbances. Particularly to call upon the boards of adjustment in all disputes between the employer and the employees when conciliation by conference no longer seems possible.*

This section introduces at once the problem of the strike. What are the duties of a workers' representative in case of a strike? The law makes it incumbent upon him to use all means at his command to prevent a strike or any other interference with the continuation of production. Even when a strike is called by the union in connection with some matter not directly under the jurisdiction of the works council, the workers' representatives are not permitted to lead the strike. They are required to use their authority to bring



about an agreement between the employer and the union, and, in event of failure, to call upon the board of adjustment to settle the dispute in a peaceable manner.

In order to "safeguard the industry against disturbances" the workers' representatives must be very careful in considering the various demands the workers may choose to have them present to the employers. The works council is required by law to do the bidding of the employees, but only when it is certain that such demands will not result in some kind of disturbance or interruption of production in the plant. The members of the works council can be held individually or collectively responsible for the interruption in production, and if found guilty the individual members or the whole council may be impeached by a board of adjustment.<sup>3</sup>

The employers generally admit that the works councils have succeeded in eliminating a great number of the so-called "wild," or unauthorized, strikes. The workers know now that the best way to obtain a hearing of their case is to appeal to a member of the works council rather than quarrel with the foreman and run the danger of being discharged. This in itself has eliminated a great deal of unnecessary friction. Besides, the workers' representatives, schooled by their every-day experience, are now better able to handle individual cases with the least possible disturbance to the plant as a whole.

*4. To see to it that the decisions of the boards of adjustment or any other mediation agency are actually carried out.*

The decisions of the boards of adjustment are not effective unless accepted by both sides or declared compulsory by the proper authorities.<sup>4</sup> Then they become the equivalent of a contract or a collective agreement, and it is the duty of the works councils to take care that these decisions, and, for that matter, all other agreements, are carried out in practice.

The works councils have, however, no executive power to force the employers to carry out the various agreements. All that the workers' representatives can do is to remind the employer of the existing discrepancy or report it to the union, which may then take action against the guilty employer for breach of contract. They may also induce the individual workmen affected by the failure of the employer to comply with the agreement to sue him for damages in the labor courts.<sup>5</sup>

*5. To further the solidarity within the ranks of the employees, as well as between them and the employer, and to uphold the constitutional right<sup>6</sup> of the workers to organize.*

The right of the workers to organize can be restricted either by other workers in the same plant or by the employer. The majority of workers belonging to one union may exert pressure upon the minority which may not be organized or which may belong to a different organization. Or the employer himself may choose to favor one union or the unorganized workers as against the organized. In either case it is the duty of the members of the works council to see that the rights of the minority or of the individual workers are

<sup>3</sup> Articles 39 and 41.

<sup>4</sup> The minister of labor or the special arbitrators.

<sup>5</sup> For labor courts, see Ch. IX: "Mediation and arbitration machinery."

<sup>6</sup> The "Vereinigungsfreiheit," or the right to organize was granted to the German workers by article 159 of the Weimar constitution.

not molested. The law does not provide for any definite action to be taken by the workers' representatives against such offenses, and the works council can resort only to moral suasion as a means of bringing the offenders—employer or employees—to terms.

Should, however, any member of the works council be guilty of interference with the workers' right to organize, or should the works council as a body remain inactive in the face of such infringement upon the workers' right, it makes itself or its guilty member subject to impeachment by a board of adjustment. The attitude of the legal authorities in this matter is clear and can be illustrated by the following characteristic example:<sup>7</sup>

On September 17, 1921, the board of adjustment at Krefeld rendered the following decision:

The firm X which, under the pressure of the majority of its employees, discharged the complainant because of his refusal to join the union, is held fully responsible for its action. It did nothing to counteract the illegal demand of its employees and is therefore to pay the discharged worker the full sum of damages applied for. The works council, too, did nothing in this case to dissuade the workers from their illegal demand, and the employer is hereby requested to enter a claim for its impeachment because of a serious violation of its official duties.

*6. To take up the complaints of the employees and to effect their redress through conferences with the employers.*

This section deals primarily with the complaints of individual workers. The usual order of procedure in dealing with a complaint is as follows: The worker goes to any representative of his group or directly to the group council during the regular consultation hours. The complaint is then taken up for consideration at the next session of the council. If in the judgment of the council the complaint is justified, the matter is taken up with the management. In event of disagreement, the only action the works council can then undertake is to apply to a labor court for a final decision, as the boards of adjustment can not now be called upon to settle individual disputes.<sup>8</sup>

*7. To take an active part in all campaigns against industrial accidents and against conditions menacing the health of the workers in the factory; to assist the Government industrial inspectors with advice and proper information and to see that all the police and safety regulations are carried out in the plant.*

Compulsory factory inspection has existed in Germany since 1878. The supervision of the hygienic conditions in the factories and the enforcement of the labor protective laws lie in the hands of the Government industrial inspectors, who are now being assisted by the works councils. The latter have thus become an executive agency of the Government. The cooperation of the works councils with industrial inspectors and the employers is usually in the form of a special safety commission on which each of the three parties is represented by an equal number of members. This commission acts as an independent body in all investigations of industrial accidents, as well as in its campaigns for better safety conditions, but the members are required to make periodic reports to their respective organizations.

<sup>7</sup> Clemens Nährpel: *Aus der Betriebsräte Praxis*, Vol. II, p. 106.

<sup>8</sup> According to the arbitration decree of October 30, 1923.

In their official reports for the years 1920 to 1922, the industrial inspectors speak of the gradually increasing activity of the workers' representatives in the field of factory inspection and their salutary influence on the rank and file of employees. In addition to the direct help rendered to the officials during their inspection tours and in investigations of accidents, the works councils arrange for special lectures on hygiene, on the necessity of keeping order in the plant, and on the importance of strict obedience to the factory regulations and the use of the safety devices installed in order to avoid accidents.

The industrial inspector of the district of Liegnitz, Prussia, says among other things:<sup>9</sup>

But their chief accomplishment [referring to the activities of the works councils] consists in persuading the workers to make use of the safety devices and installations to avoid accidents in the plants. In the field of health preservation the works councils in the larger plants accomplished a great deal. They paid special attention to the installation and the proper upkeep of washing and bathing facilities, sanitary toilets, dressing rooms, dining and entertainment halls, etc. They also took care that the unnecessary gases, dust, and other foreign elements were regularly removed from the workshops.

The report of the industrial inspector at Königsberg reads:<sup>10</sup>

In matters of cleanliness and preserving the health of the workers, the works councils have made many contributions, paying special attention to the supplying of fresh water, clean resting places, and sanitary wash rooms and toilets. In one pulp mill a special committee of the workers' representatives inspects the entire establishment at regular intervals and reports the findings to the employer and the Government inspector. In another establishment a similar committee decided to protect the workers against dangers from infection by having all employees submit regularly to medical examinations with special attention to optical and venereal diseases. In still a third place all the apprentices were required to attend a course in first aid given regularly in the plant, under the supervision of the works council.

*8. To cooperate with the employer in the administration of the workers' living quarters belonging to the plant, in the administration of the various benefit funds, and in the administration of any other workers' welfare organization, provided the employees have not already other representatives in accordance with previously existing regulations.*

A number of disputes have arisen over the extent of the work councils' cooperation with the employers in the administration of the workers' living quarters belonging to the plant. The chief problem has been whether the workers' representatives should participate only in the formulating of general rules for the renting of the quarters or whether their cooperation should include the actual renting and management of the quarters. On this question a very significant decision was made by the board of adjustment in Dortmund on March 7, 1922:<sup>11</sup>

The board drew a distinction between the meaning of workers' cooperation in the field of production and in the field of workers' welfare. In the first case, the decision stated, participation can not be on equal terms, as it was not the intent of the works council law to have the works council encroach upon the individual property rights of the owner of the plant. Welfare organizations, however,

<sup>9</sup> Reports of the Industrial Inspectors, Prussia, 1921, pp. 210, 211.

<sup>10</sup> *Ibid.*, p. 5.

<sup>11</sup> *Das Schlichtungswesen*, 1922, No. 10.

and the living quarters belonging to the plant, are established primarily for the workers. The existence of such welfare organizations and workers' living quarters in the plant bears a definite relationship to wages and the general working conditions in that plant. In the second case, therefore, participation means cooperation with equal rights in the actual management as well as in all decisions.

### ADDITIONAL DUTIES FOR GROUP COUNCILS

The members of the group councils (wageworkers' council and salaried employees' council) have, within their own sphere of activity, duties similar to those of the works council,<sup>12</sup> but in addition they are required—

1. To cooperate with the employers in the regulation of wages and other conditions of work in those industries where no wage contract exists, in the introduction of new methods of remuneration; in the determination of regular daily hours of work, and especially when the regular hours must be shortened or lengthened; in the regulation of vacations for employees, and in the consideration of complaints concerning the instruction and treatment of the apprentices in the plant.

2. To agree with the employer upon rules regulating the employment and dismissals of the members in the respective groups, in case this has not yet been taken up in a wage agreement with the union.

3. To be particularly concerned with the wounded war veterans and the employees injured in the plant and assist in providing them with work fitted to their strength and capacity.

### INTERESTS OF THE PUBLIC CONSIDERED

In performing their tasks the workers' representatives must always have the interests of the community at heart. It is their duty so to influence the employer and the employees that any demands or actions on either part which may be detrimental to the interests of the community shall be abandoned. This provision was supposed to be merely a guide for the activities of the works councils. Under favorable circumstances, however, it may give the workers' representatives powers far beyond those specified in the law. For example, in the interests of the community the works council may at any time demand a report on the process of determining the price of a commodity, or forbid the export or import of any article. In practice these powers have been used very seldom, and in the only instance reported by the *Betriebsrätepost* (an organ of the United Christian Trade-Unions), the board of adjustment denied the works council the right in the interests of the community to inquire into the amount of goods exported by the firm and into the pure profits the company made from the sale of the exported commodity. The same provision to protect the interests of the public may also be used against the works council itself, if by word or deed it causes dissension or disturbance in an industry in which the public may be vitally concerned.

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<sup>12</sup> This is also true of the shop steward and the united works council, the lowest and the highest form of workers' representation.

**WORKS COUNCILS DEVOID OF EXECUTIVE POWERS**

The carrying out of all the agreements and joint decisions is left entirely in the hands of the employer or his manager. The works council is prohibited from encroaching upon the rights of the employer by issuing orders independently of the management. This provision definitely places the executive powers in all cases in the hands of the management. In fact, it was only after a long and bitter struggle that the works councils were finally granted the right to make announcements of their own and were permitted to use the works bulletin boards for that purpose.

In the majority of establishments the works councils must send a copy of their announcement to the management for approval. Unless approved, the announcements may not be placed upon the bulletin board. Other establishments require that a copy of the announcement be sent to the management only as a matter of official record, posting being permitted without the express approval of the management. In still other firms, the works councils have agreed with their employers that no announcements are to be posted by either party without previously securing the approval of the other side. In event of disagreement the announcement may be posted on the bulletin board, but it must contain the statement that the announcement had been presented to the other side and had not been approved.

## Chapter VIII.—WORKS COUNCILS AND COLLECTIVE BARGAINING

Wages and general conditions of work in Germany are regulated by three kinds of agreements: The general collective agreement, the works agreement, and the individual contract. The general collective agreement (*Tarifvertrag*) is concluded between a single employer or a group of employers in a trade, and a single union or a group of unions representing the employees in the trade. The works or factory agreement (*Betriebsvereinbarung*) is concluded between the owner of a single plant or a number of plants and the workers' representatives in the plants. The individual contract is made between the employer and the individual worker at the time of hiring. The individual contract, which predominated before the war, has now lost all its significance. It is limited to the narrow group of highly skilled specialists whose wages and conditions of work are not covered by a collective agreement. On the other hand, since the revolution the general collective agreement has become the accepted means of stipulating terms of employment, wages, and other conditions of work.

### COLLECTIVE AGREEMENTS

Collective bargaining has been known in Germany since 1848. At that time the workers in the printing trades in a number of cities struck for the right to participate in the determination of conditions of labor in their industry. The strike failed, but local collective agreements were concluded in many cities, including Leipzig, the most important printing center in Germany. Generally, however, organized labor and organized capital, especially, were opposed to this method of regulating conditions of work. The collective agreements, although used to a large extent during the war due to the pressure of the Imperial Government, made, as a matter of fact, but little headway before the revolution.

The first official recognition of collective bargaining by both organized capital and organized labor took place in the now famous agreement between the three major trade-union organizations, Socialist, Christian, and Hirsch-Dunker, and the United Employers' Associations of Germany, on November 15, 1918. This important document, termed the "Magna Charta" of German labor, contained the following provisions referring to collective agreements:

1. The trade-unions are recognized as the official representatives of labor.
2. Conditions of work for all employees are to be regulated by collective agreements between the employers and the unions concerned.
3. In establishments with 50 or more employees special workers' committees are to be elected whose duties it shall be to see that the stipulations of the collective agreements are carried out.

The official adoption of collective bargaining by organized labor and capital was followed by its legal sanction by the provisional

government in the decree of December 23, 1918. The Government added at this time two very important provisions to the system of collective bargaining as outlined by the agreement above. The first provision stipulated that any other contract concluded between the parties affected by a general collective agreement and not conforming to the agreement should be null and void. The second provision made it possible for collective agreements to be declared binding for a whole trade or an entire industry in the country, thus extending the influence of these agreements far beyond the immediate fields covered by them.

The effect of this law and of the agreement of November 15, 1918, upon the progress of collective bargaining in Germany may be seen from the following table. It represents the number of establishments and employees in the various industries covered by collective agreements in 1918 and in 1919, only one year after the law went into effect.<sup>1</sup>

NUMBER OF ESTABLISHMENTS AND WORKERS COVERED BY COLLECTIVE AGREEMENTS, 1918 AND 1919

Industry	Establishments		Persons covered	
	1918	1919	1918	1919
Agriculture and fisheries.....	740	9,265	5,293	90,577
Building.....	23,476	41,368	141,451	437,195
Chemicals.....	56	1,482	8,068	177,226
Cleaning and sanitation.....	267	1,924	1,563	22,224
Clothing.....	12,485	27,898	141,220	327,581
Commerce.....	2,513	20,790	34,589	134,786
Food, drink, and tobacco.....	11,629	41,303	63,407	243,950
Forestry products.....	29	280	2,576	16,591
Hotels and restaurants.....	1,986	14,534	7,090	145,444
Leather.....	4,965	5,501	43,440	81,152
Metal working and machinery.....	10,983	31,096	282,430	1,463,032
Mining and smelting.....	2	1,901	481	1,372,628
Musical and theaters.....	95	1,482	743	14,100
Paper.....	1,650	2,322	35,142	122,511
Pottery and china.....	2,496	3,217	20,794	158,213
Printing.....	9,551	10,256	68,298	95,785
Textiles.....	8,063	4,556	91,399	832,277
Transport.....	4,351	17,487	38,916	168,426
Woodworking.....	11,248	24,828	120,114	305,298
Miscellaneous.....	919	5,769	15,167	277,479
<b>Total.....</b>	<b>107,503</b>	<b>278,251</b>	<b>1,127,090</b>	<b>5,986,475</b>

<sup>1</sup> Includes 6 insurance offices, covering 669 persons.

According to the reports of the Reichsarbeitsblatt of February 1, 1921, the following collective agreements were concluded in 1921:

NUMBER OF COLLECTIVE AGREEMENTS CONCLUDED IN 1921

Employees	Collective agreements	Establishments	Persons covered
Wageworkers.....	11,488	697,476	12,882,874
Salaried employees.....	1,481	145,487	1,811,300
<b>Total.....</b>	<b>12,969</b>	<b>842,963</b>	<b>14,694,174</b>

<sup>1</sup> International Labor Office: Collective Agreements in Germany. Geneva, 1921, p. 578.

Most of these agreements are applicable to a whole trade or to an entire industry within a single district, or even for the entire country.<sup>2</sup> They must, therefore, necessarily be of a general and loose nature in order to allow for the differences existing among the various localities and in the separate establishments. The differences are taken care of by the factory agreements between the individual employers and the works councils. These agreements constitute the "Arbeitsordnung" or factory regulations and are sometimes called the "Betriebsverfassung" or the works constitution, as they, together with the collective agreements, play a very important rôle in the new system of workers' rights (*Das Neue Arbeitsrecht*).

### FACTORY AGREEMENTS

The requirement of published factory regulations in each establishment has existed in Germany since 1891, when it became part of the new industrial regulations order.<sup>3</sup> In accordance with the same law, the regulations were to be taken up for consideration with the shop committee, if such existed in the establishment, or with a group of the older employees in the factory. Although the absolute rights of the employers in their establishments were left more or less intact, the factory regulations requirement of 1891 represented the first serious limitation of the master and servant theory, or the "Herrn im Hause" spirit which at that time prevailed in the German factories.

By the national service law of December 5, 1916, the employers were forced to present the factory regulations for approval to the new compulsory shop committees which were established under the same law. Finally, the works council law gave to the workers' representatives equal rights with the employers in preparing the factory regulations. These become effective only when signed by both parties, or by a board of adjustment, which is the sole body authorized to take the place of either party.

All factory agreements must be made to correspond with the stipulations of the collective agreements existing in the trade. But since they deal with the more detailed problems and the peculiar differences inherent in individual establishments, the formulation of the factory regulations was attended by more difficulties than were the collective agreements. The works council law required that the new regulations be prepared and signed before September 1, 1920,<sup>4</sup> but in spite of this clause in the law, the reports of the Government industrial inspectors for 1922 speak of a great number of smaller and even larger plants as still being without factory regulations. The delay was due chiefly to disagreement existing between the employers and the workers' representatives over the contents of these regulations. In some plants the sections of the regulations on which the two parties could agree were signed at once, while the disputed parts were left for the final decision of a board of adjustment. In other plants, the board of adjustment which was appealed to either

<sup>2</sup> 83.1 per cent of the total number of employees affected by collective agreements in 1921 were covered by district or national agreements.

<sup>3</sup> Die Gewerbeordnung, secs. 134a-134k.

<sup>4</sup> Art. 80.



by the employer or the works council, because the other party refused to sign the regulations, provided the necessary signature and thus made the regulations effective.

#### PROBLEMS OF FINES AND GATE CONTROL

The chief obstacles in the way of agreement on the factory regulations were the questions of fines, of searching the workers for stolen tools or materials, and of hiring and discharging of employees.

The matter of fines had been worked out more or less in detail in the Industrial Code of 1859. Since the revolution, however, the workers demanded the complete abolition of fines in the factories. This demand was not realized. Instead, the workers' representatives were given the right to cooperate with their employers in imposing the fines prescribed by the Industrial Code. But the works council law does not state explicitly whether the workers' representatives are to participate only in preparing the general rules according to which the fines are to be imposed, or in actual imposition of the individual fine in each case.

Scarcely any other clause in the works council law has caused so many disputes as that relating to fines. No less than 50 decisions regarding fines were made by the various authorities during the first two years of the existence of the law. These, however, were so conflicting that neither the employers nor the workers can point to any one decision as a precedent for their claims. There is a somewhat more authoritative weight on the side of the workers, as their claims are supported by a decision of the minister of labor which coincides also with the opinions of such experts in the field of works councils as Professor Erdel and Doctor Flatow.

But in practice the decision of each board of adjustment is binding for the particular establishment concerned. The result is that while in some establishments the works councils cooperate with their employers in each individual case of imposing a fine, in other establishments they merely participate in the preparation of the general rules and leave the executive power of imposing the fines to the employers themselves.

Complications have also arisen in the question of a gate control system and the close searching of workers upon leaving the plant. The continued depreciation of the mark since 1920, which often made any tool or a few pieces of copper, leather, or silk more valuable than a whole week's wages, resulted in an exceedingly large increase of thievery among the workers. The situation became so desperate that even the most radical works councils admitted the need of some kind of gate control to apprehend the guilty. What many of them objected to so violently was the cruelty of the guards and the arbitrary methods used in the searching of the workers. Very often innocent employees were subjected to this cruel treatment merely because they had incurred the displeasure of the employer or of some foreman.

The works councils demanded that they be consulted as to the kind of gate control to be used. They also requested that one of them be allowed to be present at the gate and in the room where the workers were being searched. The employers refused these demands, and the struggle was long drawn out. In the majority of estab-

lishments; however, these demands of the works councils, which were supported by the unions, were granted. The workers' representatives succeeded in introducing an impersonal and official atmosphere into a proceeding which, in any other spirit, might bring humiliation to a worker subjected to a close personal search.

#### HIRING AND DISCHARGING

The cooperation of the works councils in the hiring and discharging of employees has developed out of the revolutionary demands of the workers to have a right to their jobs. As already stated elsewhere,<sup>5</sup> this demand was the cause of many a serious strike in the spring of 1919. The strikes resulted in a number of agreements which conferred upon the then existing shop committees a large measure of control in the matter of hiring and discharging of employees.

The works council law, however, does not go so far as did these agreements. In the case of hiring individual workers, the law states merely that no worker shall be refused employment because of his or her political, military, religious, or trade-union activities, or for belonging or not belonging to an organization furthering such activities.<sup>6</sup> The works councils were given the right to receive any complaints that might arise in this connection. They are required to take the matter up first with the employer and in the event of disagreement, with the board of adjustment. In the case of mass hiring, the employer is required to notify the workers' representatives about his plans some time before the actual hiring is undertaken, so that the works council may have sufficient time to communicate with the union or the official labor exchange operating in the district. In all cases, however, the final decision and the executive powers are left solely in the hands of the employer. The utmost a works council can do is to appeal to a board of adjustment, which alone has the right to overrule the employers.

In the matter of discharging employees, the rights of the works councils are somewhat more extensive. The whole problem of dismissing employees is divided into mass and individual dismissals, and the latter into regular and summary dismissals.

Until very recently mass discharging was regulated by a special law, passed on February 12, 1920, and known as the "work stretching" law. This law provided that no employer should undertake to discharge a considerable number of his employees until after the work in his establishment had been "stretched" by putting all employees on a part-time basis. Only when it had been proved that the nature of the industry would not permit of part-time employment, or that the part-time had to be reduced to less than three days per week, could the employer proceed with the dismissals. He was then obliged to follow closely the regulations which explicitly prescribed the order in which the employees should be dismissed. This section of the law was repealed by the decree of October 15, 1923, which gave the employers full freedom in the field of mass discharging.

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<sup>5</sup> Chap. II, pp. 11 and 12.  
<sup>6</sup> Art. 81.

