

EROSION OF GERMAN INDUSTRIAL RELATIONS?
EVIDENCE FROM THE METALWORKING, CHEMICALS AND CONSTRUCTION
SECTORS

by

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Abstract

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By

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Germany is once again the economic powerhouse of Europe and the Eurozone. The German Model of industrial relations with respect to collective bargaining and how firms set wages is called a coordinated market economy. Conventional wisdom holds however that Germany's coordinated market economy is eroding as a result of pressures to decentralize wage setting to firm level, because it is thought that by doing so, firms will be better suited to compete in the globalized economy. In other words, the German Model, specifically the way wages are set in manufacturing may be converging to a liberalized model like we have in the United States. Unlike most studies on German labor relations, this dissertation looks beyond the metalworking sector to include two other industries, chemicals and construction, in order to provide a more fine-grained analysis of the state and trajectory of German industrial relations. The main argument put forth in this dissertation is that decentralization varies across sectors; that decentralized bargaining is not eroding the German model; and that unions and employer associations, as social partners, remain committed to the collective contract.

This dissertation is dedicated to Guadalupe Alvear Almendarez and Sarah Herrera Hernandez.

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Table of Contents

Chapter 1: Introduction

Introduction	01
I. Varieties of Capitalism: What is the German Model?	05
II. Legal Framework	07
III. Change in the German Model	11
IV. Opening Clauses: Decentralization as Change	12
V. Examining the Existing Arguments	15
A. Decline or Erosion Perspective	15
B. Institutional Stability	18
VI. Why Bring in Two Other Industries?	20
VII. Structural Differences between Sectors	22
A. Metalworking	22
B. Chemicals	22
C. Construction	23
VIII. Statement of the Argument	24
IX. My Contribution	24
X. Major Findings of the Study	28
XI. Organization of the Study	30

Chapter 2: The Metalworking Industry **34**

Introduction	
I. Industrial Overview	37
II. Industrial Relations	45
A. Social Partnership	45
1. Gesamtmetall	46
2. IG Metall	49
3. Works Councils: Replacing the Union?	53
4. How Do Negotiations Actually Work in Metals?	55
III. 1950s-1960s Bargaining Gets On its Feet in post-War Germany	59
IV. 1970s-1980s Enter Globalization and the Opening Clause	61

V. 1990s Collective Bargaining – One size Fits All?	64
A. 1993-1994 Bargaining Rounds and the 1995 Bavarian Strike	70
VI. Why Is the Branch Level Agreement Important to employers and Why There is an Effort to Keep the System at All.	77
VII. Enter the 2000s Rocky Road for Employers and the Branch Level Agreement	79
VIII. Bargaining Rounds 2000-2010	80
A. 2000	81
B. 2002	82
C. 2003	86
D. 2004	90
E. 2005	97
F. 2006	100
G. 2007	101
H. 2008	102
I. 2009	104
J. 2010	105
IV. Conclusion	106
Chapter 3: The Chemicals Industry	108
I. Industrial Overview	112
II. Industrial Relations	123
A. Social Partnership	123
1. BAVC	124
2. IG BCE	131
III. Employer-backed Centralization and How the Union Became Tame: 1960s-1970s	131
IV. How Does Collective Bargaining Work in Chemicals?	134
V. 1990s: The Beginnings of Decentralization through Opening Clauses	137
A. 1990: Reality v. Rhetoric	138
VI. A new century begins: 2000	141
A. The 2000 bargaining round	142
B. 2002	144
C. 2003	146

D. 2004	147
E. 2005	150
F. 2007	151
G. 2008	152
H. 2010	154
VII. Conclusion	155
Chapter 4: The Construction Industry	158
I. Overview of Construction Industry	160
II. Social Partnership and Bargaining Structure	164
III. Historical Background and First Wave of Foreign Labor	172
IV. Second Wave of Foreign Labor	180
V. Third Wave of Foreign Labor	189
VI. AEntG and the Fight for the German Minimum Wage	193
VII. EU Level Response- The Posted Worker Directive	198
VIII. Collective Bargaining Rounds 2000-2010	203
A. 2000	204
B. 2002	205
C. 2003	207
D. 2007	211
E. 2009	213
IX. Conclusion	214
Chapter 5: Conclusion	216
Appendix A	231
Methodology and Data	
Appendix B	232
Decentralization Graph	
Bibliography	233
Autobiographical Statement	245

List of Tables

Table 1 Industry Basics: Metalworking, Chemicals and Construction	33
Table 2.1 German Metalworking Firms and Employees, according to branches, 2012	39
Table 2.2 Number of companies with company agreements	66
Table 2.3 Employees covered by an industry-wide agreement 1995-2000 (%)	66
Table 2.4 Membership Density (%) Gesamtmetall	67
Table 3.1 <i>Grosschemie</i> , the Employers Association and the Union	127
Table 4.1 Craft enterprises influence in the construction industry, 2009	162
Table 4.2 Working Hours, by percentage divided according to Main vs. Finishing Trades	163
Table 4.3 Bargaining Coverage of Establishments in 2004 (in %)	210
Table 4.4 Bargaining Coverage of Employees in 2004 (in %)	211

Chapter 1:

Introduction

Germany ranks among the three largest advanced industrial economies in the world. It is the largest net contributor to the European Union common budget, its high-tech industries employ a larger share of workers than in most other EU countries, and comparatively, Germany's export driven economy was not as severely affected by the 2008 global crisis as its other European brothers and sisters.¹ With leading sectors such as the multi-billion dollar automotive industry, Germany is the largest exporter of manufactured goods in the world.²

In 2010, Germany produced more than 5.5 million automobiles while the U.S produced 2.7 million. The average auto worker in Germany earned \$67.17 per hour in salary and benefits while the US earned \$37.77 per hour.³ German industry enjoys considerable prosperity, and can pay its workers high wages, despite pessimism that globalization pressures forces firms to shift labor intensive production to lower cost countries. Nevertheless, the system that glues their industrial relations together is changing.

Germany is not immune to the pressures of globalization. The changing economic and social environment in the 1980s with the spread of neo-liberalism and the 1990s with German reunification has exerted tremendous pressure to reform industrial relations. Neo-liberal politicians denounce the system as outmoded: the institutions of political economy must modernize or face defeat to the unstoppable forces of globalization. The orientation of the modernization debate stems from a need to keep firms competitive. In high-wage Germany, this is an especially

¹ Hauss 2010

² WTO Statistics database, 2010.

³ Brown, Kevin. *How Germany Builds Twice as Many cars as the US while paying its workers Twice as much*. Forbes. December 21, 2011.

sensitive area. Neo-liberalism, in this case, is based on economic liberalism. Economic liberalism is an ideological belief in organizing the economy on individualist lines, such that the greatest possible number of economic decisions are made by private individuals and not by collective institutions.⁴ For some politicians, neo-liberal policies have emerged as the right way to modernize the system: let the market set the firm's wages, not unions and employer associations. So, surviving globalization means adopting neo-liberalism and its values. The idea of the neo-liberal prescription itself, is not particularly new, but it is not the main framework in Germany's variety of capitalism, and it is not the way that Germany has maintained international competitiveness.

Unlike the American form of capitalism: the *liberal* market economy; Germany's form of capitalism is a *coordinated* market economy. The German model of capitalism, as a coordinated market economy, has a particular structure that relies on coordination between economic actors. In industrial relations, economic actors are firms and employees which are collectively represented by social partners. They are engaged in what Germans call a *soziale Partnerschaft*.

Social partners negotiate industry-wide collective agreements. The agreements are centralized wage setting arrangements. In the United States, wages are typically set between a firm's management and individual. In Germany, however, employer associations and unions negotiate regional or federal level agreements that stipulate guidelines for wage minima, hours and other work conditions. In this system, member firms are required by law to abide by the agreement minimum. This means that in firms that are members of an employer association, workers should get paid at least the collective agreed wage. Taking this route, and in stark contrast to the US, manufacturing workers in Germany are much less susceptible to poaching by

⁴ Ian Adams, *Political Ideology Today* (Manchester: Manchester University Press, 2001), 20.

other intra-industry firms because the attraction of a higher salary somewhere else is pre-empted in German capitalism.

Nonetheless, globalization exerts tremendous pressures on the centralized wage setting institutions of capitalist economies.⁵ Germany feels this pressure when employer associations and unions set wages or working hours that are simply unbearable for some firms to maintain a profit. So, it is thought that by decentralizing wage setting, and thus allowing for flexibility from the collective standard, firms are better suited to compete in the international economy. As a result, collectively bargained wages in capitalist economies are thus theoretically less desirable than wages set by the market.

The danger to diverse national institutions of political economy is convergence: Convergence in a common direction of neo-liberalism. What does that look like? For Germany, that means an end of the coordinated market economy and the eventual and inevitable triumph of the liberal market economy. The role of the unions decline, the social partnership between them fades away, no longer valuable, and the German model erodes.

Decentralized bargaining is often understood as meaning a liberalization of the German model. Most studies conclude that the changes in collective bargaining place German wage setting on the road to liberalization. This dissertation re-examines the claim the model of industrial relations is eroding, or liberalizing. It also seeks to make an assessment of the state of German industrial relations by understanding the impact the changes have on the model as a whole. Does decentralization support or dismantle the model?

Most political scientists asking the same questions have, so far, centered their research primarily on the metalworking industry. Relying on these studies, our view of the German model

⁵ Bowman, John R. "Employers and the Persistence of Wage Setting, the Case of Norway." *Comparative Political Studies*, Nov 2002

is impaired. Qualitative specialists are not able to get the full account of changes in German industrial relations because their data are drawn disproportionately from one sector or even just an element of it.⁶ The change in the German model demands a more comprehensive explanation and a wider scrutiny.

Furthermore, mainstream theory in political science that typifies political economies does not recognize differences in industrial structure across and within the economy being studied. But one cannot be studied in isolation of the other. A key point that this dissertation makes is that the structure of the industry matters. It matters because using one sector, in this case, to speak for the whole of the German economy will lead to erroneous assessments. My dissertation carefully illustrates that the structure of an industry directly affects collective bargaining outcomes and the style of bargaining that the social partners adopt. Since the German economy is not just made up of firms that produce metallic goods, to truly understand Germany's political economy means venturing outside of the most studied sector of all. What's more, this dissertation will show that there are not only cross- industry variations but also inter-industry variations that influence collective bargaining outcomes.

My study offers a nuanced analysis by comparatively exploring three manufacturing industries: metalworking, chemicals and construction. Together, they are the three largest manufacturing industries in Germany. It must be made clear however, that the metalworking industry is massive, on its own. Because this industry traditionally receives more attention in the media and academia compared to other manufacturing sectors, and because it powers much of German exports, metalworking still holds a place of significant rank and prominence in the economy and among its industrial peers. It is also a huge supplier to the chemicals and construction industries. My dissertation does not exclude the metalworking sector, but it does re-

⁶ Behrens and Jacoby 2004, p.119

examine it against the conventional wisdom and what that wisdom infers: that changes in collective bargaining in the metals industry are basically responsible for the erosion of the German model.

I argue that decentralized wage bargaining in German manufacturing is not eroding the German model of industrial relations. Analysis of the metalworking, chemicals and construction industries reveals that there are three very different cases of decentralization specific to each sector that are within the model itself. The German model is not converging to a liberalized market like we have here in the US, but rather adapting to suit the needs of the actors that use it. Furthermore, there would appear to be no solid reason why, based on the evidence presented in this dissertation, why a coordinated market economy, such as Germany, cannot possess some elements of so-called liberalization and still retain the characteristics and features of coordination. Just because some elements are liberalizing, does not mean that the outcome of those changes is a totally liberalized model. For German manufacturing, decentralization is not the same as liberalization.

I. Varieties of Capitalism: What is The German Model?

Critically examining industrial relations and how wages are set is part of understanding a country's political economy. In political science, the "Varieties of Capitalism" (VOC) approach is a theoretical framework for comparing the institutional structures of different political economies. Pioneered by Hall and Soskice in 2001, according to this approach, there are two basic types of advanced industrial economies, amounting to essentially two varieties of capitalism: liberal market economy and coordinated market economy. The German model represents a coordinated market economy.

In a coordinated market economy, institutional structures facilitate coordination between economic agents by setting rules of interaction and information exchange, and monitoring those rules. Firms are “institutional takers”. This means that firms do not create the institutions of their nation’s political economy, the State does that; but, they will manage coordination with other actors in the economy through those institutions.

The term “German model” is used to describe the post-World War II (West) German economy. It describes how the German economy is set up and how it works- the structures, the industrial practices, the behavior of economic actors, and the role of the government. Up until the late 1980s the German system of industrial relations and particular type of capitalism was called a model because it was thought to be capable of being a role model, a model to emulate, based on the post-World War II economic success that the country was having. After German political and economic re-unification in 1990, the model was adopted in former eastern Germany, amounting to a transfer of the entire western German model of capitalism on the eastern German economy.

The German model is defined by its institutional components: cooperative and consensual industrial relations, an inclusive system of corporate governance, collective provision for skill training and technological transfer, a high level of social protection under the welfare state and close relations between financial institutions and industrial sectors that have cultivated economic prosperity. This dissertation looks at the industrial relations component of the model. It zeroes in on the relationship and behavior of employer associations and unions and the outcome of their collective bargaining negotiations. The relationship between these two social partners is typified as consensual and cooperative, making industrial relations in Germany relatively peaceful.

The VOC approach does not ignore the State, but it *is* a firm centric approach to studying the institutional arrangements that underpin the operations of market mechanisms. The institutions examined in this dissertation are undoubtedly political, but they are not government. They are decision makers; they decide who gets what, when, and how.⁷ They are institutions of power and of changing distribution and balance of power. Their power *does* depend on the State supporting their autonomy, which it has since 1949.⁸ None of the actors examined in this dissertation would be able to do what they do without the delegation of power by the State.

After World War II, it was the understanding and viewpoint of the social partners and lawmakers that the regulation of working time, wages and other working conditions beyond basic legal provisions should be settled without interference by the state. This is called collective bargaining autonomy, or *Tarifautonomie*, and it is a pillar of coordinated German capitalism.

II. Legal Framework

Collective bargaining today is legally based on Germany's post World War II Basic Law (*Grundgesetz*), Article 9, established in the former Western Germany. This is the first pillar of industrial relations. The 1949 Collective Agreement Act (*Tarifvertragsgesetz* or *TVG*) states that on the employees' side, only trade unions have the right to conclude collective agreements while both employer organization and individual employers can act as bargaining parties on behalf of the firm side. This guarantees free collective bargaining: the right of the parties to negotiate pay and other working conditions without state intervention.⁹ Since this law was enacted, the main pattern in collective bargaining has been industry-specific sectoral collective bargaining between trade unions and employer organizations.

⁷ Magstadt, Thomas. *Understanding Politics*. Cengage, 2011, p.3.

⁸ See Article 9 Section 3 of the German Constitution, or Basic Law

⁹ Jacobi et al, p. 198

Sectoral bargaining takes place at regional level, or level of the federal states, or *Länder*, with some regions having the role of pace setter in agreements. The collective agreements negotiated by the regional association of employers and trade unions are called *Flächentarifvertrag*, or association collective agreement. Negotiations at the national level are rare in Germany, a major exception being the construction industry.

Collective agreements are legally binding for all parties involved and there is strict peace obligation while the agreement is in effect.¹⁰ A peace obligation means that the union cannot legally call for a strike during that time. This ensures “industrial peace” or *Betriebsfrieden* which means that work is not interrupted by industrial dispute. Industrial peace is highly valued by employers in manufacturing and is a central reason why many employers do favor collective contracts.

In practice, collective agreements apply not only to those workers belonging to the union, but to non-union workers as well. In fact, German law requires unions to represent the interests of all employees, not just those who are their members. In addition, employers’ associations also effectively represent all employers in their industry, though by virtue of the strength of their organization, not by law.¹¹

How does collective bargaining work?¹² While direct agreements between unions and the firm are possible, such as the negotiations between carmaker Volkswagen and their unionized workforce, most work contracts are subject to collective wage bargaining agreements. The following is an example of how collective wage bargaining is conducted in the metalworking industry: The metalworking industry employer association is called *Gesamtmetall*. This

¹⁰ Jacobi et al. in Ferner and Hyman, 1998

¹¹ Jacobi p.191

¹² In Germany, collective bargaining does not cover health insurance benefits, accident insurance or pensions. These are benefits that are the legal responsibility of the deep rooted welfare state.

employer association is divided into regional associations. The regional association of North Rhine-Westphalia, (Gesamtmetall NRW), will negotiate a contract with the local branch of the trade union for the metal industry, IG Metall. These contracts cover a wide area of subjects, from wage increase to wage structure, bonuses, etc.

The negotiated contract is valid for all metalworking firms in the region who are members of the employers' association and for all employees who are members of the union. However, most member firms extend the contact to all their employees, even to non-union members. Since there are sixteen regions, sixteen different contracts have to be negotiated; and they do differ, although some parts of the contract may be negotiated for all of Germany – either by declaring one region as a "pilot region" or by negotiations between the head office of the union and Gesamtmetall.

Collective agreements are a prominent part of how German capitalism functions. At the end of 2001, approximately 30,000 sectoral multi-employer agreements existed at regional or national level and approximately 15,000 single-employer contracts at the company level. Almost 70 per cent of the workforce in western Germany and more than 50 percent of the workforce in eastern Germany were covered by collective bargaining. Moreover, those companies that did not chose collectively bargained agreements used the collective stipulations as guidelines for their own specific company-labor relations. These firms are often called “free-riders” and imitators. They do not pay membership fees to a respective employer association but still use the standards the association collectively creates. However, the free riding can alternately be viewed as a measure of the reach that a collectively bargained contract actually has on non-member firms.

The second pillar of industrial relations is the works councils, formally independent from trade unions. Firm level employee representation is governed through works councils by the

Works Constitution Act of 1952, amended in 1972 and 2001. Works councils are mandatory in firms with more than four employees. They possess rights of information, consultation and co-determination. Co-determination, or *Mitbestimmung* is a practice whereby the employees have a role in management of a company via a works council. Co-determination rights are different in different legal environments. In some countries, like the United States, the workers have virtually no role in management of companies, whereas in Germany, their role is given importance by law.¹³

Co-determination applies to social matters such as the introduction of new payments methods, holiday arrangements, weekly work schedules, regulation of overtime, and also covers matters such as recruitment, transfer, and dismissal. According to the TVG 1949, works councils are excluded from the right to settle collective agreements, but the law does *not* prohibit works councils of all bargaining authority. While collective bargaining is the realm of the social partners, the following rights do belong to the works council: First, works councils have the right to negotiate works agreements with the firm's management on all items including remuneration (pay) *not* covered by a collective agreement. But, a works council *cannot* negotiate anything in a collective agreement or pertaining to an opening clause. Second, works councils have the right to improve, but not undermine, collective agreed working conditions. Sometimes this can result in wage drift in which wages are higher than collectively agreed.¹⁴

Finally, the social partners are free to empower both works councils and management to fine tune the framework agreements. In such case, an opening clause is used. An opening clause allows for company tailored working conditions and is considered a substantial reform of the

¹³ Co-determination in Germany is regulated by the Co-operative Management Law (1951), amended in 1976, and the Workers Committee Law (1952), amended in 1972. German co-determination law (*Mitbestimmungsgesetz*) requires that just under half of companies' supervisory boards' members are representatives of workers.

¹⁴ Jacobi 2003, p.29 in Ferner and Hyman

collective bargaining system.¹⁵ The increased or widespread use of opening clauses indicates decentralization of collective bargaining. It is precisely this type of decentralized bargaining that has caused some observers of the model to claim that collective bargaining is dismantling.

III. Change in the German Model

Since the early 1990s, the survival of the German model has been out into question due to increased competitive pressures. The government, academics, foreign observers and the media have questioned the viability of the German model and have suggested that it must be changed.¹⁶ A particular target of demand for change is centralized collective bargaining which is viewed by neo-classical economists as setting high wages and while restricting flexibility.¹⁷ My dissertation however shows that changes in the model should not be misinterpreted as a turn away from maintaining centralized collective bargaining. Germany's labor market institutions are much more flexible than given credit for in an all too pessimistic media.

What is in fact changing? Firms are increasingly fleeing their respective employer associations. German association flight has been more common over the past few years.¹⁸ Fewer new firms are joining employer associations and plant-level arrangements have become more common. Union membership is also less frequent. Union membership, post re-unification, was 13.7 million members in 1991 but fell back to 8.6 million by 2004.¹⁹ Also, since 2001, total membership in all unions in unified Germany was lower than it was in West Germany before unification, though there is some indication that this has come to a halt.²⁰ Looking at actual collective agreement coverage negotiated by employer associations and unions, between 1995

¹⁵ Jacobi 203, p. 29

¹⁶ Muller, Michael. "Institutional Resilience in a Changing World Economy? The Case of the German Banking and Chemical industries" *British Journal of Industrial Relations*. 35:4 December 1997, pp. 609-626.

¹⁷ Muller 1997, Hassel and Shulten 1997.

¹⁸ Silvia 1997

¹⁹ Addison, Schnabel, Wagner, 2006

²⁰ Eiroline

and 2004, there was a drop from 53% to 41% coverage of multi-employer bargaining. This means that there were 12% fewer employees that are covered by collective contracts.

The primary change in the German model is the recent trend toward more flexible lower level bargaining procedures.²¹ The bargaining process is decentralizing. Instead of collective bargaining taking place in the hands of the employer associations and unions at industry or region wide level, there are increasing numbers of firm level negotiations. Employer association flight, dropping union numbers and increasing decentralization, specifically via opening clauses, signify changes in German industrial relations as usual. Consequently, the “erosion of the German model” may have already started.²²

IV. Opening Clauses: Decentralization as change

Opening clauses are an example of decentralization of German collective bargaining. As a process, “Decentralization manifests itself as a shift from multi-employer at the sectoral level to single employer bargaining.” According to Traxler, there are two types of decentralization: organized and disorganized. In Germany, Traxler sees *organized* decentralization. Bargaining tasks have been deliberately delegated to lower level associations in a way that *does not* eliminate coordinating control by higher-order associations over bargaining processes at lower levels. Furthermore, organized decentralization does not necessarily mean a weakening of labor market associations.

An opening clause is a passage written into a contract that allows qualifying firms to deviate, under certain conditions from what is collectively agreed to by the union and the employer association. Usually, that departure is from either from wages or working hours. The clause stipulates that companies can diverge from the industry standard in certain pre-specified

²¹ Spielmann 2005, p.1

²² Spielmann 2005, p. 21

ways to deal with exceptional conditions.²³ If a clause is approved by the union and the employer association, and is included in a contract, company specific “fine tuning” of collectively made provisions are carried out at firm level. Specifically, works councils and local firm management are some given decision making power via said opening clauses.²⁴

Implementing an opening clause thus raises the question of a shift in power from unions and employer organizations to representatives at company level. The significance of such a shift is that when company level actors increase in power compared to collective actors, wage setting begins to resemble how it would happen in a liberalized market economy like the United States, rather than in a coordinated market economy like Germany. In Germany, wage setting in manufacturing is largely left to collective actors, but opening clauses are perhaps transferring that power to lower level delegations.

The increasing use of opening clauses and the increasing power of the works council relative to the union is used to support the claim that a retreat from traditional German wage setting is in procession. However, evidence suggests that the use of opening clauses is exaggerated. Consider the following: First, a WSI (Works Council) 2000 survey shows that while there is significant tendency toward decentralization of collective bargaining in Germany, they also make clear that the overwhelming majority of establishments still neither use opening clauses nor contravene collective agreements. Second, a survey based from the IAB Establishment panel in 2005 reveals that just 13% of all companies surveyed have an opening clause in their agreement. Of that 13%, only about half made use of the opening clause.

²³ Mayer and Schweisshelm, p.3.

²⁴ Jacobi 2003, p.35

Interestingly enough, of the firms surveyed in 2010, more than one of five firms did not even know if their firm agreement had an opening clause or not.²⁵

Still, over the past twenty years, declining trade union membership, increasing employer association dropout, dwindling collective bargaining coverage, increasing decentralization of collective bargaining as evidenced by an increase of company agreements in relation to industry wide agreements, increasing numbers of employers undercutting terms of collective agreements, the use of opening clauses and hardship clauses, and the creation of a new class of employer association membership that allows for freedom from collective agreements, all signal change from “German business as usual” in industrial relations. The economic shock of reunification, increasing international competition and structural and technological change have all posed new challenges for trade unions and business and the use of opening clauses with respect to wage bargaining could signify a system of “wage determination under stress”.²⁶

Because of company drop-outs and decreasing numbers of new members, employer associations introduced a new category of membership. *Ohne Tarifbindung Status*, or OT-Status was created to keep current members and attract new ones. With OT status, a firm can enjoy the benefits of membership such as legal advice, without having to abide by or participate in the collective wage bargaining schema. Gesamtmetall introduced the *OT-Status* to their organization in 2005.²⁷ The OT status is typically used to signal a dramatic weakening of the reach of collective agreements and the decreasing relevance of the union-employer social partnership. In Germany, unions and employers have been traditionally tied by the collective contract in a

²⁵ Eiroline....WSI Survey

²⁶ Schnabel, 1999

²⁷ The number of members bound by the sectoral collective agreements of Gesamtmetall decreased from 4,189 members in 2005 to 3,803 members in 2007 in western Germany. However, the number of members who were not bound by the sectoral collective agreements rose from 1,432 members in 2005 to 2,229 members in 2007 in western Germany. (Eiroline)

symbiotic relationship. The existence of an OT Status is thought chip away at that social partnership, rendering it at some point of little use.

A core question is whether the model will be able to support decentralized bargaining without endangering the traditional pillars of industrial relations, or whether the system will transform into something “new.”²⁸ The change in industrial relations system may also be spilling over to other pillars of the coordinated market economy such as the works councils whose role is seen to be increasing in scope as a result of decentralized negotiations.

V. Examining the Existing Arguments

In some or all sectors of many European countries such as Denmark, Austria, Finland, Germany and the UK, collective bargaining has experienced a degree of decentralization to company level. However, swift and radical change in industrial relations is rare and much of the industrial relations across Europe remain “traditional”.²⁹

Germany is a good case to mine for insights into questions of institutional resilience and breakdown.³⁰ Until the early 1990s, the German model of industrial relations impressed many observers by its robustness, potential for providing social cohesion, business competitiveness, low record of industrial disputes, and high level of training.³¹ In fact, the German model did not suffer from decentralization during the 1980s as many European economies did.³² The following sections introduce the two schools of thought on the trajectory of the German Model.

A. Decline or Erosion Perspective

An extensive literature has sprung up over the last two decades on the decline and erosion of the German model, roughly aligning itself with the neo-liberal convergence theory. The neo-

²⁸ Frege 2003, p. 318

²⁹ European Foundation

³⁰ See Hall and Soskice 2001, Hall and Thelen 2009, Streeck and Thelen 2005, Traxler 1995

³¹ Hassel 1999, p. 483

³² Hassel 1999, p. 484

liberal convergence theory holds that structural pressures caused by global triumph of liberalism has forced change from an industrial welfare state to a national competitive state.³³ For Germany, this would mean a convergence over time to the US style liberal market economy in which wages are set by the competitive forces of the market, not by social partners via collective bargaining. A convergence to the US model means a decline of the German model.

Much of the German “decline hypothesis” literature is written by present or former members of the Max-Planck-Institute for the Study of Societies in Cologne, Germany³⁴ including Wolfgang Streeck, Juergen Beyer, and Martin Hoepner. In brief, their position is that “changes in constitutive areas of the German system are undermining the latter’s functionality and complementarity.” The German model is winding up, or “eroding”.

With respect to industrial relations, there is an erosion of organizational strength of business and labor.³⁵ While the 1990s brought temporary restoration and re-centralized cooperation between government business and labor due to German re-unification, eventually employers pressed for a departure from the German model. Collective agreements became increasingly company level agreements and union decline and employer division contributed to a further decentralization of industrial relations to the plant level. Streeck and Hassel refer to this as “shrinking of the core” of Modell Deutschland. However, this dissertation provides evidence that the core of the German model is not shrinking at all, but rather reconfiguring and adapting to the challenges it faces.

The decline hypothesis sees a weakening of traditional union and employer association strength, which for them translates into “crumbling pillars of social partnership.”³⁶ What was

³³ Cerny, 1995.

³⁴ Busch 2005

³⁵ Streeck and Hassel 2004

³⁶ Streeck and Hassel 2004

once an asset of the German industrial relations system, is now a liability in today's globalized world. Some describe the German model: "role model to phase-out model."³⁷ Streeck even speaks of a "crisis" of the German model.

Yet, most of Germany still collectively bargains; despite the calls for reform, the labor relations system has remained broadly stable exhibiting great flexibility.³⁸ The decline thesis is based on a period of observation, namely the years of the stock market bubble of the late 1990s to the early 2000s, which in many respects is an exception, rather than the rule... a better test would be to see if the results are confirmed during more normal times.³⁹ Thus, it remains unclear whether the changes taking place are affecting the "core" of the German model and ultimately ending in its failure.⁴⁰

Oftentimes, as a case study, Germany is grouped with other European states France, United Kingdom, Italy, Sweden and Ireland. Baccaro and Howell⁴¹ provide one such study in which they re-hash the neo-liberal trajectory argument of advanced capitalist economies. Along the lines of what I term the *Streeck School*, the authors argue that the mutually supportive relationship between union-bargained sectoral agreements and firm level works councils in Germany has collapsed, as Streeck warned. Their evidence includes union density that fell to below 20 percent in 2003 and the OT Status used by Gesamtmetall and subsequently followed by other sectors. Their assessment of this data is misleading. The union density numbers given are not representative of a single one of the three largest manufacturing sectors in Germany and the authors pass on misinformation about the largest and most powerful employer association in

³⁷ Beyer 2003

³⁸ Deeg in Streeck and Thelen, 2005, p. 343-344.

³⁹ Busch 2005, p. 133

⁴⁰ Busch 2005, p. 133

⁴¹ Baccaro, Luis and Howell, Chris. "A Common Neo-liberal Trajectory: The Transformation of Industrial Relations in Advanced Capitalism". *Politics and Society* 2011 39: 251. October 10, 2011.

Germany. Gesamtmetall did not invent the OT category, and the authors drop the ball in actually telling the reader what these other sectors are that followed suit. Their argument relies on oversimplifications and unchecked facts in at least one case, to fit Germany's model of capitalism into the neo-liberal trajectory, essentially arguing against reality.

B. Institutional Stability

The other side of the spectrum sees institutional stability, roughly aligning itself with the Varieties of Capitalism (VOC) approach. The VOC approach views political economies that remain divergent. The presence of institutional complementarities reinforces the differences between coordinated and liberal market economies.⁴² This view, however, may be more adept at explaining institutional resiliency, rather than institutional change. It must also be said that within this school it is very hard to find someone that is actually arguing that Germany has not changed at all.

Refuting the neoliberal thesis which sees a decline of the German model, and refining the varieties of capitalism approach, Thelen and Wijnbergen (2003) look at labor relations in Germany in a globalized economy. They argue that German employers' vulnerability to industrial conflict has "shored up" short term stability in centralized bargaining, but has set destabilizing long and medium term effects in motion. The main strength of this research is the notion of varying levels of stability. Yet, upon closer look, we see evidence from a single industry: metalworking.

Thelen and Wijnbergen claim that their almost exclusive focus on developments in the metalworking sector is justified in terms of the pattern setting role that this sector has traditionally played in German industrial relations. Streeck (2009) similarly confirms that there continues to be some sort of intersectoral coordination of wage bargaining, as sectoral unions

⁴² Hall and Soskice, p. 17

follow a pilot agreement negotiated by a wage leader. In the past this was almost always the metalworkers union with its counterpart employer association: Gesamtmetall.⁴³

But Behrens and Jacoby argue that the metalworking sector shows considerable variation in the development of collective bargaining when compared to other sectors. “Discussion of the German model often ignore important sources of diversity within the German political economy—diversity across sectors, across regions and across time.”⁴⁴ My dissertation does not ignore the variation across regions, sectors or time. In fact, researching and categorizing these variations is long overdue, and a main contribution of my work.

In another work examining the stability of bargaining, Thelen proposes that German employers are ambivalent about abandoning traditional bargaining institutions. They disagree among themselves on the issue and in some ways are quite unsure of whether alternatives to the current system would unequivocally serve their best interests.⁴⁵ She contends that German employers are thus not likely to dismantle traditional bargaining structures in a dramatic move.⁴⁶ The result is institutional stability. Nonetheless, her conclusion is mainly drawn from one industrial dispute that occurred in 1995, the Bavarian Strike in the metalworking sector. Thelen’s conclusion is inherently flawed because she uses predominantly one sector which is strikingly different both in competitive structure and industrial organization than the rest of the manufacturing economy. This is an all too common mistake in studies on the German model. Furthermore, while employers are key actors, the idea of employer ambivalence is not a sufficient explanation of what’s going on. This dissertation will show that employers in metalworking (and the union for that matter) are not “unsure” of alternatives they face, rather

⁴³ Streeck 2009, p. 38

⁴⁴ Behrens and Jacoby 2004

⁴⁵ Thelen in Iverson, Pontusson and Soskice 2000, p. 141

⁴⁶ Thelen 2000, p. 146

they are very aware of the alternatives to collective bargaining. In addition, this study illuminates differences in industrial structure across Germany to show that developments and changes in collective bargaining are not congruent for all sectors.

Perhaps for simplicity of argument, some have taken the decentralization process and empirics such as employer association flight to mean institutional breakdown. This is essentially what I refer to as the decline thesis or, as “erosion.” But the weakness of this argument is the confounding of terms, of process and outcome. Decentralization is taken to mean the liberalization (or erosion, unraveling) of the entire model. This dissertation offers a more refined understanding of what decentralization is and what it results in. Specifically, the notion of decentralization as change in the German model does not explicitly mean that the model is changing into a liberalized market economy. It does mean however that there are elements of liberalization within a coordinated market economy. Until now, most studies on German industrial relations have not considered in detail that decentralization and coordination can exist at the same time, without one destroying the other.

VI. Why bring in two other industries?

Single case designs are “vulnerable”, and more importantly, the analytic benefits from having two (or more) cases may be substantial.⁴⁷ While the metal industry has traditionally been considered representative of German industry; and while at one point in history, concentrating on this one sector would have yielded compelling results for all bargaining actors and industries, that is no longer the case. Industrial relations in other industries are evolving in *completely different* ways as compared to engineering and metal industries.⁴⁸

⁴⁷Yin 2006

⁴⁸ Busch 2005, p. 85

Behrens and Jacoby examine institutional change in a tri-industry study and show that in fact, no sector behaves like the other. The authors' model is based on unions and the "rise of experimentalism" in collective bargaining, each union employing a different logic to their bargaining strategy, essentially "experimenting" to see what works and what doesn't in the battlefield. Specifically, "in chemicals, the social partners control decentralization. In metalworking increasing flexibility is characterized by a mismatch between the national-level union and the district-level employers. Finally, the construction unions seek to replace the centralized bargaining system, with a state minimum wage.⁴⁹ Bringing their discussion up to date, though the German state did introduce a minimum wage for construction, the institution of collective bargaining has not died out in this industry. The minimum wage co-exists with an industry wide collective agreement set by the social partners.

Behrens and Jacoby shed much needed light on the variation between sectors in Germany, which is the main strength of their research; indeed their article builds from their previous one connecting union experimentalism and German economic innovation⁵⁰. But, they set out to answer the question: what strategic options are open to unions in hard times? This dissertation does not attempt to understand the German model by zeroing in on tactical changes in union bargaining, though it does not discount union behavior.

The next section previews some structural differences including the use of opening clauses within German industry. These differences matter, because analyzed in depth, as this dissertation does, challenges the existing discussion of German political economic reality.

VII. Structural Differences between Sectors

A. Metalworking

⁴⁹ Behrens Jacoby 2004

⁵⁰Behrens and Jacoby, "Experimentalism as a Tool of Economic Innovation in Germany" *German Politics and Society*, Vol. 19, 2001

Although the conventional wisdom is that opening clauses are widespread, and metals does make use of opening clauses on working time, more than other sectors, metals is really more known for its hardship clauses, more so than in the other sectors.⁵¹ Hardship clauses are specifically intended for firms experiencing serious economic difficulties, and are primarily used for firms in eastern Germany.

B. Chemicals

Opening clauses in chemicals are not used as often as in metalworking, which is news to those studies that claim that opening clauses are basically running rampant in collective contracts. Wage related opening clauses were used for the first time in 1997.⁵² Two years later, in February 1999, of the 1,700 companies covered by the sectoral agreement for West German chemical industry, only 120 companies were using a type of opening clause which amounts to 7 percent of the total. In metals, the use of opening clauses is much more frequent (roughly 20 percent for 1990-2007) and began earlier (1993). This may have led some researchers to conclude that the model of industrial relations was eroding but even if you look at just one other sector, the so-called “erosion” is less stark.

Second, in 2000, the chemicals sector became the “pattern setter” for the whole bargaining round in all of Germany, a role that traditionally belonged to metalworking. This is significant because other industries will look to the “pattern setter” for their own collective agreements as a sort of benchmark of what can and cannot be achieved in negotiations. Traditionally, the pattern setter is the first sector to conclude an agreement.

⁵¹ Schnabel 1999

⁵² The type of clause used was a wage corridor clause which allows firms under certain circumstances, allows to reduce the collectively agreed wage by up to 10% for a limited period of time. This is in contrast for example, to a working time corridor also employed in the chemicals industry which allows certain Western German firms to add or subtract 2.5 hours on the base of a 37.5 hour work week.

Third, the outcomes of negotiations in the chemicals bargaining round are often “praised” by employers. In contrast, outcomes in metals negotiations are typically not described by employer praise. This helps demonstrate that the chemicals sector is more flexible or cooperative which shapes its behavior and attitude toward collective bargaining. Also, the chemicals sector does not strike with the same frequency as the metals industry. The union in the metalworking industry calls for warning strikes with almost each bargaining round.

C. Construction

In 2005, in Western Germany, 12% of firms covered by collective agreements had opening clauses in their contract. Of that twelve percent, a little over half made use of them. In Eastern Germany, 7% were covered by collective agreements with opening clauses and almost 90% of firms used them. This shows two things, i) when we look outside of metals, we see a different picture of the “widespread use” of opening clauses, that it is actually not so widespread, and ii) significant variation across regions within an single industry.

Second, the wage structure of construction industry is unique. There is a binding minimum wage, which sets it apart from others in the economy because metals and chemicals do not have minimum wages. Another unique characteristic of this industry is increasing foreign competition, but in a different way than say the automobile industry. In 1993 with the Single European Act, labor became much more mobile. When labor became mobile, foreign construction companies, especially from Portugal, eventually brought with them their mobile work force. This suggests competition of a different nature and different responses to it for this industry. In other words, the foreign competition is coming into the borders, not taking away jobs to outside of the borders.

VIII. Statement of the Argument

This dissertation seeks to understand Germany's coordinated market economy by answering four chief questions. First, what kind of decentralization is taking place in industrial relations? Second, is the trajectory of decentralization the same in all sectors? And finally, what is the significance of the decentralization in terms of the state of the German model? To solve this puzzle I also examine the behavior of those actors responsible for collective bargaining. Specifically, what are the differences, if any, between employers and unions in the three sectors and what does this matter for industrial relations?

I argue that decentralization of collective wage bargaining is not eroding the German model of industrial relations, nor converging the model to a liberal market economy. In the metalworking, chemicals and construction sectors, there are three very different cases of employer driven decentralization; each sector has a unique industrial structure and is subject to different pressures which influences collective bargaining outcomes. For Germany, decentralization does not mean liberalization. Collective bargaining is still the predominant way wages are set, and even with notoriously highly paid workers, German firms stay very competitive.

IX. My Contribution

Mainstream literature on the German Model is missing three crucial elements that handicap both lines of thought from truly capturing the dynamics at play. In both schools, with respect to studies specifically on Germany, or those that use Germany as a case study in a pan European analysis, there is a three-fold commonality, which I outline below. Explaining the commonalities reveals the significance of my dissertation's contribution to the literature on the German model.

First, there is an almost exclusive focus on Germany's metalworking industry. This neglects two other industrial giants- chemicals and construction. My study breaks new ground and departs

from the literature by looking outside of the most studied sector of German manufacturing. For at least fifty years, the metalworking sector has been a default sector for Germany, probably for two reasons. First, it is easier to get industrial relations data for this sector, and second, it is Germany's largest manufacturing sector, it is the industry that German is most known for because it includes the automotive and machine making sectors, both exporting giants. Yet, there is very little comprehensive political economic literature on the chemicals and construction sectors, so scholars who study German political economy use the metalworking sector to speak for a very large and diverse German economy. This is a mistake. As this dissertation will show, each of the three sectors have completely different industrial structures, and exhibit very different patterns of industrial relations behavior. Briefly, metalworking concludes collective agreements at regional level and shows the most decentralized bargaining. The chemicals industry bargains at national level and shows a moderate amount of decentralization, and the construction sector has a very centralized bargaining structure involving the State. These differences are explicated in chapters two three and four.

Second, studies tend to bypass the history of decentralization. Most literature on the German model and its decline jumps off from the same point. By this, I mean that most studies start from the same decade, the 1990s, and there are good reasons for this. The 1990s screams a deviation from the norm, namely the increasing decentralization of wage setting. In my dissertation, I go back 60 years to the creation of autonomous collective bargaining within the German Constitution which grants collective bargaining autonomy to the institutions of political economy I am studying. I go back to the first bargaining rounds in German manufacturing starting in the 1950s, to see if opening clauses and decentralization is a truly new phenomenon. One major finding indicated that in the most studied sector of all, metalworking, that decentralization and

opening clauses are actually not new at all. They began in the 1970s during the “heyday” of the German economy. What this showed was that the German model of industrial relations was actually a lot less rigid than previously assumed, it had already faced problems and largely solved them, and that unions and employers have been injecting flexibility into collective bargaining agreements all along.

Third, given points one and two, that does not mean that there has not been significant changes, namely that wage bargaining is in fact decentralizing more than it used to be. This leads me to my third point, which both schools exclude: assigning responsibility for the decentralization that’s actually taking place. What the decline school claims is that decentralization is shifting power to the works councils as a result of wage setting being delegated to lower levels. But that is a half-truth. Structurally, yes, works councils (employee representatives) and firm management are responsible for implementing opening clauses, and yes, they must agree to even using an opening clause, but the buck does not stop there.

My dissertation shows that in most cases, decentralized wage setting is still in the hands of the social partners. This goes for the metalworking, chemicals *and* construction sectors. This is a crucial find because this type of decentralization is not the type of decentralized wage setting we have in the US. Now, even in the most radical case of decentralized negotiations, there is something called the Pforzheim agreement which allows a metalworking firm in need to deviate from anything, absolutely anything in a collectively set agreement.

Such radical departure is essentially alien to traditional German collective bargaining. But what other studies are missing in their analysis is *regulatory fact*: The Pforzheim agreements must still be agreed to by the *union*. This confirms that ultimate approval and power resides in

collective hands. So, no matter what the opening clause may be used for, or how long it lasts, it is an instrument explicitly designed *by* and in the domain *of* the social partners. Even within the model, most decentralized bargaining comes with very specific instructions written into opening clauses on pay or working hours that grant the *possibility* of departing from contract standards, for a limited time period, for certain qualifying firms. But an opening clause is not a guarantee of that departure. It may be then that the devil is in the details. As my dissertation exposes, the opening and the Pforzheim Agreements, are not a free for all which leads to US style liberalization.

How do we know that the German model is not eroding? How do you know a coordinated market economy when you see one? A liberal market economy does not typically have powerful unions as we saw in Germany. Workers are not typically poached in Germany, as they can be in the United States. My dissertation illustrates in all three sectors that skilled manufacturing workers in Germany tend to be highly trained in vocational programs or as apprenticeships paid by firms which is not typical in the US, decentralized bargaining in the US looks almost nothing like it does in Germany. Just the mere fact that co-determination via works councils, a constitutional right made precisely for the German model, and which by the way, distinguishes it from other coordinated market economies in Europe, speaks to the point of a drastically different decentralized firm level wage setting environment from the US. It would appear that, based on the evidence that my study presents, liberal can have different meanings, so context should probably be taken into consideration.

X. Major Findings of the Study

The below points summarize the main findings of this dissertation.

The metalworking industry shows the most decentralization of all three sectors. It also shows the most conflict oriented approach to bargaining. Employer density is relatively low compared to the chemicals sector, but within those firms, over half of the metalworking population is represented. Employers in metalworking are vastly different in size, in fact most 70 percent of all firms in this sector, have less than 100 workers, while only two percent have over 1000 workers; but, this does not directly correlate with firm profitability. The union in this sector is very vocal, conducting warning strikes with almost every bargaining round. This is largely based on their self-identity and history. Yet, warning strikes are not national strikes and Germany loses relatively little work days to strikes compared to the rest of Europe. The union enjoys considerable public support, and respect. Furthermore, regarding employers, the OT category of employer association membership is growing, which means that more new members choose that category rather than the traditional category which binds them to the collective agreement. Still, the most radical and modern form of decentralization occupies just seven percent of all collective contracts in 2011. Finally, workers in this industry, especially in the largest firms tend to be paid above the collective standard. Even workers that are paid according to the collective standard are among the highest paid in German manufacturing. Rare for Germany, both eastern and western pay rates are the same. Also, metalworking is the only sector of the three which has a 35 hour work week for western Germany, one thing among many that the union fought vigorously for.

The industrial structure of chemicals is so different than the other two industries that it actually makes wage setting much more cooperative between firms and the union than in other sectors. The “big 3” chemicals firms are leading firms in the industry that basically dictate employer strategy at the bargaining table. This oligarchic structure has been a feature of this industry in Germany since the turn of the 1900s. Smaller to medium sized firms are followers

and all firms are connected in a tight chain of supply and demand. Much of the industry is located in big chemical parks, which facilitates product integration and access to supplies. Employer solidarity does not appear to be a huge problem in this sector. Based on their history and self-identity, which differs from metalworking, the union in this sector is relatively quiet compared to metalworking and does not normally exhibit public displays of disagreement with employers. The lack of strikes is partly due to the industrial structure overall which does not make shutting down production easy. Furthermore, opening clauses are fairly common today, but departure from the employer association is not. Bargaining in this sector is more centralized than in metals but less so than in construction. The chemicals sector is also a leader in collective contracts on demography. Currently, chemicals employers in eastern Germany are actively hiring and recruiting for job training, which is atypical for many manufacturing sectors post 2008. Workers in this industry are among the highest paid in all of German manufacturing, even though eastern and western pay rates are not equal. Most chemicals workers are under collective contract.