As in the case of mass employment, however, the employers are required to notify the workers' representatives in advance of their intentions to dismiss a considerable part of their employees. In addition, each individual worker discharged may, within a definite time limit after having received a notice of discharge, protest against his dismissal to his group council. Grounds for such a protest may be (1) that the notice was given without a stated reason for the dismissal; (2) that the dismissal resulted because of the employee's refusal constantly to do other work than that for which he was hired, or (3) that the dismissal constitutes an "unfair disadvantage" to the employee, not justified by his or her behavior in the plant, or by the economic conditions in the industry.

In his book, "Aus der Betriebsräte Praxis," Clemens Nörpel gives about 35 cases of dismissals which have been reversed by the various boards of adjustment because they represented an unfair disadvantage to the employees concerned.<sup>7</sup> Some of these cases follow:

1. A board of adjustment at Düsseldorf reversed the discharge of a 60-year old man who demanded payment in accordance with the regular rates established by the collective agreement in the trade.

2. Similar action was taken by a board of adjustment in Munich in the case of a worker discharged because of his refusal to act as a strike breaker.

3. A board of adjustment in Stuttgart nullified the dismissal of a worker who appealed to the court in order to make the employer obey a decision rendered by another board of adjustment.

4. An office girl was discharged on account of repeated absence because of illness and the necessity of undergoing a cure prescribed by the State insurance office. The dismissal was reversed by the board of adjustment of Berlin as constituting an unfair disadvantage to the girl.

5. A board of adjustment in Berlin considered an unfair disadvantage the dismissal of a stoker in a glass factory who, contrary to the orders issued, did not prepare the furnace for the next shift, because he knew that the next shift would go on strike—as actually happened.

Upon receipt of the protest of the dismissed worker, the works council is required to arrange for a session to decide whether or not the protest is to be approved. If the complaint of the worker is not approved, the dismissal takes effect and the discharged employee may not even appeal to the board of adjustment. But if the workers' representatives concur with the protest, the works council must arrange for a conference with the employer and attempt to persuade him to reconsider the dismissal. In event of disagreement between the works council and the employer, the dismissal takes effect, but the dismissed worker or the works council has a right to appeal within a week to the board of adjustment for a final decision.<sup>8</sup>

A decision in favor of the worker does not, however, compel the employer to reinstate the discharged employee. He may choose the alternative, which is to pay the discharged man a definite sum of

<sup>7</sup> Vol. 2, p. 183.

<sup>8</sup> Since October 30, 1923, the place of the board of adjustment in such cases has been taken by an industrial or commercial court.

money as damages, these also to be determined by the board when deciding the case. The sum determined upon depends on the length of time the discharged worker had been in his present employment. It usually amounts to one month's wages for each year of employment, not exceeding six successive years. Some boards of adjustment also add compensation for the time lost during the interval between the time of discharge and the rendering of the decision. This sum the employer must pay even if he agrees to reinstate the discharged employee.

A summary dismissal is different from a regular dismissal because in the former no time notice is required. Nor is any complaint permitted, other than that the case did not justify a summary dismissal as provided for in article 123 of the Industrial Code. This article provides that employees may be summarily discharged for:

1. Presenting false documents or a false work book.
2. Thievery, misappropriation or fraud, or for questionable morals.
3. Leaving work without a permit or refusing to do the kind of work for which the employee was hired.
4. Not heeding the fire rules or other safety regulations.
5. Committing or inducing others to commit an act harmful to the employer or to a fellow worker.
6. Offending the employer, a member of his family, or the manager by word or deed.
7. Being incapacitated or affected by a contagious disease.

A complaint against a summary discharge is handled in the same way as a protest against a regular dismissal. The handling of the cases in connection with these two kinds of complaints forms the chief routine occupation of the members of the works councils.

#### DISCHARGING WORKERS' REPRESENTATIVES

The special protection granted the workers' representatives from discharge constitutes the only real advantage a workers' representative has over other employees. Article 96 of the works council law expressly provides that no member of the works council, while in office, may be discharged or transferred from one plant to another without the approval of the other members of the works council. When the works council refuses to approve the dismissal of one of its members, the employer may appeal to a board of adjustment<sup>9</sup> whose decision in the case is final. But he must keep the workers' representative employed until the decision of the board is made. No approval of the works council is required in the discharging of a workers' representative in case of a complete shutdown of a plant, or when a member of the works council commits a crime which makes him subject to a summary dismissal in accordance with article 123 of the Industrial Code.

Attempts have been made by some employers under one pretext or another to avoid the necessity of procuring the approval of the works council for the dismissal of one of its members, but the boards of adjustment have always insisted on the observance of the required rules, as illustrated by the following example:<sup>10</sup>

<sup>9</sup> Since October 30, 1923, the place of a board of adjustment has been taken by the labor courts.

<sup>10</sup> Board of adjustment, Hamburg, December 21, 1920, quoted from "Mittlungsblatt Schleswig," No. 5, 1921.

A firm discharged without notice two of its employees, both members of the works council of the firm, without applying to the works council for approval. Its contention was that the two members did not work regularly and interfered with the work of other employees, thus causing much damage to the firm. It did not present a more serious reason for the discharge, such as would justify the application of article 123 of the Industrial Code.

The board of adjustment of Hamburg which was called upon to pass upon the appeal of the works council declared the dismissal of the two members of the works council to be ineffective. The firm was requested to reinstate the two employees and pay them their full wages since the time of their discharge up to the time of reinstatement. In this instance the board of adjustment did not decide upon a sum for damages, as the law requires that members of the works councils unjustly discharged must be reinstated.

A short time after the decision was rendered, the same two members received a letter from the firm stating that their wages were waiting for them and that the firm had no objection to their reinstatement, but on account of poor business, the firm was forced to shut down and was therefore again obliged to dismiss them. The case was once more appealed to the same board of adjustment. It decided that since the workers had never been reinstated, they could not be again discharged, and insisted upon their immediate reinstatement.

The special protection of the workers' representatives against dismissals gives the members of the works councils the necessary independence they need in dealing with the employers. The nature of their functions is such that it brings the works council in constant opposition to, if not in direct conflict with, the employers. Cases of disagreement between the works councils and the employers are always pending before the boards of adjustment or before the labor courts. Only when the workers' representatives are secure in their jobs can they proceed with a policy of honestly fulfilling the tasks set for them by the works council law.

The employers are sufficiently protected against any abuse of privileges on the part of the workers' representatives. The works councils are required to follow strictly the regulations prescribed by the works council law. Any attempt to go beyond the bounds set for them by the law, or any violation of their official duties and responsibilities can be easily checked by an appeal to a board of adjustment (now a labor court) for the impeachment of the individual members guilty or of the entire works council.

## Chapter IX.—BOARDS OF ADJUSTMENT AND LABOR COURTS

The outstanding characteristic of the labor movement in Germany since the war has been the emphasis placed upon mediation and arbitration. Inaugurated by the national service law of 1916, as a means for the successful prosecution of the war, the institution of mediation and arbitration was first officially recognized by organized capital and labor in their agreement of November 15, 1918, and was sanctioned by the Government in the decree of December 23, 1918. Since then scarcely a law has been passed in the field of labor that did not provide additional functions for the boards of adjustment.

As was to be expected, the works council law with its numerous legal technicalities deals at special length with the boards of adjustment. Although organized originally for mediation purposes only, the boards were called upon by the works council law also to arbitrate disputes between the workers' representatives and the employers and even to render final decisions, as in the case of complaints of discharged workers or in the recall of members of the works councils. The work of the boards soon became so burdensome and the dockets so crowded that in spite of the increased number of members and their subdivision into trades and industries, no case could be expected to come up for decision in less than 30 days after the application had been filed.

In addition to this slow and awkward functioning of the boards, they were objected to by both employers and employees for other reasons. The employers resented the constant interference in the relations between the individual employees and their employers. The workers also soon came to realize that even when decisions had been rendered in their favor they were far from securing the benefits of the decisions. These could be made enforceable only by an official court after a special hearing of the case. In reviewing the decisions of the boards of adjustment, the courts could easily dismiss the entire case on the basis of some slight legal or technical error made by the board.

### NEW BOARDS OF ADJUSTMENT

As a result of this dissatisfaction on both sides and the rapidly growing expense of the upkeep of the original boards,<sup>1</sup> the Government undertook a complete revision of the system. The decree of October 30, 1923, completely abolished the old boards of adjustment and established instead a new system, differing from the old both in structure and functions.

First, the districts of the boards were made considerably larger. Due consideration was given this time to the social and economic

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<sup>1</sup> The boards of adjustment are a Government institution and all the expenses are carried by the National Government.

nature of the district in contrast with the old division which was made during the war and was based entirely upon the military requirements of the country.<sup>2</sup>

Another important change is that the new boards of adjustment must all be presided over by impartial chairmen especially appointed by the Government. Formerly it was left to the discretion of the members of the board whether they should proceed with or without a chairman elected by themselves. The new boards, as were the old, are made up of an equal number of representatives of capital and labor. The old boards consisted of six permanent members, three from each side, who were considered regular officials of the Government, and two temporary members, one from each side, elected by the employees and employers in the trade concerned. The new boards are made up of only four members, two from each side, and the impartial chairman. The members are considered public officials only when summoned to a session by the chairman. The latter, however, is a permanent Government official appointed by the highest authority of the State, after a conference with the representatives of the organizations of capital and labor.<sup>3</sup>

A third change is that the minister of labor is empowered to appoint one permanent arbitrator for each economic district, and special arbitrators in each labor dispute, should the importance of the case warrant such measures. Formerly the minister of labor himself arbitrated such disputes, but this experiment proved unsatisfactory, as it caused much opposition to the Government on the part of both capital and labor. Hence the attempt to refer even the most important cases to an impartial body. There are now in Germany 20 such districts, selected primarily for their economic importance, for which permanent arbitrators have been appointed by the minister of labor.<sup>4</sup>

#### FUNCTIONS OF BOARDS OF ADJUSTMENT AND ARBITRATORS

All labor disputes have been divided into two distinct classes:

1. Group disputes, affecting a whole trade or industry, or all employees in a single plant.

2. Individual disputes, affecting an individual worker in a plant. Formerly all cases of disputes were handled by the boards of adjustment. Now only the group disputes are placed within the scope of the new boards, while the individual cases are transferred to a different jurisdiction.

The duties of the new boards of adjustment and the arbitrators are primarily to mediate in the general collective agreements (*Tarifvertrag*) and in the works agreements (*Betriebsvereinbarung*).

<sup>2</sup> Under this new division there are now in Germany 115 arbitration districts, namely: In Prussia, 66 (of which the Ruhr section alone has 10); Bavaria, 13; Saxony, 6; Thuringia, 6; Wurttemberg, 5; Baden, 4; Hesse, 3; Mecklenburg, 2; Bremen, 2; Hamburg, Lubeck, Lippe, Waldeck, Anhalt, Strelitz, Brunswick, and Oldenburg, 1 each.

<sup>3</sup> The new boards are supposed to save the Government the greater part of its former expenses on this institution.

<sup>4</sup> This accounts for the great variety in the sizes of the districts: Berlin was made into a district all by itself, as has been the Ruhr, with the arbitrator's office in Dortmund, and the Rhineland, with the arbitrator in Cologne; Silesia has been divided into Upper Silesia and Lower Silesia, while the rest of Prussia has been given but two arbitrators, one for East Prussia, with the headquarters at Gumblinnen, and one for Pomerania, with the office at Stettin.

In either case the boards or the arbitrators are to act only when there is no other mediation agency provided for by a previous agreement, or when such agency has failed to bring about the desired results. It must be emphasized here that the impartial machinery in Germany has been established not so much for the purpose of settling strikes and lockouts which have already taken place as for drawing up collective agreements which would preclude in a large measure the occurrence of lockouts and strikes.

The boards or the arbitrators begin to be active in a case, either on the appeal of one of the parties concerned or on their own initiative, if the gravity of the situation warrants such action. There is no compulsion for either side to apply to the board, although the by-laws in the constitution of the A. D. G. B. (the general office of the socialist trade-unions), as well as of the other trade-unions, provide for mediation in all cases where direct negotiations with the employers have failed. Strikes and lockouts, without previously applying to a board for mediation, are forbidden only in the most vital public utilities, such as in the supplying of water, gas, or electricity.<sup>5</sup>

The procedure of the boards of adjustment is now as follows: First, the impartial chairman calls a conference of the parties concerned and attempts to bring them to terms, without calling an official session of the board. If he fails, it becomes his duty to organize a board consisting of two members from each side and presided over by himself.<sup>6</sup> This chamber, too, first sits as a mediation agency, and only after this second effort has failed to bring about a free agreement between the parties, does the board suggest its own plan of settlement which, if accepted by both sides, becomes equivalent to a written agreement.

Unless accepted by both sides or declared compulsory by the proper authorities—an arbitrator or the minister of labor—the decisions of the boards of adjustment are not binding, and the parties are left free to proceed as they please. It is customary, however, in submitting the dispute to a board of adjustment or to an arbitrator, that the two sides agree beforehand to accept the decisions rendered, in which case the decisions are also binding.

#### LABOR COURTS ×)

The second group of labor disputes contains cases of individual employees in a plant. The disputes arise chiefly in connection with the application of the Industrial Code, the works council law and other labor laws. Formerly they constituted the majority of cases which the old boards of adjustment were called upon to decide. Here belong all the disputes arising in connection with the imposing of individual fines,<sup>7</sup> in connection with the discharging of employees,<sup>8</sup> including the discharging of workers' representatives,<sup>9</sup> and all cases of impeaching individual workers' representatives or the entire works council.<sup>10</sup>

<sup>5</sup> President Ebert's decree of December 10, 1920.

<sup>6</sup> If they deem it necessary, the arbitrators are allowed to call more than the prescribed two members from each side to serve on the board of adjustment.

<sup>7</sup> Ch. VIII, p. 46.

<sup>8</sup> Ch. VIII, pp. 47 and 48.

<sup>9</sup> Ch. VIII, pp. 40 and 50.

<sup>10</sup> Ch. IV, pp. 25 and 26.



The jurisdiction over all cases in connection with individual disputes has been transferred to the so-called labor courts. These have not yet been organized, and their place is temporarily taken by the old industrial and commercial courts which have been in existence in Germany since 1891.<sup>11</sup> The industrial courts have jurisdiction over all the wageworkers and such of the salaried employees as receive a salary below a fixed amount. The commercial courts have jurisdiction over the majority of the salaried employees.

Both kinds of courts are organized very much in the same fashion as are the boards of adjustment. They consist of a chairman, usually a judge, appointed by the Government, and of eight jurors, four from each side, elected by the employers and the employees of the community in which the court is established. As in the case of the boards of adjustment, no attorneys are allowed to plead before the labor courts, and the parties concerned must be on hand to present their own cases. The place of the employer can be taken by his manager or by his permanent legal adviser, while the place of the individual employee can be taken by a member of the works council.

In contrast with the boards of adjustment, however, the decisions of the labor courts are absolutely binding and enforceable and may be appealed only to the higher civil courts. This gives the labor courts a real advantage over the boards of adjustment, and it is the general opinion of the leaders of organized capital and labor that the transfer of the individual cases to the jurisdiction of the labor courts can not but lead to the greater satisfaction of all the parties concerned.

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<sup>11</sup> Until actual labor courts shall have been established, the name "Labor courts" is applied to the industrial and commercial courts.

## Chapter X.—SPECIAL RIGHTS OF WORKERS' REPRESENTATIVES

The various duties and responsibilities placed upon the works councils require of the workers' representatives a knowledge of facts and details which can be obtained only directly from, and through the assistance of, the management of the plant. Thus, in order "to safeguard the industry from disturbances," the works councils must not only be well informed of the plans and activities of the unions and the rank and file of employees with reference to the establishment, but they must also be acquainted with at least those projects and undertakings of the management which relate directly to the conditions of work in the establishment. Furthermore, the works councils have been made the legal guardians of the collective agreements and the decisions of the boards of adjustment referring to the plant. This can be accomplished only when the workers' representatives are permitted access to records which would enable them to compare the stipulations of the agreement and the decisions with actual practices in the establishment regarding wages, hours of work, etc.

To enable the works councils to fulfill their duties efficiently, the workers' representatives were granted certain specific privileges which can best be classified under the general heading of "Rights to information." These rights may be divided into three parts:

1. *The right to demand information and explanations about all the proceedings in the plant which bear a direct relationship to the collective agreement or to the general conditions of work in the plant.*

This right of the works councils, even when interpreted in its narrower sense as is done in practice, would have given the workers' representatives a large insight into the affairs of the plant, were it not for the provision in the law concerning trade and industrial secrets. Under this provision the employers are permitted to refuse the workers' representatives any information which in their opinion might endanger the industrial or trade secrets of the company. The result is that any employer unwilling to impart to the workers' representatives the desired information can easily evade it by merely referring to the "secret clause." The works councils are then compelled to use the tedious method of litigation before the boards of adjustment each time they are confronted with such a refusal.

In reality, therefore, the amount of information given to a works council depends entirely on the relationship existing between it and the employer concerned. Where the relations between the two parties are of an amicable nature, the works councils have no serious difficulties in obtaining the desired information from the management of the plant. But where the two parties do not cooperate, the workers' representatives, even when upheld

by the board of adjustment, can secure but little information from an unwilling and hostile employer.

2. *The right to examine the wage records and any other data pertaining to the carrying out of the collective agreements.*

This privilege of the works councils is more specific and depends less on the relationship between the workers' representatives and the employers. The kind of information to which it refers is also more definite and can not be imparted orally, as in the case of the general information mentioned above. The extent and limitations of this right are clearly demonstrated by the following decision handed down by the board of adjustment at Pforzheim on July 11, 1922. The case was as follows:

At the request of the metal workers' union the chairman of the works council of a firm wrote to the management demanding the privilege of examining the wage records. The purpose was to find out how far the actual wages paid by the firm corresponded with those set in the existing collective agreement. The employer refused to let the chairman see the records on the ground that this would endanger his business secrets. The works council appealed to the board of adjustment which decided:

General wage records can not be regarded as business secrets as this would be contradictory to the contents of the law. If the wages of any individual worker are regarded by the employer as secret, the employer must show the record, but he should make use of the provision in the works council law which forbids the workers' representatives to disclose any information given them confidentially.<sup>1</sup>

The works council is entitled to take whatever notes of the records it may deem necessary in the event a mere examination of them does not suffice. Should this work require more time than one could reasonably expect a workers' representative to sacrifice of his own free time he may, with the permission of the employer, do this work during the regular working hours. Any expense that may be required for this purpose, if justified, belongs in the class of "necessary" expenses and are to be borne by the employer.

When required the works council may report the contents of the wage records to the economic organization of the workers it represents; i. e., the union.

The best means of solving the various difficulties that may arise in connection with the examination of the records by the works council is for the employer or his manager to copy the requested information from the records and deliver it to the works council.<sup>2</sup>

3. *The right of the works council to demand regular quarterly reports on the general conditions of the industry as a whole, and of the establishment concerned in particular.*

The reports are to be made only at the request of the works council. This request may either be general or may take the form of a questionnaire containing a complete outline of the information desired by the workers' representatives. Due to their confidential nature, these reports have never been published. But their nature and scope may be illustrated by the questionnaire presented to the management of a shoe factory in Nuremberg in August, 1920.<sup>3</sup>

<sup>1</sup> Article 100. Any workers' representative guilty of disclosing information given to him by his employer confidentially is to be punished by a fine of 1,500 marks (this amount varying with the progress of inflation) or imprisonment.

<sup>2</sup> Article 99. Imprisonment for one year and a fine up to 10,000 marks (this amount varying with the progress of inflation), or either, is the punishment for any employer who for the sake of deception gives to a workers' representative false data concerning the economic and financial conditions in the establishment.

<sup>3</sup> Aus der Betriebsräte Praxis, by Clemens Nürpel, Vol. II, pp. 125-127.

The works council demanded the following information:

1. Present number of employees in the factory; number of wageworkers; number of salaried employees.
2. Total amount of wages paid to the wageworkers for the quarter from June to August, 1920.
3. Total amount of salaries paid to the salaried employees during the same period.
4. Total amounts of money contributed by the firm to the various insurance funds of the wageworkers and the salaried employees separately.
5. Number of pairs of shoes manufactured during the quarter.
6. Average selling price of a pair of shoes during the period.
7. Average cost of production of a pair of shoes during the period: (a) Itemized cost of raw materials used; (b) labor costs.
8. Total net costs of running the establishment during the period: (a) Amount of fuel used and costs; (b) new machinery purchased and costs; (c) new buildings erected and costs; (d) repairs made and costs.
9. Pure profits or losses incurred by the firm during the period.
10. Amounts of cash on hand in the beginning and at the end of the quarter.
11. Amount of bank accounts and at which banks kept.
12. Accounts receivable and accounts payable.
13. Does the firm need new capital? How much, and how does it intend to obtain it?
14. What increases or decreases in the number of employees are planned for the next quarter?
15. What is the immediate outlook for the shoe and leather industries at home and abroad? What changes in taxes or in foreign tariffs are expected to affect the two industries?
16. What are the firm's connections abroad? What use did the firm make of these connections during the last quarter?

In addition the following information was requested by the works council for statistical purposes only:

1. Prices of the various raw materials used in August, 1919, and in August, 1920.
2. Selling prices of the articles produced in July, 1914, in August, 1919, and in August, 1920.
3. Number of employees in the factory in July, 1914, in August, 1919, and in August, 1920.
4. Total amount of wages and salaries paid in July, 1914, August, 1919, and August, 1920.
5. Number of shoes produced in July, 1914, August, 1919, and August, 1920.

The firm declined to answer these questions and the case was first brought before the local authorities and finally before the Bavarian minister of social welfare, who was in charge of the department of labor, the highest authority in this instance. His decision was:

The management is obliged to give to the works council full information concerning the total number of employees in the factory, the amounts of wages and salaries paid out to each individual and in toto during the quarter, and the amounts of money contributed by the firm to the various insurance funds of the workers and the salaried employees.

With regard to the questions dealing with the purely commercial side of the undertaking, such as cash on hand, itemized expenses, or net costs, etc., the firm need not answer these questions in detail. A general statement concerning the economic and financial condition of the establishment is sufficient. It must, however, contain sufficient data to give the workers' representatives a comprehensive and reliable picture of the conditions prevailing in the establishment. Special emphasis must be placed on the prospects of the enterprise and its requirement of labor for the next quarter.

The firm is not obliged to make its report in monthly installments—one account for the entire three months is sufficient. Nor is it required to give to the works council any information covering a period prior to the passage of the works council law.

The report may be made either in the form of a written statement or in written answers to the questionnaire of the works council, or preferably,

orally to the executive committee of the works council. The workers' representatives are absolutely forbidden to make public any of the information given to them confidentially. They are not even permitted to disclose it to the works assembly or to the other members of the works council.