The construction sector has two employer associations and one union, which structurally distinguishes it from the other sectors. The two employer associations, one representing mostly large firms and one representing mostly smaller firms, have a need to make sure that they are on the same page before bargaining rounds start with the union. So, employer solidarity can sometimes be a challenge. The construction sector has two ways of bargaining, one of which was necessitated after European Integration in 1992. Still, this external pressure did not manifest itself in decentralization but rather a more centralized form of bargaining with the government as a third party. In this sector, a minimum wage and a collectively agreed wage co-exist. This is a first for the entire country of Germany. Also, the presence of a social fund unique to this sector

would not be possible with a regionalized decision making process, rendering regional, and not centralized, bargaining inefficient. The construction industry is the most domestic industry of the three. It also exhibit a worry that the others sectors in this study typically do not, that of illegal labor. Opening clauses are not usually written into contracts in this sector. The construction sector possesses a centralized bargaining structure, not decentralized.

All three sectors remain committed to collective bargaining via their social partners, exhibiting a concerted effort to adapt the way they set wages so that in fact their model overcomes the challenges it faces by remaining flexible. Opening clauses are an example of this flexibility. The social partnership and social dialogue between unions and employers is a valued institution both in German manufacturing and German industrialism overall.

XI. Organization of the Study

The structure of my study is as follows: Chapter one is an introduction to the study. I give an overview of the German model and describe the key features and legal framework of collective bargaining. I then give an example to show how collective bargaining works and what the new developments in bargaining are, specifically the use of opening clauses. Next I situate the study over the status of the German model and reveal how my analysis exposes that the conventional perception may not be accurate.

The next three chapters are dedicated to one industry each. Chapter two is the metalworking sector, chapter three is the chemicals sector and chapter four is the construction sector. Each chapter explains the development of collective bargaining in the relevant sector and the impact of decentralization as change. Each chapter is organized according to the following research plan.

First I give an industrial overview including total number of firms in the industry, competitive structure and bargaining coverage. Next I describe the make-up of the social partnership and describe each actor's role. Then I offer an analysis of collective bargaining by decade up to the end of the 1990s when the erosion literature started to fly off of the shelves. I follow up with a detailed look at bargaining rounds from 2000-2010 to show how decentralized decision making plays a part in modern negotiations and to assess how the behavior of the social partners has changed in the previous fifty years. The chapters end with remarks on the most significant changes that each sector has experienced and how the social partners have come to terms with economic challenges.

The final chapter of my dissertation offers concluding remarks and highlights the differences among the three sectors, which when taken together, still indicate that the German model remains a coordinated market economy. There are different pressures in each sector that give rise to different types and degrees of decentralization, illustrating that not all decentralization is the same or ends in the same place. Based on my research, I conclude that Germany remains a coordinated market economy, despite the decentralized collective bargaining that is taking place. Decentralized collective bargaining is still collective bargaining.

The German Model of industrial relations is not unraveling due to pressures to decentralize wage bargaining. The institutional changes resulting from pressures to decentralize bargaining are largely exaggerated by those researchers who argue that the model is eroding. Even if the economy is not accordingly portioned to show sector variation, taking the entire country into account, today there are around 70,000 collective agreements in place, with 6,000

new agreements being concluded every year. Pay agreements in 2011 cover around 80 percent of all work relationships in Germany.⁵³

⁵³ Bda.de

Table 1 Industry Basics

<u>Chemicals</u>	<u>Metalworking</u>	<u>Construction</u>
<p><u>Basics:</u></p> <ul style="list-style-type: none"> • Ranking: 4th in the world and 1st in Europe • Exports: 109 billion Euros in 2008 • Main force behind Germany's top position in international trade • Includes pharmaceuticals • 500,000 employed <p><u>Leading Firms:</u></p> <ul style="list-style-type: none"> • BASF, largest chemical company in the world • Bayer • Evonik • Merck <p><u>Products:</u></p> <ul style="list-style-type: none"> • Solvents, industrial gasses, inorganic chemicals, plastics, foams, performance products, coatings • aspirin, veterinary drugs, over the counter drugs, prescription drugs, pesticides • polyurethane, Plexiglas, rubber granulate/artificial turf, specialty chemicals 	<p><u>Basics:</u></p> <ul style="list-style-type: none"> • Ranking: 1st as steel producer, consumer, importer and exporter in Europe • Automotive exports: 185 billion Euros in 2008 • Machinery and Equipment exports: 145 billion Euros in 2008 • Metal and Electrical: over 1 trillion Euros a year turnover • 3.6 million employed <p><u>Leading Firms:</u></p> <ul style="list-style-type: none"> • Siemens • Audi • BMW • Thyssen Krupp • Daimler <p><u>Products:</u></p> <ul style="list-style-type: none"> • Luxury cars • laser cutting machines, specialized steel sheets of different thicknesses • Machines that make machines 	<p><u>Basics:</u></p> <ul style="list-style-type: none"> • Ranking: 1st in Europe • Over half of investment in Germany made in this sector • Leading firm produced over 20 billion USD in 2006 • One of Germany's largest private employers • 2.2 million employed <p><u>Leading Firms:</u></p> <ul style="list-style-type: none"> • Hochtief • Max Frueh • Bilfinger Berger <p><u>Products:</u></p> <ul style="list-style-type: none"> • Transplanting Abu Simbel rock temple in Egypt • New Athens International Airport • Specialty bridges and other specialized structural engineering projects, housing, commercial, public construction

Chapter 2:

The Metalworking Industry

The metalworking industry is huge and is the core of all industrial manufacturing.¹ The German metalworking industry is particularly known for its manufacture of luxury cars, machines, and machine tools by highly skilled, high wage labor. The metalworking industry self-generates: metal tools needed to make machines are in turn used to produce vehicles or other machines. As such, the metalworking industry exhibits strong supply chain networks. Internationally regarded for its high quality products², metalworking is the largest German manufacturing sector indeed in terms of both firms and number of employees, with approximately 23,000 firms and 3.6 million employees.

Of the three industries analyzed in this dissertation, metalworking has traditionally received the most attention both in the media and in academia. It is also the one industry, whose social partners have put into motion, the most decentralization in collective bargaining. However, as chapter one has explained, metalworking is a single sector in a very diverse economy, and its bargaining outcomes should not be used to make claims for the whole German Model.

In order to understand the development of collective bargaining today in metalworking, there are a few things to consider. First, metalworking has a particular industrial structure that extends beyond the scope of the well-known automobile

¹ EMO Hannover 2011 The World of Metalworking International Conference.
<http://files.messe.de/cmsdb/GB/004/25170.pdf>

² "Made In Germany" products are known for their particularly high quality

companies. German metalworking is not just cars made by giants like BMW and Mercedes. In fact, the metalworking sector is mostly made up of small to medium enterprises that specialize in high tech machines of all types and sizes. Second, employer association membership costs are high for firms. Membership fees are typically affordable, but the cost of being bound to a collective agreement is high because wages are set quite high in this industry. Member firms are required to pay the collectively agreed wage which is usually higher than a wage set outside of a collective agreement. Third, is the 35 hour work week in western Germany which is unique to the metalworking sector. There is no other industry in Germany with a 35 hour work week. A 35 hour work week in western Germany, but not in eastern Germany, means that the union will fight for the same working hours for the east, until they get it.

In terms of collective bargaining, while other German industries will more or less keep up with the latest settlement in the metals, bargaining rituals between the three largest industries are not similar at all. Today, neither employers nor unions in construction and chemicals replicate the way Gesamtmetall³ and IG Metall⁴ bargain with each other. Each industry has their own distinct way of finding solutions. IG Metall is particularly known for its industrial action, even among the other social partners cross-industry who see IG Metall as a “classic fight” organization, or a union oriented to *klassische Kampf*. A classic fight union is rooted in the mostly conflict oriented approach to employers that IG Metall has kept. This approach can also be called activist, the opposing of which would be accommodationist. A feature of activist unions is the frequent use of strikes.

³ Employer association for metalworking firms

⁴ Union for workers in the metalworking industry

Exploring cross-industry differences in bargaining behavior between the metalworking union and employer association supports a key claim made in this dissertation that the metalworking sector should not be used to typify German industrial relations. Stylistically, compared to chemicals and construction, bargaining in metals is generally characterized by more public conflict between the employers and union, but it does not mean that bargaining is something that the partners want to abandon. Nor should it suggest that collective bargaining does not work. Unlike the other industries in this study, during metalworking bargaining rounds, very public bouts of fighting and conflict are regularly displayed, followed by mutual agreement. Decentralization has then, also adopted this ritual. My research shows there to be no significant change in the post-war bargaining style for metalworking, but rather the change is in the collective bargaining outcomes. This chapter also argues, and what tends to go un-captured about the metalworking industry in conventional studies, is that the social partners are actually quite versatile.

This chapter shows that after a turbulent 1990s in which the collective agreement was starting to lose popularity, inserting flexibility into those agreements was necessary for collective wage setting to survive. While many authors talk about decentralization via opening clauses as some function of increased power to works councils, and a less powerful social partnership, this study demonstrates that the social partners have not only made collective bargaining work for them again, but they have retained bargaining power. What is conventionally seen to be a period of erosion led to the biggest breakthrough in recent years that employers had with the union- the Pforzheim agreement. Pforzheim is a type of decentralization that is unique to the metalworking

sector, and it should not be interpreted as a turn away from the German model or social partnership. This chapter provides evidence largely uncovered in most studies: that Pforzheim is ultimately controlled by the social partners.

The chapter is divided into nine sections. Section one offers an industrial overview of this huge sector. Section two familiarizes the reader with the two social partners and how collective bargaining negotiations look like. Sections three and four start out with collective bargaining in post war Germany up to the end of the 1980s with the purpose of showing that decentralization forces were already at work before the erosion thesis literature started in the 1990s. Section five goes into a bit more detail for the next decade of the 1990s and examines the first metalworking strikes of re-unified Germany and what the effects were. Section six explains why employers and the union want to keep branch level agreements at all. Section seven introduces the 2000s to set the stage for the new century. Section eight analyzes each wage bargaining round since 2000, and re-examines Pforzheim, the newest form of decentralization. Section nine concludes that while metalworking is responsible for the most radical form of decentralization in the three industries studied, decentralization is nothing new to this sector.

I. Industrial Overview

Metalworking is Germany's largest industry with over 23,000 businesses and annual revenue of close to one trillion dollars. The number of employees has remained stable for the last ten years. Of the 3.64 million people working in this sector, about 1.8 or 1.9 million are employed in companies that are members of the employers association, Gesamtmetall. Although Gesamtmetall has just 4,000 companies that are formally part of

the collective agreements, the majority of the metalworking population work in companies that are represented by the employers association, especially larger companies. This makes Gesamtmetall a major player in metalworking.

There is hardly a large industrialized country in which the metalworking industry has such a significant impact on the national economy as in Germany. The German economy benefits from its successful integration in the global economy via this industry. Over 60 percent of all goods produced are sold abroad. Accounting for such success is high productivity, innovation, and very high quality and technology. Employees in this industry are highly skilled, adaptable and motivated. Today, Germany produces 20 percent of the EU-27 Gross Domestic Product (GDP)⁵. The German manufacturing sector, of which metalworking is the lions share, accounts for about 27 percent of total German GDP.

Metalworking generated 634 billion Euros of exports in 2011, up from 561.1 billion Euros in 2010. This is well over half of total metalworking revenues of 997 billion Euros in 2011 up from 959.5 billion Euros in 2010.⁶ Given its size, it must also be mentioned that the metalworking industry is highly vertically and horizontally integrated not only within metals, but in the construction and chemicals industries as well. For example, the tires produces in the chemicals industry are sold to the metalworking.

The focus of production in the metalworking industry is on capital goods such as machines and electrical systems, while a smaller portion is dedicated to consumer goods such as household appliances and entertainment technology. Products range from irons

⁵ <http://www.gtai.de/GTAI/Navigation/EN/Invest/Business-location-germany/Economic-profile/economic-activity.html>

⁶ www.gesamtmetall.de

to cars to die cast goods, to telescopes to high tech laser machines that precisely cut dental crowns to toasters to enormous sheets of metal of different thicknesses. While Germany is undoubtedly known for its luxury automobiles from corporate giants⁷ like BMW, the actual industrial structure in metalworking is overwhelmingly characterized by small and medium sized companies, or *Mittelstandische Firmen*. Small to medium firms are largely considered the “backbone” of the German economy.⁸ Seventy percent of all metalworking companies have no more than 100 employees each and only two percent of all companies have over 1000 employees.

There are twelve distinct branches within this industry.⁹ Table 1 presents all branches in metalworking with the number of firms and employees in each branch as well as totals for eastern and western Germany.

Table 2.1 German Metalworking Firms and Employees, according to branches, 2012

- **Firms with 20 or more employees.**

Branch	# of Firms	# of Employees

⁷ The top ten metals and electrical industry firms according as follows, in order of revenue in millions of Euros: ⁷ First is Daimler, followed by Siemens, BMW, Volkswagen, Robert Bosch, Thyssen Krupp, Audi, Franz Haniel and Cie, Continental and Ford Works. All of these firms are located in former Western Germany, five of them are in southern Germany and the rest are in the industrial part of North Rhine Westfallen with the exception of VW located in Niedersachsen. VW is the only major automobile firm that is not a member of Gesamtmetall.

⁸ Overall, 71.8 percent are employed in firms with under 100 people, 26.4% are employed in firms with less than 1000 and 1.8 percent are employed in firms with over 1000 people. – Gesamtmetall brochure

Metallurgy, Cold-Rolling Mills	192	17,291
Non-ferrous metal processing, Semi-finished goods	330	60,443
Foundry	579	78,497
Metal-processing	6,124	532,304
Machine-making	6,683	962,961
Office machines, Data Processing	151	18,217
Electrical Engineering	3,217	512,404
Fine Mechanics, Optics, Clocks	1,203	155,258
Automotive	1,807	799,967
Ship-building	92	18,500

Railway/Rail Vehicle Engineering	194	38,061
Air and Space Engineering	121	68,135
Other manufactured goods	1,118	123,460
Repair and Installation of Machines and Equipment	1,618	183,895
Total Metalworking (Germany)	23,430	3,569,393
Total Metalworking (eastern Germany)	18,782	3,126,575
Total Metalworking (western Germany)	4,648	442,818

Source: Federal Statistics Office, Germany. Author's own translation. *Ursprungsdaten Statistisches Bundesamt, Fachserie 4, Reihe 4.1.1; Beschaeftigung und Umsatz der Betriebe des Verarbeitenden Gewerbes, 2011, updated April 20, 2012 by Gesamtmetall-Berechnungen.*

The three largest branches in terms of persons employed are machine making with 962,961 people working in 6,683 firms; automobiles with 799,967 people working in 1,807 firms and metal processing with 533,358 people working in 6,168 firms. The smallest branch is ship building with 92 firms employing 18,500 people.¹⁰

Machine making is of utmost importance to the metalworking sector due to its sheer size and number of companies. However, if any sector is studied in isolation, it is usually the automobile sector. In fact, the automobile industry is more often than not, seen to exercise to greatest influence in industrial relations. This could be for one of two reasons. First, the corresponding union to this industry is often considered an “autoworkers” union because its membership is strongest there.¹¹ Second, the public’s perception of how the metalworking industry and even Germany’s economy overall is doing is heavily influenced by the automobile industry.¹² This may be rooted in the heydays of the “spectacular performance” of West German automobile manufactures in the extremely competitive world markets of the 1980s.¹³

According to the Federal Ministry of Economics and Technology, the auto industry is one of the key sectors in the country.¹⁴ In 2010, the German auto industry recorded revenues of more than 317 billion Euros, an increase of 20 percent over the previous year. Today, the industry continues to be a major employer in Germany. There are currently 799,976 people that work in the auto industry.

¹⁰ http://www.gesamtmetall.de/gesamtmetall/meonline.nsf/id/DE_Die_M+E-Branchen

¹¹ Interview with IG Metall

¹² Interview with Gesamtmetall

¹³ Streeck, Wolfgang, “Successful Adjustment to Turbulent Markets: The Automobile Industry”. In: Katzenstein, Peter J. (ed.), *Industry and Politics in West Germany: Toward the Third Republic*. Ithaca and London 1996: Cornell University Press, 113-156; p. 114

¹⁴ <http://www.german-business-portal.info/GBP/Navigation/en/Business-Location/Manufacturing%20Industries/automotive-industry,did=325954.html>

The automotive sector makes what Germany manufacturing is perhaps best known for: luxury cars. BMW, Porsche, Mercedes and Audi are practically household names. These top firms produce more than cars; they can also make busses and other types of automotive vehicles. The firms are also very innovative. According to the National Association of the Automotive Industry, the VDA, Germany registers an average of ten new automotive patents a day. The auto sector spent almost 19.6 billion Euros on research and development in 2010.

Accordingly, the German auto industry does very well in world markets. Ernst and Young placed Germany as the top automotive production location in Europe in terms of innovation, product quality and productivity. Germany manufactures more than one third of the total automotive production in Europe with 4.48 million autos exported in 2010.¹⁵ Unionized workers and employers that belong to an employers association are the inputs making this happen. The only major automaker that is not a member of Gesamtmetall is Volkswagen, or VW for short. VW concludes their own house agreements with the union.

Apart from a re-examination of the automotive sector, the fact is that the majority of firms are clearly in machine and equipment making. They also hold the majority of membership in the employers association.¹⁶ Because machine making is the largest component both in terms of firms and number of workers, and because it receives little attention in industrial relations studies relative to automobiles, this section also develops a feel for what machine making is.

¹⁵ The German Business Portal <http://www.ixpos.de/IXPOS/Navigation/EN/Your-business-in-germany/Business-sectors/automotive.html?view=renderPrint>

¹⁶ Interview with Gesamtmetall

This does not mean that the auto industry is eliminated completely from the study. On the contrary, because the vertical and horizontal integration within metalworking is high; you cannot study one in isolation of the other. For example, firms Varta (battery makers), VDO (electronics and mechatronics), and Bosch are suppliers to car manufacturers. German car makers buy most of their supplies domestically and are subject to the same industrial wage agreements as assemblers.

Let's take a look at the machinery sector. The machinery and equipment sector is the second largest industrial sector in the entire country. Outside of Germany, the machinery and machine tool manufacturing industry is the largest and strongest within Europe.¹⁷ In 2009, nineteen percent of all exported machinery products were made in Germany. This sector holds 28 percent of the world's mechanical engineering patents. Recently, the machinery and tools sector grew by 7.5 percent in 2010.

What does this sector make? Products are sold mostly to other German metalworking companies but also to companies in chemicals and renewable energies. There are so many different industry segments within machine making, but we can name some to get an idea of the range of highly specialized products. Cutting tools, foundry machinery, glass technology, jigs and fixtures, length measuring technology, machine vision, robotics and automation, ventilation technology, woodworking machinery, casting machines, building material machinery and precision tools are just some of the industries that make up the machine making sector, or *Machinenbau*.

¹⁷ Raval, Tushar. "Economic Rebound Boosts German Metalworking." September 2011, Fluids http://www.klinegroup.com/news/articles/LnG_MarketingMatters_Sept2011.pdf

One of the most successful segments within machinery and equipment making is machine tools. Machine tools are the reproductive center of the economy. This means that they reproduce themselves and other capital goods. The level of technological development in this sector affects the efficiency with which capital equipment is produced and thus the competitive position of all industries.¹⁸ Ultimately there is hardly a product that can be made without machine tools. All industrially manufactured goods are directly or indirectly made with machine tools.

The machinery sector however is what some might call “old industry.” Still, the machine making and tool sector is an essential motor for Germany’s economy. In tool making, competition is centered around small to medium sized businesses- about 58 percent of the firms in machine tool making have less than 250 employees.

This section gave a brief description of what metalworking is and what the industrial structure is like, with a focus on autos and machinery. It also showed how the whole metalworking industry is highly integrated. The machinery and tool making sector is metalworking’s silent giant. Next I will give an account of the social partners for this industry including a brief history of each organization, their structures and an insider look on how collective agreements are actually set for Germany’s largest manufacturing sector.

II. Industrial Relations

A. Social Partnership

¹⁸ Katzenstein p.23

There are two social partners in metalworking. The employers association is Gesamtmetall and the union is IG Metall. They are responsible for wage bargaining. Gesamtmetall is a member of the umbrella employers association BDA (Confederation of German Employers), but only Gesamtmetall can conclude collective agreements. IG Metall is a member of union umbrella organization DGB (Confederation of German Trade Unions), but DGB cannot conclude collective agreements either. It is said that both Gesamtmetall and IG Metall have the most influence in their umbrella associations relative to their counterpart organizations in construction and chemicals.

1. Gesamtmetall

Gesamtverband der metallindustriellen Arbeitgeberverbände, or United Confederation of Metall Employers' Association is commonly known as Gesamtmetall. Gesamtmetall represents companies who are in the metalworking and electric industry. It is a non-compulsory organization. The aim is to increase the efficiency and competitiveness of the metalworking industry by optimizing working conditions and labor relations. It is also an employer association that firms can join to represent their interests on a collective, or even individual level.¹⁹ Gesamtmetall is a service provider, speaker, political advisor and organizer for firms that apply the collective bargaining contracts. Gesamtmetall will also provide services for those members that do not wish to be part of collective agreements.

Gesamtmetall speaks for 22 member associations representing 6,300 companies and 2.1 million employees.²⁰ As with other employer associations in Germany,

¹⁹ For example, when a company has to fire somebody, which can be hard to do in Germany.

²⁰ The current head of Gesamtmetall is Martin Kannegiesier.

Gesamtmetall is regionally structured according to states. The heads of the regional associations and the negotiators for the associations are usually from small to medium sized firms, which mirrors the industrial structure. The head of Gesamtmetall himself owns a laundry machine company with just 300 employees.

There are thirteen (more) independent regional employer associations which are affiliated with Gesamtmetall. The regional coverage corresponds essentially to the political borders of the states.²¹ Of all of the regional associations, two are considered the pilot regions, or the regions in which collective bargaining contracts are made first. The two pilot regions are home to the highest concentration of metalworking firms and employees. Those two regions are Baden-Württemberg and Nordrhein-Westfalen. The regional employers associations are Suedwestmetall and Metall NRW, respectively. Suedwestmetall has more than a thousand member firms with around 500,000 employees. Metall NRW represents about 2,300 member companies with a total of 670,000 employees. Metall NRW is the biggest regional association of Gesamtmetall.

In all of these regional associations, there are 3,713 member firms that are bound by the collective agreement totaling 1,690,338 employees. Of the total number of regional associations, there are eight associations that have member firms that are not bound by the collective agreement for a total of 2,725 firms and 334,795 employees.²²

²¹ Listed by name, region, and city, the member organizations are Sudwestmetall - Baden Wuttemberg in Stuttgart; VBM or Verband der Bayerischen Metall und Elektro-Industrie in Munich; Metall NRW, or Verband der Metall und Elektro Industrie and AGV Nord in Nordrhein-Westfalen; Nordmetall, or Verband der Metall und Elektro Industrie in Hamburg; Hessenmetall in Frankfurt; VMW in Berlin-Brandenburg, Niedersachsenmetall in Hannover; Pfalzmetall in Neustadt; ME Saar in Saarbruecken; VEM Rheinland-Rheinessen in Koblenz; VSME for Sachsen in Dresden; VME in Thueringen- Erfurt; and VMW Sachsen-Anhalt in Magdeburg.

²² Zahlen 2011- Die Metall-und Elektro- Industrie in der Bundesrepublik Deutschland. Booklet Publication from Gesamtmetall I picked up there.

While employer density is not very high, the actual scope of collective contracts is far reaching as we will see because firms outside of the bargaining agreements will often use the collective contracts as a guide for in-house contracts.

There are five main areas of service that Gesamtmetall provides to members. The first area is industrial labor relations. Gesamtmetall will analyze the economic and business climate to devise strategies for collective bargaining. They coordinate with trade unions to negotiate collective contracts and will provide support for their member companies in case of a strike by the union.

The second area of business is social policy. The goal here is to sustain financed social security systems while keeping companies administrations manageable. An example would be advising member associations on old age pensions and health policy. For example, the in-house developed *Metallrente* pension fund along with a collective agreement enables employees to pay part of their salary into a pension fund. The next three areas of business are education and training, public relations and international affairs. This study is on changes in bargaining between Gesamtmetall and IG Metall as part of the overall German Model of industrial relations so attention is concentrated in the first area of service .

Today, federal level representation of Gesamtmetall is in Berlin. Housed in a villa near Postdamer Platz, it was previously the home of wealthy banker Friedrich Meyer in the eighteenth century. When Germany was divided in two, Gesamtmetall was founded in Cologne, the former capital of West Germany. After German re-unification, the employers association moved to its present location. The move had some significance

because Berlin is the original city of the German metal industrialists association founded in 1890, the predecessor to Gesamtmetall. In addition, the former Villa had a famous salon for intellectuals and industrialists to meet and exchange ideas. The villa, still just a pile of rubble in 2000, took three years to excavate and finish reconstruction before Gesamtmetall could move in. Today, when you walk in the villa, the first thing you see is shiny metal armchair meant to symbolize an open inviting house, social dialogue and recollections on the former “salon” talks tradition.

2. IG Metall

The predecessor to IG Metall is the Deutscher Metallarbeiter Verband, or the DMV. Before the DMV, there were two metalworkers union that were disbanded by Anti-Socialist laws, but the DMV was a united union that formed six months after the Laws expired in June 1891. The original founding of the DMV was in Frankfurt and its members decided to make the new union for industry workers too, not just craft workers.²³ As a result of this decision the DMV was the first industrial labor union in Germany. It became the leading advocate for industrial unionism within the then social democratic union movement until it was dissolved by the Nazis in 1933.

The union’s strongholds were in the machinery industries of Baden, Wurttemberg, northern Bavaria, Saxony, Hessen, Hannover and Berlin, in addition to shipbuilding centers of Hamburg, Bremen and Kiel. The union, however was having trouble garnering support from armaments and heavy machinery and large German companies like Krupp, Thyssen, and Stumm that were very anti-union, to say the least.

²³ Today’s HQ of IG Metall is also in Frankfurt.

The early history of the DMV shows repeated union strikes and subsequent defeats. The employers were much better organized.²⁴ The defeats along with the failure to organize heavy industry led to the emergence of a radical opposition within the union. The internal opposition attacked the leadership as too accommodationist and timid. A temporary split occurred with the DMV in 1917, and a new leader, Robert Dissman began to attract armaments industry and defined the basic ideological position that would eventually shape the attitude of IG Metall.²⁵ He also urged the union to become more revolutionary and less fearful of giant employers.

Peaking at close to 1.5 million members in the mid-1920, the DMV faced very strong and politically conservative employers that cut wages repeatedly and practiced lockouts that lasted as long as a month. This led the union to develop a very conspicuous orientation to the left. Thus, the DMV bequeathed the legacy of ideological radicalism to IG Metall.²⁶

What is now known as IG Metall was founded after the second world war. The first decade was one of re-organization and re-defining their role in society. In 1952, all unions in Germany, but especially IG Metall took a blow to their power when the Works Constitution Law came into effect, which barred the union from an official role on the shop floor. The result was drastic losses in membership during the 1950s and a need to re-strengthen and re-organize to fit the new rules.

²⁴ Markovits, 1986

²⁵ Markovits. Dissmann also supported a role for works councils but also believed in the limits of socialization of industry supplemented by co-determination.

²⁶ Markovits, p. 183

Still headquartered in Frankfurt, *Industriegewerkschaft Metall* (IG Metall) is the largest union the world. With some 2.6 million members, IG Metall is both a German union and a role-model union to the rest of the metalworking unions in Europe. There are eight (7) regional districts (*Bezirke*) in IG Metall. The districts are Bezirk Berlin-Brandenburg-Sachsen in Berlin, which was once the head of the German metalworkers; Bezirk Kueste in Hamburg, Bezirk Nordrhein-Westfalen in Duesseldorf, Bezirk Niedersachsen and Bezirk Sachsen-Anhalt in Hannover, Bezirk Frankfurt, Bezirk Baden-Wurtemberg in Stuttgart, and Bezirk Bayern in Munich. Each district is responsible for one or more bargaining areas.

There are a total of 19 different bargaining areas, or *Tarifgebiete*. So, for example, IG Metall Berlin- Brandenburg will bargain for wages that apply to all of Berlin and the whole Land of Brandenburg and Saxony which includes towns Dresden, Leipzig and Chemnitz. IG Metall is organized on a unitary basis without specific divisions for sectors, with the exception of steel. Members of IG Metall living in these areas can be from any of the vast trades and professions in the metalworking and electrical industry. Trades and professions include motor vehicles builder, heating and sanitation builders, die casters and metal melters (foundry), watchmakers and electroplaters. Iron and steel have a separate sub-branch of IG Metall. This sub sector will conclude separate collective agreements with Gesamtmetall for their workers.

Strike pay is one of the classic benefits that unions provide. Strike pay has varied over time and strike benefits are paid to union members in official strikes or to those locked out by employers. IG Metall pays about twelve times the individual monthly

contribution per week, but IG Metall does not provide benefits in the event of warning strikes. A warning strike is a minor strike that has not been enlarged to national level.

During a warning strike in metalworking, union members will leave their machines usually for an hour or two. Workers will turn off their machines, walk away from the work building to make their point, have the opportunity to hold signs or red flags, then return to work after the strike is finished. Warning strikes can be very effective. Gesamtmetall as other employer associations also pay monetary support and maintain funds to compensate member companies for costs that come from strike activity and lock outs.

IG Metall once enjoyed the role of a “pacesetter.” A pacesetter in collective bargaining is the sector of the economy that other unions will look at to formulate their bargaining demands and gauge employer responses. Sectoral collective bargaining in metalworking set benchmarks for years for collective agreed standards of work.²⁷ But, this is not necessarily true anymore. IG Metall is not necessarily a model for other unions in Germany, but it does continue to be a role model for other European labor unions. IG Metall also considers itself as having the greatest acceptance among the other unions as a leader in society.²⁸

Of the three unions in this study, IG Metall holds on to a tradition of a fight culture, while chemicals union IG BCE and construction union IG Bau have largely let go of this classic fight approach to finding solutions. Assuming there are heated

²⁷ Bispinck, Reinhard and Dribbusch, Heiner. *Collective Bargaining, decentralization and crisis management in the German Metalworking industries since 1990*. WSI Discussionpaper No.177, October 2011, WSI Germany, p. 3

²⁸ Interview with IG Metall

disagreements at all bargaining tables, the negotiation disputes in metalworking are highly publicized in the media whereas the chemicals union for example, since the late 1970s, prefers to keep conflict away from the public's eye and away from their workforce.²⁹

3. Works Councils: Replacing the Union?

Since the 1980s, more and more areas of regulation and decision making have been transferred from branch level agreements to firm level using opening clauses.³⁰ Wages have been typically set at branch level since the German dual system was set up. Works councils are usually not allowed to negotiate topics related to pay at all, nor topics that are regulated in collective bargaining agreements. But, this has changed since the 1980s and wage bargaining has gained flexibility through opening clauses widening the role of the works councils.

Works councils are employee elected representatives that form a council at the level of the firm.³¹ The counterpart of the works council is the firm's board of management. When collective bargaining decentralizes to the firm level in Germany, this means that the works council at firm level may have to implement opening clauses reached at regional level by the two social partners. For example, as was the case in the 2010 bargaining round, if a firm wishes to use an opening clause to implement a pay

²⁹ Interview with IG BCE interview, Markovits, Andrei description of IG Metall as activist versus accommodationist, Interview with BAVC

³⁰ Ellguth, Peter, Gerner, Hans-Dieter, and Stegmaier, Jens. "Wage bargaining in Germany: The role of works councils and opening clauses." IAB Discussion paper 5/2012.

³¹ In the system of co-determination peculiar to Germany, works councils and managements can make co-decisions that affect the firms and employees. For example, works councils have legal rights to information, consultation and co-decision on a wide range of subjects that are social matters such as the introduction of new payments methods and regulation of overtimes or holiday arrangements

increase earlier or even later than the collective agreed date, works council and firm management must agree. When such a decision is left to firm level, it is considered decentralized.

In Western Germany in 2002, 50 percent of employees worked in a firm with a works council, 61 percent of employees were covered by an industry-wide collective agreement and just 7 percent of employees were covered by a firm level agreement. It should be noted however that according to the IAB, these figures underestimate the influence of collective bargaining because about 40 percent of firms without a collective agreement still orientate themselves toward the regulations and conditions laid out in the branch level agreements.³²

Delegating decision making power to works councils at firm level has initiated a new wave of literature and speculation about the increasing power of works councils themselves.³³ The question that has developed from the delegation of power to works councils is if their power is increasing as a result. In other words, are unions losing power to the works councils because the councils are now making decisions that were once being made by the unions themselves? Another question that has arisen is if works councils are linked to higher wages for employees. Numerous authors have tackled the works council factor and German policy institutes publish yearly data on the attitudes of

³² IAB, September 2003. Table- Tarifbindung und Betriebsrat 2002.

http://doku.iab.de/betriebspanel/ergebnisse/2003_09_01_05_betriebsrat_und_tarifbindung.pdf

³³ Please see ibid Carola M. Frege, 2003, Addison, John T., Teixeira, Paulino, and Zwick, Thomas Ludwig. "German Works Councils and the Anatomy of Wages" *Industrial and labor Relations Review* 2012; Huebler, Olaf and Jirjahn, Uwe. "Works Councils and Collective Bargaining in Germany: The Impact on Productivity and Wages" *Scottish Journal of Political Economy*, 50:4, pp.471-491. September 2003.

works councils.³⁴ Yet, according to the German Institute for Labor Market and Employment Research (IAB), only 10% of establishments in Germany have works councils at all.

IG Metall acknowledges that works councils have increased in power but they are not very worried about this transfer of power nor do union officials feel it is a threat. It is not a threat to them simply because the members of metalworking works councils tend to be IG Metall members anyway.³⁵ As such, seeing that works councils have influence on what type of policies are made at firm level; it is advantageous for IG Metall rather than a weakening of their position.³⁶

The question of the increasingly powerful works councils as a result of decentralization is one that is often raised, and its impact on bargaining can be fairly easily understood: Decentralization, while a regular part of collective bargaining in metalworking today, does not mean that the social partners are no longer involved in the decision making process, nor should it suggest that an increase in works council power signifies a decrease in union power.

4. How do negotiations actually work in metals?

Theoretically each Gesamtmetall regional association within the bargaining system could formulate their own agreement with IG Metall but it is not done so in practice. There are two regional associations: Baden-Württemberg and Nord Rhein-

³⁴ The Cologne Institute for Economic Research publishes a yearly or every two years study on works council elections at over 1,000 companies across Germany.

³⁵ Interview with IG Metall

³⁶ Nevertheless, some union officials feel that works councils as a result of their increasing power, are more susceptible to black mail.

Westfallen which negotiate their contracts first, in a pilot agreement. Then the other regional organizations will use the pilot agreement as a blueprint to write out their own regional collective contracts.

For instance, on May 7, 2007, IG Metall and Südwestmetall reached a new collective agreement covering pay increases for metalworkers for the years 2007–2008. The agreement was applied to the remained bargaining regions with only minor adjustments. This is how it is done each bargaining round, with IG Metall and either one or both of the key regional employers associations of Metall NRW or Suedwestmetall signing agreements first. Aptly, they are also called pilot regions. What does it take to get to this point?

Negotiations are held at a big hotel and a deal is struck after several rounds. As rounds carry on, eventually, the amount of people will thin out and a deal is finally struck between less than a handful of representatives including the union. The first round of negotiations consists of a delegation including economists from both sides that are talking and facing each other. The more serious it gets, the smaller the delegation gets; from eight people to six people to finally sometimes two or three on each side.

There are meeting areas in the hotel where other people involved in the rounds are waiting: additional economists, and the labor lawyers plus other representatives. If anyone has a new idea, the economists have to calculate the costs, and the lawyers are there to type out what a new agreement would look like. At the negotiations, there is always a representative from Mercedes. All heads, or chairmen, of each regional association are waiting in the background.

In between talks there is a break where each side (union and employers) discusses what was said during the negotiations with their own people in the meeting areas. This can take a long time, but it is vital because regional heads have to agree on what will be proposed next so that finally an agreement can be made. The in-between talks ensure that a final agreement can be adopted because the others have discussed it thoroughly with all the people that have to agree to it later on. Usually, talks start sometime in the evening or late afternoon and last through the next morning.

Twelve regions negotiate. Even though there are actually more regional employer associations in number, sometimes those regions negotiate together so total negotiations from the beginning is twelve. The first negotiation round is pure ritual. The local, or regional union representatives come in, explain their demands and then that round is over. The second round is when the employers explain why not all of those demands are feasible. Then, the third round is when the union answers back and sometimes the employers will then say what they offer, formalized. Rounds happen times 12, for each of the 12 regions.

Negotiations never start at national level, but Gesamtmetall makes sure that the heads of the regional associations are always informed of what's going on elsewhere, through a central committee. This is called the *Tarifpolitischer Ausschuss*, or Collective bargaining committee, which is made up of the president and vice-president of Gesamtmetall plus the chairmen of the regional associations. In this way, bargaining on the employers' side is much more centralized than on the union side.³⁷

³⁷ Markovits, Andrei, 1986.

There are about ten people on the Gesamtmetall central committee and out of these ten, four committee members are always present at all rounds. It is not always the same four, but at least four of them are always present, no matter where they are negotiating, whether it's in Frankfurt or in Munich or in Hamburg. Traditionally, as pointed out before there is a leading region that will serve as pattern setter. The leading regions are where the industry is most highly concentrated, and where the most metalworking employees work, historically and today. As explained, what happens is that negotiations start out in every region, but after the third bargaining round, when it really starts to get serious, negotiations fall to two or three regions only. These are the aforementioned regions of Nordrhein-Westfalen and Baden-Württemberg.

There is a slight problem here that may be obvious. There are regions that do not feel fully represented through this way of conducting negotiations, especially as it comes closer to a final solution. Employers agree that is a valid point, but it apparently affects the union side more. IG Metall argues that they need the opportunity to rally their members and oppose agreements, even literally wave red flags in front of the hotel where the negotiations are taking place. Because negotiations are funneled to the pilot regions over time, the option to hold demonstrations is geographically limited. But that is how negotiations are, they become funneled, so union leaders in Baden-Württemberg and Nordrhein-Westfalen have a heavy responsibility to make sure all union regions across Germany feel that outcomes are fair. If things go well, the other regions agree to copy what was signed in the deciding regions. If not, warning strikes are a common result.

The social partners end up with what is called a *Piloteabschluss* (pilot agreement). The leading regional employer associations will not normally agree to the pilot agreement

if the other regional associations aren't able to do it as well. This is why communication between regions and via the Central committee is important during the rounds. After some formal coordination, a couple of days later, the regional heads of all regions associations meet and sign the agreements on the dotted line.

This section described the organizations responsible for collective bargaining with a look at how rounds are actually carried out. The question of the increasing power of works council was also briefly re-examined. The next two sections describe collective bargaining starting with a glimpse of the post war years, the golden years of the 70s and 80s, and up to the end of 1990s. If the 1980s brought in globalization, the 1990s brought in drastic change that gave Germany a two-pronged economy. Even so, the privatization and re-unification of Germany, in hindsight, did not destroy collective wage bargaining, nor the social partners associated with it. Reviewing and re-assessing historical trends and data allows us to capture dynamics and correctly place the decentralization developments of the most recent decade of the 2000s.

III. 1950s-1960s Bargaining Gets On Its Feet in Post-War Germany

The 1950s was a turbulent decade for IG Metall. A disastrous defeat in Bavaria made the union realize that what they actually needed was a coherent bargaining strategy. In an odd twist, the head of the collective bargaining unit for the union proposed something called “plant level collective bargaining policy,” or *betriebsnahe Tarifpolitik* through which IG Metall could regain its organizational strength. The new hopeful strategy was believed to represent a much needed decentralization of wage policy.³⁸

³⁸ Markovits, *ibid.*

Well, the effort failed. High ranking union leaders saw that the plant level bargaining policy would erode their power and the centralized bureaucracy at IG Metall effectively sabotaged the progressive approach. This shows however, that already in the 1950s, efforts were being made to decentralize bargaining within institutional confines, surprisingly, at the internal request of the union. Relative union weakness due to lack of adaptation plus organization power battles would see that the next several years would then usher in a period of “conditional cooperation.”³⁹ IG Metall would struggle to maximize gains without challenging the legitimacy of the system itself.

Throughout the 1960s, IG Metall leadership faced criticism from rank and file for not having pressed hard enough to defend its members, above all at automobile plants. But by the end of the decade, the economy was booming and tactical improvements were made to strikes. For example, strike after strike after strike involving tens of thousands of workers grew more efficient through better forms of communication and the union steadily improved its bargaining position. It took several decades, but by the 1980s, IG Metall secured a new and effective approach to bargaining that worked for them. It entailed a new version of maneuverability. It sounds simple, but repeated and large scale demonstration helped cement solidarity among members and a real sense of unity could be felt.

Looking back, we should not confuse struggle with weakness. In fact, labor relations in the German auto industry in the 1970 and 1980s became a model case for successful industrial performance, of which no part was trade union weakness.⁴⁰ But also

³⁹ Markovits, Andrei, *ibid.*

⁴⁰ Streeck, *Successful Adjustment to Turbulent Markets: The Automobile Industry Chapter 5 in...*

during the 1980s, critical structural changes were occurring for employers, namely that competition was becoming more and more global. Overall, the style of industrial relations for this period and the ones to come has been described as “cooperative conflict resolution”.^{41 42}

IV. 1970s-1980s Enter Globalization and the Opening Clause

Decentralization of bargaining already took place in the 1970s and 1980s. Often overlooked, changes in collective bargaining were initiated, and mutually accepted by social partners well before the 1990s. With respect to decentralization, in the 70s, the first notable agreement that included an opening clause of qualitative bargaining was reached in 1973.⁴³ In the metalworking industry in Nord Württemberg/Nord Baden, employers were obligated to negotiate a *Betriebsvereinbarung*, or company agreement on thirty separate issues, nine of which were on the “humanization of working life.” The works council, with its responsibility to implement collective agreements became the most suitable institution for implementing qualitative changes. Opening clauses offered a compromise that was acceptable to both unions and employers while employers achieved plant level flexibility within the collective framework.

More than 80 percent of elected works councils were trade unionists which means that works councils had become the center of trade union organization at the workplace,

⁴¹ (Jacobs, Orwell, Patterson)

⁴² In sum, from the 1960s-1990s there was a large scale use of lockouts by employers. On the other side, the union tradition sees industrial action to be an exception, but necessary means to enforce demands or defend achievements. This policy of conflict is viewed as a supplement rather than a contradiction of day to day policy. It has been called a system of conflict partnership. (Mueller –Jenstch)

⁴³ French, Steve. “The Impact of Unification on German Industrial Relations”. *German Politics*, vol. 98, no.2 (August 2000), pp.195-216; p.202-203

in the auto industry more than anywhere else.⁴⁴ The possibility for industrial agreements to delegate specific subjects to works councils and employers for regulation by works agreement, or decentralization increased during the 1980s. It increased because industrial relations became more complex. For instance, automotive firms needed to undertake large scale training and re-training, long term investment perspectives for both the firms and employers and rapid absorption of technological change.⁴⁵ All of these strategies were a response to the changing competitive environment that globalization brought in, a changing environment that the German automotive industry adapted well to. All of these strategies were better worked out at firm level.

In the 1984 bargaining round, IG Metall secured a 35 hour work week for western German metalworkers through an opening clause that allowed for a step by step reduction in the weekly working hours starting at 38.5. The collective agreement allowed company specific solutions for the distribution of working time.⁴⁶ Metalworking employers thus succeeded in instituting far reaching flexibility on working time arrangements at company level in exchange for the first step in what became a progressive lowering of the average working week.⁴⁷ This was also accomplished via a *Betriebsvereinbarung*, or works agreement. This flexibility would push the spread of opening clauses in sectoral agreements. At the time, the result was a significant decentralization of the industrial relations system⁴⁸.

⁴⁴ Streeck, W. Successful Adjustment to Turbulent Markets..., p. 128.

⁴⁵ Streeck, W. p. 130-133

⁴⁶ Hassel Anke. "The Erosion of the German System of Industrial Relations". P. 497

⁴⁷ Bispinck, Reinhard and Schulten, Thorsten. "Sector-level bargaining and possibilities for deviations at company level: Germany". *European Foundation for the Improvement of Living and Working Conditions*, 2011.

⁴⁸ Ibid, P.128

Globalization changed the competitive landscape for Germany's economy. Globalization meant one thing for metalworking firms, and it had to be done fast: adapt to the new surroundings. Japanese automakers were considered to have a superior production system with high quality goods of unmatched price. Also, newly developing countries in Eastern Asia could boast a huge supply of cheap labor.⁴⁹ Increased international competition was especially critical to German industry because Germany was already home to very high wages and other high labor costs, such as holiday money and social payments.

Until now, German firms could sell products that were very expensive even if labor was very expensive. Goods sold because industrial quality was more often than not, unparalleled. Basically throughout the 1980s, the German economy powered by exports and the metalworking industry, soared above other industrialized nations and became known as the "economic motor of Europe." West Germany actually increased production of automobiles from 32 percent in 1973 to 38 percent in 198x. Credited with this performance is the product strategy of specializing in a secure niche in the world market for expensive high performance cars. Thus, the German market remained largely unaffected and remained unchallenged by the Japanese throughout the 1980s.⁵⁰

Good times for firms translated into substantial bargaining gains for the union as autoworkers in corporate giants BMW, Daimler and Porsche saw their pay go up and up. But, the decline of working hours in the work week⁵¹ and rising real wages caused

⁴⁹ Streeck, W. p.114 (Success...)

⁵⁰ Streeck, *ibid.*

⁵¹ In 1984 after a huge strike, IG Metall secured the 35 hour work-week. See Thelen 1991 for detailed account. The 35 hours a week does not include a lunch break.

concern that mid and small sized firms would exit their employer association. The bulk of companies that make up the membership of the employer association are precisely these small to medium firms, so internal pressure mounted in Gesamtmetall to hold back on wage increases. It also became increasingly difficult to please a heterogeneous membership. A widening gap between small and large firms needs became even wider because large firms wanted political representation and small firms wanted legal services most.⁵²

Decentralization in the 1970s and 1980s started to increase collective bargaining flexibility. For early observers of decentralization in the metalworking industry like Wolfgang Streeck, the capacity of the industrial relations system to evolve gradually in response to a changing environment accounted for its successful performance. However, since then, flexibility of bargaining has often been renamed and understood as an erosion or unraveling of an industrial relations entire system. It's a catch-all argument, but it is a misrepresentation of the adaptation that the social partners in metalworking are obviously capable of. A social partnership is just that. In this case, there are two parties that are committed to each other, in cooperation or in conflict. Decentralization is a reality and collective bargaining is not exclusively suitable to fair weather. Nowhere in German manufacturing does this show as well as it does in metals.

V. 1990s Collective bargaining-One size fits all?

The 1990s prompted a new discourse on the German model and the 1990s decentralization is a major reason why scholars started re-examining the pillars of

⁵² Silvia, Stephen. "German re-unification and Emerging Divisions within German Employers' Associations..." p. 197

German political economy. Glaring deviations like increased use of opening clauses and associational flight were too much to ignore. The “increased use of opening clauses” or “growing numbers of opening clauses” is a descriptive term for collective bargaining in the 1990s, but it lacks numerical specificity.