### THE BALANCE SHEET LAW

In addition to the quarterly reports, the employers of such establishments as are required by the Commercial Code to keep a complete account of their affairs, or who employ at least 300 wage-workers or 50 salaried employees, must present to the executive committee of its works council a full account of the profits and losses the firm incurred during the entire fiscal year.<sup>4</sup> The workers' representatives are again forbidden to make public any information received confidentially. The required report must be made not later than six months after the close of the business year and must comply with the regulations laid down in a special law passed for this purpose. The law was passed on February 5, 1921, and is known as "The balance sheet law." Its chief provisions are:

The balance sheet of the concern must contain all the component parts of its liabilities and assets as required by the various commercial laws applying to the enterprise in question. The final financial statement must be presented in such a way that when examined alone, independently of other sources of information, the balance sheet provides a complete abstract of the financial condition of the concern.

The meaning of, and the connection between, the separate items must be explained in a separate statement, based upon the data contained in the financial statement, in the inventory, in the cash accounts, and in the expenses of producing and marketing the commodity. All essential changes in matter of administration and finance which occurred during the business year must be mentioned in the report. The submission of actual vouchers is not compulsory.

If several plants belong to the same concern, the financial conditions of each plant must be explained to the individual works councils concerned, in so far as the nature of the whole concern as well as of the separate plant permits of such separation of accounts. The balance sheet of the entire concern must be presented to the united works council, if there be one organized in the concern.

The balance sheet law has not been in existence long enough to permit a critical analysis of its application in industry. The fact that it applies only to such concerns as are already required by other laws to publish their financial statements, robs the law of its revolutionary significance. What it really amounts to is that the same financial statement, which was prepared for publication in the press, is read before the workers' representatives with but a few additional details.

### WORKERS' REPRESENTATIVES ON BOARDS OF DIRECTORS

Article 70 of the works council law grants the workers' representatives the right to elect one or two delegates as members to the board of directors of their firm. It reads as follows:

One or two members of the works council<sup>5</sup> are to be elected as members to the board of directors in every establishment having such a governing body and no special provisions for its employees to be represented in the same. The rules regulating the elections are to be set down in a law especially to be

<sup>4</sup> Art. 72 of the works council law.

<sup>5</sup> One member to represent the wagedworkers and one the salaried employees.

passed for this purpose. The members of the works councils on the board of directors are to represent the interests and the wishes of the employees regarding the organization of the entire concern. They are to attend and to vote at all sessions of the board. They are not, however, entitled to any remuneration outside of their personal expenses, and are forbidden to disclose any of the information received confidentially.

The special law concerning the "Sending of delegates of the works council to the board of directors" was passed on February 1, 1922, to go into effect immediately. It enumerates the kinds of organizations which are required by the Commercial Code to have a board of directors as their governing body. It describes the ways and means by which the labor members to the board of directors are to be elected and specifies the qualifications which a member of the works council must possess before he may be elected.

Not a word is said with reference to the rights and the duties of the labor members on the board of directors, or to the legal responsibilities which membership on the board would place upon a workers' representative. Nor is mention made as to whether or not the labor members are permitted to serve on some of the committees of the board, or to take part in the general meetings of the stockholders. A number of disputes have therefore arisen with respect to the last two questions, both of which have been decided in the affirmative. The majority of the boards of adjustment and the higher courts have taken the position that the delegates of the works councils to the boards of directors are bona fide members of the board. Their names are to be recorded in the official commercial registries, together with the names of the other members of the board. Aside from the fact that the labor members must serve without remuneration, they are entitled to equal rights with the regular members of the board.

The employers from the very beginning objected to having labor members sit on the boards of directors. They opposed the article of the works council law which grants this right to the workers' representatives and fought persistently the passage of the special law. Their opposition did not cease after its passage. Most of the organizations which previously had boards of directors, but which are not required by law to have such a governing body, abolished their boards altogether, rather than to permit a labor delegate to sit on the board. Others have caused their stockholders to transfer to special committees not accessible to the labor members the most important functions of the board, except those actually prescribed by law. In the case of the trusts and cartels, the constituent parts have merely transferred the most important functions of the separate boards of directors to the combined central board of directors, to which the workers' representatives are not entitled to send delegates.

Whenever admitted to the board of directors, the workers' representatives have been considerably hampered by the requirement of secrecy which forbids them from making reports not only to the workers at large, but even to the works council itself, from which they were elected. On the board they are in a minority even under the most favorable conditions when the proportions of the labor members to the representatives of capital are two to three. However, a ratio of one or two labor members to twenty-five or thirty

representatives of capital is not a rare instance. Some of the labor members admit freely that they often find themselves at an intellectual disadvantage in comparison with the other members of the board, who are, as a rule, industrial and financial experts.<sup>6</sup> This, they say, accounts for the silence and apparent inactivity of the labor members on the board of directors.

Potentially, however, the law is a very significant advance in the field of industrial relations in Germany. It gives the representatives of labor an opportunity to participate in the direction of industry and finance and to take part in all the decisions of boards of directors on equal terms with the representatives of capital. Necessarily, it means also a closer cooperation between the two sides in other fields, including the social phases. The German worker, unlike his brethren across the channel, does not so easily break away from the habit of hating the capitalist and his way of doing business, a hate which was instilled into him by decades of class struggle and socialist propaganda. He must now go through a conscientious struggle before he will agree, as a member of the board of directors, to attend a social entertainment given by that body. Besides, he is more apt to lose the confidence of his fellow workers or be removed from his office as a traitor to the cause. Nevertheless, the first steps of a social rapprochement between the two classes have already been made and the way paved for increased cooperation in the future.

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<sup>6</sup> That the workers in Germany are fully conscious of this intellectual disadvantage can be seen from their efforts to overcome it—witnessed by the widespread and intensive educational campaigns. See Ch. XII, on works councils and workers' education.

## Chapter XI.—WORKS COUNCILS AND GERMAN TRADE-UNIONS

### STATUS OF TRADE-UNIONS SINCE THE REVOLUTION

The revolution of November 9, 1918, produced a number of very important changes in the trade-union movement of Germany. The most essential of these changes were:

1. The consolidation of the numerous big and small independent unions into three large central organizations, Socialist, Christian, and Hirsch-Dunker.

The tenth general congress of all the socialist unions in Germany, held in Nuremberg in June, 1919, voted to federate all the socialist unions into one large central organization. The new organization was named "Der Allgemeine Deutsche Gewerkschafts Bund," literally, the General Federation of the German Unions. The individual unions were left absolutely autonomous in their internal affairs as well as in their methods of organization. The object of the federation was to take care of the common interests of the unions and to afford the necessary assistance to all unions alike, whether small or large, whether organized on the basis of the craft or the industry. No discriminations were to be made regarding the political or religious affiliations of the individual members of the unions.<sup>1</sup>

The Federation of the Christian Trade Unions of Germany (*Der Gesamtverband der Christlichen Gewerkschaften Deutschlands*) was organized through the merger of the independent Catholic unions of Germany with the other Christian labor organizations, which took place in October, 1919. This federation declared itself in favor of the craft form of organization and found its political expression in the Clerical, now the Centrum, Party of Germany.

Finally, those unions which could not subscribe to the political doctrines of the socialists, on the one hand, and to the religious doctrines of the Christians, on the other hand, met in conference in November, 1919, and organized the Federation of Liberal Hirsch-Dunker Unions of Germany (*Verband der Deutschen Gewerksvereine Hirsch-Dunker*). This third federation also expressed a preference for the craft form of organization as against the industrial. Politically it became affiliated with the Democratic Party of Germany.

2. The rapid growth of trade-union organizations among the salaried employees and the Government officials of Germany and the alliance of their central unions with the central organizations of the wageworkers.

As a result of these two changes the entire trade-union movement in Germany has now reached a stage of development which is known

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<sup>1</sup> This clause was the result of the splitting of the former Socialist Party of Germany into majority socialists, independent socialists, and communists.



in Germany as "Das Drei-Säule System," literally, the three-pillar system, represented in the following tables:<sup>2</sup>

ORGANIZATION AND MEMBERSHIP OF CENTRAL GERMAN TRADE-UNION FEDERATIONS IN DECEMBER, 1923.

Federation of Socialist Federations—8,814,656 members

Federation of Socialist Wagerworkers' Unions (A. D. G. B.)—49 unions, 7,817,152 members		Federation of Socialist Salaried Employees' Unions (A. F. A. B.)—15 unions, 643,230 members		Federation of Socialist Officials' Unions (A. D. B.)—20 unions, 354, 274 members	
Union	Members	Union	Members	Union	Members
Metal workers.....	1,624,554	Central Union of Salaried Employees.....	310,419	Of Government railroad officials.....	200,000
Factory workers.....	733,583	Foremen.....	160,000	Government officials in railroad workers' union.....	40,000
Textile workers.....	727,440	Technicians and engineers.....	86,500	Officials in transport workers' union.....	20,000
Transport workers.....	566,274	Bank employees.....	31,000	Post office employees.....	18,000
Construction workers.....	543,578	Other unions (11).....	55,811	Other unions (16).....	76,274
Agricultural workers.....	499,107				
Railroad workers.....	444,704				
Woodworkers.....	434,843				
Mine workers.....	395,836				
Other unions (40).....	1,847,167				
<b>Total.....</b>	<b>7,817,152</b>		<b>643,230</b>		<b>354,274</b>

Federation of Christian Federations—1,681,090 members

United Christian Wagerworkers' Unions—19 unions, 1,031,006 members		United Christian Salaried Employees' Unions—10 unions, 459,576 members		United Christian Officials' Unions—21 unions, 390,478 members	
Union	Members	Union	Members	Union	Members
Metal workers.....	228,406	Mercantile clerks.....	285,879	State and railroad officials.....	280,000
Textile workers.....	144,504	Female clerk and office workers.....	102,626	Post office officials.....	30,000
Mine workers.....	141,016	Foremen.....	14,541	Administrative officials.....	17,991
United factory and transport workers.....	126,281	Other unions (7).....	56,530	Other unions (18).....	42,487
Agricultural workers.....	104,344				
Other unions (14).....	286,455				
<b>Total.....</b>	<b>1,031,006</b>		<b>459,576</b>		<b>390,478</b>

Federation of Hirsch-Dunker Unions—687,969 members

Federation of Hirsch-Dunker Unions of Wagerworkers—21 unions, 230,612 members		Union of Hirsch-Dunker Salaried Employees—1 union, 300,357 members		Hirsch-Dunker Unions of Officials—2 unions, 147,000 members	
Union	Members	Union	Members	Union	Members
Metal workers.....	130,459	Salaried employees.....	300,357	Government officials.....	65,000
Factory and hand workers.....	44,727			Railroad officials.....	82,000
Hotel and restaurant workers.....	40,080				
Other unions (18).....	45,346				
<b>Total.....</b>	<b>230,612</b>	<b>Total.....</b>	<b>300,357</b>	<b>Total.....</b>	<b>147,000</b>

<sup>2</sup> Special Annex to the Reichsarbeitsblatt, 1924, Nos. 1, 2.

In addition to these three central federations, there are now existing in Germany the following trade-union organizations:

1. The National Federation of German Unions, composed of 22 unions of wageworkers with 221,553 members, 7 unions of salaried employees with 55,726 members, and 1 union of officials with 5,919 members, or a total of 30 unions with 283,198 members.

2. The Unionist-Syndicalist Organization of wageworkers with 246,892 members.

3. Independent organizations of wageworkers with 132,251 members, of salaried employees with 232,199 members, and of officials with 1,040,496 members.

The total number of organized workers in Germany in December, 1923, was 13,308,721.

### WORKS COUNCIL LAW AND TRADE-UNIONS

Article 1 of the works council law provides that "in order to safeguard the economic interests of the employees as against those of the employers, works councils are to be organized." This sounds like a direct challenge to the German trade-unions, which for decades had been preaching the doctrine that the union was the only organization designed to protect the interests of the workers. The framers of the law did not, however, have the slightest intent to interfere with or to diminish the influence of the trade-unions. On the contrary, there is every indication that the opposite was true, and that the rights and functions of the works councils were determined with due consideration for the interests of the unions. Thus article 8 of the works council law reads:

The rights of the economic organizations of the wageworkers and the salaried employees (i. e., the unions) are not to be affected by the regulations of this law.

Elsewhere the law grants the unions the right to have representatives at the sessions of the works councils and at the workers' assemblies within the plant.<sup>3</sup> Also, the law definitely restricts the activities of the works councils to their particular sphere of influence, namely, within the plant, while the other more important socio-political functions, principally the making of the collective agreements, are left exclusively to the unions.

The attempt of the lawmakers thus to draw a line between the rights and functions of the unions and the works councils did not succeed in solving the problem of the relationship between the two organizations. This is especially true of the socialist unions. The other two major union organizations, the Christian and the liberal Hirsch-Dunker unions, were little affected by the workers' and soldiers' soviets which had arisen in Germany simultaneously with the revolution. When the works council law was passed these unions welcomed the new institution as a continuation of the formerly existing shop committees to which they were always favorably inclined. The tendency to cooperate with the employer has always been prevalent among these unions, and the works council law merely gave effect to their doctrines.

<sup>3</sup> Articles 31 and 37 of the works council law.

Within the socialist ranks, however, the advent of the revolution immediately brought about a struggle for supremacy between the workers' and soldiers' soviets and the unions. Later, when the works council law was passed, this struggle developed into a conflict between the followers of an independent system of works councils and a system organized under the control of the unions. The strife continued for nearly two years<sup>4</sup> and is now regarded as one of the most important phases in the post-revolutionary development of the labor movement in Germany.

### WORKERS' SOVIETS VERSUS TRADE-UNIONS

The pre-war attitude of the socialist trade-unions to a system of workers' representation in the shops has been variable, depending largely upon the exigencies of their "class struggle" policy. This explains their strong opposition to any shop-committee movement inaugurated by the employers, while at the same time supporting similar movements originating from the workers.

Since the war, however, the socialist unions definitely committed themselves in favor of the shop-committee movement and accepted the demand for the establishment of workers' committees in the shops as part of their program. It was chiefly due to the influence of these unions that the national service law of December 5, 1916, contained the provision for compulsory organization of shop committees in all establishments having at least 50 employees, and that the revolutionary decree of December 23, 1918, considerably extended the rights and the functions of these committees. That the unions well understood the importance of these shop committees can be seen from the fact that they were willing to let these committees acquire rights even beyond those granted them by the revolutionary decree of 1918. In the spring of 1919 the unions actively supported the strikes of the salaried employees in the banking and metal industries of Greater Berlin and helped them win the right for their representatives to cooperate with the management in all cases of employment and dismissal of salaried employees in the industries concerned.

Entirely different was the attitude of the trade-unions to the workers' and soldiers' soviets. These, patterned after the Russian model, grew up in Germany simultaneously with the revolution and for a while at least forced the unions into the background and completely overshadowed them. The belief that the hour for the final overthrow of the capitalist order had come, and with it also the complete triumph of socialism, made the unions, which were but a tool of defense against the capitalist exploitation of labor, appear superfluous. Their place was to be taken by the new workers' organizations, the workers' soviets, which were to lead the victorious proletariat into the new economic order dedicated to the idea of producing for the benefit of the whole nation rather than for the profits of the few.

Under the spell of the revolution the returned soldiers and the mass of unorganized and untrained workers became eager followers

<sup>4</sup> In a sense the struggle is not over yet, as the numerous communist members in the socialist unions still advocate a system of works councils which would make the continued existence of the unions superfluous.

of the soldiers' and workers' soviets. Through these soviets they also became members of their respective trade-union locals. This accounts for the amazingly rapid growth in membership of the German trade-unions at a time of their apparent inactivity and lack of popularity. In October, 1918, all the socialist unions combined had a total of 1,648,313 members, while at the end of 1918, only two months after the revolution, their combined total was already 2,858,053 members; a year later the total membership was over 7,000,000.

It was thus the thought of soviets that gathered the millions of workers around the unions.<sup>5</sup> The masses of new members, together with a large number of the old ones, demanded the recognition of the workers' soviets by the unions. This caused a big split within the ranks of the socialist unions. The old leaders, the so-called bureaucracy of the German labor movement, refused point-blank to have anything to do with the soviets. Their attitude was best expressed in a speech made by the late president of the socialist unions, Mr. Karl Legien, at the conference of trade-union leaders, held on February 1 and 2, 1919. Legien said:

The soviet system is generally incapable of rendering any services to the working class. In addition it breaks up the unity of the craft organizations. There is no present need for this system, and its incorporation into the economic and political organizations of the workers is hardly conceivable.

In direct opposition to the policy of the workers' and soldiers' soviets, which was of a revolutionary nature, based upon the concept of the "class struggle," the heads of the unions continued even after the revolution the policy of industrial peace upon which they embarked since the war. The idea of joint councils (*Arbeitsgemeinschaft*) grew out of the industrial truce proclaimed by the Imperial German Government at the outset of the World War. On November 15, 1918, only six days after the outbreak of the revolution, at the time when the triumphant workers' and soldiers' soviets had practically completed the overthrow of the political State and were devising ways and means of proceeding with the socialization of German industry, the leaders of the unions openly joined hands with the owners of the industries against the soviets. On this date the unions concluded with the United Employers' Associations of Germany that famous agreement which the conservatives in the trade-union movement still call the "magna charta" of German labor, while among the more radical groups of workers it is known under the name of the great betrayal (*der grosse Betrug*).

This agreement consists of 13 brief articles, of which not less than eight contain each some important concession made by the employers to the unions. These concessions were:

1. Recognition of the trade-unions as the official representatives of the wageworkers and the salaried employees.
2. No limitations to be placed upon the rights of the wageworkers and the salaried employees to organize.
3. Repudiation by the employers individually and collectively of the company unions (the so-called peaceful unions organized by the employers in their plants).

<sup>5</sup> It is now generally admitted by the unions that during their short existence the workers' and soldiers' soviets concentrated around themselves large masses of the working population who later became good and efficient members of the trade-unions.

4. Equal rights with the employers in the control and the administration of the labor exchanges.
5. Regulation of wages and general conditions of work by collective agreements to be concluded between the representatives of the employers and the unions in the trade concerned.
6. Organization of shop committees in all establishments having 50 or more employees to see to it that the conditions in the establishment correspond to the stipulations contained in the collective agreements.
7. Acceptance and the immediate introduction of the 8-hour day as a maximum.
8. Immediate organization of trade joint councils and one central joint council with equal numbers of representatives of capital and labor to work for the preservation of the economic life of the country.

It can not be denied that this agreement marks the triumphant success of the trade-union movement in Germany. The German workers have been for decades fighting their employers for the recognition of the unions and for the establishment of the 8-hour day throughout the country. This document not only conceded to the workers their two principal demands, but actually granted them an equal right with the employers in determining wages and the general conditions of work.

Nevertheless, these concessions were not looked upon even by the employers as too high a price to be paid for the assistance they received from the unions. That the employers knew where to turn for help at this most critical moment in the history of German industry becomes evident from the statement made by Doctor Reichert, the director of the Association of the German Iron and Steel Producers, on December 30, 1918, when he said:<sup>6</sup>

The situation was already clear to us in October. The question was how to save all German industry from the danger of socialization which was to follow immediately upon the wake of the coming revolution. The only stronghold in sight then appeared to be the organized part of labor, the unions. In the midst of the general insecurity, in view of the rapidly waning powers of the Government, there remained but one way to save the industries—by making common cause with the workers' organizations, the trade-unions.

It is obvious that the revolutionary workers could not be satisfied with such a policy of the union leaders. It roused tremendous opposition even among the individual unions, some of which openly repudiated the policy of their leaders. "The trade-unions are not a revolutionary organization, hence their place must be taken by the workers' soviets," was the general cry of the militant extremists. But having already been defeated on the political field and having failed to incorporate a system of soviets in the political state,<sup>7</sup> the opposition did not dare to break away from the unions and concentrated its energy on capturing the union organizations by boring from within.

In the meantime the effects of the revolution upon the unions also began to assert themselves. The memberships of the individual unions continued to grow by leaps and bounds. The new member-

<sup>6</sup> Reindl, Jacob, *Die Deutsche Gewerkschaftsbewegung*, 1922, p. 258.

<sup>7</sup> See Ch. I, p. 9.

ship consisted chiefly of unskilled and untrained workers, who had come to the unions under the influence of the workers' soviets. First within the soviets, and later within the unions, the skilled and unskilled workers learned to work together and finally broke down the barriers which for years had separated the skilled aristocracy from the unskilled laborers. Again, the triple system of organization in the Federation of the Socialist Unions brought into closer contact not only the wageworkers of the separate unions, but also the wage-workers with the salaried employees and the officials.

The two changes combined helped to overcome the repugnance of the socialist unions toward an industrial form of organization. As early as 1919 the Nuremberg congress of the socialist unions declared itself willing to accept within its fold both forms of organization, the craft and the industrial union. The more important and larger unions, such as the metal workers' union, the factory workers' and the railroad workers' unions, adopted the industrial form and reorganized accordingly. Finally, the Leipzig congress of the socialist unions, in June 1922, declared itself in favor of the industrial form of organization wherever and whenever possible.

The reorganized unions soon realized that the idea of workers' soviets or works councils had taken deep root among the workers, and that the only means of saving the labor organizations from splitting into separate parts was to incorporate some kind of system of works councils within the unions. They accepted the system which was first outlined in article 165 of the Weimar constitution and later brought into realization by the works council law of February 4, 1920.

The socialist unions took a very active part in the framing of the law. It was due to their influence that the more important socio-political and economic functions were left exclusively in the hands of the unions and that the activities of the works councils were so arranged as to make them absolutely dependent upon the unions. On July 5, 1920, the leaders of the socialist unions met in conference with the heads of the federation and worked out a complete and detailed program for incorporating the new institution of works councils into their organizations. At the same time, in order to overcome the resistance of the followers of a soviet form of organization, who continued to preach the doctrine of *Alle Macht den Betriebsräten*, "The works councils above everything else, including the unions," the leaders decided to call a general congress of all workers' representatives in the country belonging to the socialist unions.

This was the first general congress of works councils in Germany and took place in Berlin on October 5 to 7, 1920. It was attended by 1,100 delegates from all parts of the country, and represented not only the two socialist parties, but also the Communist Party of Germany. The unions won an overwhelming victory over their opponents. The congress voted by a large majority to make the works councils an integral part of the trade-unions and adopted the program of organization presented by the leaders of the federation. Thereupon the socialist unions became the staunchest supporters of the works councils, and it is now admitted, even by the most conservative union leaders, that the system of works councils constitutes the most important achievement of the revolution.