My research shows that most data that provides numerical specifics over time on opening clauses is for Germany as a whole, rather than according to sector. This is provided for in the first chapter. If opening clause data is sector specific for this decade, then it usually describes the varied use of opening clauses like working time corridors or wages for general manufacturing or other sectors, but not for just metalworking. If data is specific for metalworking, then it is usually reserved for eastern Germany and the creation of the hardship clause which allowed a company to diverge from collectively agreed standards. It is from this set of data plus the overall decline in collective bargaining coverage coupled with the increase of firm level agreements for Germany as a whole that the 1990s erosion literature, more than likely got a lot of its push.

Relevant tables are presented below that have been used in conjunction with the erosion argument. Table 3 shows the increasing number of company agreements. Table 4 shows a decrease in industry-wide agreements, or collective bargaining agreements.

Table 2.2 Number of companies with company agreements

Year	Western Germany	Eastern Germany	Total
1990	2,100	450	2,550
1991	2,300	850	3,150
1992	2,422	1,178	3,600
1993	2,562	1,404	3,966
1994	2,689	1,445	4,134
1995	2,924	1,588	4,512
1996	3,081	1,652	4,733
1997	3,293	1,685	4,978
1998	3,606	1,765	5,371

Source: Federal Ministry of Labour and Social Affairs, Schnabel

Table 2.3: Employees covered by an industry-wide agreement 1995-2000 (%)

.	West Germany	East Germany
1995	72.2	N/A
1996	69.2	56.3
1998	67.8	50.5
2000	62.8	45.5

Source: IAB Establishment Panel.

While sector-specific figures for opening clauses are hard to find, association density in metalworking is not. For example, in a re-unified Germany, membership density in the employers' association decreased from 60 percent in 1991 to 36 percent in

1994 - though still covering between 55% and 65% of the employees.⁵³ Between 1993 and 1998 for a re-unified Germany, membership density in Gesamtmetall decreased from 42.8 percent to 31.8 percent. But in terms of employees, density in the same years, density only decreased by one percentage point, from 63.1 to 62.1 percent.⁵⁴ Those two sets of numbers mean that firms dropped out of Gesamtmetall, mostly due to bankruptcy or mergers, but the number of employees working in firms that were members of Gesamtmetall stayed pretty much the same. This implies that collective bargaining coverage also roughly remained the same. Table 2 shows membership density of Gesamtmetall for 1993 and 1998.

Nevertheless, the fall of the Berlin Wall and the re-unification of Germany in 1990 brought panic to the extent that analyses with titles such as “The Erosion of the German System of Industrial Relations” and “The Crumbling Pillars of Social Partnership” fueled attention to a system that was purportedly coming undone

Table 2.4 Membership Density (%) Gesamtmetall

	Company		Employee	
	N	Density	In 1,000	Density
West	7,752	44.0	2,459	63.3
East	1,111	35.7	204	60.0
1998	6,810	31.8	2,167	62.2
West	6,307	34.1	2,079	64.8
East	503	17.1	88	32.2

Sources: Gesamtmetall, Statistisches Bundesamt, own calculations Source: Streeck and Hassel p. 111

⁵³ "Ostdeutsche Tariflandschaften", Ingrid Artus and Rudi Schmidt, in *Die Mitbestimmung* No. 11, p. 34-36 1996.

⁵⁴ See Table 2 from Streeck and Hassel: *The Crumbling...*

A full range of socio-economic effects of German re-unification are outside the scope of this study⁵⁵, but re-unification, while bringing severe economic and social challenges for Germany, did not cause erosion of industrial relations. An uncertain amount of “wildcat cooperation” which means that a firm will simply not follow the collective agreement, plus erosion of central bargaining arrangements were attributed to eastern German industrial behavior, but the fact is that metalworking remains a largely West German industry, and if anything, it is the West German business that drive the trends in bargaining much more than their eastern counterparts.

Further, German unification did not cause association flight.⁵⁶ As we saw in the 1980s, Gesamtmetall was already facing threats to its membership from small to medium sized firms and high costs of association, namely the collective wage agreement. To be clear, it was not the decade of 1990s that brought pressure to Germany’s industrial relations order. For Gesamtmetall, troubles began in the previous decade which was well before re-unification.⁵⁷ Underlying tensions such as high costs of associational membership, generational shifts in management and the continued gap in needs between large and small firms helped precipitate firm associational flight in the 1980s.

Still, there are certain elements to the eastern and western divide in a re-unified Germany in metalworking that are critical to understanding the reality of German industrial relations and bargaining today. First, since 1991, employment in the Eastern German metalworking industry never reached above a million, with the average number

⁵⁵ See authors MA thesis on the privatization of the GDR, plus others such as the seminal works of Profs Hans and Gerlinde Sinn: “Jumpstart Economy”.

⁵⁶ Silvia Stephen J. German Unification and Emerging Divisions....1997

⁵⁷ Silvia, p. 203

of workers being closer to 300,000. This is a significant difference in employment, but does make sense when you consider that there are considerably less firms in eastern Germany in the first place.⁵⁸ If there are any, in eastern Germany, the highest number of employees are found in the manufacture of fabricated metals products, and equipment manufacture of machinery and equipment, and the manufacture of motor vehicles, trailers and semitrailers.⁵⁹ The privatization of eastern Germany resulted in a significant loss of firms and jobs.

Second, the West German thirty five hour work week is something that the union will fight for in eastern Germany until it gets it, both in metalworking and the steel industry. That metalworking wages are equal today in eastern and western Germany, is not enough for IG Metall, and considering the promises of politicians after the Berlin wall came down,⁶⁰ this is not only understandable, it is also not a surprise.

Third, re-unification brought about a new institution to eastern Germans whose wages had previously been in the hands of the state. Teaching eastern Germans to use the new institution and understand its advantages and disadvantages takes time. This goes for both employers and union members. Employer association membership in eastern Germany is really small compared to western Germany because companies cannot afford the costs associated with the collective agreement and membership. In 1993, for every eastern German metalworking firm that was a member of Gesamtmetall, there were seven

⁵⁸See table two. An exception however would be the new Porsche plant in Leipzig and the VW plant in Saxony.

⁵⁹ Federal Employment agency as of 31 Dec 2010, Bundesagentur für Arbeit.

⁶⁰ Please refer to Kohl "promising landscapes" comment.

member firms in western Germany.⁶¹ Finally, Western German industry was so profitable that it helped finance the massive costs of the re-unification transition period: over 1.5 trillion Euros has been pumped into Eastern Germany since 1991. But that does not mean that an equally profitable industry was set up, or even could be set up quickly in eastern Germany.

A. 1993-1994 Bargaining Rounds and the 1995 Bavarian strike

During the first years of re-unification, the union established a presence in eastern Germany which subsequently raised membership from 2.6 million to 3.6 million. The first collective agreement signed two years earlier between the social partners provided for a phasing in of nominal wage parity between eastern and western metalworkers over a three-year period. The 1992 pay raise was paid on schedule but many employers, especially the small to medium companies worried that the continuation of the wage parity would bankrupt them.⁶² For Gesamtmetall, this meant more dropping membership.⁶³

The collective contract called for a 26 percent pay hike in 1993. But by April 1, employers announced that instead of a 26 percent pay raise, the pay raise would be 9 percent. IG Metall denounced this as an illegal move. Employers said that the union was out of touch with reality, namely the economic situation of the quickly deteriorating east. At the time, eastern Germany was in a massive economic slump. It was with these two opposing views that the fundamental conflict began, leading to a strike.

⁶¹ Author's own calculation using table from *Verbandsmeldungen*, by year 1970-2010. Gesamtmetall brochure figures for member firms and employees at member firms, 2011.

⁶² Lowell, Turner

⁶³ Silvia p. 193

On the first two days of April 1992 and between April 14-15, warning strikes were held and by May 3, a national strike began in Saxony with 7,000 workers at 20 workplaces.⁶⁴ By May 4, Mecklenburg-Vorpommern added 12,500 striking workers. By the second week of the strike, 30,000 metalworkers joined the strike from 75 additional companies. The union paid strikers about 150 dollars a week in strike benefits and employees showed no sign of returning to work, as employers had expected. By the end of the second week, strike action began in the remaining regions of eastern Germany. On May 12, 1993, 400,000 workers and their supporters including over 50,000 western metalworkers.⁶⁵ Eventually, employers issued a statement giving in that the contract cancellation was out of the ordinary and was not an appropriate solution to bargaining problems. The result was a newly created form of decentralization: the hardship clause.

In 1993, IG Metall and employers association in the East agreed to something new called a “hardship clause” .⁶⁶ The hardship clauses allowed companies to apply for a deviation from the branch level agreements and its corresponding high wage rates on two conditions. The company had to be near bankruptcy and they also had to have a strategy for reviving their economic situation. Both the union and the employers association have to agree on validating the case of hardship, and in that case, they themselves must negotiate a firm-specific agreement. Between the years of 1993-1996, 98 out of 181 applications for hardship clauses were accepted in the eastern metalworking industry. Of those 98 firms with an accepted hardship, only about half could improve sales, and just a

⁶⁴ Turner, Lowell. *Fighting for Partnership, Labor and Politics in a Unified Germany*, 1998. Cornell University press.

⁶⁵ Turner, *ibid.*

⁶⁶ Schnabel, Claus 1999. *Collective bargaining under Stress*.

few improved their overall financial situation.⁶⁷ Still, not all firms who operated with a hardship clause could be saved. If the clause did not work, then it was cancelled.

It is important to note however the difference between a hardship clause and an opening clause. They are not the same and pinpointing the difference clarifies where power is being re-assigned to, or where it remains. In the deal that ended the strike, Gesamtmetall did not settle for an opening clause, but rather a hardship clause. At first glance, yes, both permit downward wage adjustment. But, in an opening clause, the power to negotiate lower wage levels is in the hands of firms and the works councils. By contrast, in a hardship clause, the power of approval is in the hands of a union-employer commission, which gives the union the power to veto any attempt by an employer to defer from a settlement.⁶⁸ While employers saw hardship clauses as an achievement, the union was determined to use the new instrument selectively because it meant that the wages they had collectively agreed to would be pushed lower for their workers.

By 1993, according to the OECD, Germany's share of world exports had fallen since 1987 more than any of the group of 7 leading industrial nations. Germany's unit labor costs were average of 23 percent higher than a weighted average of other industrial countries. (Financial Times- see Lowell p100). With their competitive edge slipping right out from under them, the metalworking employers made their move. Four months after Gesamtmetall had announced that cancellation of contracts should not become a precedent for industrial relations behavior, they did it again. At the end of September 1993, once

⁶⁷ Tarifliche Lohnpolitik unter Nutzung der Härtefallregelung. Ergebnisse einer Untersuchung zur Praxis in der ostdeutschen Metall- und Elektroindustrie", Rudolf Hickel and Wilfried Kurtzke, in WSI-Mitteilungen No.2, p. 98-111 (1997). Study by University of Bremen.

⁶⁸ Turner p.18

again Gesamtmetall announced the cancellation of contracts covering pay and vacation bonuses. They also announced that pay would be negotiated downward. This time however, the cancellation of contracts was for West Germany, and it was the first time ever for them. Employers took the offensive in collective bargaining. Germany was facing a threat of disinvestment.⁶⁹

In the fall of 1994, Gesamtmetall, emphasizing the danger of disinvestment in Germany, demanded a ten percent reduction in labor costs and a new working hours flexible corridor to be determined at firm level. The union did not accept. IG Metall wanted a 5.5-6 percent pay raise and guarantees of employment in exchange for plant level flexibility. In February 1994, IG Metall called for three warning strikes, the first being February 2-3 with approximately 270,000 metalworkers participating. On February 25, the biggest day in strike action, 300,000 workers joined, the already additional 65,000 waving banners. As negotiations continued, Saxony in eastern Germany joined in the strike with 11,000 employees. This was the straw that broke the camel's back. The president of Gesamtmetall telephoned the president of IG Metall to avoid a national strike. The two social partners agreed to wage restraint ensuring cost reduction and employees received provisions for employment security to be negotiated at plant level. Again, we see consensual and necessary decentralization at work.

By 1995, the *Treuhand* had finished privatizing eastern Germany. A new round of negotiations was about to take place in an economic climate in which unemployment stood at 9.4 percent. Still, IG Metall wanted a wage increase, their logic being that in the previous two rounds they had exercised wage moderation. IG Metall began the round

⁶⁹ Lowell, *ibid.*

with a demand for a six percent pay raise. Gesamtmetall refused to make a counter offer. Employers told the union that before talks could even begin, IG Metall needed to make concessions allowing for flexibility. Of the union offers proposed, none were effective enough for Gesamtmetall to even make a counteroffer. In a predictable move, IG Metall called to strike. Unpredictably, the union called for its confrontation not in Baden Württemberg, home to a large number of machine tool companies and the giant Daimler-Benz, but in Bavaria, which surprisingly had a weakly organized union district.⁷⁰

Gesamtmetall continued to be under pressure from small to medium sized firms to keep wages moderate and to get the union in line with flexibility. In Bavaria it seemed like employers would have the advantage because not only was the union weaker there, but Bavaria was home to a high number of small to medium sized companies, just the type that was putting increasing pressure on their employers association. When Gesamtmetall refused to make a counteroffer, it did not bode well with its members. What followed was a nation-wide strike that was publicized as a gigantic failure of employers which had started to lose solidarity.⁷¹

After 14 days of strike activity, Gesamtmetall had to choose between escalating the strike or making a deal. They made a deal. The deal was widely viewed as a union victory. It called for a lump sum payment of DM 152.50 per month for the first four months of 1995 followed by a 3.4 percent increase for the next six months. Also, a reduction in working time from 36 to 35 hours took place in October.

⁷⁰ Thelen 2000- Why Employers cannot.....

⁷¹ Thelen , 2000 p.150

Opening and hardship clauses was an option for some firms, but agreements were still considered rigid because flexibility was reserved for those firms struggling with economic hardship. During the 1990s and leading into the early 2000s, the rigidity of collective bargaining agreements was becoming so unbearable for employers that pressure increased from members to fix things up.⁷² Decentralization through opening clauses was not sufficient because opening clauses were not flexible enough. They are written out in such a way that limited the issues that a company could deviate from. So, employers had to come up with something else to preserve their competitive ranking in the global economy, remain adaptable to their needs and still use collective agreements. This would eventually be the Pforzheim agreement but it took a while to get there.

At the time, in the 1990s, according to the union, collective bargaining coverage was about 80 percent for the whole industry. This 80 percent was made of 381 branch level agreements which covered about 66 percent of metalworkers in western Germany and 57 percent of metalworkers in eastern Germany, There were a further 1,102 company agreements in 674 companies that covered an additional 10 to 15 percent of employees. All in all, the numbers clearly do not indicate sparse collective bargaining coverage. But this does not mean that the pressures had stopped.

In the mid- 1990s, when employment in metalworking dropped by 1.5 million to 3.5 million workers, Gesamtmetall received even more complaints from its small to medium firm members that the collective agreements were setting standards that were way too high and too inflexible given the structural changes in the economy. Something had to give. Gesamtmetall didn't want to lose members and risk dropout from the

⁷² Interview with Gesamtmetall

contracts, and generally speaking, the union needs an employer's association to bargain with. Social partners came to the conclusion that collective bargaining needed a tune-up the fit the times.

In November 1997, Gesamtmetall and IG Metall brought together new proposals for a reform of collective bargaining in metalworking. Both special partners agreed that there was a need to modernize the system but the proposed ideas of exactly how to modernize the system were different, namely Gesamtmetall wanted further decentralization of collective bargaining and IG Metall wanted to widen the scope of branch level and company bargaining.⁷³ Unfortunately, the detailed proposals were quite incompatible with each other and the social partners did not really achieve much other than the co-admission that the system needed some changes. This shows efforts at adaptation under pressure.

Amidst ever-increasing international competition, it is critical to know that the employers did not wish to step away from collective contracts all together. After all, despite the tendencies toward some decentralization, branch level agreements were and are still the most dominant way of setting wages for workers. For employers in an export oriented economy, the collective contract is especially valuable. The next section gives an insider look at why the branch level agreement persists. Contrary to the perception that German metalworking firms are ambivalent about abandoning traditional bargaining institutions⁷⁴, employers are actually quite sure of the alternatives that they face.

⁷³ <http://www.eurofound.europa.eu/eiro/1997/12/feature/de9712240f.htm>

⁷⁴ Thelen, K. Why employers cannot bring themselves to dismantle the German model.

VI. Why is the branch level agreement important to employers and why there is an effort to keep the system at all.

Remaining competitive is at the heart of a firm's operations. For German metalworking firms in an era of globalization, this meant that collective bargaining contracts had to keep up with the structural changes in the economy so that Germany remained competitive. Wages are a significant part of the equation firms use to calculate costs. Usually, collectively agreed wages are higher than if they are set through a firm or plant level agreement. If collective wage agreements are rigid, why keep them at all?

According to an interview with IG Metall, the collective wage agreement benefits employers, because it creates a level playing field for German firms regarding competition. According to an interview with Gesamtmetall, that is a very common point, but unfortunately, it is wrong, because it is not true anymore. Competition is no longer within Germany, but on a global scale. This is an outcome of globalization.

There are two primary reasons to keep branch level agreements, according to employers. One reason is based on industrial structure unique to metalworking and the other is a cultural reason. The first reason to keep branch level agreements is the aspect of security, called Peace obligations, or *Friedenspflicht*. In Germany, the Peace obligation is an important cornerstone in German collective bargaining. It forbids any industrial action (strikes) during the validity of a collective agreement and by doing so guarantees stability in the production process with no inference. In other words, for firms, there is a certain guarantee that there is no disruption in the industrial process. This is most important asset that employers in metalworking can have because it is the branch

that produces mostly industrial goods and consumer goods. Most of the goods produced by metals firms are bought by other companies. So, just in time production system is extremely vital and important to make sure the supply stream is not interrupted at all.

The second most important reason to keep collective bargaining is what one might call the outsourcing of trouble. Having to talk about money is always a sore subject, at least in Germany.⁷⁵ The common knowledge is that no one is happy when you have to talk with your boss about money, either because you won't get what you want or because as an employer, you have to pay more than what you want. Being part of collective wage agreement allows you to get rid of the uneasiness. Effectively, the trouble is outsourced because the employer association does the negotiations for firms and the union negotiates for workers. For a large number of companies it's an important issue, otherwise they wouldn't be members.

In sum, for employers the major reason for collective bargaining is stability of the supply chain. And the second main reason is outsourcing of trouble. If bargaining completely devolved to company level, why would Gesamtmetall even be needed? So, there is a conscious effort to adapt, remain flexible and cater to the needs of their members. To do this, decentralization is considered a necessary and logical choice. It maintains the autonomy of collective bargaining so that the government does not become involved, while at the same time fitting within the parameters of what the social partners in metalworking are actually capable of, and rarely given credit for.

⁷⁵ Interview

This section has shown that employers are not ambivalent about the institutions that they operate in. The next section introduces the next decade of employer-union conflicts, agreements and decentralization.

VII: Enter the 2000s Rocky Road for Employers and the branch level agreements

At the turn of the century, the German media and academicians⁷⁶ continued to write about breaches of agreed provisions and company exits from both collective agreements and employer associations. These exits made it difficult for Gesamtmetall to attract and retain firms and make sure they complied with collective agreements. Also, developments in Eastern Germany highlighted the difficulties of a one-size fits all industry-level agreement. According to Gesamtmetall, the employers association was making deals that were just not sustainable. The wage increases were getting too high and the regulations attached to the system were beginning to smother flexibility. Something had to give.

The whole collective wage bargaining system itself was under attack. It was a time in Germany when the BDI industry association said to basically throw away the collective agreements.⁷⁷ A famous quotation by the BDI president was “*Verbrennt die Flacechen Tarifvertraege*”, or the branch level agreements are going up in flames. Geamtmetall knew that the agreements were rigid, and so they began to discuss if more regulations should be given to the company level. Gesamtmetall members asked

⁷⁶ See Anke Hassel, etc.

⁷⁷ BDI has the reputation of being very neo-liberal but also not fully in line with employers' associations views.

themselves, “Should we enable companies to deal with more issues and subjects themselves?”⁷⁸

In hindsight, the economy in European perspective conveyed a more positive picture than the rhetoric assumed. For example, between 1995 and 2001 Germany’s share of total EU production in the automobile industry rose from 48.2 per cent to 52.6 per cent, in machine construction from 42.3 per cent to 44.4 per cent, and in the production of office machines and data processing equipment from 24.9 per cent to 29.7 per cent.⁷⁹

In the meantime, however, employers pushed through with opening clauses in many branches. A landmark development was the 2004 “Pforzheim Accord.” With this, bargaining began to be moved even more to the workplace. Workplace agreements, together now with supplementary collective agreements that amended industry standards became common. Some call this a weakening of the scope, influence and coherence of industry level bargaining, but it can also be seen another way. It was a way to allow collective agreements to survive.

VIII. Bargaining Rounds 2000-2010

The following offers a narrative analysis of each wage bargaining round since the beginning of this century. By 2010, manufacturing bounced back from the 2008 recession, and inputs to the metalworking industry increased.⁸⁰ The most recent complete decade demonstrates three main points: the revived need to adjust bargaining,

⁷⁸ Interview with Gesamtmetall

⁸⁰ Economic Rebound Boosts German Metalworking Fluids, September 2011.

continued conflictual cooperation between IG Metall and Gesamtmetall, and that the newest form of decentralization in metalworking, is also the most radical.

A. 2000

In January of 2000, Amidst the “Alliance for Jobs” (*Buendnis fur Arbeit*) political movement of the social democrats, the main issue in the 2000 bargaining round was the campaign for retirement at age 60, which had been proposed two years earlier by IG Metall with the intention of retaining and creating jobs. The “Alliance for Jobs” strategy was to improve the economic situation in Germany and fight unemployment by “joint-action.” But employers did not feel the same way about retirement. They argued instead for flexibility at company level and developing the already existing early retirement scheme.

Finally after a series of warning strikes, the two parties agreed to an employment bridge in which older workers could enter phased early retirement scheme for up to six years with limited financial compensation for the reduction that they would later have for taking their state pension out before normal retirement age.⁸¹ All in all, it was the Alliance for Jobs that shaped this bargaining round which somehow still ended up with employers negotiating pay settlements above the rate of inflation. In fact, up until 2004, all pay agreements in metalworking were settled at above inflation rate. The pilot agreement of North Rhine Westphalia was adopted with minor revisions for the rest of the German bargaining regions and the 38 hour work week was fixed in east German metalworking until April 30, 2003.

⁸¹ Bispinck, Reinhard and Dribbusch, Heiner. Collective bargaining, decentralization and crisis management in the German metalworking industries since 1990. WSI, no.177, October 2011., p.35

B. 2002

In February 2002, new rounds of negotiations began for metalworking. The union demanded a 6.5 percent wage increase while Gesamtmetall offered wage increases amounting to 3.35 percent, according to the union. Two months later, after negotiations went uninterrupted for fifteen hours, the talks had failed. Gesamtmetall president told observers that it was going to come down to industrial action and that employers would just have to see through it. Employers told the media that it was irresponsible of IG Metall to stir up conflict because they were putting jobs at risk and adding to the already conflictual nature of the talks.⁸²

Increasing pressure on employers, the union called a series of warning strikes in eastern Germany, claiming that workers in the east are not covered by German convention that bans industrial action during pay talks.⁸³ Some 3,000-4,000 metalworkers in Berlin-Brandenburg Sachsen staged one hour strikes on March 25. Union workers from Bombardier, a railway engineering firm, Babcock Borsig AG, a power engineering and shipbuilding company and ABB, power electronics and robotics, and auto industry supplier, all in eastern Germany, demonstrated outside of their plants.