### ORGANIZATION OF WORKS COUNCILS WITHIN UNIONS

All industries, trades, and institutions in Germany have been divided into 15 industrial groups, namely:

1. Agriculture and gardening.
2. Banking, commerce, and insurance.
3. Building trades and the stone industry.
4. Chemical industry.
5. Clothing and textile industries.
6. Foodstuffs and kindred industries.
7. Leather industry.
8. Liberal professions.
9. Metal industry.
10. Mining industry.
11. Printing trades and the paper industry.
12. Social insurance organizations.
13. State and municipal institutions and offices.
14. Transportation.
15. Woodworking industries.

The members of the works councils and the shop stewards are required to organize themselves into works council groups corresponding with the above group division of the industries. Membership in these works council groups is determined not by virtue of belonging to one or the other union but by virtue of being employed in a plant belonging to one or the other industrial group. In practice this means that workers' representatives belonging to the same union may, if employed in different industrial groups, also belong to different works council groups. Similarly, any one works council group may consist of members belonging to different trade-unions, provided they are all employed in establishments belonging to the same industrial group. The outstanding characteristic of these works council organizations is that all the workers' representatives of a single establishment must belong to the same works council group.

All the works council groups in a single community are required to organize a single works council local. This central organization consists either of all the workers' representatives in the community or, if there are too many, of not less than five delegates from each works council group. In addition, the works council local must contain also five members from each socialist union in the community. The local elects a governing body consisting of one member from each works council group and one member from each socialist union. At the head of the governing body is an executive committee, consisting of five members from the works council local (three wage workers and two salaried employees) and five members from the socialist unions. The executive committee is known under the name of a "Betriebsrätezentrale" and cares for all the common interests of the workers' representatives in the community.

There are no district organizations of the works councils. Each union may, however, of its own accord organize all of its members, workers' representatives, into district or national units. These are usually directed by a works council department, a part of the general office of the union concerned. Similarly, the federation of the socialist unions organized a works council department (*Die Gewerk-*

*shaftliche Betriebsrätezentrale*), which guides the activities of the works councils in the federation.<sup>8</sup>

It would seem from the nature of the works councils and the purely industrial form of their organizations that they would become the bone of contention between the industrial and craft unions organized within the federation. Cases of encroachment by the larger industrial organizations upon the smaller craft unions have indeed come up before the federation and before the general congress of the socialist unions in June, 1922. Nevertheless, this problem has not really presented any serious difficulties to the labor movement in Germany. One of the reasons for the comparative absence of strife between the two kinds of organization is the fact that the great majority of the socialist unions are already organized industrially. Another more important reason is the consideration given by the larger organizations to the smaller unions.

Although absolutely autonomous and independent, the German unions seldom act individually in performing their chief functions, namely, in the making of the collective agreements. In dealing with the employers the unions usually form combinations of all those labor organizations which are interested in the trade affected by an agreement. These alliances are called *Gewerkschaftliche Kartelle*.<sup>9</sup> The negotiations with the employers are carried on by representatives of the unions in the cartel. It is a common experience that the smaller unions intrust the representatives of the larger organizations with the authority to protect the interests of their members, with results favorable to all parties concerned.

While the collective agreements thus help to bring the various tendencies of the German labor movement into closer contact with one another, the institution of works councils serves to promote a closer cooperation between the unions outside and the workers' representatives within the shops.

#### CAUSES OF FRICTION BETWEEN WORKS COUNCILS AND UNIONS

In spite of the incorporation of the system of works councils within the unions, there are fields where the two organizations must necessarily clash with each other. The friction results either from the difference in the aims and objects of the two organizations or from the difference in their fields of activity.

The members of the works councils are supposed to be first and foremost representatives of the workers in the plant. Their responsibility and allegiance to the plant must, therefore, supersede their allegiance to the union. Now, it is the object of each union to gain as many members as possible in the plant at the expense of the unorganized workers or any other union organization. It is, on the contrary, the duty of the works councils to protect the right of each individual to belong or not to belong to any organization. It is further the duty of the works councils to safeguard the establishment against any disturbance, whether it come from the employer

<sup>8</sup> Since January, 1924, the *Gewerkschaftliche Betriebsrätezentrale* has been dissolved, chiefly because of the lack of funds in the federation, due to inflation.

<sup>9</sup> In the larger district and national agreements the socialist unions also make alliances with the Christian and the *Hirsch-Dunker* organizations, and even with the nationalist unions and the syndicalists. This is especially true in the steel industry in the Ruhr, where all the organizations have more or less considerable followings.



himself, the workers, or their union. This task of the workers' representatives not only excludes the possibility of a member of the works council acting as a union organizer, but it even precludes the presence of an organizer in the establishment. Some of the unions have, therefore, complained that the workers' representatives take their duties toward their establishment too seriously and thus hamper the growth of the union.<sup>10</sup>

Another cause of friction between the works councils and the unions rises from the difference in the field of activity of the two organizations. The union has its membership scattered among numerous establishments in the various parts of the country. It must, therefore, necessarily adhere to a policy which can be justified only from a broad point of view but which may prove very dangerous and unjust if applied to any one particular establishment. The workers' representatives, if they be truly interested in the welfare of the workers and the establishment they represent, must needs oppose such a policy of the union. A clash between the unions and the works councils of a particular plant is also easily conceivable in the case of a strike, especially in a general or sympathetic strike. In fact, the members of the works council do not have to be actually on the side of the employers, as was expected in the case of the company unions, to find that many of their important duties unavoidably clash with the aims and purposes of their unions.<sup>11</sup>

Finally, there is the struggle between the members of the works councils and the officials of the unions for leadership in the union. The four years of application of the works council law in industry produced among the workers' representatives a number of new leaders better acquainted with the industrial problems of the day and closer to the rank and file of the workers than the professional union leaders. Time has not yet permitted these individual quarrels to assume a concrete form of opposition, but unless the unions manage to absorb the new generation of leaders into their ranks, the opposition will not fail to assert itself in the very near future.

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<sup>10</sup> Korrespondenzblatt, October 2, 1920, cited by the International Labor Office Studies, Series B, No. 6.

<sup>11</sup> The functions of the workers' representatives in the plants are so similar to those of the company unions that there is always the danger that the works councils will break away from the trade-unions and either turn into company unions or pass over to the more extreme and also decentralized syndicalist organizations. Both tendencies have increased considerably during the year 1923, due to the weakening of the socialist unions as a result of the inflation.

## Chapter XII.—WORKS COUNCILS AND WORKERS' EDUCATION

The aims of the various labor organizations in supporting the works-council movement in Germany are exceedingly different. It is the well-known purpose of the Communist Party of Germany to overthrow the existing social order and replace it by a new system with the works councils as its political and industrial centers. The socialists plan by means of legislation and evolutionary measures to usher in the cooperative commonwealth, also based upon a system of works councils. Finally, the more moderate Christian and Hirsch-Dunker unions—and with them must be classified also the social reformers of Germany—see in the works councils an organization intended to raise the moral and intellectual level of the working class, at the same time also raising the standard of production by having the workers take a real interest in the establishments and share jointly with the capitalists the responsibilities of industry. But, whatever the final aim may be, it is universally conceded that if the works councils are to accomplish anything at all, their members must first undergo a rigid training in order to carry out the responsibilities placed upon them by the works council law. This means a new system of workers' education. The old method of preparing trade-union and socialist leaders by means of occasional lectures and propaganda meetings proved entirely inadequate in the face of the flood of the new and difficult problems which the labor movement in Germany was called upon to solve since the days of the revolution.

*New problems.*—The scene of battle between capital and labor has shifted from the factories and shops into the conference halls, where, sitting at the green table with the representatives of capital, the labor leaders are compelled to show reasons why their point of view rather than that of their opponents should prevail in the collective agreements. This requires a knowledge of hard economic facts rather than a mere display of force, which was the only means used before the war.

Even more varied and complicated are the problems with which the members of the works councils are confronted in their every-day routine work in the factory. It will be recalled that one of the tasks of the workers' representatives is to assist the employer in running his plant at the highest possible efficiency coupled with a maximum of economy. To be more specific, the members of the works councils are required not only to be the outposts of the trade-unions in the shops and as such to see to it that the stipulations of the collective agreements and the factory rules are carried out, and in general to represent the interests of the employees when called upon, but also must actually be acquainted with each detail of the industrial and commercial processes which are going on in the plant. For example, in order to determine the rates of any task or piecework the workers' representatives must know the average

wage an average worker earns in a week, the average amount he can produce in that time with the industrial equipment at hand,<sup>1</sup> the cost of materials used in the process of production, the price of the product when sold, and the profit made by the employer. Similarly, a knowledge of the writings of either Marx or Lenin will not help the members of the works council to understand the quarterly reports of their employers or their yearly financial statements filled with figures representing capitalization, stocks and bonds, rents, dividends, amortization, interest, the inventory of stock, the value of raw materials, of finished and semifinished products at hand, etc. Likewise the doctrine of the class struggle would hardly be of any help to the labor delegates of the company's board of directors when even more complicated financial affairs and methods of organization are being discussed.

The concrete tasks set for the new institution of works councils required equally concrete and equally new methods of educating and preparing the workers' representatives to meet the obligations placed upon them by the law; and organized labor in Germany did not fail to provide this new kind of workers' education.

*Trade-union pamphlets.*—First in this field were the pamphlets issued by the three major union organizations. Each pamphlet deals with a particular problem of the works councils. Thus the central organization of the socialist works councils issued the following pamphlets:

1. Plans for incorporating works councils into the socialist trade-unions.
2. How to transact the current affairs of the works councils. (This pamphlet also contains a sample of factory rules as advocated by the socialist unions.)
3. Rules of procedure for guidance in cases of employment and dismissal of workers and salaried employees.
4. Duties of the workers' representatives in the small shops and how they are to be performed.
5. Who is authorized to decide disputes between the works councils and the employers?
6. What is a financial statement?
7. The works council law and its relation to the other laws in the field of labor legislation.
8. Organization of the works councils in the trade-union locals.
9. Storehouses and their significance in the plant.
10. How to read and digest a financial statement.
11. What constitutes "net costs" in an establishment?

The united Christian trade-unions also issued a number of pamphlets of which the more important are:

1. A guide to the works council law and other labor laws.
2. How to protect oneself from being discharged.

The individual trade-unions either issued similar pamphlets of their own or distributed among their members the pamphlets published by their central organizations.

*The works council press.*—The next step was to issue special semi-monthly and monthly magazines devoted entirely to the interests of the works councils. These were published either by the central trade-union organizations for all the works councils or by the individual trade-unions for the members of the works councils in the

<sup>1</sup> Should the equipment be obsolete or worn out, the works council has a right to demand its replacement by more modern machinery.

particular trades. Of the general magazines the most important were: "Der Betriebsrat," which was issued by the central organization of the socialist salaried employees even before the works council law was put into effect and which was finally merged with the "Betriebsräte-Zeitung," published monthly by the general office of the socialist trade-unions;<sup>2</sup> the "Betriebsräte Post," issued by the general office of the Christian trade-unions; and "Wirtschaftliche Selbstverwaltung" (Self-government in Industry), published by the general office of the Hirsch-Dunker trade-unions. Of the works council papers issued by separate trade-unions the most important are: "Die Betriebsrätezeitschrift," published twice a month by the socialist metal workers' union, claiming a membership of one and a half million workers, which were represented in 1922 by more than 26,000 members in the various works councils;<sup>3</sup> "Merkblätter für die Betriebsräte in der Textil Industrie" issued by the Socialist Textile Workers' Union, with a membership in 1922 of over 700,000, represented by more than 20,000 shop stewards and members of the works councils;<sup>4</sup> "Der Betriebsrat in der Holz Industrie," issued by the Socialist Woodworkers' Union, with a membership in 1922 of 416,462 workers, represented by over 18,000 shop stewards and members of the works councils; and the "Merkblätter für Betriebs und Beamtenräte der Reichsbahn," published by the Socialist Union of Railroad Workers, with a membership in 1922 of 442,000, represented in the Central Railroad Works Council by 19 members (the other six are divided equally between the Christian and the Hirsch-Dunker unions of railroad workers), 344 members in the 35 district works councils, and about 20,000 out of the total 25,000 members in the local works councils.

An examination of these works-council magazines will immediately reveal the striking difference between these and the ordinary labor papers which were published in Germany before the war.

<sup>2</sup> This magazine ceased publication in December, 1923, due to the lack of funds in the general office, caused by inflation.

<sup>3</sup> According to the report of the Socialist Metal Workers' Union, 1922 (p. 114), the distribution of the total number of workers' representatives in the metal industry for 1922 was as follows:

Union	Members of works councils	
	Number	Per cent of total
<b>Wageworkers:</b>		
Socialist Metal Workers' Union.....	26,430	81.2
Other socialist unions.....	2,570	7.9
Christian Metal Workers' Union.....	1,783	5.5
Hirsch-Dunker Metal Workers' Union.....	046	2.0
Unionists and syndicalists (Ruhr).....	243	7
Unorganized.....	884	2.7
<b>Total.....</b>	<b>32,562</b>	<b>100.0</b>
<b>Salaried employees:</b>		
Socialist Union of Salaried Employees (A.F.A.).....	3,510	62.6
Other organizations of salaried employees.....	1,295	23.1
Unorganized.....	504	14.3
<b>Total.....</b>	<b>5,315</b>	<b>100.0</b>

<sup>4</sup> The factories in the textile industry are much smaller than the plants in the metal industry, hence a disproportionately large number of representatives for a comparatively smaller number of workers. In the metal industry there are more than 60 workers for each representative, while in the textile industry there are only 35 workers for each representative.

While the pre-war labor magazines dealt chiefly with problems of trade-union policies and methods of organization or were devoted to the general discussion of socialism in its various phases, the works-council press concentrated its efforts upon an entirely different field of problems. The following is a random selection of samples to give an idea of the contents of these magazines:

*Betriebsrützeitung, No. 10, March, 1921*

Do we need entrepreneurs in industry? (The answer is affirmative.)  
 The relation of credit to the housing problem in the city of Berlin.  
 Essentials of trade and barter.  
 The present economic conditions in the world market.  
 A descriptive account of the State printing shops.  
 A course in double-entry bookkeeping (running serially). Book reviews.

*The works council in the Stone and Marble Trades, June, 1921*

The nature and duties of the works council (serially).  
 Vertical and horizontal trusts in industry.  
 Marble and stone enterprises in Germany (serially).  
 Decisions of the boards of adjustment in the marble and stone trades.  
 General economic remarks.

*Betriebsrützeitschrift, May 13, 1922*

Community of interests agreements in the German steel industry.  
 Formation of "Trust works councils" in the steel industry.  
 The activities of the economic schools in Thuringen.  
 The present world economic crisis.  
 The new economic policy of Soviet Russia.  
 The German marine-transportation industry.  
 Properties of chemically pure iron (Weicheisen).  
 Workers' education in the shops.  
 Short economic notes.

*Merklblätter für die Betriebsrüte in der Textil Industrie, January, 1923*

Results of the works-council elections in the textile industry in 1922.  
 The coming new "Work stretching" law.  
 A unified system of workers' representatives in the textile industry.  
 Standards of production in the cloth-weaving industry.  
 Important phases in the process of production in the textile industry (running serially).  
 Important decisions in the field of works councils.

The trend of the works council magazines represented by these samples is clear. It is no longer trade-unionism or socialism in general—these are left to the voluminous union and socialist party press—it is the desire to lift the worker out of the immediate narrow surroundings of his job in the factory or in the plant and to give him a larger view of the whole enterprise or the entire industry of which he is a member. The object of the works council press and the new workers' education is to make the worker understand industry and become its enlightened guide, rather than a blind tool in the process, or a mere cog in the wheel.

*Workers' education.*—In addition to the works council press,<sup>5</sup> special courses were organized by the individual trade-unions for

<sup>5</sup> Among the works council magazines must also be reckoned the monthly reports of the boards of adjustment which were forced out of existence by the growing inflation of 1923 and the *Neue Zeitschrift für Arbeitsrecht*, edited by Prof. Walter Kaskel, of the University of Berlin, and devoted to a discussion of problems in the field of workers' rights. Professor Kaskel is also the author of "Das neue Arbeitsrecht," 1920, which is considered the best book on the subject.

the education of the members of the works councils in the particular trades and by the central organizations, usually in cooperation with some of the universities, for the education of the works council members and trade-union leaders in general. The first problem that arose simultaneously with the idea of workers' education, was whether this education should be made available to all the members of the unions or whether it should be limited to the elite only, represented by the members of the works councils and trade-union secretaries.<sup>6</sup> The lack of teachers and the shortage of funds, which became more and more acute with the progress of inflation, caused the trade-unions to decide in favor of the second plan.<sup>7</sup> It was thought, however, that after the members of the works councils would have had their special training, combined with their experience in the plant, they would soon be in a position to disseminate their knowledge among the rest of the workers.

Of the courses arranged by the separate trade-unions, the most widespread are the so-called "flying courses," organized by Dr. Engelbert Graf, educational director of the Socialist Metal Workers' Union. The courses are arranged as follows: The entire country is divided into educational districts, with at least one important metal industry as the center of each district. A quiet little town is selected in the immediate vicinity of the industry, where the educational director gathers around himself from 60 to 80 elected members of the works councils and trade-union secretaries appointed by their locals for a period of from two and one-half to three weeks. The workers are freed from their regular labor but receive part of their wages for the support of their families, either from the local or the central union. The latter also carries all other expenses connected with the course. During the period of instruction the workers form a cooperative community doing their own housework.<sup>8</sup> The instruction is carried on by the educational director himself with the assistance of whatever local talent he can get, usually university professors or industrial engineers. The method used is chiefly Socratic, being in the form of questions and answers with occasional lectures. The workers receive from five to six hours of instruction every day, on the following subjects:

The nature and development of modern capitalism.

Problems of socialization.

Workers' rights and social insurance.

Rights and duties of the works council.

Technical and commercial problems in the metal industry.

In a personal interview with the writer, Doctor Graf stated that although the courses were too short and the time could well be doubled or even trebled, the workers gained a great deal from the "flying courses." It is significant, of course, that the members are

<sup>6</sup> The number of these is not so small considering that in Prussia alone there are over 50,000 members in the works councils and that each town, no matter how small, has at least one or two trade-union locals.

<sup>7</sup> No other organization suffered so much from inflation as the socialist trade-unions. During the summer and fall of 1923 the funds of the unions fell so low that they were forced temporarily to give up all their educational projects and even the press had to suspend publication for some time. Since the stabilization of the mark in December, 1923, the unions have been coming back into their own. The press has been reestablished and the educational projects are being revived.

<sup>8</sup> One of the requirements in this temporary cooperative community is absolute abstinence from alcoholic beverages.

selected from the more educated and more active groups of workers. During their stay together they compare experiences with their respective employers and boards of adjustment and in this way gain even more than from the actual instruction. In the hours free from classes, visits are made to the near-by factories, usually under the guidance of some industrial expert, and to concerts and theaters to improve the cultural standard of the workers.

Similar courses have been arranged by the socialist mine workers, textile workers, shoe workers, and agricultural workers' unions, and are being planned by other organizations as well.

*Trade-union seminars.*—More comprehensive are the courses arranged in the larger centers by the combined trade-union organizations (socialist, Christian, and Hirsch-Dunker) assisted by, or under the direct supervision of, some university. The trade-union seminar, organized by Professor Kuske of the University of Cologne in May, 1920, can be taken as a characteristic example. The most distinguished feature of this seminar is that in its organization there participated not only the three major unions but also the Chamber of Commerce and the Employers' Association of the city of Cologne.

The first session was arranged for 10 weeks, from May 10 to July 19, 1920. The instruction was given regularly five times a week from 8 to 10 o'clock in the morning. The subjects of the lectures were as follows: *Industrial economics; Industrial forms of organization; History of the Rhine industries; Rights and duties of the works councils; Wages and standards of production.*

The first subject was given two hours per week, the others one hour each week. The remaining four hours were devoted to lectures, two by the representatives from the employers' side and two by representatives of the trade-unions, on various subjects selected by the group concerned. The number of students was limited to 60 workers, selected as follows: Appointed by the chamber of commerce, 5; by the employers' association, 5; by the socialist trade-unions, 33; by the united Christian trade-unions, 14; by the Hirsch-Dunker unions, 3.

The expenses were divided among the organizations in proportion to the number of students sent by each organization, the workers receiving from their employers their regular pay for the two morning hours spent in the seminar.

The first 10 weeks were very successful, but the time was found too short and the second course was lengthened to 15 weeks. The hours were also changed from the morning to the evening because of inconvenience to the teachers as well as to the workers. Similar successful courses were organized in Frankfurt on the Main, Mannheim, Hamburg, Darmstadt, Leipzig, and other university centers. In Hamburg the students were divided according to trades and were instructed by special experts in their trades.

An even larger attempt in the same direction was made by the Socialist Union of Textile Workers. In cooperation with the University and Commercial Institute of Leipzig and the Technical College of Dresden, the union arranged for a four months' intensive training course for 40 of its members from the works councils of the textile industry. The course was made up of the following subjects:

Subject	Hours
Commercial arithmetic.....	28
Bookkeeping and accounting.....	22
Essentials of commercial law.....	20
Industrial economics.....	12
Monetary problems.....	6
General principles of economics.....	16
The place of the textile industry in Germany's industrial organization.....	20
Trade and its methods in modern society.....	8
Selected problems in industrial policy.....	16
Labor's rights in industry.....	24
Industrial inspection in Saxony.....	6
Social legislation.....	18
Economy of heat and energy and other forces of production.....	12
Essentials in the technique of the textile industry.....	16
Scientific industrial management.....	8
Industrial hygiene.....	4
Total.....	236

At the end of the four months the students were given a special examination, at which the heads of the union were also present. They expressed themselves as absolutely satisfied with the progress made, but could not repeat the course without aid from other organizations because of the large expense involved. Transportation and living expenses of the 40 students; the reimbursement of the wages lost during the time of training, salaries to the professors, and incidental expenses amounted altogether to 580,000 marks. The union declared itself ready to repeat the experiment in cooperation with other organizations, but the plans were not carried out because of the rapid fall of the mark, which robbed this union, as well as the other unions, of the larger portion of its funds. <sup>77</sup>

These two examples are sufficient to show the trend which workers' education in Germany has taken under the influence of the works council law. The German universities have liberally responded to the need of the workers and assisted them with classrooms and instructors. Especially valuable work in this direction was done by the political institute at Munster, under the leadership of Professor Plenge and the present adviser to the Prussian Ministry of Education, Engineer Richard Woldt.<sup>9</sup>

*Other educational projects.*—Finally permanent works council schools and economic colleges have been established, the first by the unions themselves and the second by the unions in cooperation with the Government. Of the works council schools, the largest and the most important is the Betriebsräteschule in Berlin, organized by the socialist trade-unions in 1920. In 1923-24 the school conducted two semesters of courses in eight different sections of greater Berlin. The courses are open to all members of the socialist trade-unions at a nominal fee and are divided into three groups—for beginners, intermediate students, and advanced students. The school is conducted along the line of socialist traditions and, in addition to such courses as bookkeeping, financial statements, industrial management, industrial hygiene, and others, one may find also courses and special

<sup>9</sup> Richard Woldt is the author of a number of pamphlets on the education of works councils, and his "Economic Education under the Leadership of the Trade-Unions," Leipzig, 1922, contains a fuller description of the courses above mentioned and a number of others.



lectures on socialism, the class struggle, the economic doctrines of Karl Marx, and others.

Economic colleges have been organized in Berlin, Leipzig, and Düsseldorf. The one in Berlin was closed at the end of 1922 because of lack of funds, and the other two are also suffering from the same cause. Similar is the situation with the special economic schools organized by the minister of railroads, with the active assistance of the three railroad unions. In 1922 the schools successfully carried out a very extensive educational program among the railroad workers and the officials, but in 1923 the program had to be abandoned because of insufficient funds.<sup>10</sup>

*The academy of labor.*—At the head of these various experiments in workers' education in Germany stands the academy of labor in Frankfort on the Main. It is a part of the University of Frankfort and was organized by a special agreement among the three major unions, the ministers of education and science and the city and the University of Frankfort. According to this agreement, the academy is to admit each year 100 students sent to Frankfort by the three unions. The academic year consists of two semesters, four months each, with a vacation period of four weeks in between. Its object is primarily to train trade-union leaders, and the field covered by the academy is much wider than that of the various other educational projects, including even the program of the Political Science Institute at Münster. Although the chief emphasis is here, too, placed on problems of a technical and industrial nature, much time is also devoted to the fields of labor legislation, political science, and law. Special attention is also given to the natural sciences, and at least one course a semester is devoted to the fundamentals of philosophy. The students are given all the privileges of the university grounds, including the use of the large economic library in the institute of political science, which is also a part of the university. The academy of labor is otherwise an entirely independent institution and is conducted by a director appointed by the university with the approval of the union organizations.

The course of studies is arranged by the director with the assistance of the teaching staff and the committee elected by the students. The expenses are covered by the unions, although the Government and the city of Frankfort are supposed to contribute a definite sum each year. The first semester began on May 2, 1921, and lasted through August. The second continued from September, 1921, through January, 1922. The work of the first year was so successful that the trade-unions in Switzerland asked for permission to send some of their members to the academy, and during the second and third years the academy had 110 students, including the 10 Swiss workers. The work of the academy was carried on even during the worst months of the inflation in the fall of 1923, although neither the Government nor the city of Frankfort was in a position to contribute its share of the expenses. Because of the shortage of funds the academy remained closed during the summer of 1924, and was reopened again in the fall. The trade-unions attach so much weight

<sup>10</sup> In the spring of 1924, the writer was assured by the secretary of the Socialist Union of Railroad Workers that with the stabilization of the mark, the program will again be taken up in the very near future.

to the importance of its work to their movement that unless the unions themselves are forced out of existence the future of the Academy of Labor is assured.

On the whole, the inflation of 1923 put a serious check upon the entire development of workers' education in Germany. Not only plans for the future but successful accomplishments of the past few years—organized institutions of training—had to be abandoned for lack of funds. But the idea of workers' education, the new methods, and the results of three years of their practical application have strongly entrenched themselves in the entire labor movement of Germany, and with the first wave of relief from the financial and industrial chaos into which Germany was thrown by her policy of inflation and the French occupation of the Ruhr the work will again be taken up where it was left in the spring of 1923. Besides, the works councils are still alive and with them there will always exist that stimulus which initiated the new workers' education in 1920 and which will renew it again as soon as the first favorable opportunity presents itself.

## Chapter XIII.—FOUR YEARS OF WORKS COUNCILS IN GERMAN INDUSTRY

### ATTITUDE OF EMPLOYERS TOWARD WORKS COUNCIL LAW

The general attitude of the German employers toward the idea of works councils in industry has been in the main very antagonistic. Powerless, however, to resist the organization of revolutionary soviets within their own plants and fearing the law might grant the legal workers' representatives powers similar to those the workers' soviets had taken by the right of revolution, the employers concentrated their efforts not so much against the passing of the works council law in general, as against some of the clauses in the law which they deemed most objectionable. In addition to direct conferences with the Government and with the committee of the National Assembly in charge of the drafting of the law, the employers individually and collectively sent delegation after delegation to the National Assembly at Weimar and to Berlin protesting against the objectionable provisions of the law and offering to replace them by provisions of their own.

In a special issue of September 15, 1919, devoted primarily to the problems of works councils, *Der Arbeitgeber*, the official organ of the United Employers' Associations of Germany, systematically outlined the list of objections of the employers to the proposed works council law. These objections were of two kinds. The first group of objections was aimed at the general and sweeping nature of the law, which did not make allowance for the differences among the various industries. The mine owners, for example, maintained that theirs had always been an exceptional industry because of its peculiar characteristics and that the plans of workers' representation which fitted into other lines of endeavor could not possibly be applied to mining. Similarly, the building trades stressed the seasonal and scattered nature of their industry, as one which would not permit of the application of a general law.

The other set of objections was directed against separate provisions of the proposed law. It was demanded, for instance, that—

1. The age of candidates for the works council be raised to 25 (30 in the mining industry) in contrast with the age of 18, as demanded by the radical workers.

2. Service in the trade, which would make a worker eligible to the works council, be lengthened to three years (five in mining) instead of the two years required by the law.

3. The size of the works council be limited to a maximum of 20 members instead of the present maximum of 30.

4. No meeting of the works council should ever take place during regular hours of work.

5. The employees should not be granted the right to recall their representatives, as this would result in numerous difficulties and repeated elections which would seriously impede production.

6. The employers be granted the right not only to be present at all the sessions of the works council but also to preside over them; otherwise the authority of the employers in their plants would be seriously affected.

The protests of the united employers were not left unheeded by the lawmakers and exerted a considerable influence upon the nature of the works council law. One need but compare the content of the law as it was finally passed on February 4, 1920, with the original draft of the minister of labor<sup>1</sup> to see the effects of the employers' influence.

### STRUGGLE BETWEEN EMPLOYERS AND THEIR WORKS COUNCILS, 1920

The opposition of the employers to the works councils did not cease with the passage of the works council law. Their first move to counteract the aggressive attitude of the newly elected workers' representatives was to organize in each large plant, or in a number of small shops combined, a legal bureau conducted by one or more lawyers versed in the field of labor problems and labor legislation.<sup>2</sup> It became the duty of this department to interpret the works council law for the employers and the workers' representatives. Later, when the impasse regarding who should preside at the joint sessions was reached,<sup>3</sup> this legal department became the sole medium of contact between the workers' representatives and the employers.

During the first year of the application of the works council law, neither the workers' representatives nor the employers themselves were well acquainted with its provisions. This, together with the numerous exceptions appended to each article of the law, its ambiguous language, and the numerous contradictory decisions of the boards of adjustment and of the courts, made it possible for the trained lawyers of the employers to interpret to the advantage of the employers even such clauses of the law as were definitely intended to benefit the workers. On the other hand, the masses of the employees, including the workers' representatives, were still under the influence of the revolutionary soviets, and did not discriminate between legal and illegal acts, or between industrial and purely political problems. Finally, the first month of the application of the works council law coincided with the attempt to overthrow the Government (*Kapp Putsch*)<sup>4</sup>, which was defeated by the general strike throughout Germany and was followed by a few months of continuous communist uprisings in the Ruhr and elsewhere. It was during these months that the majority of clashes between the new workers' representatives and their employers took place. Some of these were so serious that a complete closing down of the works was unavoidable.

One of the concerns seriously affected by the struggle between its works council and the management usually employed about 6,000 wageworkers and salaried employees. The firm had installed an

<sup>1</sup> See pp. 13 and 14.

<sup>2</sup> This bureau is known in some works as Die Soziale Abteilung, in others as the Arbeitrechtliche Abteilung.

<sup>3</sup> See Ch. VI, pp. 32 and 33.

<sup>4</sup> March 13, 1920.

electric steel furnace, the use of which was forbidden by the coal commissar on account of the tremendous amount of electricity it consumed. After failure to dispose of the furnace within the country, the company sold it to Hungary. As the time of delivery drew near, the wageworkers' council suddenly declared its objection to the removal of the furnace from the plant on the ground that it was contrary to law to send any productive material out of Germany.<sup>5</sup> It was also against the announced policy of the German trade-unions to supply the reactionary Horthy government of Hungary with war materials.

All attempts to persuade the members of the wageworkers' council of the need to fulfill the firm's contract failed, and the management ordered the furnace forwarded in spite of the disapproval of the workers' representatives. The chairman of the wageworkers' council forbade the workers to load the furnace and his influence prevailed. The firm could not immediately discharge the chairman of the wageworkers' council as it could not secure the necessary approval of the other members of the works council.<sup>6</sup> The management appealed to a board of adjustment, which recalled the chairman. To counteract this decision of the board of adjustment, the entire works council resigned and called for new elections, which resulted in the reelection of the same chairman. This case and a number of other incidents in connection with the preparation of the factory rules for the plant created such tense feeling between the management and the employees that the firm was forced to shut down the entire works and lock out all of its employees.

At about the same time another even more disastrous clash between the management and the new organization of works councils occurred in a large motor works. During the spring of 1920 the general office of the firm was twice stormed by the workers because of misunderstandings in connection with additional wage payments, made necessary by the rapidly increasing cost of living.<sup>7</sup> Relations between the firm and its employees became still more strained by a number of other incidents during the summer of 1920. On August 2, the manager of the firm ordered the loading of three large military tanks on railroad cars for foreign delivery. Under the leadership of two communist members of the works council, who told the workers the tanks were destined for Poland to be used against Soviet Russia, the excited mass of workers unloaded the tanks from the cars and cut them to pieces with a gas burner, thus causing the firm a loss of a few hundred thousand gold marks. The other members of the works council, including the two chairmen, either purposely absented themselves from the plant or explained their inaction by the spontaneous nature of the uprising which they claimed they were powerless to control. Two days later the men who actually had burned the tanks were summarily dismissed by the management. A riot immediately took place in the plant. Thousands of employees quit their work, and, armed with pieces of iron and other weapons, surrounded the office and demanded the unconditional

<sup>5</sup> Since the war the German Government has forbidden the export of any productive tools or materials.

<sup>6</sup> Art. 90 of the works council law.

<sup>7</sup> As a result of the continuous fall of the mark, the employers were compelled to adopt a sliding scale of wages, which were being adjusted at first case each month and finally twice each week in accordance with the food index numbers published by the Government.

reinstatement of the discharged employees. The manager was compelled to tear up the notices of discharge and the director himself was forced to announce it to the enraged mass of workers.

A similar scene occurred before the office of the same firm when the first deduction of the 10 per cent employment tax was made a few weeks later.<sup>8</sup> This happened in spite of the fact that the members of the works council in conference with the employer admitted that the firm was not responsible for the tax and promised to use their authority to pacify the workers. But even the interference of the Government, which sent a special delegate to the plant to plead with the workers, could not sway them to submit to the tax deduction. With the permission of the Government the plant was closed down on August 25, and reopened three weeks later with a 50 per cent reduction in the force of employees.

In a special issue of the works paper of October 18, 1920, the management of the firm published a list of its grievances against the system of works councils. This list is significant because it contains the kind of objections to the works councils which had arisen in a large number of other plants, although not necessarily all at the same time, or in the same plants. These grievances were:

1. The cost of the system of workers' representatives is too large for the impoverished German industries. The Daimler Motor Co., employing over 9,000 workers, claimed a monthly outlay on its works council of about 30,000 marks. This sum did not include the expense of litigation before the boards of adjustment nor the cost in time and energy the management was obliged to devote to the weekly conferences with the works councils.

2. The works council quarters, its office help, and equipment were generally used for political and union propaganda, or for other purposes which had no direct relationship to the interests of the workers in the plant or the concern, as a whole.

3. The works councils preferred to follow blindly the orders of their political party or union leaders, rather than act judiciously for the immediate interests of the workers concerned or the plant.

4. The majority members of the works councils discriminated arbitrarily against other political or trade-union organizations and especially against the unorganized employees in the plant.

5. Sessions of the works councils and general assemblies of all the employees were called during regular hours of work without the permission of the employer for the purpose of discussing political or other irrelevant issues.

6. All the members of the works council, especially the independent socialists and communists, did everything in their power to foment discontent among the workers instead of allaying it, to the mutual benefit of the employer and the employees.

7. The members of the works council attempted to terrorize the management with such phrases as "We warn you" or by open threats to call a strike every time the management chose to differ with an opinion of the works council.

The character of these grievances and the nature of the struggle between the employers and their workers' representatives, as illustrated in the two instances mentioned, tend to show that most of the difficulties between the employers and works councils in 1920 arose from political reasons. They took place at a time when general strikes and communist uprisings were common occurrences not only in the Ruhr but in all the industrial centers in Germany. Historically, this struggle therefore represents the aftermath of the

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<sup>8</sup> The 10 per cent employment tax deducted at the source of income was the cause of a large number of factory riots throughout the country.

revolutionary days of 1918, when a large number of industries suffered from the excesses of revolutionary zeal among the workers and the returned soldiers.

### GROWING COOPERATION BETWEEN EMPLOYERS AND THEIR WORKS COUNCILS

Since 1920 the attitude of the employers toward the system of works councils has undergone a considerable change. Here, however, one must distinguish clearly between the general views of employers as represented by their associations and the practical experiences of the individual employers. In contrast to the dogmatically negative attitude of the employers' associations to the entire system of works councils, their violent opposition to every suggestion of their counterparts, the trade-unions, to extend the rights and activities of the workers' representatives, the individual employers have as a rule managed to establish a definite *modus vivendi* with their own works councils. Some of the employers have not only reconciled themselves to the presence of works councils in their plants, but have actually found the workers' representatives a useful medium for keeping peace in their establishments. They now admit that the economic demobilization after the war could hardly have been carried out so peacefully without the constant cooperation of the workers' representatives. Time and again have the works councils acted as the intermediaries between the workers and their employers, or between the latter and the unions, and have on numerous occasions averted breaks which seemed imminent and which would necessarily have led to bitter hostilities and protracted cessation of work.

The reports of the Government industrial inspectors for 1921 already contain numerous references to the improved relations between the employers and their works councils. *Soziale Praxis* for August 2, 1922 (p. 821), quotes one of the inspectors:

The experiences of the employers with their works councils are growing more encouraging, with more favorable results. The differences which accompanied the first introduction of the system of works councils into industry are gradually disappearing. Where there is good will present on both sides the majority of disputes in the plants are decided in a peaceful fashion by the employers and the workers' representatives. Even in the more complicated problems dealing with the dismissals of masses of employees necessitated by contractions in the industry or by complete closing down of plants, the workers' representatives have often proved capable of averting very serious complications.

The industrial inspector of Chemnitz, a large industrial center in Saxony, reports:<sup>o</sup>

The experiences with the works councils in the medium-sized and large plants have been very good and are constantly improving. It often seems as if this form of workers' representation has been in existence for a very long time, so natural and smooth are the relations among the three groups—the employers, the works council, and the employees. This, in spite of the fact that the position of the chairman of the works council as the usual intermediary between the workers and the employer is a very delicate one and requires much alertness combined with farsightedness and, above all, a cool head.

Similarly, the industrial inspector of Berlin:<sup>o</sup>

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<sup>o</sup> *Soziale Praxis*, August 10, 1922, p. 875.

The cooperation of the employers and their works councils was made easier because of the gradual establishment of a mutual tolerance between the two. The works councils have learned to take a larger point of view and bring a deeper insight and a good will toward the solution of difficult problems. Many employers have openly and unconditionally declared that they have the best of relations with their workers' representatives, through whose activity the hostile spirit which previously predominated among the employees has been completely eliminated.

Even more explicit than the reports of the industrial inspectors is the statement made on August 3, 1921, by the *Karlsruher Zeitung*, a daily published by the Democratic Party of Germany, which occupies a middle position between the two political extremes:

Although one can not say that industry in Germany has prospered because of the positive contributions of the works councils, the contrary is certainly not true. Much has been accomplished by the workers' representatives in keeping the social peace in the plant. Had it not been for the institution of works councils German industry would have certainly suffered more from regular and wild strikes and lockouts than it did in previous years. The works council is that organ in the plant through which the rank and file of the employees can at any time notify their employer of their complaints and wishes. Also the employer has in the works council a convenient medium of direct contact with his employees. He is now in a position to know exactly what is taking place in his own plant and can eliminate much of the friction which previously existed, not so much because of the fault of one side or the other as because of the lack of understanding between the two sides.

On the labor side, too, reports have appeared which speak in unmistakable terms of the growing cooperation between the employers and the workers' representatives. It has always been the aim of the Christian unions in Germany to establish such a cooperation between the workers and the employers in the plants. The report, therefore, of the Christian Metal Workers' Union, issued in pamphlet form in 1921, and entitled, "From experience for the sake of experience" (*Aus der Praxis für die Praxis*), is of great importance. It is even more significant since it also contains a more or less impartial analysis of the entire works council law:

Like all new institutions, the works councils had to go through the various stages of "children's diseases." Their difficulties were still more complicated, because the works council law was the result of a compromise of various political parties with fundamentally different ideologies, of extravagant demands from the extreme left and absolute denials from the extreme right. To these must be added the exaggerated expectations on the part of the employers and the employees due to the peculiar historical background of the law. The employers did not even realize that the works council law meant a definite denial of the social-democratic principles of the class struggle. Nor did they see that the institution of works councils was intended to secure intelligent cooperation of the employers and the workers on the principles laid down in the organization of the joint councils on November 15, 1918. The employees, on the other hand, expected much more from the law than it actually contained. Their disappointment was very keen indeed when the golden age which was supposed to be ushered in with the organization of works councils failed to appear in the light of cold reality.

Then there were the serious shortcomings of the law itself, with no previous experience and no precedent to fall back upon in cases of misunderstanding or contradictions. Its complications were even more involved by the fact that the works council law was not a piece of independent legislation, but was hopelessly entangled with other laws and regulations, such as the Civil and Commercial Codes, the Industrial Code, the various insurance laws, the demobilization orders, and the Versailles Peace Treaty.

The principal points of contention between the employers and the works councils were of a socio-political rather than of an industrial character. This



struggle was still more exaggerated by the agitation of the political parties on the one hand, and the hair-splitting contentions of the *Cyndici* (the lawyers of the employers) on the other hand.

The employers themselves were not always innocent in the disputes with their employees or with the works councils. They often submitted their quarterly reports to the workers' representatives in such a form that the members of the works council could not possibly understand them. The data presented were at times the exact opposite of the conditions prevailing in the plants. Later, when these reports were compared with the real figures of production in the industry, with the inventories and the actual amounts of goods purchased and sold, their falseness became evident, and new difficulties ensued. It must also be emphasized that most of the employers absolutely excluded their workers' representatives from cooperating in the field of production or in the business side of the industry. Nevertheless, when given an opportunity, the works councils did attempt to cooperate with the employers for the purpose of increasing production. In one large factory in Hagen, in the Ruhr, the works council posted the following notice on the bulletin board in the factory:

"All employees are hereby notified that it is absolutely against the rules to be late for work, to change clothing during hours of work, to leave work prior to the midday rest, or to go to the wash room before the closing hours. It is desirable that the workers devote the full eight hours to real and conscientious work. Penalty for the first offense against these rules will be a fine; subsequent offenses will be met with heavier punishment, including dismissal without notice."

The attitude of the socialist unions, with the exception of the extremists who have no use for the works councils except as a means of revolutionary propaganda, has also changed in favor of a closer cooperation of the employers and the workers' representatives in the shops. This attitude is clearly presented in an article "Two and a half years of the works council law," by Herr Asterott, chairman of the works council of the Henschel Locomotive Works at Cassel, published in *Soziale Praxis* of October 12, 1922.<sup>10</sup>

According to Herr Asterott, the object of the law was to give the workers a voice in industry and by this means preserve peace within the plants. The task put upon the workers' representatives has so far been carried out very successfully, considering the hard times and the economic difficulties from which the entire country had suffered since the end of the war.

There were, of course, excesses. There were those among the members of the works councils who believed that by bullying the employers and by beating with their fists on the tables they would make the employers concede to their demands and thus make themselves popular with the workers. But these soon gave place to another kind of workers' representatives who knew better how to serve the interests of their constituencies than by using such questionable methods.

There is, in fact, no better way of educating the workers' representatives than to have them sit ever so often at the round table with their employers or the managers of the plant and thrash out their mutual problems in a frank discussion. This alone caused thousands of radically inclined members of works councils, who previously regarded their employers as parasites living off the industry, to become convinced by their own experience of the huge amount of energy and intelligence required for the successful management of a large enterprise. They brought this spirit of understanding back to the general assemblies of the rank and file of the employees and thus contributed much to the maintenance of peace in the establishments.

In spite of the multiplicity of duties of the workers' representatives and the difficulties encountered because of the complications in the law, in spite of the constant renewals of the wage contracts necessitated by the rapid fall of the mark and the numerous other ills that followed in the wake of inflation, the works councils have proved a real success. This will readily be

<sup>10</sup> In an interview with the author, in February, 1924, Mr. Asterott reaffirmed his statements of over a year ago with even more emphasis than in the article mentioned.

confirmed by the foremen and the other petty officials in the plants with whom the workers' representatives cooperated in determining rates of task and piece work and in the solving of numerous minor details, unimportant by themselves but very essential to the peaceful and uninterrupted process of the industry as a whole. The success of the works councils depends, however, on the political training and the maturity of the individual members and the attitude of the employers, especially in the larger plants, where any other means of personal contact between the employers and the workers is entirely out of the question.

Even in the press of the employers, which is in the main still hostile to the system of works councils, voices can be heard testifying to the good effects of the works councils in industry and their accomplishments. Thus one newspaper representing the interests of the mine owners in the Ruhr<sup>11</sup> carried the following interview with an important employer in Essen on the subject of works councils:

The works councils have an important mission to fulfill. All the experiences so far seem to justify the brightest hopes placed upon them. Many business managers have already expressed the opinion that they could not get along without the help of their works councils. The members are in most cases fully acquainted with their duties and responsibilities and constitute a desirable channel of communication between the employer and his employees. The large expenses connected with the organization of works councils are returned with interest by the services rendered to the establishments by the new institution.

In the summer of 1922 the Bavarian Union of Employers, a branch of the United Employers' Associations of Germany, issued a special questionnaire to its members concerning the application of the works council law in their establishments.<sup>12</sup> Out of 120 replies only 19 concerns demanded the unconditional repeal of the law; 73 merely complained of the difficulties they had encountered in the application of some of the provisions of the law; the remaining 28 agreed that the works councils were a necessary institution but that the workers' representatives so far had represented the interests of the employees only and had either completely neglected or were only partially concerned with the welfare of the establishment as a whole.