Then, on May 6, the union called a strike in the southwestern Germany. Over a period of ten days, about 200,000 workers went on strike in more than 100 firms in Baden Württemberg alone.⁸⁴ Employees from large firms Siemens, Epcos and Infineon

⁸² "IG Metall gears up for Strike Action", *Deutsche Welle* 2002

⁸³ "German union launches warning strikes", BBC, 25 March, 2002.

⁸⁴ Strikes were held both in Baden Württemberg and in Berlin-Brandenburg. Why would Berlin-Brandenburg get involved? Berlin has a rather weak industrial base.⁸⁴ But it turns out that a strike vote has taken in Berlin- Brandenburg with 87.2 of the union membership voting yes to a strike in Berlin and 85.7 percent in Brandenburg. This was well above the 75 percent margin required to strike.

employees took part in a walk out. Even before this, IG Metall had organized wildcat stoppages at individual firms.

Why had the talks failed? Looking at numbers only, Gesamtmetall offered a 3.3 percent wage increase and a 190 Euro lump sum payment, but this was not satisfying to union demands who had in the course of negotiations and a strike lowered their demand to a 4 percent pay increase.⁸⁵ Gesamtmetall president Kannegiesser stressed that employers had no plan to use the lock out as tool to counter the union's strike because it is an outdated tool and has proven inappropriate for resolving conflicts.⁸⁶ He did say however that he thought it inappropriate for IG Metall to call a strike over the perceived difference between the union's 4 percent demands and the employers' 3.3 percent offer which amounted to a difference of just 0.7 percent. Employers thus asked the union to return to the bargaining table.

The union responded. On May 15, after three months of negotiations and ten days of full work stoppage, the union and employers finally signed a pilot agreement to increase pay.⁸⁷ From June 2003 the pay increase would be 4 percent and from June 2003, the pay increase would be 3.1 percent. Alongside other provisions, the pay agreements included an "emergency clause." In the emergency clause, the works council and management at company level could file for an application to deviate from the collectively agreed pay increases up to a certain amount of months. This application goes to the union and the employers association. The exception to the collectively agreed standard can be made only if the company is in danger of bankruptcy. Both social

⁸⁵ IG Metall Strike Yields 4 % Increase, Deutsche Welle. <http://www.dw.de/dw/article/0,,521416,00.html>

⁸⁶ Ibid, P.3

⁸⁷ Pilot agreements signed in....2002

partners have to approve the application and the paperwork must include a rehabilitation plan for the company in question.

The agreed pay increase in metalworking for 2002 turned out to be higher than chemicals and higher than any other pay increase in metalworking since the early 1990s. The union expressed that these results were only achievable after industrial action, and this round shows that the decentralization via an emergency clause was mutually agreed to and the union once again, like clockwork, held a strike.⁸⁸

Later that year, in June, IG Metall held “Congress for the Future” to discuss its “Manifesto for the Future, *Zukunftsmanifest*”⁸⁹ The three day *Zukunftskongress* drew about 450 union activists and 350 academics and took place in Leipzig. Then Chancellor Gerhard Schroeder addressed the congress. One of the main issues discussed was the future of industry wide collective bargaining. At the time, the government under Chancellor Gerhard Schroeder was reviewing the law on collective bargaining in order to allow more flexibility in pay and conditions at firm level.⁹⁰ The Chancellor “threatened” unions with the possible introduction of a statutory opening clause that would apply to all collective agreements in Germany.⁹¹

The Union’s manifesto stated that industry wide collective bargaining was the instrument of choice to guarantee appropriate wages and working conditions, but also

⁸⁸ There were some problems with applying the collective agreement within Germany. Regarded as a pilot agreement which would become valid for 3.6 million employees in Germany, the metalworking employers association in Saxony, eastern Germany was not prepared to adopt all provisions of the Baden Wurttemberg agreements. More often than not, companies in eastern Germany have different needs than their western counterparts.

⁸⁹ IG Metall debates “manifesto for the future”

⁹⁰ Agenda 2010 would be the result

⁹¹ Binspinck and Schulten, “Sector level Bargaining and possibilities for deviations at company level”. p. 9

acknowledged a need to introduce more differentiation between companies. Here, IG Metall is talking about opening clauses. The manifesto said that opening clauses could be used as a tool to allow for additional adjustments at company level, and suggests the continued use of supplementary agreements (*Ergaenzungstarifvertrag*). Here we see union support for deviation. It may not be unanimous, but it is there.

Yet, using clauses for differentiation is not so easy. For example, some opening clauses can be very complex and are difficult to calculate and implement. Many firms do not have the resources or staff to do this, especially the smaller ones. This is a likely reason why despite the trends to decentralize bargaining through opening clauses, there is a difference between clauses available and actual clauses used as shown in chapter one. In other words, just because an opening clause is provided for in a collective agreement, does not mean that all or even a majority of firms will use it.

In other cases however, clauses are necessary. For example, some companies that are facing hardships are allowed to employ pay cuts to help the company survive. Other differentiation measures could actually be used for companies that are doing well but want to improve competitiveness or retain jobs. This puts more responsibility in the hands of works councils. In 2003, the Federal Ministry of Economics and Labor survey of Works Council members showed that the majority of works council members did not want the system of collective bargaining to be more decentralized, 67 percent believed that decentralization strengthens the position of employers to assert their interests, 42

percent thought that decentralization of bargaining is generally problematic and 34 percent felt that decentralization overtaxes and overburdens works councils.⁹²

While about 40 percent of the companies with more than 21 employees do not have a works council at all, you need one to implement an opening clause. In Germany, it is not a legal requirement to have a works council, but it is a legal and democratic option. Employers thought the congress was well received.⁹³ Steps were being made again to adapt to the changing needs of the industry. This shows versatility and commitment to wage bargaining. It does not indicate abandonment of bargaining institutions.

C. 2003

West German metalworkers under collective contract work 35 hours a week while their eastern counterparts work 38. In 2002, the social partners agreed to negotiate a phased reduction in working hours in eastern Germany in the round of 2003. The reduction was to be phased in by 2009. But IG Metall decided it did not want to wait that long after all. The official argument from the union side was that after thirteen years of unification, eastern German workers should not be treated differently as far as hours worked than their western counterparts. With this belief, the 2003 round brought more industrial action, this time to the detriment of the union.⁹⁴

Rather than viewing the reduced hours as a guarantee of equality, employers expressed that a 35 hour workweek would remove the comparative cost advantage of doing business in eastern Germany. If employer costs increase, it would have a negative

⁹² WSI Works and staff council surveys 1999/2000 and 2002.

⁹³ IG Metall debates....2002

⁹⁴ "Strike Debacle Plunges IG Metall into Disarray", *Deutsche Welle*, June 2003.

impact on employment, especially since the union did not pair a pay reduction with the decreased hours demand. In a further economic line, because eastern German productivity was not on par with western Germany, employers said that companies with above average productivity in Western Germany could not and should be a benchmark for the whole sector, with respect to the unions demand. The reality was that metalworking firms in western Germany still had higher productivity.

On June 16, 2003, the eastern German associations of Gesamtmetall refused to agree to a reduction in working time to match western Germany in metalworking because they argued it was contrary to the economic interest of the region. The economy of eastern Germany was still struggling to get on its feet.⁹⁵ Still, IG Metall in eastern Germany decided to strike. Because metalworking is a highly vertically integrated industry, western German firms were affected too. Western car makers had to close down plants because there was a lack of supplies from eastern Germany. Some major plants that went on strike were VW and the gearbox supplier for BMW cars. Volkswagen had to stop production of the then best-selling Golf model, BMW had to lay off 10,000 workers in western Germany and put them on short time working.⁹⁶ The strike lasted four weeks but without a new agreement. Instead, it resulted in a devastatingly unique union loss, especially for IG Metall in Berlin-Brandenburg and Sachsen.

What was the problem? The pay was exactly the same between eastern and western workers, which was a huge accomplishment in itself. Metalworking is one of the

⁹⁵ Nine eastern German companies broke with the Gesamtmetall decision and signed company agreements on working time reduction with IG Metall.

⁹⁶ GERMANY: Strike-hit BMW and Volkswagen plants resume production – report, Associated Press 2 July 2003

few sectors where the pay is exactly the same in eastern and western Germany; but working hours were not. Eastern German metalworkers worked three hours longer per week than their western counterparts. But, metalworkers in eastern Germany knew that the single advantage left of producing in eastern Germany was the longer working week.⁹⁷ Eastern union members did not want the advantage destroyed. The strike resulted in a bit self-destruction for IG Metall.

Union members wanted to go to work despite the industrial action called for.⁹⁸ Because there was hardly any support from eastern German union members, IG Metall revamped their tactic: other union members were bussed in from Western Germany. That did not bode well with the eastern Germans. How come? Roughly put, a Stuttgart based unionist bussed in and set up to strike, telling a union member from rural Saxony how to behave was the worst possible thing the union could do.⁹⁹

Eventually, at least one company hired a helicopter to fly in its workers to work. This company was Federal Mogul in Dresden.¹⁰⁰ Federal Mogul, a huge supplier to the automotive industry, used helicopters to fly in labor in addition to sleeping bags, foods and clothing while union activists continued to block entrance ways to works and illegal barricades.¹⁰¹ The western union activists were literally blocking the way into the entrance of the company even though the local workers wanted to enter and work.

⁹⁷ Interview

⁹⁸ Interview

⁹⁹ Interview

¹⁰⁰ Raess, Damien. Why the Time is Ripe for the transformation of Industrial Relations. Review of International Political Economy, 13:3, 2006.

¹⁰¹ Bruff, Ian. Germany's Agenda 2010 Reforms: Passive Revolution at the Crossroads, *Capital and Class*, 2010 34: 409

According to IG Metall Berlin-Brandenburg, the union “miscalculated” that the people in the former DDR were used to the *auseinandersetzung*, (loosely translated: contention, argument, dispute). Since there are not as many members of IG Metall in eastern Germany as in western Germany (get data), the eastern members were more shy and the *auseinandersetzung* was not successful. Eastern unionists simply did not want the strike. IG Metall felt that the eastern members held more distance to the union, less solidarity, and more fear. According to the union, this has to do with remembering the mass unemployment of the early 1990s, immediate post re-unification.¹⁰² People in eastern Germany were scared that they would lose their job if they would strike. Whether this was true or not, it certainly did influence eastern unionist behavior and the outcome of the strike. It was the first time ever that IG Metall lost a strike- utterly, without achieving anything.

The 2003 warning strike in eastern Germany was the first strike that IG Metall abandoned since 1954. But it was still only a warning strike, and it was not the only issue that was going on in the metalworking industry. The collective agreement continued to be under attack from the government plan of Agenda 2010 which inflamed the race to the bottom consequences of globalization. The government doubted the efficiency of the German labor market institutions. The economy shrank for the first time since the 1993 recession post re-unification and Germany was unable to keep its budget deficit within European Union limits.¹⁰³

¹⁰² In east Berlin, there were 100,000 jobs in metalworking in 1990 versus 14,000 today.

¹⁰³ “German economy shrank during 2003.” BBC, <http://news.bbc.co.uk/2/hi/business/3398989.stm>

Internally, Gesamtmetall could not escape pressures sweeping in from medium sized enterprises that found the agreements less and less fitting to their needs. Even larger firms wanted some flexibility in a stagnating economy. Opening clauses were not enough and employer associational membership numbers showed decline. From 1984 to 2004, employment density in western metalworking employers associations fell by almost twenty percent to 57.6 percent. This means that there were twenty percent less employees working in a firm that was a member of Gesamtmetall in 2004 versus 1984.

The next section tells the story of the breakthrough that employers had with the union. After this breakthrough, branch level agreements came in two varieties: flexible and standard. While the standard solution to agreements remains the most common way of doing things, the decentralized flexible solution gave breathing room to the firms who needed it.¹⁰⁴

D. 2004

This year started out with a conference on industrial relations to which Gesamtmetall was invited. The conference, organized by the Cologne Institute of Business Research, called for a reform of the system of collective bargaining. The conference director argued that serious problems existed with the system and cited waning support for industry wide collective agreements and dropping trade union membership. The head of IfD Allensbach Polling Institute presented data that the

¹⁰⁴ Since 2000, the number of employees that are covered by sectoral agreements declined from 84,214 to 64,542 in eastern Germany and from 2,038,258 to 1,625,796 in West Germany. Measured by number of companies covered by a sectoral agreement, there were 426 firms in eastern Germany in 2000 and now 218 member firms covered by an agreement in 2010. In Western Germany 5,826 firms in 2000 were covered compared to 3,495 in 2010. Membership has been on a steady decline; however Gesamtmetall tells us that the majority of declining members are due either to mergers or bankruptcies.

majority of firms not want to get rid of industry wide agreements but did want to create more flexibility.

The managing director of Gesamtmetall was there and shared some words. “According to our members, the collective agreement is considerably better than its reputation.”¹⁰⁵ He defended the existing model of negotiating and reminded the conference goers that it was “industrial peace” that was the main advantage of the current system is (*Betriebsfrieden*). This peace obligation was critical for companies in highly sensitive alliances or value added networks. At the time, nearly 6,000 firms in metalworking used industry wide collective agreements and planned on continuing so in the future. That the collective bargaining system needs reforms is nothing new, but the fact that it does tend to adapt to changing times should not signal an eventual unraveling of an entire way of doing things.

The conference showed that employers do support branch level bargaining and speak up against those who are doomsday prophets of collective wage setting. Nevertheless, employers did see that adjustments were in-line, not as a response to a three-alarm fire by outside institutions, academicians and politicians claiming erosion, but rather as a response to the changing needs of their members. Versatility is certainly within the behavioral scope of the social partners. It is a characteristic of bargaining in metalworking which is underplayed. Amidst the political discussion and pressures of strengthening Germany as a production location, Gesamtmetall tells us that it came to a point where they finally reached a solution with the union. This solution is unique to the metalworking sector. No other industry has what is called Pforzheim agreement.

¹⁰⁵ IW Conference examines...de0403104f, 2004

Employers believed the wage setting structure was good, and Gesamtmetall still had sufficient number of members that still saw the advantages of it. The discussion became, how do we reform collective bargaining? How much of the regulation do we give back to the company level? How much do we keep on the collective level? The discussion went back and forth until firms had a huge breakthrough with the union.

In 2004 Gesamtmetall and IG Metall agreed on what has become known as the Pforzheim agreement. The Pforzheim agreement was a remarkable breakthrough in the course of normal negotiations, because it was the first time the social partners found an agreement which allows companies under certain conditions to deviate from anything in the collective bargaining contract. The key word here is anything: any subject, any condition, or any regulation. It is also the way collective bargaining has been done ever since in metalworking.

Pforzheim may have the appearance of decentralization via opening clause, but it is not. Pforzheim amounted to a paradigm shift in collective bargaining in manufacturing.¹⁰⁶ Despite its significance, many industrial relations authors either do not attempt to explain in detail what Pforzheim is, clumping it with general agreements that are made at workplace level, or they put it in the context of additional erosion of collective agreements.¹⁰⁷ This washes away the unique meaning of the Accord, and its place in the evolution of German bargaining. How then does Pforzheim work and what does it mean, especially to employers that struggled to keep their competitive edge?

¹⁰⁶ Glassner, Vera and Galcogzi, Bela. WP 2009.01 "Plant Level Responses to the Economic Crisis in Europe". European Trade Union Institute for Research, Education, Health and Safety.

¹⁰⁷ Ie: Collective bargaining, decentralisation and crisis management in the German metalworking industries since 1990. Reinhard Bispinck and Heiner Dribbusch. WSI, 2011.

First, the Pforzheim Accord (agreement) of 2004 established common rules and procedures for deviations as well as much closer control of these processes by the central office of IG Metall and Gesamtmetall.¹⁰⁸ This also made wildcat cooperation easier to detect. Second, it was considered a breakthrough partly because it necessitated full union cooperation. Since the union must ultimately agree with employers to the deviations that Pforzheim allows if they are to be used, this would suggest that the traditionally un-accommodationist nature of IG Metall would prohibit any Pforzheim agreements from actually taking place, thus smothering flexibility.¹⁰⁹ Employers then, were at first skeptical. But it turned out that for every case since 2004 that employers made and justified to use a Pforzheim agreement, the union has agreed to it. This is a one hundred percent acceptance rate.

Third, Pforzheim allows a company to deviate from anything, anything at all: holiday pay, days worked, etc. This is different from an opening clause because clauses written in a collective contract specify their exact purpose, such as the possibility to lengthen the time taken to implement a pay raise, or the option to postpone in working time. A company with an approved Pforzheim agreement, on the other hand, is not limited to the specifics of an opening clause. It is likely the most flexible form of collective bargaining that exists, and is in the ultimate domain of the social partners, and it is only for metalworking industry. Pforzheim is significant because it changed the application of opening clauses which were originally intended only for exceptional cases.

¹⁰⁸ Sector-level bargaining and possibilities for deviations at company level: Germany. European Foundation for the Improvement of Living and Working conditions, 2011.

¹⁰⁹ Interview with Gesamtmetall

Fourth, it is still a very small minority of companies that use Pforzheim, so this most modern decentralization, while a reality, should not be exaggerated. According to Gesamtmetall, about 300 firms use Pforzheim today, that is less than 7 percent of all members using collective agreements.¹¹⁰ In the case that works council and company do not agree to the conditions of the Pforzheim, there is no rule that obligates them to explain why, and the regular collective agreement will stand. Fifth, both the union and the regional employers association have to agree on the Pforzheim deviation. Without a mutual agreement by both social partners, the deal is null.

Sixth, a Pforzheim agreement, which is only good for a limited time, can only be put into use if two specific conditions are met: (i) The deviation from collectively agreed standards must contribute to the safeguarding or creations of jobs; and (ii) the deviation must improve competitiveness, investment conditions and the innovation capacity of the firm in question.¹¹¹ Finally, and perhaps most important of all, is a small but overlooked detail. The Pforzheim Agreement stipulates that deviations, or derogations have to be negotiated as additional agreements to industry level agreements, which makes them remain part of the collective bargaining system rather than of the codetermination arrangements.¹¹²

The following is how Pforzheim was introduced in the course of negotiations. In the beginning of the 2004 round, against an original 4 percent wage demand by IG Metall, employers announced that they would only settle on pay if IG Metall agreed to an

¹¹⁰ Authors own calculation 300/4000

¹¹¹ Haipeter, Thomas. "Works councils as actor of collective bargaining. Derogations and the development of codetermination in the German Chemical and Metalworking Industries" *Economic and Industrial Democracy* 2011 32.

¹¹² Haipeter, Thomas. *Ibid.*

opening clause which would allow companies to diverge from the collective standards. Also, Gesamtmetall originally said it should not be necessary to get the unions approval for deviations.

In an expected move, this triggered warning strikes across Germany involving about half a million workers. IG Metall went on strike for higher wages. Thousands of workers, mainly from the auto industry and on the docks followed the unions call for a strike for ten days in January and February. On February 5th, 90,000 workers left their work places and strikes continued through February. But we should note that again, these were largely what is officially called “warning strikes.”¹¹³ Finally, the disagreement was settled and the pilot agreement of Baden-Württemberg was applied in other bargaining states. Again, in the eyes of the union, the agreement was only possible because of the warning strikes and the pressure amounting from those strikes.

A pilot agreement signed in Baden-Württemberg February 2004, provided for a pay increase of 2.2 percent in 2004 and a further increase of 2.7 percent in 2005. As part of the deal, under certain conditions, up to half of employees in a firm could work up to 40 hours a week. But the most important cornerstone of this round was an agreement that allowed a time limited deviation from agreed standards. The time deviation was to “achieve a sustained improvement in the development of employment.” This was the Pforzheim Agreement.

A brief example involving Mercedes illustrates Pforzheim. Mercedes is a huge MNC with workers that are usually paid well above the collectively agreed wages, and

¹¹³ In a warning strike, the union will only strike for a few hours a day.

thus atypical of the group of smaller firms that may have struggled with collective agreements throughout the 1990s. Nevertheless, it shows how deviating from collective agreements does not necessarily mean that firm in question is small or facing economic difficulties.

In 2004, Mercedes announced to their workers that a difficult decision had to be made: Possibly move production of the Mercedes C-class to another town in Germany and South Africa. After two weeks of protests by workers including a strike at Daimler of 60,000 employees and short work stoppages, Daimler Chrysler management signed an agreement with IG Metall that would keep 6,000 jobs at its plant in Baden Wurttemberg until 2012. The deal was reached on July 23, 2004 and provided for an increase in working hours from 35 to 39 per week.¹¹⁴

The company level agreement did not breach the terms of the collective agreement signed in February 2004 for the metalworking industry. The deal totaled 500 million euros in cost reduction. Both the union and regional employer association had to approve the deal which was agreed to on a preliminary level by works council and management. Pforzheim is thereby a form of decentralization that is quite regulated. The flexibility that Pforzheim brought firms has been an option in bargaining ever since.

¹¹⁴ There was some give and take. In exchange for concession on working practices and planned pay increases, including a gradual working time increase to 39 hours a week for its services staff, Daimler did not move production of its C-Class Mercedes to its plant in South Africa, and Bremen, Germany, both lower cost production sites. There was no reduction of collectively agreed wages and salaries, but there was a reduction of additional parts of pay, which would be the pay above standard wages. In exchange for the worker concessions, which did not get paid for the increased hours, (check) Daimler Chrysler agreed to reduce the salaries of 3,000 managers by an undisclosed percent and the company's top executives by 10 percent. They also agreed to a paid increase of employees in R and D from 35 to 40 hours.

For those that view Pforzheim as an erosion of union power in favor of firms, it is noteworthy that union workers are not necessarily against deviations from agreements, even in this most radical form. Haipeter argues that plant-related collective bargaining strategies IG Metall adopted during the Pforzheim negotiations were intended to increase the union's organizational power through the negotiations of local collective agreements.¹¹⁵ Specifically, the perceived relevance of the union and enforcing and guaranteeing labor standards in local disputes was to be strengthened and participation was intended to make the union more attractive to existing and potential members. Before Pforzheim, plant related collective bargaining was supported only by a minority within the higher ranks of IG Metall, but in the course of negotiations, the ability to negotiate at plant level increasingly became to be seen as a strategy for regaining the initiative in local disputes. As such, it became part of the rules to implementing Pforzheim: union involvement and approval.

E. 2005

In this year, a new framework agreement on pay structure would replace old framework agreements governing pay grades in four metalworking regions. Apart from that, however, this year is marked by the introduction of OT status, or "*Ohne Tarifbindung*" status, as Gesamtmetall struggled to keep members. Small and medium sized enterprises especially were still dropping out of their regional association. This is called a decline in employer density.¹¹⁶

¹¹⁵ Haipeter, *ibid.*

¹¹⁶ Thelen and Wijnbergen, *The Paradox of Globalization 2003*; Schroeder and Silvia, *Why are German Employers Associations Declining?*. 2007

OT Status, or “Ohne Tarifbindung” status is a new type of membership category for Gesamtmetall members that was created in January 2005. OT status membership offers representation to firms without collective bargaining functions. In other words, a firm can join Gesamtmetall for its other benefits but not be bound by collective bargaining agreements. It is important to note however, that OT status was not invented by Gesamtmetall. It had been an optional category in other employer’s associations since the 1990s.