Those employers who were opposed to the works council law in general were also general in their statements. One of the replies, for instance, read:

The works council is the center of disturbance and agitation in the plant. Its object is to interfere with the work of the employees, to cause unrest and dissatisfaction among the workers, and to foment every insignificant disagreement into a sensational struggle. The quarters of the works council are turned into a club for discussion and debate on how to make every worker join the socialist unions and to turn every establishment into a union local.

Nevertheless there were a few replies which attempted to enter into a deeper analysis of the problem by presenting both the good and the bad sides of the works councils. One firm wrote:

The results depend largely on the existing relations between the members of the works councils and the management, which, in turn, depend on the composition of the works council. One single member who may be in the works council for political or propaganda purposes only is often sufficient to spoil the work of the entire organization. On the whole, however, one may say that the works councils have already passed through the stage of infancy. They

<sup>11</sup> Deutsche Bergwerkszeitung, December, 1921.

<sup>12</sup> Unfortunately, the source of this information can not be given here as it was imparted confidentially to the author.

now adhere more closely to the rights given them by the law, and the number of controversies with the employers is therefore rapidly diminishing.

The objections to the system of works councils are:

1. Its organization and maintenance involve considerable expense.
2. The influence of the restless minority on the members of the works council is always greater than that of the peaceful but indifferent majority.
3. The works council is more concerned with the exclusive interests of the employees than with the general interests of the establishment as a whole.

But a "good" works council can very easily overcome all these and other objections and become of great assistance to the employer because:

1. It does away with unjust treatment of employees by petty officials and thus reduces the causes of unrest among the workers to a minimum.
2. It can, because of its close relations to the rank and file of employees, carry out many of the wishes of the employer in less time and with less friction than if it were done by the management.
3. It eliminates every possibility of sudden outbreaks and wild [unauthorized] strikes in the plant.<sup>12</sup>

### ACCOMPLISHMENTS OF WORKS COUNCILS

In face of the testimony presented above it may well be asked what have been the real accomplishments of the works councils and what is their future in Germany. Outside of the communists, who still regard the works councils as a means of revolutionary propaganda among the workers, and the few large employers, who longingly look back toward the days of their absolute control in the factories, the large masses of German workers and employers, as well as the general public, are of the opinion that the institution of works councils has so far justified its existence. Of the two tasks set before the works councils by the law, namely, "to represent the interests of the employees and to help the employers raise the efficiency of production," the workers' representatives seem to have devoted most of their time and energy to the first and only very little to the second. It is true, however, that they were not given an opportunity to do any constructive work, nor did they really have the time for it. During the comparatively short period of the existence of works councils much has happened in the labor field in Germany, claiming all the time and attention of the workers' representatives for this field alone.

It is entirely to the credit of the works councils that during the 1921-1923 inflation and the rapid sinking of the mark, so few disturbances of any significance or wild strikes took place in German industry. It was the duty of the workers' representatives to help the employers and the unions prepare the weekly changes in the wage rates, making them correspond with the wage agreements and the Government food index numbers, which became the basis of all wage contracts. It was also their task to see that the workers received their bread money daily, which was later to be subtracted from the weekly wages. But their chief accomplishment during the summer and fall of 1923 was to help provide the workers with potatoes and coal for the coming winter. Without this help the situation in Germany during the winter of 1923-24 would have been even more desperate than it was in reality.

<sup>12</sup> The elimination of wild strikes by the works councils is admitted even by the most hostile employers, including those who had had unfortunate experiences with their workers' representatives when the law was first put into effect.

Because of the extreme depreciation of the mark in the fall of 1923, the only way to procure potatoes, the chief means of subsistence of the German workers, from the German farmers or abroad, was by paying for them in foreign currency or by barter. Until December, 1923, wages and salaries were still being paid in paper marks. In the cities the police could force the storekeepers to accept the paper money as a means of exchange, but there was no way of forcing the agricultural groups to bring their produce to the cities in exchange for worthless marks.

To check the growing unrest among the workers and to forestall riots, the works councils in each establishment prevailed upon the employers to solve the potato problem for the workers in the following fashion: The employers purchased large quantities of potatoes, paying in foreign exchange, and distributed them at cost among their employees. The cost was deducted in weekly installments from the earned wages. The employers did not readily accede to the requests of the works councils. Finally, however, they realized the extent of the growing unrest among the workers and, with the help of the cooperative canteens existing in every large plant in Germany, and the active participation of the workers' representatives, the plan was carried out successfully. In the same manner, the workers' homes were supplied with fats, sugar, and flour for the Christmas holidays, and with part of the needed fuel for the winter.

If, in spite of the successful elimination of wild strikes by the workers' representatives, their cooperation with the Government industrial inspectors in improving sanitary conditions in the factories, and in installing safety devices and actually inducing the workers to make use of them, the positive contributions of the works councils to German industry may still be questioned, there can be no doubt as to their effectiveness in representing the interests of the employees. As an organ representing the interests of the workers and as a mediation agency between the employers and the employees, the works councils have proved a real success.

In visiting about 30 large industrial plants in Berlin, in the Ruhr, and elsewhere, the author made it a point to inquire of some of the workers he met casually about the plants whether there was a works council in the establishment and where its office was located. Not one ever paused for a moment to think, while most of them knew at least one member of the works council by name or by sight. All the workers know that somewhere in the plant, either near the general office or in a special improvised room conveniently accessible to the entire plant, there are always to be found the workers' representatives whom they helped to elect and who are always ready to lend a willing ear to their complaints and wishes. Once he has registered his complaint with the works council, the worker returns to his job, satisfied, even if the workers' representatives make him see his own fault in the matter or are not always in a position to help him. The foremen and their assistants also are aware of the presence of a works council in the establishment and this knowledge is sufficient to restrain them from petty tyranny over the employees.

The works councils in Germany have come to stay. In a period of reaction, as in the spring of 1924, some of the powers of the workers' representatives, for example, their right to elect members of the boards of directors, may be abrogated. They may be hampered in their work, and parts of the works council law may even be repealed. But the works councils themselves will remain. They have become an integral part of the economic and social structure of present-day Germany, and no political party or industrial group will dare to put them out of existence on pain of jeopardizing its own life and disturbing the civil peace of the country.

## Chapter XIV.—WORKS COUNCIL MOVEMENT IN OTHER EUROPEAN COUNTRIES

### WORKS COUNCILS IN AUSTRIA

Austria was the first country to organize a general system of works councils by way of legislation. The works council law of Austria was passed on May 15, 1919. In its essence and in the majority of details, the Austrian law is very much like the German works council law for which it served as a model.

*Scope of the law.*—In Austria as in Germany a works council must be organized in all establishments having at least 20 employees. Establishments with 4 to 19 (inclusive) employees are required to elect shop stewards. In addition to a works council, a wagersworkers' council must be organized to protect the separate interests of the wagersworkers in the establishment, and a salaried employees' council to protect the separate interests of the salaried employees. Government officials are not included in the works council law. Similarly excluded are all the employees in the Government undertakings and in all public utilities subject to Government control. The employees of these establishments are permitted to organize works councils of their own, but the functions and activities of these workers' representatives are regulated by special decrees issued by the respective authorities in charge.

*Aims and objects.*—The object of the works council law in Austria is "to protect the economic, social, and cultural interests of the workers in the establishment." The Austrian law does not make it a duty of the workers' representatives to assist the management in running the plant efficiently, with a maximum of economy, and in this respect it differs from the German law. The absence of such a clause in the law saved the Austrian works councils from the reproach of the employers for being too one-sided and not fulfilling all the duties placed upon them by the law. It also saved them from attacks of the extreme left for being but tools of the employers and supporting the capitalist system.

*Methods of organization.*—The workers' representatives in Austria are elected for a period of one year. Reelection from year to year is permissible. The right to vote is granted to all employees who are at least 18 years old and who have been employed in the establishment not less than one month before the election day. A candidate for election to the works council must, however, be at least 24 years of age and must have been employed in the establishment not less than six months before election. In establishments with more than 51 employees one-fourth of the total members of the works council may consist of representatives not employed in the establishment but belonging to the unions of which the wagersworkers and the salaried employees concerned are members. The outside members of a works council must be officials of a union and can not belong to more than one works council at the same time.

*Functions of workers' representatives.*—The Austrian works council law permits of a closer cooperation of the works councils and the unions than exists in Germany. This is due to the fact that the labor movement in Austria has not suffered from a split of the Socialist Party, as was the case in Germany. Also, the Austrian trade-unions at once recognized the significance of the works-council movement, and instead of actively opposing it, as the German unions did, they declared themselves in favor of a system of works councils and supported its organization from the very start. The result was that, in contrast with the German unions, the Austrian unions are allowed to have permanent members in each of the works councils belonging to the union concerned. Also, in contrast with the German works councils, the Austrian workers' representatives are allowed to participate in the making of the collective agreements, while in Germany this function is left exclusively to the jurisdiction of the trade-unions.

Where there is no collective agreement in existence it is the duty of the workers' representatives to cooperate with the union in preparing the ground for an agreement. In addition, the works councils are required to agree with their employers on factory rules, which must be drawn up in every establishment to correspond with the existing collective agreement in the trade. These rules are not, however, so extensive as in Germany, since the making of the piece and task work rates is left to the personal contract between the employer and the employee at the time of hiring. This really means that the employers are entitled to make those rates themselves. But in the event of a disagreement, or in the case of a complaint of the workers that the rates are too low, a committee of the works council has the right to examine all the data used by the employer in preparing the rates. These include the cost of the raw materials, the cost of the materials used in the process of production, the labor costs, and the net profits of the employer.

The other important functions of the workers' representatives are:

1. To supervise the carrying out of all the labor protective laws, of the factory hygiene regulations, and the installation and the use of safety devices in the establishment.
2. To help the management in preserving order and discipline in the establishment. Fines for disciplinary offenses are to be agreed upon between the management and the works council. A special committee of the works council is to be elected to cooperate with the management each time a fine is to be imposed upon an individual worker for any offense against the factory rules.
3. To assist the management in the administration and control of all the workers' welfare organizations in the plant, including the workers' dwellings belonging to the establishment.

*Rights of workers' representatives.*—Like the German works councils, the Austrian workers' representatives have the right to examine the wage records of the employees in order to compare the actual wages paid with the rates set in the existing collective agreement. They are entitled to access to any other data pertaining to the carrying out of the agreement. A member of the works council has also the right to be present in the office of the paymaster during the paying hours.

Once a month, at the request of the works council, the management is obliged to confer with the workers' representatives on the financial and economic conditions of the establishment and the desirability to improve these conditions. Special emphasis is to be placed each time upon the labor demands of the plant during the coming month. Of its own accord the management may extend these monthly meetings with the works council into weekly conferences.

The employers of all commercial undertakings with not less than 300 employees and the employers of all industrial and mining enterprises are required to present their yearly balance sheets to their works councils. The financial statements must be prepared in sufficient detail to give the workers' representatives a fair idea of the financial and economic conditions of the establishment, of the amounts of commodities produced, and the net profits or losses incurred during the period covered by the report. A fine or imprisonment is the penalty imposed upon any member of the works council for disclosing information confidentially imparted to the works council by the employer.

Finally, the Austrian works council law also grants the workers' representatives of the joint stock companies the right to send two permanent members to the company's board of directors. The two labor delegates become bona fide members of the board and are entitled to a voice and a vote in all of its sessions. They can not, however, be replaced by proxies, nor are they entitled to any remuneration except a compensation for their personal expenses.

*Mediation and arbitration.*—In Austria, as in Germany, the chief feature of the works-council movement has been the emphasis placed upon mediation and arbitration of disputes. The Austrian boards of adjustment (*Einigungsämter*) were established by a special law passed on December 18, 1919. The boards are made up of an equal number of representatives of capital and labor appointed by the minister of social welfare for a period of three years. The appointees are selected from the two lists of delegates nominated by the labor and capital organizations, respectively. The boards of adjustment are presided over by a chairman or a vice chairman, both of whom are judges appointed by the minister of justice.

The functions of the boards are chiefly to mediate in all disputes regarding collective agreements. If they deem it necessary, the boards of adjustment have the right to declare any collective agreement compulsory for a whole trade or an entire industry, thus extending its influence far beyond the field covered by the parties to the agreement. In addition, the boards of adjustment have a right to render final decisions in all cases of disputes which arise in connection with the application of the works council law. This includes all cases of dismissal of employees or of workers' representatives, all disputes in connection with the elections to the works councils, problems of hours of work, of fines, etc.

At the head of the local boards there is one national board of adjustment, which decides on all cases affecting more than one locality and passes upon appeals against decisions rendered by the local boards.



To decide upon individual disputes industrial courts have been established by the law of April 5, 1922. These are made up of two judges and an equal number of jurors from labor and capital appointed for a period of five years. The labor jurors are appointed by the minister of social welfare from a list of candidates nominated by the labor organizations, while the capital jurors are appointed by the minister of trade and commerce from a list of candidates nominated by the employers' organizations. The two judges are appointed by the minister of justice, who has the supervision over the industrial courts.

A hearing of a case by the industrial court must be held not later than three days after the appeal has been made. The presence of a judge and two jurymen, one from each side, is sufficient for a session of the court. Before assuming their duties the jurors are required to take a special oath to be impartial and not to disclose the information presented before the court. The judges receive their salaries and the jurors their fees from the Government.

*Chambers of labor.*—Austria does not have an institution similar to the National Economic Council of Germany, where capital and labor have their representatives in the same organization. Instead, the law of February 26, 1920, provided for the organization of district chambers of labor to correspond with the already existing chambers of commerce and industry, to be situated in the same locality with these organizations.

The functions of the chambers of labor are:

1. To furnish reports, make proposals, and give advice to the public authorities on all problems and legislative bills in the field of labor.
2. To assist the public institutions in promoting industry, trade, and manufacturing in the country.
3. To keep records of the trade-union developments in their respective districts.
4. To cooperate with the Government in the preparation of labor statistics and other inquiries in the field of labor.
5. To create and take charge of institutions for the social and economic improvement of the workers.

The chambers of labor consist of from 30 to 130 members elected by the workers for a period of one year. The right to vote is granted to all workers, irrespective of nationality, who have reached the age of 18 and who have been employed in the district not less than 2 months before election. A candidate for election must be an Austrian citizen, at least 24 years of age, and a member of his trade for not less than 3 years.

The meetings of the chambers of labor must be public and must take place at least once in every two months. The business affairs of the organization and the minutes of its meetings are in charge of a special secretary, not a member of the chamber, but selected because of his satisfactory qualifications in the fields of social and economic problems.

Once a year the chambers of labor are required to make a complete report to the minister of social welfare concerning their activities and accomplishments during the past year. The chambers of labor are Government institutions, and the State authorities are required to transmit to them for approval all bills regarding industry

and commerce or general labor conditions before introducing them to the legislative bodies. The State, the chambers of commerce and industry, the financial department, and other autonomous bodies are required to supply the chambers of labor with all the needed information. At the request of the Government the chambers of labor are obliged to hold joint meetings with the other Government institutions, including the chambers of commerce and industry.

The expenses of the chambers of labor are a part of the Government's budget. Any additional expenses not covered by the budget are made up by a special levy upon the workers in the district, collected at the source of their income.

### SHOP COMMITTEES IN CZECHOSLOVAKIA

Czechoslovakia has two separate works council laws. The first was passed in June, 1920, and provides for the organization of works councils in the mining industry only. The second law became effective in January, 1921, and applies to all other commercial and industrial enterprises. But while in the mining industry the institution of workers' representatives is still officially called "Betriebsrat," the name used in Germany and Austria, the general works council law uses the word "Betriebsausschuss," the name under which the shop committees were known before the German revolution of November, 1918. This difference merely shows the decline of the revolutionary spirit in central Europe since 1920.

There are other indications of the more conservative nature of the general works council law in Czechoslovakia. Thus, a shop committee is required to be organized only in establishments which employ not less than 30 workers throughout the whole year. Temporary employees, apprentices, foremen, and other officials are not included in the list of permanent employees. Establishments with less than 30 permanent employees are not even required to elect a shop steward, as is the case in Germany and in Austria. This limitation excludes a very large proportion of Czechoslovakian workers from the system of workers' representation.

The shop committees are elected for a period of one year. The number of members of each committee must not exceed 20. The right to vote is granted to all the workers who have reached the age of 18 and who have been employed in the establishment not less than three months before election. Candidates for election, however, must be at least 26 years old, Czechoslovakian citizens, members of their trade not less than three years, and employees of the establishment not less than one year before election. This right is also granted to citizens of other nations whose laws accord similar rights to Czechoslovakian citizens. This provision refers to Austria but not to Germany.

The aims of the shop committees are similar to those in Austria, namely; to protect the economic, social, and cultural interests of the workers. The functions of the workers' representatives are also not limited, and those mentioned in the law merely serve as an example of the duties the shop committees may be called upon to perform. Their chief functions are to assist the unions and the employers in making the collective agreements, to see that the stipulations of the agreements are carried out by both sides, to safe-

guard the workers against unsanitary conditions in the plants and against industrial accidents, and to assist the management in preserving order and discipline in the establishment.

The employers are required to transmit to the workers' representatives copies of their collective agreements and their rules for employment. They are also to notify the shop committee of a visit by the industrial inspector, who may be accompanied by one or more members of the committee throughout the entire visit. Every three months the employer must present to the shop committee a report on the economic and financial conditions of the establishment, with particular emphasis on the future labor requirements of the plant. Once a year the employers must present their balance sheets with a detailed account of the amounts produced and the total net profits or losses incurred during the period covered by the report. Finally, the workers' representatives of the larger joint-stock companies are entitled to send one to four permanent delegates to the company's board of directors. The rights of the labor delegates are similar to the rights of any other member on the board, except that they receive no remuneration for their services.

In the mines with more than 100 employees the quarterly and yearly reports are made before a special joint committee consisting of two members of the shop committee, one member representing the salaried employees in the mine, and four members representing the employer. This joint committee is also in charge of the workers' share of the net profits, amounting to 10 per cent of the total sum distributed in dividends.

No member of a shop committee can be discharged without the approval of a board of adjustment. Each board is made up of six members, one of whom, the chairman, must be a judge, appointed by the highest judicial authority; and a second member must be an expert in the field of labor and social problems, appointed by the highest civil authority of the State. The other four members are also appointed by the civil authority from lists of candidates nominated by the trade-unions' and the employers' organizations. The duties of the boards of adjustment in Czechoslovakia are similar to those of the corresponding organizations in Austria and in Germany, namely, to mediate in all disputes in connection with the collective agreements and to render final decisions in the disputes arising from the application of the shop committee law.

In addition to the shop committees, the law in Czechoslovakia provides for the organization of district works councils corresponding to the Austrian chambers of labor. The members of the district works councils are elected by the workers in the respective districts for a period of two years. Their duties are to supervise the activities of the shop committees in the district, to mediate in disputes between members of the shop committees and their employers, and to assist the unions and the employers in drawing up uniform collective agreements and uniform rules of employment for the entire district. In the mining industry the district works councils are entitled to a voice in determining prices and the distribution of coal. They also assist in determining the workers' share in the net profits from the mines and the purposes for which this money shall be used. The expenses of the district works coun-

cils are covered partly by the Government and partly by special levies upon the workers in the respective districts.

### SHOP COMMITTEES IN NORWAY

Norway is the only country with a non-German-speaking population which has a compulsory system of workers' representation. The shop committee law of Norway was passed on July 23, 1920. By the nature of their functions and the extent of the rights granted them by the law, the Norwegian shop committees can not really be put in the same class with the works councils of Austria and Germany, or even with the shop committees of Czechoslovakia. They represent rather a transition stage between the compulsory system of workers' representation in central Europe and the voluntary system typified by the English Whitley councils or by the American shop committees.

The law provides for the organization of a shop committee in all establishments with 50 or more employees if one-fourth of the number of employees expresses the desire to have such an organization. The total membership of a shop committee must not be less than 2 and must not exceed 10. The candidates for election must be 21 years of age or more and employed in the establishment not less than two years before election.

The rights of the shop committees in Norway are of an advisory nature only. The employers are required to confer with their workers' representatives on problems concerning important changes in the establishment affecting the conditions of work, concerning the rates of wages, hours of work, overtime, and other conditions of work if there is no agreement with the unions and no contract with the individual employees concerned; on changes in or annexes to the existing factory regulations, and on all matters concerning the organization and the administration of the workers' welfare institutions, such as sick and death benefit funds, mutual benefit funds, and the workers' living quarters belonging to the plant.

There is no compulsion for the employers to comply with the advice of their workers' representatives. This accounts for the lack of enthusiasm and support of the shop committees among the rank and file of the Norwegian workers. The chairman of the Norwegian section of the International Association for Labor Legislation reported to the tenth congress of this organization at Geneva, in the spring of 1923, that since the passage of the law there were organized in Norway only 130 shop committees, representing a total of 31,136 employees.<sup>1</sup> The trade-unions are in favor of the shop committee movement in Norway, but they are dissatisfied with the present law because of the limited rights of the workers' representatives. In fact, the present law is only temporary, and the special commission appointed by the King to investigate the problem of workers' representation and prepare the ground for a new law has already made its report, which is expected to become the basis of new legislation in the near future.

<sup>1</sup> International Association for Labor Legislation, *Die Zukunft der Arbeit*, vol. 1, Nos. 2 and 3, p. 87. Jena, 1923.

# Appendix I.—WORKS COUNCIL LAW OF FEBRUARY 4, 1920

## I. GENERAL PROVISIONS

1. In order to safeguard the collective economic interests of the employees (wageworkers and salaried employees) as against those of the employer and to assist the latter in fulfilling the economic aims of the enterprise, works councils are to be organized in all establishments having under normal circumstances not less than 20 employees.

2. A shop steward is to be elected in all establishments having as a rule from 5 to 19 (inclusive) employees, of whom not less than 3 are eligible for the office in accordance with the requirements of articles 20 and 21 to follow.

One shop steward may be elected in the establishments having at least five wageworkers and five salaried employees. However, if the two groups do not agree on a common shop steward, each group is entitled to elect a shop steward of its own.

3. A special works council must be organized for the home workers of an establishment employing not less than 20 such workers for whom the home work of this establishment constitutes their chief occupation, and who in turn do not have any employees of their own. Further regulations are to be issued by the minister of labor with the approval of a special committee consisting of 28 members of the Reichstag.

4. Articles 1 and 2 apply also to agriculture and forestry with the exception that in these industries only the permanent workers are to be considered as employees. Also a shop steward is to be elected in these industries only if the establishment has not less than 10 permanent employees, of whom at least 3 are eligible to the office in accordance with the requirements of articles 20 and 21 to follow.