The employer association saw a number of companies leaving, so they had to think- “what do we do?” The solution was two-fold. First was either losing those companies all together or second, finding a way to keep them tied to the association. The solution would keep them tied to Gesamtmetall through OT *Verbaendete*. So, Gesamtmetall set up a second branch of the employers association which basically said to firms, you can be part of the employers association and benefit from all the other numerous services that the association has, but you are not legally bound by the branch level agreement.

The “OT” membership category is seven years old to Gesamtmetall and adds to the already existing 4,000 regular member companies. According to an interview with Gesamtmetall, it is a category where they are growing actually. The OT status is good way to bring those firms to the association world itself.¹¹⁷ Of those firms, there are also those companies that get to know everything that the association has to offer, then they can decide to join the regular member status, but it doesn’t happen very often.¹¹⁸

¹¹⁷ Interview with Gesamtmetall

¹¹⁸ The regular membership status, is called the “Tariftraegerverbaende”, or “T-Verbaende”.

Gesamtmetall does not experience a huge loss from the regular T status to the OT status; rather, the situation is that new companies will join OT instead. At the time, OT status members totaled 2,000 firms with approximately 200,000 employees. Now, in 2010, 2700 companies are within the OT status with 300,000 employees. The 2700 companies are on top of the 4000 companies that are regular members.

IG Metall was displeased with Gesamtmetall's move. The union accused Gesamtmetall of supporting the erosion of collective agreements in two ways: first by agreeing to accept firms without such agreements and two, by providing special abrogation rights. Called an "unfriendly act", IG Metall made public that the OT status was a "further undermining of sectoral collective agreements." Still, the employers move was legal and Gesamtmetall kept members, and got new members, rather than losing them.

The option of OT should hardly be considered erosion of industrial relations, or for that matter a decline in the bargaining position of Gesamtmetall because it does not abolish the social partner. Rather, the OT membership category gives choices and options to potential members precisely so that associational density does not decline any further. Firms that are in OT status are not bound to a collective agreement, but they still have to settle on a firm level wage agreement. Firm level contracts, as mentioned earlier, are oftentimes very close to the collective agreement set by the social partners at regional level, or at the very least, the collective agreement is used as a guide. Unions typically

trive to ensure that the house agreements are as close as possible to the region wide agreement.¹¹⁹

OT status is associated with decentralization because it is outside of the collective contract, but it is not synonymous with crumbling social partners. It must be made clear that the social partners need each other¹²⁰ and while the OT status introduced an element of choice to member firms, and change, the decentralization that comes with it does not strip away responsibility from the institutional actors, nor does it replace them fully.

The next two years show more union warning strikes followed by an exceptionally good year for the industry as a whole. I address them only in brief and present them as evidence of the way that metalworking seems to operate time and time again: clash in public then cooperate just in time. At this point, the ritual should be familiar.

F. 2006

This year was a good year for the German economy which expanded by 2.5 percent in 2006, its fastest rate of growth since 2000.¹²¹ The previous year, GDP had risen by just 0.9 percent. Emerging from a stagnating economy, Germany was labeled once again the economic locomotive of Europe, shedding the “sick-man of Europe” identity it has acquired in the previous decade.

¹¹⁹ Schroeder and Silvia, p.8

¹²⁰ Interviews with IG Metall and Gesamtmetall

¹²¹ Destatis, German Federal Statistics Office, *Deutsche Welle*, “Germany Economy in best form since 2000.” January 11, 2007.

With respect to bargaining, the 2006 round went comparably smoothly even though a series of warning strikes were still conducted. The first strike was conducted at BMW in Leipzig, eastern Germany. One shift of workers walked off of their jobs on Tuesday March 28 with further support from unionists in and around Leipzig, totaling 800 people.¹²² The union stressed how the street protests were a necessary pressure for the talks. Additional strikes then took place in Nordrhein Westfalen, home to Thyssen Krupp, as well as Berlin-Brandenburg.

About a month later on April 22, 2006 a pilot agreement was signed between IG Metall and the regional member of IG Metall Nordrhein-Westfalen covering pay and continued training. A general pay increase of 3 percent and a lump sum payment of 310 Euros set the new standard. The option to deviate from the standards was possible dependent on the financial state of the company. Deviations from the agreement had to be agreed to by both works councils and employers and could include increasing, postponing or reducing the payments.¹²³

Putting the agreement into connection with other agreements across Germany in other industries shows that the 3 percent increase that IG Metall secured was higher than pay increases in other industries. In exchange, IG Metall, for the first time, agreed to allow works councils and employers reduce a collectively agreed payment without needing further approval by the social partners. This shows trust. It also shows further consensual decentralization.

G. 2007

¹²² "German Union to strike BMW over stalled talks," *New York Times*, March 27, 2007.

¹²³ Dribbusch, Heiner. "New package of agreements signed in metal industry." July 3, 2007. De0605039i

The domestic economy continued to grow in 2007. With a national growth rate of 2.5 percent and a sector specific growth rate in machinery and equipment of 8.4 percent exports increased, unemployment shrank and even labor productivity saw a slight increase.¹²⁴ Good times brought high wage demands, and when they were not met, the union went on strike again.

After token work stoppages and another series of warning strikes involving some 470,000 workers in 1,900 companies in Western Germany a pilot agreement was signed in Baden Württemberg and applied in other bargaining regions with a few minor adjustments. Overall, the agreement stipulated for a pay increase of 4.1 percent and a lump sum payment of 400 euros in 2007 followed by a further pay increase of 1.7 percent to take place in 2008. Again, depending on the economic situation of the involved companies, works councils and employers could delay or reduce the lump sum payment.

The union originally entered negotiations with a demand for a 6.5 percent increase and given the current good economic situation of the sector, Gesamtmetall defended the pilot agreement because companies could generally afford the pay increase and saw no sign that would indicate that companies would leave the employer association as a result of the new agreement. Putting this year into perspective, the new wage rate was the highest pay increase in metalworking in more than a decade, because after 19 months, the wages would have increased by 5.8 percent all together.¹²⁵

H. 2008

¹²⁴ Robust growth of the German economy, German Federal Statistics Office, http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/press/pr/2008/01/PE08__015__811,templateId=renderPrint.psml

¹²⁵ Binspick, *ibid.*

On September 15, 2008, US investment bank Lehman Brothers declared bankruptcy and global crisis loomed. But in the meantime, most German metalworking firms were doing great. In fact, the whole German economy was experiencing an upturn.¹²⁶ Judging from how the economy was doing, and the preceding phases of strong growth, IG Metall formulated their demand. The eight percent hike that the union wanted was the steepest wage hike they had sought in sixteen years.

Germany, relatively isolated from the crisis until now, started to worry. Gloomy economic forecasts from the “five wise men” seeped into the minds of decision makers at Gesamtmetall and IG Metall which bolstered them to strike a deal as soon as possible.¹²⁷ The five wise men, as they are called in the press, are the government’s five economic advisors, who at the time were criticized by Chancellor Merkel for not doing more to stimulate growth in a country that they themselves said was on the edge of recession.¹²⁸ The economists expected the union to take modest wage raises especially given the slowdown of the automobile industry. What actually happened was an increase in real pay for metalworkers.

Warning strikes took place as metalworkers put down their tools at firms Siemens, Bosch, auto-supplier Helag, saw manufacturer Stihl, and Daimler.¹²⁹ Other warning strikes were held at Mercedes, Opel, Ford, and General Motors. Eventually, some 600,000 workers in 2,700 companies across Germany went on strike with the largest strike taking place in Baden Württemberg. About 170,000 workers in more than

¹²⁶ “Warning Strikes Spread on German Engineering Sector”, *Spiegel Online* November 3, 2008.

¹²⁸ Dempsey, Judy. “Powerful German Union Agrees to Modest Raises”, *New York Times* November 12, 2008.

¹²⁹ Thousands of metal industry workers strike, *The local.de* November 2, 2008.

500 establishments went on strike while in Bavaria and NRW, about 130,000 workers struck.

Nevertheless, the pilot agreement reached in Baden Württemberg was adopted with minor adjustments in all other bargaining regions. On November 12, 2008, IG Metall and Gesamtmetall reached a new collective agreement with pay increases of 2.1 percent starting February 1, 2009 and 2.1 percent starting on May 1, plus lump sum payments. Depending on the economic state of the companies, through a Pforzheim agreement, the lump sum payment with wage increases could be cut or doubled or sometimes a part of it could be paid earlier or later. The next year, however, would be a totally different story.

I. 2009

By this year, the effects of the global crisis were clear. German firms hustled to anticipate exactly to what extent the crisis would affect their operations and revenues. A new collective agreement reflected the concerns of the time. On April 15, 2009, IG Metall and Gesamtmetall agreed to several new rules on short time work which deals with the worsening economic state of companies. Valid until December 31, 2010, this new contract extended short time work in companies, contained an opening clause allowing for training measure during short time work to not be remunerated and introduced two models of compensation regarding allowances for workers.

Nonetheless, somehow, a high net wage was guaranteed via monthly allowances.¹³⁰ The allowances, according to national legislation, are 60 percent of the

¹³⁰ Vogel, Sandra. "New collective agreement in metalworking sector." De0905049i

wage cut, net of taxes for which employers are reimbursed by the Federal Employment Agency. Additional allowances were granted to short time workers. In exchange, Christmas and holiday bonuses were reduced. Daimler was one of the first companies to use the new regulations shortly after they were introduced.

J. 2010

The final bargaining round to be discussed is from 2010. These rounds took place amidst the economic crisis on the industry, but not during the worst part of it. In fact, the economy was rebounding by 2010.¹³¹ The metalworking sector was expected to reach pre-crisis performance levels, there was nonetheless not a need to take the upswing too far, and in a never before done step, the union entered the metalworking bargaining round with no specific pay demand and talks ended up being brief in a strike free year.

On February 17, 2010, IG Metall and Baden Württemberg shook hands on a regional agreement package. The next day, IG Metall and Metall NRW also concluded a regional package. As a reminder, these are the two pacesetting regions. Both packages will last until March 2012 and served as pilot agreements for the rest of German metalworking. The pay agreement extends the pay scale tables of the 2008 agreement and a lump sum is to be paid in two steps. On April 1, 2011, wages increased by 2.7 percent.

Employers tell us that the contract included in an opening clause that worked like so. If things are going well on company level, firms can agree to start paying the increase up to two months earlier, which is better for workers. But it is a decentralized decision. With this specific opening clause, company level management and works council have to

¹³¹"IG Metall Seeks 'Fair' 6% Pay Raise for Steel Workers as Economy Picks Up", Bloomberg

agree. If they do not agree, they're not forced to agree. In that case, the standard solution is valid. According to employers, the advantage of flexibility is built in. It gives those member firms that have to deviate from the standard regulations a way to do it, but those who want to keep on outsourcing the trouble can say that they will not take the option, and they are not worse off than anybody else.

IX. Conclusion

This chapter is an empirical contribution to studies on the metalworking industry and serves as an analytical narrative to wage bargaining in one of the most powerful sectors of Germany. In a significant step adding to the existing literature, the chapter provides evidence that opening clauses actually started in the 1970s, and that employers pushed for changes amounting to various forms of flexibility via decentralization resulting in the Pforzheim agreement of 2005. Still, the main way of bargaining remains the standard collective contract. Further, in comparison with chemicals and construction, the metalworking social partners have their own style of labor relations that at first glance seems full of conflict, strikes, and points of strong public disagreement, but it has resulted in ritual of bargaining that works for them.

The discussion of decentralization ending in liberalization is at the forefront in this dissertation. Rhetoric assumes that firms are all too eager to deviate from collective agreements. Inflated views of the consequences of globalization for Germany, partly supported by the media, neo-liberal politicians and academicians, have led to the belief that if firms do not liberalize their wage setting regimes that Germany will lose their competitive edge. This is misguided on two counts. First, the German metalworking

industry, largely relying on collective wage agreements, remains very productive and brings in more revenue today than it did before the global crisis of 2008. Second, we saw that firms are not the only actors that push for decentralization, even in Pforzheim.

Pforzheim is the new reality for metalworking but it is not the new standard. The metalworking industry is responsible for the most decentralized bargaining of the three largest manufacturing sectors in Germany.

Chapter 3:

The Chemicals Industry

The German chemicals industry has enjoyed a competitive advantage since 1850¹. There are two types of competitive advantage, cost leadership and product differentiation.² German chemicals achieved both. The chemicals industry is internationalized, vertically integrated, and recognized by government as one of Germany's leading sectors.³ Oftentimes referred to as an "invisible" industry, the chemicals industry in Germany is a manufacturing giant, selling their products to other firms within chemicals, and to other sectors such as construction, textiles and automobiles.

Since chemicals is a science based industry, research and innovation have been crucial to its growth, and relations between the industry and the academic and training policies of governments have been of considerable importance.⁴ In the case of Germany, there are strong ties to universities and research institutes that the chemical industry promotes. Historically, this was set up because the industry complemented academic research by establishing its own laboratories, such as Bayer.⁵

This chapter argues that the chemicals industry is a case for stability of the German model and that the social partners in chemicals are characterized by cooperative, mostly conflict-free industrial relations. I demonstrate that structure of industry, led by a handful of the largest chemicals and pharmaceuticals firms, is subsequently mirrored in the institutions of wage setting

¹Competitive advantage is reached when an industry or company acquires or develops an attribute or combination of attributes that allows it to outperform its competitors.

²http://www.valuebasedmanagement.net/methods_porter_competitive_advantage.html

³"Merkel at IYC kickoff in Germany", International Council of Chemical Associations, 2011.

⁴ Grant, Patterson, and Whitson, *Government and the Chemical Industry*, 1988, p.15.

⁵ Grant, et al . p.18

and explains collective bargaining outcomes. Further, decentralization in this sector, while accounting for a moderate amount of deviation from collective contracts, is largely employer driven, but in every case, requires the consent of both the regional employer association and the local union. Finally, chemicals industry bargaining remains for the most part, centralized at industry (national) level, which is in direct contrast to the metalworking sector which bargains at regional level.

Three key features of the chemicals industry should be highlighted because they distinguish this industry from others in Germany. More importantly, these key features help explain collective bargaining outcomes. Chemicals bargaining outcomes with respect to levels of decentralization are distinct from the other two industries examined in this dissertation. In comparison to metalworking and construction sectors, the chemicals industry shows a moderate amount of decentralization. My research also shows that the chemicals social partners come to collective bargaining agreements in a cooperative way, with few industrial disputes. I offer an explanation why.

First, although this industry is made up of 1,640 firms⁶, the power structure was, up until about ten years ago, tripartite, with the three largest firms assuming a cartel-like structure. Since then, the industry remains dominated by a handful of giant firms. Second, and related to the first, the big three firms do not directly compete with each other in the domestic market. Third, there are tight, conflict-averse networks between the top firms and representatives in collective bargaining. In other words, representatives from large firms assume greater positions of leadership in bargaining than do the smaller to medium sized firms. Also, much of the industry is geographically intimate, which supports its vertical integration. For example, much of the

⁶ VCI website

industry is located in chemical parks, which serve upstream and downstream product needs like supply of water and energy and waste disposal.⁷ That the chemical industry is, because of its development path, characterized by a strong tendency to concentrate both economically and regionally, is not a new observation.⁸ But for the most part, recognition of this feature, in comparison to other German industries, is conspicuously absent in industrial relations studies.

This chapter will show that as a result of the tripartite industrial organization, lack of direct competition, and cooperative relations between social partners, the German chemicals industry, although heterogeneous like metals, has enjoyed for the most part, industrial peace.⁹ All of these features are unique to chemicals. I also explain how the three key features essentially translate into less decentralization and more cohesion for chemicals when compared to bargaining outcomes metalworking and construction. If the German model of industrial is eroding in any sense, changing into a liberalized model, or if collective bargaining is unraveling, then the chemicals sector does not appear to be a major driver of this trend. Acknowledging that change has occurred within this sector, the evidence suggests a much less severe change than in metals supporting my initial claim that metalworking should not be used to speak for the whole of German manufacturing. What follows then, is an empirical contribution to the existing political economic literature that has more often than not neglected this industry in detail.

I contend that the social partners in the chemicals industry have a completely different style of bargaining and that social partners in chemicals do not follow IG Metall-Gesamtmittel pattern bargaining, which further justifies a separate study of this industry. If anything, the

⁷ For example, North Rhine-Westphalia is home to ten parks and 30.1 percent of total chemicals sales for Germany in 2010 while Schleswig-Holstein is home to one park and 2.5 percent of total chemicals sales for the same year. Both *Laender* are in former Western Germany.

⁸ Bathelt H, 1995, "Global competition, international trade, and regional concentration: the case of the German chemical industry during the 1980s" *Environment and Planning C: Government and Policy* 13 (4) 395 – 424

⁹ The last major strike was in 1971, with the preceding one being in 1922.

pattern setting is often reversed. Metalworking will look to chemicals industry to loosely copy what has been concluded as far as agreements on demography. Furthermore, with respect to decentralization, the chemicals employers' associations have at one time or another in recent history been either for and against decentralization. In other words, sometimes the employers have pushed for centralization when labor is pushing for decentralization.

This would seem to debunk the rhetoric that decentralization is always employer driven. Since the mid-1970s, in fact, chemicals employers have pushed for centralization more than in other sectors in this study. Against the common characterization of the crisis of industrial relations as a neoliberal employer offensive against embattled unions, political scientists find that in countries like Germany, the tensions in traditional bargaining institutions go back not so much to union weakness but above all to a lack of *employer* solidarity.¹⁰ My research shows that the second largest manufacturing industry in Germany simply does not fit this claim.

The layout of the chapter is as follows: First, I give an overview of the chemicals industry and its organization, indicating the power structure, competitive environment and providing a look at how tightly vertically integrated this industry is. Second, I describe the structure of industrial relations in chemicals, as far as the institutions, with a brief history of the employers association and union, but focusing more on what matters most- the clear leadership of the biggest firms. We will also see that 1971 was a turning point for the union and for industrial relations, securing the non-radical character of the union. Third, I illustrate the intimacy between the three firms (tripartite structure) and their relations with the social partners to show that the tripartite structure permeates collective bargaining decision making. Fourth, I give an analysis of the 2000-2010 bargaining rounds demonstrating that chemicals is cooperative and has been for a

¹⁰ Thelen and Kume 1999, Thelen and van Wijnbergen 2000, and Thelen 2000

long time. Finally, I conclude that this industry while showing a moderate amount of decentralization is far from liberalizing wage setting and instead is devoted to a publically peaceful social partnership.

I. Industrial Overview

The chemicals industry is capital intensive, export oriented and has a high degree of centralization into larger units of production. All of this requires heavy investment and emphasis on research and development.¹¹ Spending large sums on research and development has enabled German firms to create a stream of new and superior products and processes.¹² The chemicals industry has always played a leading role in German innovation. Overall, the industry grew through large economies of scale and scope taking advantage of backward integration and its product diversification.^{13 14}

As a result of more frequent and earlier investments in manufacturing, marketing and management, the German chemicals industry developed faster and outperformed competitors in Great Britain and the USA up until the first World War. It was known for its domination of the world's market for dyestuffs. By 1900, it controlled ninety percent of the world market.¹⁵ This dominance was exercised by just three firms: BASF, Bayer and Hoechst¹⁶, or the "big 3". In German, they are referred to as *Grosschemie*. At one time, Berlin was known as the "Pharmacy

¹¹ Markovits, 1986.

¹² Markovits, 1986, p.29-30.

¹³ Hirth, Lion. 2007.

¹⁴ Backward integration is the purchasing of suppliers compared to forward integration which is the purchasing of distributors. For example, a chemicals firm exhibits backwards integration if it purchase the oil refinery that it needs to produce xxx. On the other hand, forward integration would be exhibited if a firm would sell its products to internal buyers, or even itself rather than to outside or foreign firmsxxxx. Both are types of vertical integration.

¹⁵ Grant et al, p.18.

¹⁶ Now ex-Hoechst

to the World.”¹⁷ The way these firms secured the market was remarkable. It was a leap to hegemony, almost to monopoly. It has no parallel. ¹⁸

The evolution of the chemical industry was heavily influenced by the role of government. Cartelization and government war requirements did much to ensure the dominant position of the former big 3. The role of the state in research and technical education, the role of the state as a customer, and tax policies have been crucial interventions by the German government to this industry.¹⁹ Also, since chemicals is historically an exporting industry, it has been of obvious concern to the German government, especially post war where it was a major contributor to trade balances.

Germans were protective of this industry in particular since the early 1900s. Originally, areas near the towns of Halle and Leipzig in Saxony which are in the former eastern Germany (GDR) were home to numerous chemicals firms because it was found to be a good place, strategically.²⁰ During World War I when the first planes dropped bombs in Germany, it was thought that French planes would never make it as inland as present day Saxony. Firm leaders thought that if there was another war with France, Saxony would be a good place to locate industry because it was far enough inland to be kept safe.²¹

In the same region, years later, the former eastern Germany maintained a strong tradition of chemicals industry throughout the period of German division from 1949-1989. In a double income household, female workers in the GDR especially were drawn to the chemicals industry and it was thought to be one of the ideal careers a woman could have. Today, the chemicals

¹⁷ Interview

¹⁸ Grant et al, p.18.

¹⁹ Grant et al, p.48

²⁰ Interview with BAVC

industry remains a major employer of women, at around 45 percent, which further distinguishes this industry from the other two in this study.

Chemical products can be divided into three broad groups: industrial (base) chemicals, intermediate chemical products and consumer chemical goods. Industrial chemicals include hydrogen, oxygen, chlorine, sulfuric acid and other standard chemicals as well as organic chemicals such as ethylene, propylene and acetylene out of which other chemical products are made. Intermediate chemicals are fertilizer, plastics, sealants and coatings, adhesives, synthetic fibers, rubber such as false turf for football fields, and paint dye. Chemical consumer goods are personal hygiene products, soap and detergents and photographic chemicals.

Most of what the chemicals industry makes is for further integration into other products or directly sold to other industries. Small to medium sized firms are often both suppliers and buyers of what the larger firms produce. For example, BASF makes Elastocoat®, a waterproofing coating system, which is then sold to the construction industry for the construction of buildings. Another example is Duracat™, small-engine catalysts that reduce hydrocarbon and carbon monoxide emissions from gasoline engines, sold to the automotive sector in metalworking. Finally, Citral- an aroma chemical for a lemon, citrus, fruity and green scent is sold to the cosmetics sector, within chemicals.²²

Today, the German chemicals industry is the fourth largest in the world, with a market share of 6.3 percent in 2009. It is also the largest in the European Union, with a 25.5 percent share in 2009. France is second with 15.1 percent share followed by Italy and the UK with 9.7

²² <http://www.basf.com/group/products-and-industries/index>

percent each.²³ The main chemicals production areas in Germany are fine and specialty chemicals, which have a 24 percent share of production value, followed by plastics and polymer related products and organic base chemicals each with a 16 percent share. About 60 percent of products are delivered within the industry (vertical and backward integration) while 23 percent of them are supplied to other industries such as construction and packaging.

The chemicals industry is also resilient. In total, the industry employs 446,000 people domestically²⁴ and had a total revenue of \$145.9 billion in 2009.²⁵ Though this number represents a 14.2 percent drop from 2008 revenues, after the initial recession shock from the 2007 Lehman Brothers crash, overall, the industry rebounded with 18.9 percent output growth. This growth, “outstripped” the European average of 11.3 percent. By the end of 2010, the association for German chemicals industry, VCI, reported that chemicals and pharmaceuticals domestic sales were up by 14 percent and exports up by 20 percent, with total sales in 2010 of 170.6 billion euros (\$229 billion). Although 2009, was witness to the worst sales decline in chemicals since 1975, by 2011, VCI predicted a return to normal growth rates of about 4 percent.²⁶ Obviously, this industry is not only enormous, it rebounds well.