5. Workers' representation in the marine and river transportation industries shall be regulated by a separate law, especially enacted for this purpose.

6. In order to safeguard the separate economic interests of the wageworkers and the salaried employees as against those of the employer, separate wageworkers' councils and salaried employees' councils must be organized in all establishments, the works councils of which are made up of representatives from both groups of employees.

7. In establishments with two shop stewards, each shop steward represents the interests of his particular group. If there is but one shop steward he is entitled to represent the common as well as the separate interests of the two groups.

8. The rights of the economic organizations of the wageworkers and the salaried employees to represent the interests of their membership are not to be affected by the regulations of this law.

9. The law recognizes as an establishment all industrial and commercial establishments as well as all offices of a public or private nature.

Subsidiaries and constituent parts of an undertaking connected with each other through an administrative office or by the processes of production and located within the same or closely lying economic communities are not, however, to be considered as independent establishments.

10. All wageworkers and salaried employees of an establishment with the exception of the relatives of the employer are recognized as employees.

All public officials, real and potential, all persons who are employed not primarily for their economic gains but because of other considerations, such as health, vocational training, or for charitable, religious, scientific, or artistic purposes, are also not to be considered as employees.

11. Wageworkers in the sense of this law are all persons who sell their labor to others for a wage or as apprentices, salaried employees excepted.

Among the wageworkers of an establishment are also to be reckoned all the home workers, living in the immediate vicinity of the establishment, whose

work in the establishment constitutes their chief occupation but who do not in turn employ any wageworkers of their own.

If there is a separate works council organized for the home workers of an establishment, these are not to be included among the other wageworkers of the establishment.

12. Salaried employees are those employees who in return for remuneration perform the activities mentioned in paragraph 1, article 1, of the salaried employees' insurance law. With the salaried employees are to be reckoned all the apprentices for the above-mentioned occupations and all office employees, including even those who perform the lower and merely mechanical services.

Excepted from this group are all executive officers and such legal representatives of the employers or their managers who have the right independently to hire and discharge other employees or who are especially intrusted with such a right.

13. The National Government may order by a special decree that certain officials of its own enterprises or of public undertakings which are subject to Government regulations be reckoned among the wageworkers or the salaried employees of the establishment concerned.

Similar orders may be issued by the State or community governments for the officials of their own undertakings or of public enterprises which are subject to control by the State or community authorities.

Should this be the case, it precludes the application of paragraphs 8 and 9 of article 78, articles 81 to 90, and articles 96 to 98 of this law to this group of officials.

In a similar manner it may be determined that certain groups of wage-workers or salaried employees who are performing duties similar to those of public officials may be reckoned with the public officials when these are granted their separate form of representation in officials' councils (*Beamtenräten*).

14. If the employer is not a single person, his rights and duties as prescribed by this law are to be exercised:

(1) In the case of a juridical person or a group of individuals by their legal representatives.

(2) In the case of the National, State, and community Governments or in public corporations by the executive officers in charge of the particular departments in accordance with the special regulations issued by the highest Government authorities concerned.

Representation of employers by temporarily empowered delegates is permissible.

## II. ORGANIZATION OF WORKERS' REPRESENTATION

### A. THE WORKS COUNCIL

#### I. Composition and election

15. The works council is to be made up of 3 representatives in establishments with 20 to 49 employees; of 5 representatives in establishments with 50 to 99 employees; of 6 representatives in establishments with 100 to 199 employees; this number of representatives to be increased by 1 for every 200 employees between 200 and 999; by 1 for every 500 employees between 1,000 and 5,999, and by 1 for every 1,000 employees from 6,000 on. The highest number of representatives must not exceed 30.

The wageworkers' council and the salaried employees' council are to be made up of the corresponding group members in the works council. If there are but one or two such members, they are entitled to all the rights and duties of a group council. If the membership of any one group is so large that in accordance with the above method of calculation it would be entitled to more representatives than it actually has in the works council, the group is to elect the required number of supplementary representatives.

Should the establishment have fewer employees eligible for election to the works council than the workers are entitled to, the works council must be made up of three members only; if there are less than three eligible employees, only shop stewards are to be elected in such establishments.

16. The works council must consist of representatives of both groups of employees in proportion to their numerical strength.

Each group if consisting of only five members and constituting more than one-twentieth of all the employees in the establishment, must have at least one representative.

The minority group is entitled to 2 representatives for 50 to 299 members in the group, 3 representatives for 300 to 599 members, 4 representatives for 600 to 999 members, 5 representatives for 1,000 to 2,999 members, 6 representatives for 3,000 to 5,999 members, and 8 representatives for 6,000 and more members.

The numerical proportions of the two groups are to be determined by the election committee in accordance with the existing election regulations. (Article 25.)

The minority group is entitled to no representation if it has less than five members and constitutes less than one-twentieth of the total number of employees in the establishment.

17. The distribution of representatives between the two groups can be arranged otherwise than mentioned above if the majority of each group decides upon it in a separate secret vote.

Should any one group have less members eligible to office than it is entitled to, it may elect members of the other group.

18. The wageworkers' members of the works council and the supplementary members of the wageworkers' council are elected by the wageworkers from their own group, while the salaried employees' members of the works council and the supplementary members of the salaried employees' council are elected by the salaried employees from their own group. All workers' representatives are elected at the same time by a direct and secret vote on the principles of proportional representation for a period of one year. Reelection from year to year is permissible.

Should the number of employees temporarily rise to more than double the original figure, but altogether by not less than 15, the temporary employees are entitled to elect a representative of their own to be added to the already existing works council. If there were no works council in existence, the temporary representative assumes the functions of a shop steward.

Should the number of temporary employees exceed 100, the majority of all the employees may then decide to elect a new works council. In agriculture and forestry, however, the temporary employees merely elect two representatives of their own to be added to the already existing works council.

19. The wageworkers and the salaried employees of an establishment may decide in a separate secret ballot, each with a two-thirds majority, to have all the members of the works council elected by a common vote of all the employees.

The formation of the separate group councils in accordance with the rules of articles 15 and 16 is not to be affected by this decision.

20. The right to vote is granted to all employees, male or female, who are at least 18 years of age and who have not been subject to a civil degradation.

A candidate for election must be a German citizen at least 24 years old, no longer in vocational training, an employee in the establishment for not less than six months, and a member of his trade or profession for not less than three years.

No employee can be elected in more than one establishment at the same time.

21. In establishments or enterprises which have not been in existence six months, the employment requirement should be limited only to the length of its existence.

The six months' employment requirement may also be abandoned in establishments which do not employ their workers the whole year round.

The six months' employment requirement as well as the three years' membership in the trade requirement may be disregarded if there are not enough employees in the establishment who satisfy these requirements, or in the case of wounded veterans, whose disability caused them to seek rehabilitation in a different trade or profession than the one to which they previously belonged.

22. In making up the membership of the works council, the various crafts of the employees should, if possible, be taken into consideration.

23. The works council must elect an election committee of three and appoint one of them as a chairman not later than four weeks before its term expires.

Should the works council neglect its obligations, the employer himself is entitled to appoint an election committee, which must consist of members from both groups of employees. The committee elects its own chairman.

The employer must appoint an election committee also in the case of a new establishment or when the number of employees has reached the minimum required for the election of a works council.

Immediately upon its appointment the committee is to proceed with the preparations for the election of the works council, which must take place not later than six weeks after the appointment of the election committee.

24. Loss of time in order to exercise the right to vote or to perform the duties of an election committee must not be made the cause for deductions in wages or salaries. All agreements to the contrary are void.

25. All other details in connection with the procedure of election shall be determined by the minister of labor with the approval of a committee consisting of 28 members of the Reichstag.

## *2. Business procedure*

26. If the works council consists of less than nine members it elects from its midst by a simple majority the first and the second chairman. Both chairmen must not belong to the same group of employees if both groups are represented in the works council.

27. If the works council has nine or more members, it elects from its midst on the principles of proportional representation an executive committee of five members. All the members of the executive committee must not belong to any one group of employees if both groups have their representatives in the works council.

The executive committee elects its own first and second chairmen, one from each group of employees.

28. The chairman or the vice chairman is entitled to represent the works council before the employer or the board of adjustment.

29. The election committee must call the first session of the works council for the purpose of electing an executive committee or the two chairmen not later than one week after the elections have taken place. All other sessions are called by the chairman of the works council, who also prepares the agenda and presides at the meetings. Special meetings must be called by the chairman at the request of not less than one-fourth of the total membership of the works council or at the request of the employer. The causes of the request must be placed first on the order of business of a special meeting.

In addition to the sessions to which the employer is invited he has also the right to be present at all sessions of the works council which are called upon his request. In such cases the employer may even preside over the session.

An appeal to the board of adjustment is permissible only after the employer has been duly notified and invited to attend the session for the discussion of the disputable matter, or when the employer or his representative has failed to respond to the invitation duly issued.

30. The sessions of the works councils are to take place, if possible, outside the regular hours of work. They are not to be open to the public.

The employer is to be duly notified of all the sessions which must take place during the hours of work.

31. At the request of one-fourth of the members of the works council, one delegate from each of the economic organizations to which the employees of the establishment belong, may be admitted to the session of the works council, but in an advisory capacity only.

Similarly, a delegate from each of the economic organizations to which the employer belongs must be admitted to the sessions of the works councils in which the employer himself is allowed to participate.

32. A decision of the works council is lawful only after all the members have been duly notified of the subject matter under discussion. Half of the total membership of the works council constitutes a quorum. Attendance by proxy is permissible only in accordance with the rules set forth in article 40, to follow.

The decisions are made by simple majorities of the members present at the session. A division of votes is equivalent to a denial.

33. All sessions of the works council must be recorded. The decisions must be taken down verbatim as passed, with their majorities, and must be signed by the chairman and one other member of the works council.

If the employer makes any statement before the session of the works council, he also must sign the minutes containing his statement. He must also receive



a copy of all the minutes of the sessions in which he had the right to participate.

Should the representatives of the minority group of employees regard a decision of the works council as seriously injuring the interests of their group, they are entitled to pass a minority decision of their own and present the same to the employer.

34. All other details concerning the business procedure are to be determined by the works council itself.

35. The office of the works council is honorary, and the workers' representatives receive no special remuneration for it. The necessary loss of time in performing their duties must not, however, become the cause of deductions in their wages or salaries. All agreements to the contrary are null and void.

36. All the necessary business costs, including the personal outlays of the members, are to be covered by the employer, unless otherwise provided for in a collective agreement. The employer is also required to provide the works council with the necessary office room and equipment for the sessions, the consultation hours, and the transmission of the current affairs of the workers' representatives.

37. The levying and collecting of any contribution from the employees for the benefit of the workers' representatives is not permissible.

38. Articles 29 to 37, inclusive, apply to the business procedure of the executive committee of the works council.

The first sentence of article 26, and articles 28 to 37, inclusive, apply also, respectively, to the business procedure of the wageworkers' and salaried employees' councils.

### 3. Expiration of membership

39. Membership in the works council may expire through resignation, through termination of the employment contract, or through the loss of the right to be a member in the works council.

The district economic council, or if such does not exist, the board of adjustment<sup>1</sup> may at the request of the employer or of one-fourth of the total number of employees in the establishment, recall a member of the works council for a serious violation of his official duties.

The expiration of membership in the works council automatically means also the expiration of membership in any one of the group councils.

40. The place made vacant by the termination of membership of a workers' representative is to be taken by a replacement member in accordance with the election regulations. The same holds true in the case of a temporary absence of a workers' representative.

The replacement members are to be taken from the list of the nonelected candidates of the group to which the departed member of the works council belonged.

41. At the request of the employer, or not less than one-fourth of the total number of employees in the establishment, the district economic council or, until such is organized, the board of adjustment<sup>1</sup> may decide to dissolve the entire works council because of a serious violation of its official duties.

42. Should the total number of members of the works council and their replacement members fall below the required number of workers' representatives, new elections must take place.

New elections are to take place in the case of recall or resignation of the entire works council. The replacement members can not take the place of an entire works council.

43. If new elections become necessary, the members of the old works council remain in office until the new works council has been formed.

The place of a recalled works council is taken by a temporary works council especially appointed by the district economic council, or in its place, by the board of adjustment.<sup>1</sup>

44. Articles 39 to 41, inclusive, apply also to the expiration of membership in the separate group councils.

Expiration of membership in any one group council is followed automatically by the termination of membership also in the works council.

<sup>1</sup> Since Oct. 30, 1923, the place of the board of adjustment has been taken by the labor courts.

Should the total number of supplementary and replacement members fall below the required number of representatives in a group council, new elections are not to take place.

If a group council resigns or is recalled, new elections are to take place, but only for the members of the works council and the supplementary members of the particular group concerned. Article 43 also applies in the case of a group council.

#### 4. Works Assembly

45. The works assembly is composed of all the employees in the establishment. If, because of the nature or the size of an establishment, a complete works assembly becomes impossible, the assembly is to be divided into sectional assemblies.

46. The works assembly is called by the chairman of the works council. At the request of the employer or of one-fourth of the total number of employees in the establishment, the chairman is obliged to call a special works assembly.

The employer must be notified of assemblies which are called at his request. At such assemblies he has the right to appear in person or through a representative and to participate in the discussion of the assembly, but is not entitled to a vote.

The works assembly must take place outside the regular hours of work. If, under pressing circumstances, need should arise to evade this rule it must be done only with the express approval of the employer.

47. A delegate from each of the economic organizations to which the employees in the establishment belong may be permitted to attend the works assembly, but in an advisory capacity only.

48. The works assembly can present its wishes and resolutions to the works council, but it must take up for discussion only such affairs as are strictly within its own sphere of activity.

49. Articles 45 to 48, inclusive, apply also to the separate assemblies of the wageworkers and the salaried employees.

#### B. UNITED WORKS COUNCIL

50. If there are within one community, or within a group of closely lying and economically connected communities, a number of establishments alike in their products or complementing one another in the process of production, and at the same time belonging to the same owner, the members of the separate works councils may unanimously conclude to organize a united works council to exist side by side with the individual works councils.

51. Instead of a united works council a joint works council may be organized to take the place of all the individual works councils.

The employees of any one establishment may decide by a simple majority to withdraw from the joint works council, but this must take place not later than six weeks after the joint works council has been elected.

A joint works council must be organized in all establishments which are precluded by paragraphs 1 and 2 of article 62 (to follow) from having individual works councils.

52. Any one works council or the employer may request that the place of a united works council be taken by one or more joint councils, if by this means and without impairing the interests of the employees a considerable simplification in the business procedure of the council can be effected. If all the works councils do not agree unanimously on the action to be taken upon this request, the final decision must be left to the district economic council, or until such is organized, to the board of adjustment.

The majority of the employees of any one establishment may also propose the dissolution of the joint works council, but this must take place not later than six weeks before the expiration of the term of the joint works council. The final decision, in case the works councils do not agree unanimously upon this proposition, is again left to the district economic council, or, in its stead, to the board of adjustment.

53. Articles 50 to 52, inclusive, apply to all public corporations and to all enterprises of the community, even if they are not connected with one another in the processes of production.

54. In the election of a united works council all members of any one works council constitute but one elective body, which elects from its midst the number

of members to the united works council to which the establishment is entitled. The elections are carried out on the principles of proportional representation. Membership and composition of the united works council are determined in accordance with the regulations of articles 15 and 16.

The formation of separate wageworkers' and salaried employees' councils within the united works council is not required.

55. The business procedure of the united works council is regulated in accordance with the rules laid down in articles 26 to 37, inclusive.

56. The election of a united works council is for a period of one year.

Expiration of membership in the united works council is regulated by articles 39 and 41 to 43, inclusive.

Termination of membership in the united works council is followed automatically by withdrawal from the individual works council concerned. The reverse is also true.

In both events the place of the resigned or recalled member is taken by the replacement member of the works council concerned.

57. In industries having a joint works council the place of a joint works assembly is to be taken by separate works assemblies in the individual establishments.

#### C. SHOP STEWARD

58. The shop steward is elected by a simple majority of the employees in the establishment for a period of one year. Reelection is permissible.

The elections of a shop steward are to be regulated by articles 20, 21, and 23 to 25, inclusive, with the exception that the place of an election committee is to be taken by one election manager, who must be appointed at least one week before the elections are to take place.

59. The business procedure of a shop steward is to be regulated by articles 28 and 35 to 37, inclusive.

60. Expiration of office is regulated by paragraphs 1 and 2 of article 39 and by article 43.

#### D. OTHER FORMS OF REPRESENTATION

61. The formation of individual and united works councils in such enterprises or offices of the National, State, and community Governments which extend over more than one community is to be regulated by special Government decrees.

The decrees are to be issued by the authorities in charge, after conferring with the economic organizations of the employees concerned.

These decrees may also determine which of the constituent parts of the undertaking or the office are to be considered as separate establishments in the sense of paragraph 2 of article 9.

62. No works council is to be organized, or the existing one ceases to function if its organization or its activity is connected with special difficulties due to the nature of the industry concerned. In such cases another form of workers' representation must be organized by a generally compulsory wage agreement. The new form of representation enjoys all the rights and duties of a regular works council.

At the expiration of the wage agreement this form of representation continues to exist until a new agreement has been concluded and declared compulsory or a regular works council has been elected.

63. If a request has been made to declare the wage agreement general and compulsory, the minister of labor may on the application of one of the parties concerned order the suspension of electing a works council until a decision has been rendered with reference to the wage agreement.

64. Should the wage agreement not include all employees of the establishment, the employees not included are to be allowed to elect their representatives in accordance with the regulations of this law.

65. If in addition to a regular works council there exists in the establishment also an officials' council, the two organizations may meet together in order to discuss their common affairs.

The common session is presided over alternately by the chairmen of the works council and the officials' council. The invitations to the session and the order of business are prepared by both chairmen jointly.

More details concerning the regulation of officials' councils are to be issued by the respective Government authorities in charge.

### III. TASKS AND RIGHTS OF THE WORKERS' REPRESENTATIVES

#### A. THE WORKS COUNCIL

66. The duties of the works council are:

(1) To advise with the management of establishments with economic aims and by this means help bring about the highest possible production coupled with a maximum of economy.

(2) To cooperate in the introduction of new methods of work in the establishments with economic aims.

(3) To safeguard the establishment against disturbances; especially, without invading the rights of the economic organizations of the wageworkers and the salaried employees, to call upon the board of adjustment or any other agreed upon mediation agency in all disputes of the works council, of the employees, or any group of them, with the employer, when conciliation by conference no longer seems possible.

(4) To see to it that the decisions of the board of adjustment or any other agreed upon conciliation or mediation agency are carried out in the establishment.

(5) To agree with the employer, in accordance with article 75 to follow, on factory rules or changes in the same, corresponding with the regulations of the existing wage agreements.

(6) To further the solidarity within the ranks of the employees as well as between them and the employer and to stand up for the rights of the workers to organize.

(7) To take up the complaints of the separate group councils and to effect their redress through a conference with the employer.

(8) To supervise the campaigns against accidents and against dangers to the health of the workers in the establishment; to assist the industrial inspectors and other officials by means of inducements, advice, and proper information, and to insist that all police regulations and safety requirements are carefully observed in the establishment.

(9) To cooperate in the administration of the various benefit funds and the workers' living quarters belonging to the establishment as well as in all other organizations of workers' welfare; in the latter case, however, only if there are no other provisions for the workers' representation, or no special objection arising out of the last will of the benefactor.

67. Paragraphs 1 and 2 of article 66 do not apply to establishments with political, trade-union, military, religious, scientific, artistic, or similar purposes, in so far as the nature of such establishments is contradictory to their application.

68. In performing its tasks, it is the duty of the works council to see to it that any demand or action on either side which might be detrimental to the interests of the community shall be abandoned.

69. The carrying out of the resolutions passed jointly with the management is the work of the management only. The works council must not encroach upon the rights of the management by issuing orders of its own.

70. Establishments having a board of directors and no special provisions for the workers to be represented on the same, must admit one or two elected members of the works council as permanent members of the board. The regulations according to which this is to be accomplished are to be laid down in a separate law especially enacted for this purpose. The works council members on the board are to represent the interests and demands of the employees as well as their views and ideas concerning the organization of the establishment. They are allowed to participate and have a vote in all sessions of the board but are entitled to no remuneration beyond their personal expenses. They are duty bound not to disclose any of the information they are given confidentially.

71. In order to fulfill its tasks, the works council in establishments with economic aims has a right to demand that the employer report to the executive committee or, where such does not exist, to the works council itself, on all the practices in the establishment directly affecting the employment or activity of the workers. It also has the right to examine all wage and other records relating to the realization of the existing wage agreement. Both rights can be exercised only if they do not endanger the industrial or trade secrets of the establishment, or if there are no other legal regulations to the contrary.

In addition, the employer must make quarterly reports to the works council concerning the conditions in the establishment and in the trade as a whole, with special emphasis on the accomplishments of the establishment and its prospective labor requirements.

The members of the works council are duty bound not to disclose any of the information they are given confidentially.

72. Beginning with January 1, 1921, the employers of all establishments which are required by law to keep a complete accounting of their affairs, or employing regularly not less than 300 wageworkers or 50 salaried employees, must present and explain to the executive committee of the works council or, where such does not exist, to the works council itself, their yearly balance sheets and an accounting of the losses or profits made during the completed business year. This must be done not later than six months after the closing of the business year and is to be regulated by a separate law especially issued for this purpose.

The members of the executive committee or of the works council are duty bound not to disclose any of the information they are given confidentially.

73. Articles 70 and 72 do not apply to such establishments as are mentioned in article 67, in so far as their application is contradictory to the nature of such establishments.

The National Government may relieve any other establishment from the requirements outlined in articles 70 and 72, if it is to the interests of the nation to do so.

Under such circumstances, however, the members of the executive committee, or, where such does not exist, of the works council, are entitled to send temporary delegates to the board of directors to represent the demands and wishes of the workers relating to conditions of work or the organization of the establishment. The board must then call a special meeting to discuss the demands of the employees. At such meetings the delegates of the works council have a right to participate and also to vote.

74. If because of expansion, contraction, or closing down of the establishment, or because of introduction of new technical appliances or new methods of work, the laying off or dismissal of a large proportion of employees becomes necessary, the employers are required to confer with their works councils some time before the dismissal takes place, on the ways and means of accomplishing it without inflicting unnecessary hardships upon the employees.

The works council may demand that this information be forwarded to the central information bureau or to a designated labor exchange.

75. If the factory regulations have not been made part of the wage agreement the employer must present these regulations to the works council for approval. In event of disagreement both parties may appeal to the board of adjustment, which renders a final decision, except when the disagreement is concerned with hours of work.

The procedure is similar in the case of any changes made in the factory regulations.

76. In establishments with more than 100 employees the works council has the right to arrange for special consultation hours to be held once or more than once a week for the purpose of receiving the complaints and wishes of the employees. A special agreement with the employer is necessary if the consultation hours are to be held during the regular hours of work.

77. In cases of investigation of industrial accidents by the employer, by the industrial inspector, or any other official, a member of the works council must be permitted to be present and take part in the investigation.

#### B. WAGEWORKERS' COUNCIL AND SALARIED EMPLOYEES' COUNCIL

78. The duties of the group councils are:

(1) To see to it that all the legal regulations in favor of the employees, all the important wage agreements, and all the decisions of the board of adjustment or any other agreed upon mediation agency are carried out in the establishment.

(2) To cooperate with the employers of establishments which have no wage agreements, and in harmony with the economic organizations of the employees, in the regulation of wages and other conditions of work, namely: In the determination of the task work or piece rates and in the preparation of the rules according to which these rates are to be regulated; in the introduction of new methods of wage payments; in the determination of hours of work and espe-

cially in the case of lengthening or shortening the regular hours; in the regulation of vacations for the employees; and in considering the complaints concerning the teaching and the treatment of the apprentices in the establishment.

(3) To agree with the employer on factory rules affecting a single group of employees, this to be done in accordance with the regulations of article 80 (to follow) and with the existing wage agreement.

(4) To investigate the complaints of employees and to effect their redress through conferences with the employer.

(5) In event of disagreements with the employer, to call upon the board of adjustment or any other agreed upon mediation agency if the works council refuses to do it.

(6) To take charge of the campaigns against accidents or dangers to the health of the particular group of employees in the establishment; to assist the industrial inspectors and other officials by means of inducements, advice, and information, and to insist on the observation of the police regulations and the safety devices in the establishment.

(7) To look after the wounded veterans and those injured by accidents in the establishment and, by means of advice or appeals to the employer and fellow workers, to supply them with occupations fitting their strength and capacities.

(8) To agree with the employer on rules for the employment of the particular group of workers, if such had not been incorporated in the wage agreement, in accordance with the regulations of articles 81 to 83, to follow.

(9) To cooperate with the employer in cases of dismissal, in accordance with the regulations of articles 84 to 90, inclusive.

79. Articles 68 and 69 apply also to the wageworkers' and the salaried employees' councils.

80. Article 75 applies also in the event that the separate groups make agreements with the employer relating to separate factory regulations, as outlined in paragraph 3, article 78.

The determination of fines as provided in article 134b of the industrial code is to be decided jointly by the employer and a group council. In event of disagreement the final decision is made by the board of adjustment.<sup>1</sup>

If the factory regulations had been issued prior to January 1, 1919, new factory regulations must be agreed upon to be issued within three months after this law goes into effect.<sup>2</sup>

81. The rules to be agreed upon in accordance with paragraph 8, article 78, must contain the provision that the hiring of employees shall not be affected by their political, military, religious, or trade-union activities, or by belonging or not belonging to a political, military, religious, or union organization. No discriminations because of sex are to be permitted.

These regulations do not apply to the establishments mentioned in article 67, as the nature of those establishments does not permit of their application.

Employment on legal grounds, or on the basis of a wage agreement, or of a decision by the board of adjustment, must be given preference before these rules.

Within these regulations the employment of a single employee is a matter of management only and can be decided without the cooperation or the supervision of the group councils.

82. Should the rules agreed upon be violated, the group council has a right to protest this violation within a period of 5 days after it becomes aware of it, but not later than 14 days after the violation has taken place.

The reasons for the protest and the required proofs must be presented by the council at the conference with the employer.

If no agreement is reached the group council may, within three days after the termination of the conference, appeal to the board of adjustment<sup>1</sup> or to any other agreed upon mediation agency.

The protest or the appeal to the board of adjustment by the group council does not have the effect of delaying or recalling the act of employment.

83. The decisions of the board of adjustment are final. Before the final decision is rendered the employee concerned must be given a hearing. If the

<sup>1</sup> Since Oct. 30, 1923, the place of the board of adjustment has been taken by the labor court.

<sup>2</sup> Later changed to read "before Sept. 1, 1920."

board of adjustment finds that a violation of the rules had been committed it must at the same time declare that the services of the employee concerned be terminated as soon as the decision becomes effective. He must, however, be given the required time notice. The decision makes for justice between the employer and the employees concerned.

84. Employees, when given a notice of discharge, may within five days after receiving notice protest it before their respective group councils—

(1) If there is a justified suspicion that the notice resulted because of the sex, or because of belonging or not belonging to a given political, religious, military, or trade-union organization.

(2) If notice was given without stating the reasons.

(3) If the notice followed the refusal of the employee permanently to do other work than for which he was hired.

(4) If the notice was an unfair hardship inflicted upon the employee and not justified either by his or her behavior when in service or by the conditions in the establishment.

If the employee was dismissed without the required time notice in accordance with the law justifying such dismissal, the protest may be made on the ground that the application of the law to this case was not justifiable.

85. The right of protest is not granted to the employees of the establishments mentioned in article 67, as it is contradictory to the nature of such establishments.

This right may not be used also—

(1) In dismissals due to legal grounds or based upon a wage agreement or a decision of the board of adjustment or any other agreed upon mediation agency.

(2) In dismissals necessitated by complete or partial closing down of the establishment.

86. The reasons for the protest and the required proofs must be presented by the employee concerned to his group council. If the council finds the protest justifiable, it must attempt to bring about an understanding with the employer. If an understanding can not be reached within a week, the group council or the employee concerned may within additional three days appeal to the board of adjustment.<sup>1</sup>

In the case of paragraph 2, article 84, the board of adjustment must defer its decision, if a court decision on the case is pending, or one of the parties concerned moves the postponement in order to appeal to a court for a decision. The decision of the board of adjustment must be rendered if within four weeks after its postponement no court decision has taken place, or if the court denied the employer the right to dismiss the employee concerned without a time notice.

The protest against the dismissal and the appeal to the board of adjustment does not have any delaying effects upon the realization of the dismissal.

87. The decisions of the board of adjustment are final.

If the board of adjustment approves the protest and the employer refuses to reinstate the discharged employee, the board must decide upon the amount of damages which the employer is to pay the employee concerned.

The amount of damages depends on the number of years the discharged worker had been in the employment of the given establishment. It is to be set at one-twelfth of each year's earnings of the employee, but for not more than six consecutive years. The economic situation of the employee and the capacity of the employer must also be taken in consideration when determining the amount of damages.<sup>2</sup> The decision makes for justice between the parties concerned:

Within three days after the decision goes into effect, the employer must notify the discharged worker, either orally or by mail, whether he chooses the

<sup>1</sup> Since Oct. 30, 1923, the place of the board of adjustment has been taken by the labor court.

<sup>2</sup> Due to the rapid depreciation of the mark and the resulting ridiculous sums paid as damages to discharged employees, article 87 has been revised by inserting the following sentences:

(a) The separate amounts earned during the previous years must be reduced to a basis corresponding to the wages and salaries in vogue when the decision was rendered.

(b) Should the employer by means of litigation draw out the payment of damages as decided by the board of adjustment, he is to be made responsible for the entire depreciation the money has undergone during the delay. (Reichsgesetzblatt, Apr. 20, 1923, p. 258.)

reinstatement or the payment of damages. Absence of such notice implies the refusal of reinstatement.

88. In the case of reinstatement, the employer is required to pay to the discharged employee the total sum of wages lost for the period between the time of dismissal and the reinstatement. Article 2 of section 615 of the Civil Code must also be applied. The employer is permitted to subtract from the above sum the total amount the discharged employee had received from the unemployment insurance fund or from the poor relief, and refund it to the respective institutions.

89. The worker has the right to refuse to be reinstated if while the decision of the board was pending he secured for himself a new job. He must, however, notify the employer of his intention, orally or by mail, not later than eight days after the decision has been rendered. If he does not notify the employer within the time, he loses the right to refuse the reinstatement. If he refuses to be reinstated and notifies the employer accordingly, he is entitled to a payment of wages for the time between his dismissal and the rendering of the decision by the board. Article 2 of section 615 of the Civil Code must also be applied.

90. If the time limits mentioned in articles 81 to 89 can not be observed because of natural calamities or other unavoidable circumstances, they may be counted anew from the moment a written note of such hindrance has been made.

#### C. THE UNITED WORKS COUNCIL

91. If side by side with the individual works councils there exists also a united works council, the rights and duties of the former extend only to the particular establishments they represent.

The united works council has the right to deal with all cases affecting more than one establishment or the entire enterprise.

#### D. THE SHOP STEWARD

92. The shop steward has the same rights and duties given to the works council and to the group councils in articles 66, 78 (paragraphs 1 to 7), 71, and 77.

Articles 67 to 69, inclusive, also apply.

#### IV. SETTLEMENT OF DISPUTES

93. The district economic council<sup>1</sup> is to decide in all disputes concerning—

(1) The need of organization, the kind and composition of the workers' representation in the sense of this law.

(2) The right of an employee to vote or become a candidate.

(3) The organization, rights, and business procedure of the workers' representation or the works assembly.

(4) The necessary business expenses of the workers' representatives.

(5) Any difficulty in connection with the required elections.

94. If an enterprise extends beyond one economic district or is, because of its nature, subject to State supervision, the State may appoint its own economic council or any district economic council to decide the disputes mentioned in article 93. If the enterprise extends beyond the limits of a single State the national economic council decides the disputes mentioned in article 93.

#### V. PROTECTION AND FINES

95. The employers or their representatives are forbidden to interfere with the rights of the employees to elect their representatives; with the rights of the latter in performing their duties, or in any way to place the workers' representatives at a disadvantage because of their office.

96. No notice of discharge can be given and no transfer of a workers' representative from one establishment to another can take place without the express approval of all the members of the council concerned.

<sup>1</sup> Since Oct. 30, 1923, the place of the board of adjustment has been taken by the labor court.



No such approval is required—

(1) When the dismissal is based upon legal grounds, or upon a wage agreement, or upon a decision of the board of adjustment or any other agreed upon agency.

(2) When the dismissal becomes necessary because of a complete shutdown of the establishment.

(3) When the dismissal is made without a time notice on the basis of the law justifying such dismissal.

In the latter case a protest is permitted on the grounds that the application of the law was not justifiable. If a court or the board of adjustment approves the protest the employer must recall the dismissal. Article 89 also applies.

97. If the council refuses to approve the dismissal of one of its members, the employer may appeal to the board of adjustment<sup>1</sup> for an approval. This must not be granted if any violation of the regulations of article 95 is connected with the dismissal. The member of the council must be kept in employment until after the decision of the board of adjustment has been rendered.

98. Articles 95 to 97, inclusive, apply also to the kinds of workers' representation mentioned in articles 62 and 63.

They apply also in the case of a shop steward, except that the place of the council is taken by a majority of the employees in the establishment.

99. Employers or their representatives who act contrary of the regulations of article 95 or 98 are to be punished by a fine of 2,000 marks, or by imprisonment.

Similar punishments are to be inflicted upon the employer or his representative for the violation of paragraphs 2 and 3 of article 23.

Similarly are to be punished the employers or their representatives who, contrary to the requirements in articles 71 and 72, refuse to give the necessary information to their works councils, to show them the wage and other records relating to the carrying out of the wage agreement, and to make their yearly financial reports in accordance with the legal requirements.

Whoever, in contravention of articles 71 and 72, for the purpose of deceiving or causing damage to the employees, presents to the workers' representatives false facts concerning the conditions or possessions of the enterprise, or suppresses the real and important facts from the workers' representatives is to be punished by imprisonment for one year, by a fine of 10,000 marks, or both.

The punishment is to take place only upon the request of the workers' representatives. Withdrawal of such request is permissible.

100. Whoever, without permission, discloses any of the information given confidentially to him as a workers' representative shall be punished with a fine of 1,500 marks, or by imprisonment.

Whoever discloses such information with the intention of giving an advantage to another person or firm, or in order to cause damage to the establishment, shall be punished by imprisonment for a whole year. In addition, he may also be fined 3,000 marks. Under extenuating circumstances the fine may be eliminated. All the advantages derived from the above information by the guilty person shall also be confiscated.

The prosecution must take place only at the request of the employer. The withdrawal of such request is permissible.

## VI. EXECUTION AND TEMPORARY REGULATIONS

101. The minister of labor, with the approval of the national economic council and a committee of 28 members of the Reichstag, is empowered to issue special regulations concerning the execution of this law.

102. In the first elections, which are to take place not later than six weeks after this law goes into effect, the place of the works council is to be taken by the existing workers' committees. The wage workers' committee and the salaried employees' committee shall decide upon an election committee.

If the workers' committees fail to do their duty, or if there are no workers' committees in the establishment, the procedure must be as outlined in paragraph 2, article 23 of this law.

In the first election of a shop steward, the employer must appoint the oldest employee in the establishment to act as the election manager (par. 2, art. 58).

<sup>1</sup> Since Oct. 30, 1923, the place of the board of adjustment has been taken by the labor court.

103. Until the organization of district economic councils and the national economic council, their place must be taken by other agencies designated by the proper State or national authorities.

104. Simultaneously with this law the following changes shall become effective:

I. Articles 7 to 14 of the decree of December 23, 1918 (Reichsgesetzblatt, p. 1456), concerning collective agreements and shop committees, are hereby repealed.

II. Article 19 of the above decree is to be read as follows:

"Special boards of adjustment are to be organized for the enterprises and offices of the States and the nation. This is to be accomplished by means of separate decrees issued by the proper State and national authorities."

III. Articles 20 and those following of the same decree are to be so changed that wherever shop committees are mentioned their place is to be taken by works councils, wageworkers' or salaried employees' councils, or by shop stewards, respectively.

IV. Paragraph 2, section 134a, and paragraph 3, section 134b of the Industrial Code are to be so changed that the employer and the works council must participate jointly in the preparation of the factory regulations, or any changes in the same. The chairman of the works council is authorized to sign the factory regulations in the name of the council.

V. Sections 134d and 134h of the Industrial Code are repealed.

VI. Paragraph 1 of section 134c is to be read as follows:

"A duplicate copy of the factory regulations or of any appendix to the same must be presented to the proper officials not later than three days after the regulations or the changes have been agreed upon."

VII. Paragraph 1, section 13 of the decree of January 24, 1919 (Reichsgesetzblatt, p. 111), concerning the temporary working regulations in agriculture, is to be read as follows:

"Establishments having a works council must issue working regulations, which must be exhibited in a conspicuous and accessible place."

VIII. Wherever in other laws the name "shop committee" is mentioned it must be replaced by works council, or wage workers' council; salaried employees' council, or shop steward, respectively.

105. If the law mentioned in article 72 of this law is not passed prior to December 31, 1920, the employers concerned must present to their works councils a financial statement and a balance sheet, as required by the Commercial Code.

106. This law goes into effect from the day of its announcement. Simultaneously all State works council laws become null and void.

All other works councils, shop committees, and workers' committees cease to exist as soon as the first elections of works councils on the basis of this law have taken place.

## Appendix II.—BALANCE SHEET LAW OF FEBRUARY 5, 1921

1. The balance sheet of a company, which must be presented to the works council in accordance with article 72 of the works council law, must contain all the component parts of the company's liabilities and assets as required by the various laws applying to such companies, and must be presented in such a fashion that when examined alone, independently of other sources of information, it provides a complete abstract of the financial position of the undertaking. Such property of the owners as is not directly connected with the undertaking must not be mentioned in the balance sheet.

2. The meaning and the connection among the various items shall be explained in a separate statement. The information must be based upon the data taken from the balance sheet, the inventory, the amount of raw materials on hand, the cash items, and the total expenses of producing and marketing the final product. The submission of the actual vouchers is not compulsory. All essential changes which took place during the past business year must be mentioned in the report.

If the company has more than one establishment, the financial position of each must be explained separately, provided the nature of the entire enterprise or of the individual establishments permits such separation of accounts.

3. The right to demand the presentation and an explanation of the company's yearly balance sheets is also granted to the united works councils, existing side by side with the individual works councils.

4. Articles 1 to 3 of this law apply also to the presentation of the profit and loss accounts as required in article 72 of the works council law.

5. The first presentation of the balance sheets and the profit and loss accounts must be for the business year ending on January 1, 1921.<sup>3</sup>

6. This law is to be effective as from February 1, 1921.

### Appendix III.—LAW CONCERNING SENDING MEMBERS OF WORKS COUNCILS TO BOARDS OF DIRECTORS, FEBRUARY 15, 1922

1. By a board of directors (*Aufsichtsrat*) as mentioned in article 70 of the works council law is meant all bodies which are designated with this name in the Commercial Code, the law concerning companies with limited responsibility, the law concerning cooperatives with economic aims, the law dealing with private insurance agencies, and the law concerning the mining industry.

2. If the company has more than one works council, or a united works council, the sending of the workers' representatives to the board of directors is to be regulated by the following rules:

3. With the exceptions mentioned in this and in the works council law, the workers' representatives on the board of directors are to be subject to the same legal requirements as the other members of the board.

4. Two members of the works council are to be elected to the board of directors, if at the time of election the board consists of more than three members, and if both groups of employees, the wageworkers and the salaried employees, are represented in the works council.

Two substitute members are also to be elected at the same time to replace the two real members who might for one reason or another withdraw from the board or from the works council.

5. The workers' representatives on the board of directors are to be elected by the entire membership of the one or many works councils existing in the enterprise.

Any member of the works council who has been in the employ of the company for at least one year and who in the last two years before election had not been recalled on the grounds of article 39 of the works council law may be elected to the board of directors. The one-year employment requirement may be set aside if the elective body does not have four times as many candidates as are required to be elected.

6. The elections are to be kept secret and are to be decided by a simple majority. If two members are to be elected, the minority group is entitled to send one member, if it has at least two representatives in the elective body. In such cases each group of employees elects its own members.

Reelection is permissible.

All other details concerning the elections are to be determined by the minister of labor.

7. Membership in the board of directors ends automatically with the termination of membership in the works council.

8. The place of the resigned member is to be taken by a substitute member. If there are no substitute members, new elections must take place.

9. Articles 1 to 8, inclusive, apply also to companies which have been organized but not yet registered.

10. The law is to be applied also to such workers' representation as is mentioned in article 62 of the works council law, provided the representation exists for only one company and consists of the employees of that company.

11. This law is to be effective as of February 1, 1922. The first elections are to take place three months after this law goes into effect.

<sup>3</sup> Later corrected to Jan. 31, 1921.

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[The publication of the annual and special reports and of the bimonthly bulletin was discontinued in July, 1912, and since that time a bulletin has been published at irregular intervals. Each number contains matter devoted to one of a series of general subjects. These bulletins are numbered consecutively, beginning with No. 101, and up to No. 236 they also carry consecutive numbers under each series. Beginning with No. 237 the serial numbering has been discontinued. A list of the series is given below. Under each is grouped all the bulletins which contain material relating to the subject matter of that series. A list of the reports and bulletins of the Bureau issued prior to July 1, 1912, will be furnished on application. The bulletins marked thus \* are out of print.]

### Wholesale Prices.

- \*Bul. 114. Wholesale prices, 1890 to 1912.
- Bul. 149. Wholesale prices, 1890 to 1913.
- \*Bul. 173. Index numbers of wholesale prices in the United States and foreign countries.
- \*Bul. 181. Wholesale prices, 1890 to 1914.
- \*Bul. 200. Wholesale prices, 1890 to 1915.
- \*Bul. 226. Wholesale prices, 1890 to 1916.
- Bul. 269. Wholesale prices, 1890 to 1919.
- Bul. 284. Index numbers of wholesale prices in the United States and foreign countries. [Revision of Bulletin No. 173.]
- Bul. 296. Wholesale prices, 1890 to 1920.
- Bul. 320. Wholesale prices, 1890 to 1921.
- Bul. 335. Wholesale prices, 1890 to 1922.
- Bul. 367. Wholesale prices, 1890 to 1923. [In press.]

### Retail Prices and Cost of Living.

- \*Bul. 105. Retail prices, 1890 to 1911: Part I.  
Retail prices, 1890 to 1911: Part II—General tables.
- \*Bul. 106. Retail prices, 1890 to June, 1912: Part I.  
Retail prices, 1890 to June, 1912: Part II—General tables.
- Bul. 108. Retail prices, 1890 to August, 1912.
- Bul. 110. Retail prices, 1890 to October, 1912.
- Bul. 113. Retail prices, 1890 to December, 1912.
- Bul. 115. Retail prices, 1890 to February, 1913.
- \*Bul. 121. Sugar prices, from refiner to consumer.
- Bul. 125. Retail prices, 1890 to April, 1913.
- \*Bul. 130. Wheat and flour prices, from farmer to consumer.
- Bul. 132. Retail prices, 1890 to June, 1913.
- Bul. 136. Retail prices, 1890 to August, 1913.
- \*Bul. 138. Retail prices, 1890 to October, 1913.
- \*Bul. 140. Retail prices, 1890 to December, 1913.
- Bul. 156. Retail prices, 1907 to December, 1914.
- Bul. 164. Butter prices, from producer to consumer.
- Bul. 170. Foreign food prices as affected by the war.
- \*Bul. 184. Retail prices, 1907 to June, 1915.
- Bul. 197. Retail prices, 1907 to December, 1915.
- Bul. 228. Retail prices, 1907 to December, 1916.
- Bul. 270. Retail prices, 1913 to December, 1919.
- Bul. 300. Retail prices, 1913 to December, 1920.
- Bul. 315. Retail prices, 1913 to 1921.
- Bul. 334. Retail prices, 1913 to 1922.
- Bul. 357. Cost of living in the United States.
- Bul. 368. Retail prices, 1913 to December, 1923. [In press.]
- Bul. 369. The use of cost-of-living figures in wage adjustments. [In press.]

### Wages and Hours of Labor.

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- \*Bul. 128. Wages and hours of labor in the cotton, woolen, and silk industries, 1890 to 1912.
- \*Bul. 120. Wages and hours of labor in the lumber, millwork, and furniture industries, 1890 to 1912.
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- \*Bul. 135. Wages and hours of labor in the cigar and clothing industries, 1911 and 1912.
- Bul. 137. Wages and hours of labor in the building and repairing of steam railroad cars, 1890 to 1912.
- Bul. 143. Union scale of wages and hours of labor, May 15, 1913.

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- \*Bul. 146. Wages and regularity of employment and standardization of piece rates in the dress and waist industry of New York City.
- \*Bul. 147. Wages and regularity of employment in the cloak, suit, and skirt industry.
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- \*Bul. 154. Wages and hours of labor in the boot and shoe and hosiery and underwear industries, 1907 to 1913.
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