Internationally, Germany was the world’s largest chemical exporter, accounting for 13 percent of the global market, or 134 billion Euros in 2009, followed by the United States with 104 billion Euros and Belgium with 85 billion Euros. Japan is ninth worldwide with 47 billion

²³ Cefic, 2010.

²⁴ Ibid.

²⁵ Datamonitor, 2010.

²⁶ German Chemicals Sales Growth to Slow to 4percent Next Year, VCI Says Richard Weiss - Dec 14, 2010; <http://www.bloomberg.com/news/2010-12-14/german-chemicals-sales-growth-to-slow-to-4-next-year-vci-says.html>

Euro of exports and China shows the same total exports number as Japan. A significant chunk of exports are pharmaceuticals, which is a major sector in the chemicals industry.

In pharmaceuticals alone, Germany ranked second to the US, with 11,499 patents applications and 4,552 patents granted for pharmaceuticals, as well as 399 biotechnology patents granted in 2007.²⁷ Pharmaceuticals is the largest segment of the chemicals market in Germany, accounting for 42 percent of the markets' total value. Base chemicals account for a further 31.1 percent.²⁸ Agricultural and specialty and fine chemicals make up the rest of the market, with an equal share. Pharmaceuticals is the most lucrative market segment for German chemicals, with total revenues of \$61.4 billion, with base chemicals generating revenues of 45.5 billion dollars in 2009.

It is important to understand the competitive landscape and industrial structure, especially for this industry, because it helps explain collective bargaining in practice and its outcomes. I further argue that because of the way competition evolved among the big three and the conflict-averse networks within the social partners, this translates into cooperative industrial relations. The cohesion of the industry as a whole based on its tightly integrated networks of production also plays a part in the fluidity of the entire collective negotiating process. Though competition and variety among firms does exist, it is not to the degree of being an inhibitor at the negotiation table where there are an overwhelmingly large number of firms with conflicting or markedly different needs or strategies, such as in metalworking or construction. At the bargaining table then, chemicals firms aren't talking past each other.

²⁷ Invest in Germany, <http://www.gtai.com/homepage/industries/healthcare-industry/pharmaceutical-industry/>

²⁸ Datamonitor 2009

The competitive structure and the high profitability of this sector allows firms to keep wages high and workers knowing they are well paid, making negotiating very different compared to metalworking. Though workers in the automotive sector, for example, are among the most highly paid in Germany, the unions are not very similar, and metalworkers strike often. Meanwhile, the construction industry social partners beckoned the government's help in collective bargaining, because it could not handle the matter without intervention. The asymmetry across sectors is a matter of fact.

The coordination of capitalism has reached unprecedented levels in the chemicals sector, whereas it has broken down in other German sectors such as construction.²⁹ Other industries, such as metalworking even have divides within the sectors themselves.³⁰ But the vertical integration in chemicals serves to intensify cooperation and reinforce the mutual needs of the firms, the majority of which are then interdependent. Chemicals just doesn't seem to have the same structural challenges that other sectors do.

Vertical integration is common in this market.³¹ Vertically integrated companies in a supply chain are united through a common owner. Market entry into the German chemicals sector requires large amounts of capital to set up high volume production plants and benefit from economies of scale. Economies of scale are reached when a firm can lower costs based on the scale of production of a single product. Since costs for a firm in this industry are lowered when production is higher, small scale entry is likely to be unsuccessful.³² The chemicals industry in Germany is then dominated by large firms, or *Grosschemie*, with dependent, cooperative smaller

²⁹ Schroeder and Silvia. Why are German Employers' Associations Declining? Working Paper Series 05.3 Center for European Studies.

³⁰ Ibid.

³¹ Datamonitor, 2009, p.12.

³² Datamonitor

firms. It seems that the smaller firms know the role they play, given the longstanding structure and evolution of the industry. Given their limits, the best interest of a smaller firm would be to maintain its place as part of the vertical chain, in cooperation and communication with larger firms.

Employers tell us that smaller to medium sized firms benefit from larger firms in two main ways. First, *Grosschemie* sends representatives to employer association meetings that can provide input of a quality that a smaller enterprise cannot deliver.³³ Smaller firms then benefit from larger firms because the larger firms, for example, put together models for working hours that can be used as a guideline. Also, it is the larger firms that have fast pharmaceutical responses and strategies to tackle health problems such as the bird flu which are then shared with the smaller firms at some part of the production chain. In comparison, a smaller firm just does not have the research and development staff to do this.

Second, during wage bargaining rounds, it is in the smaller firms' best interest to follow the lead of the larger ones during negotiations. The benefit is that the leading firms know that they cannot set the wage level unreachably high because it would start to kill off the smaller firms³⁴. Thus, collective wages are kept at a level that smaller firms can afford even if *Grosschemie* usually pays more than the collective wage.

We can look at what workers are getting paid and how much a worker costs a firm for 2010 to get an idea of the cost structure a chemicals firm faces. In 2010, total labor costs amounted to 75,020 Euros per chemicals employee per year. Per working hour, a west German chemicals employee costs a firm 46.49 euros while an east German worker costs 31.36 euros per

³³ Interview

³⁴ Interview

hour. Western German workers in a collective contract set by the chemicals employer association are paid a direct income of 26.30 euros while eastern German workers are paid 18.85 euros per hour. A typical worker in the west can expect to earn about 56,590 euros a year.³⁵ This means that a worker will earn the direct income plus personal income such as holiday pay, which is not part of the direct wage that a firm pays. Currently, the chemicals industry is actively hiring and training workers, especially firms in eastern Germany.³⁶

While workers are not generally poached, rivalry is assumed to be fairly high among firms, as chemical companies on the whole are selling undifferentiated products, where branding is of little significance. However, the larger firms encounter their competition much more on the international level rather than domestically. In this sense, the big firms seem to have divided the market according to each of their areas of strategic specialization. In other words, although Bayer and BASF and (ex-Hoechst) manufacture base chemicals for sale, they do not directly compete with each other because of specialized niches. These niches are the main source of their sales. In most cases, this is either pharmaceuticals or specialty chemicals. For the big 3, former Hoechst and Bayer focused more on specialty chemicals and pharmaceuticals while BASF got heavily involved in bulk chemicals and is integrated upstream into raw materials and energy. Even though many chemicals are undifferentiated, the likelihood that new entrants will arise is only moderate.³⁷

Economic historians tell us that perhaps because of wars, economic depression, lack of access to raw material in the beginning, decartelization after World War II, or the need to switch from coal to oil as the primary feedstock within a generation, the leading firms developed areas

³⁵ 46,49 Euro pro Stunde Chemie-Arbeitskosten 2010, Informationsbrief 12/2011

³⁶ Interview

³⁷ Datamonitor, 2009.

of product specialization that prevented direct competition.³⁸ The big three also avoided direct competition in another sense. Unlike the coal and steel industries on the Ruhr River, each of the big three firms established autonomous centers of strength in three different federal *Laender*, or German states. Bayer- (Leverkusen and Urdingen) in the state of NordRhein Westfalen; BASF- (Ludwigshafen) in the state of Rheinland Pfalz, and Hoechst (Frankfurt) in the state Hesse. Today, these three states continue to hold the positions of leadership in the employer association. They are usually the first to sign collective agreements.

Grosschemie used their specialization to achieve their rank among the top five chemicals firms in the world. More recently, the top two that remain from the former Big three are still ranked as first and fourth largest in the world in sales. (BASF and Bayer, respectively).³⁹ BASF's total sales in 2010 amounted to 63.873 million euros. Its main sales come from petrochemicals, inorganic chemicals, intermediates, and performance products.⁴⁰ Bayer sales amounted to 35,088 million euros in 2010. It remains focused on health care and pharmaceuticals. Together, BASF and Bayer account for about 58 percent of total chemicals sales for German firms.⁴¹ Hoechst was a German "life-sciences" company that became Aventis Deutschland after its merger with France's Rhône-Poulenc S.A. in 1999. With the new company's 2004 merger with Sanofi-Synthelabo, it became a subsidiary of the resulting Sanofi-Aventis pharmaceuticals group, headquartered in France.

³⁸ Grant et al.

³⁹ Top 100 global chemical companies , 17 Spetember 2007.

⁴⁰ www.basf.com BASF Report 2010.

⁴¹ Own calculation based on 2010 total sales reported by VCI

With respect to cooperative behavior, the difference between the (former) big three, however, should not be exaggerated.⁴² All are represented across the spectrum of chemical activities from specialty through intermediate to bulk chemicals and each one has a proven record of using capital intensity and science based innovation to diffuse specialization and value added to the whole range of portfolios. Taking this into account, still, competition among the big three was defined in international terms far more than domestic terms.⁴³ Internationally, these firms face competitors such as Dow, DuPont, Mitsubishi Chemical, Akzo Nobel (Netherlands), and Solvay (Belgium).

The next two largest chemical firms in Germany are Evonik (formerly Degussa) and Boehringer Ingelheim. Evonik sales totaled 13,300 million euros while BI totaled 12,586 million euros. Evonik is a specialty chemicals company with products such as the plasticizer and anti-graffiti coating used in the new outdoor Holocaust Museum in Berlin. Boehringer Ingelheim is a well-known pharmaceuticals company with products such as Zantac and Flomax. Other large firms are Merck with sales of 9.921 billion euros in 2010 and Henkel with sales of 15.09 billion euros in 2010. Henkel specializes in consumer goods and home products such as dish soap. Merck generates most of their sales from liquid crystals, pharmaceuticals and performance chemicals. All of the companies (except for Boehringer Ingelheim) showed an increase in sales from 2009-2010.⁴⁴

Another feature of industrial organization should be mentioned. The chemicals industry is the most important supplier of raw materials to new industry. In the chemicals industry, access to supplies is somewhat crucial. Especially for large scale market entry, access to suppliers can be

⁴² Sally, p.30

⁴³ Allen in Katzenstein, p. 160.

⁴⁴ All numbers were taken from the financials/annual reports on the websites of the companies.

problematic. Since the volume of raw materials used in producing chemicals is very high, it is preferable to locate near the sources. As mentioned earlier, chemical reactions oftentimes yield products and by products that are for further processing. Since it is costly and many times dangerous to ship these products from one location to another, more and more production and processing stages are concentrated at the original production sites over time.⁴⁵ These are called coordinated industrial systems which are major agglomerations of chemical production.

Another word for these production sites are chemical parks.⁴⁶ For example, BASF headquarters is in Ludwigshafen at the Rhine River has an area the size of 7.11 square km. It has more than 2,000 buildings, 2000 km of pipelines, 211 km of railroad tracks, and over 32,800 employees (today down from 45,000 in 1998. Though the total number of employees has dropped, productivity has risen.) In general, the firms benefit from spatial proximity to their supplier and customer bases.⁴⁷ There are approximately 40 chemical parks in Germany.⁴⁸ Each park offers transportation routes, supply and disposal lines and of course access to both suppliers and buyers for end products, renewables and intermediate products. These parks quite literally show closeness among firms in the industry.

Germany seems to maintain their stronghold in Europe and their place in the world market amidst the emergence of chemicals industry newcomers since the 1970s, mostly from emerging Asia and the Middle East. The unstable prices of raw materials, however should be taken seriously for this industry. Unlike for example cars and home building, the chemicals industry actually uses crude oil and natural gas in their basic production. Thus, the price

⁴⁵ Bathelt, et al, Unit 5

⁴⁶ Germany's Chem and related processes

⁴⁷ Bathelt, 1999.

⁴⁸ <http://www.chemicalparks.com/Seiten/default.aspx>

instability is a constant challenge. And considering that two major end markets for the chemicals industry are construction and automobiles, the three are actually somewhat interdependent, with chemicals as a forward integrator.⁴⁹

This section has shown that the structure and history of chemicals industry is distinct from others in this study. From its start, the industrial organization has been shaped by the clear leadership and dominance of the largest group of firms called the big 3. The large firms do not directly compete with each other but they do compete internationally, whereas for example in the construction industry, competition remains on the domestic front. Also, the chemicals industry exhibits a high degree of both backward and forward integration, and spatial concentration with highly trained workers that are both well paid and come equally from both the male and female working population.

II. Industrial Relations

A. Social Partnership

Just like in metals, but unlike construction, there are two major players in chemicals industrial relations: the employer association, *Bundesarbeitgeberverband Chemie* (BAVC) and the union, *Industriegewerkschaft Bergbau, Chemie, Energie*, IG BCE (formerly IG Chemie). Although chemicals also has an industry association, *Verband der Chemischen Industrie*, VCI, it is only BAVC and IG BCE that are parties to collective wage bargaining. Along with the VCI, the BAVC is a very strong and influential employers' organization. In turn, the BAVC is a member of the BDA, the umbrella employers' association cross-industry.

⁴⁹ "Petrochemical Industry In The Middle East: Low Cost Feedstock Providing Competitive Advantage"

The chemicals union is called IG BCE. IG BCE represents those that are employed in the production of basic chemical products, plastics, rubber, paper and pulp, glass ceramics, and pharmaceutical products. Of those sub-industries represented in the union, the chemicals sector dominates the union. IG BCE is a member of DGB, the umbrella association for unions in Germany.

1. BAVC

Employers are represented in an employers association, *Bundesarbeitgeberverband Chemie*, or BAVC. Plant size varies considerably from the really big firms to numerous small and medium sized firms in the rubber and pharmaceuticals sectors. It is the large firms that possess the top-level decision making positions. Despite the heterogeneity of the chemicals industry with respect to plant size, a high percentage of companies have traditionally joined one of now ten regional employer associations that negotiate collective agreements with the union.⁵⁰ Employer associational density is about 80 percent, which is exceptionally high compared to metalworking at around 30 percent. Chemicals employers tell us that the problem with associational flight is not really one they experience in their industry.⁵¹ This supports the central argument of this dissertation that in fact the Model of social partnership is not eroding, if you take the time to look at more than one sector of the German economy.

The ten regional members of BAVC are roughly organized according to German state, or *Land*. The regional members are Baden Wuerttemberg, Bavaria, Hesse, North Germany, Northeast Germany, Nordrhein Westfalen (NRW), Rheinland-Pfalz, Saarland, Unterwesergebiet, and Westfalen Sitz Bochum. There are over 1,900 member companies represented within these

⁵⁰ Behrens and Jacoby 2004, p.102

⁵¹ Interview

ten regional associations and over 550,000 employees that are affected by bargaining rounds. Traditionally, Hesse, NRW, and Rheinland Pfalz have been the leading regions in the BAVC. These states correspond to the original headquarters of Bayer, BASF, and ex-Hoechst. All of these regions are in the former Western Germany.

Bayer, ex-Hoechst and BASF tended to work collectively through their industry association VCI, given their history of tripartite cooperation, roughly equal sizes and cumulative domination of the German chemicals industry - not only by right of their individual market shares, but also due to having their representatives on the supervisory boards of other chemicals companies.⁵² This overlapping of board members transcribes to the employer association BAVC as well. And this almost oligarchic coupling between the biggest firms and employer association, and biggest firms-union stands out.

Now, I will focus on the power dynamics. The firm is intrinsic to the varieties of capitalism approach this dissertation takes. In short, the argument made here is that because the employer association and bargaining is controlled by the largest firms in the industry, and because these firms dominate the industry even outside of the social partners, this facilitates collective bargaining cooperation. The real relationship with the unions cannot be understood unless the BAVC is seen in the context of the activities of the big firms and of other actors in the sector.⁵³

There are people that hold current positions of leadership at their firm, and either BAVC or the union IG BCE. There is a clear overlap of these social partner positions of leadership with membership on the boards of the two BASF and Bayer more than other firms. What's more,

⁵² Sally, p.110-111

⁵³ Grant et al, p.157.

there are cross holdings of board seats amongst the leading firms-Bayer, BASF and mostly Evonik, the third largest German chemicals firm. For example, the current IG BCE lead negotiator is a supervisory board member at Bayer while simultaneously serving on a board at Evonik.

Another example is the newly created Lanxess (2004). Though Lanxess does not hold a representative seat at national level in BAVC, three of the four member Executive Board of Lanxess are former ex-Hoechst or Bayer employees. In addition, the CEO of Lanxess, has been a member of the VCI Presidential Council since 2006. Though not responsible for collective bargaining, the VCI maintains a close and cooperative relationship with BAVC. The seemingly “closed circle” of who makes up the decision making bodies is a result of the industrial structure described in the previous sections.

In German chemicals, the cartel-like cooperative structure goes back to the origins of the industry. Yet, one could argue that the origins of many industries resemble cartel-like structure, or that it was a sign of the times. But for German chemicals, this structure never evolved into multi-firm competition even after the decartelization post -World War II. Though cross-holdings of board memberships is not illegal in Germany, nor is it uncommon, the outstanding characteristic within the industry is that it’s almost always the same group of firms. I am not the first to realize this, though it has not really been applied to bargaining outcomes.

A look back in time reveals the following: Even in 1980, the ten largest firms, and particularly the three giants, exercised dominating influence in the industry, all having representatives on the supervisory boards of other chemicals firms.⁵⁴ This representation varied

⁵⁴ Grant et al, p.44-45.

from two in the case of Boeringer Ingelheim, the tenth largest, to Bayer, with twenty-two. Seven of the top ten firms had more than ten representatives on the boards of other chemicals firms.⁵⁵ Large firms oftentimes have interests in smaller firms as well, with former Hoechst for example owning 50 percent of Wacker Chemie in the 1980s.

Today, the networks look like this: Each person below holds a position of leadership at either the chemicals employer organization- BAVC, the industry organization, VCI, or the union, IG BCE and on either their Supervisory or Executive Board at their large firm, one of the *Grosschemie*. The oligarchic rule is clear. Table one shows the social partner network and how it is run by the large firms.

Table 1. *Grosschemie* and the Employers Association and the Union.

Klaus Engel – CEO of **Evonik** and Chairman of **VCI**;

Michael Vassiliades (BASF) head of **IG BCE (BASF: Personnel Committee, Audit Committee which are on the Supervisory Board;)**, **Henkel** - supervisory board member; **Evonik Steag** - supervisory board deputy chairman, supervisory board member Kali (Potash mining/chemicals)

Margaret Suckale (BASF) supervisory board member **BAVC**, Industrial Relations Director
BASF

Lutz Muehl-Secretary of European Chemical Employers group (ECEG)

Eggert Voscherau- (BASF) Supervisory Board President of **BASF**, President and Supervisory board chairman since 2005 of **BAVC**, Personnel and xxxx committee; President of the **BDA** since 2005 – umbrella employer organization for all of German industry

⁵⁵ Grant et al, p.44.

Ralf Sikorski (BASF) regional manager of Rheinland Palitinate/Saarland branch of **IG BCE**, also supervisory board membership at **Evonik** Power Saar and **Evonik** New Energies as deputy chairman

Manfred Schneider (Bayer) former head of **VCI** 1999-2001, now chairman of superviosry board at **Bayer**

Hans Carsten Hansen (BASF)- head of **BASF** Human Resources; chief negotiator for the **BAVC**

Peter Hausmann (Bayer)-supervisory board member since 2006 at Bayer; executive committee of **IG BCE**; office also held at **Evonik**.

Reiner Hoffmann, (Bayer) supervisory board since 2006 Bayer, North Rhine district secretary of IG BCE, office also geld at **Evonik** Serviese since 2010.

Hubertus Schmoldt (Bayer) suprvisory board member Bayer, former chairman of **IG BCE** 2003?-2009, offices also held at **RAG (Evonik** parent company)

Werner Biscoff (Evonik) supervisory board member and vice chairman at Evonik, former member of Executive general mgmt board **IG BCE**, formner chief negotiator IG BCE,board memebrrs- Sanofi-Aventis Deutschland (**ex-Hoecsht**), deputy chairman and supervisory board member **Continental AG** (rubber. Conti AG rep holds a seat on **BAVC**)

Harald Schwager (BASF) current Executive Board member **BASF**, previous supervisory board member of **BAVC**, previous Indsutrial Relations director- **BASF**.

Ruediger Erkel – former president of **BAVC**,

Juergen Maass- BAVC chief negotiator 2000 round,

The social partnership in this industry assumes and has assumed for a very long time, a cohesive and cooperative structure with the large firms assuming greater power. Both the union and employers association agree that the large firms are the leaders of the entire chemicals industry.⁵⁶ It is no secret. In fact, BASF is the only company in BAVC employers association that has two representatives at Supervisory Board level. As we have seen, BAVC and IG BCE have consistently overlapping board members from a predictable pool of what look to be the same firms. These firms are BASF, Bayer, and Evonik. Because of the sheer size of the industry compared to metals, it can be said that the networks draw from a smaller pool. What makes it unique however, is that the offices held do not really rotate among the whole of the industry to smaller firms. It maintains an almost impenetrable elite formation.

That chemicals is dominated by its three largest firms, is not a new observation.⁵⁷ Numerous studies⁵⁸ have traced the history of German chemicals on its own and in comparison with other countries, mostly Britain and France. Other studies have used chemicals and metalworking as case studies for the decentralization of collective bargaining. In political economic writings, however, the detailed studies that do include chemicals have approached collective bargaining through the lens of union politics and strategies, rather than from the viewpoint of the firm and employer association.

A main exception to this would be Thelen's *Why German Employers cannot bring themselves to dismantle the German Model*. Gathering her evidence from mostly Gesamtmetall,

⁵⁶ Interviews Employer Association and Union

⁵⁷ Markovits, Thelen, etc.

⁵⁸ Sally, Grant, Arora, Chandler, etc

she argues that German employers are ambivalent about abandoning traditional bargaining institutions, so in essence, they will not dismantle the German model. But German employers in chemicals tell another story. The employer association BAVC as we shall see, is anything but ambivalent toward collective bargaining and the challenges it faces.

Nonetheless, there is admittedly less scholarship on the chemicals industry, especially from an employer perspective.⁵⁹ The limited scholarship may be because it is easier to get data on unions than it is on employer associations. At one point, it was “notoriously difficult” to get data on chemicals at all. Furthermore, the websites of BAVC and VCI are mostly available in German only, with the union website offering only a limited amount of information in English. Nevertheless, the concentration of influence (in chemicals) has been important in determining the development of collective bargaining.⁶⁰

Finally, even outside of wage setting, the chemicals industry is tilted toward oligarchy. An important issue area for chemicals is the environment and environmental regulations imposed by the German government. It is critical to keep chemicals processes safe and clean, both for the environment and for employees, and in fact German is labeled as one of the most “green conscious” countries on the world. To deal with this, the industry works through policy networks, which at the lower level are decentralized. Yet, these policy communities are integrated upward into coherently organized pan-sectoral policy networks. These networks are asymmetrically structured, giving the large firm-industry association axis strong power positions.⁶¹ In turn, this type of structure facilitates cooperation between the social partners who

⁵⁹ Siliva and Schroeder is another example, though they do not study chemicals in detail.

⁶⁰ Grant et al, p.159.

⁶¹ Sally, p.111

are similarly organized because creating and maintaining green conscious policies is a goal that the union and BAVC have in common.⁶²

2. IG BCE

The union for the chemicals industry is called *Industriegewerkschaft Bergbau, Chemie, Energie* or IG BCE. It is headquartered in Hanover. It was formerly known as IG Chemie before it merged with the paper, leather and ceramics unions in 1997. IG BCE now represents workers in workers in mining, chemicals, natural gas, glass, rubber, ceramics, plastics, leather, oil, paper, recycling, coal and water. Today there are 800,000 union members. Leaders within the industry are pharmaceuticals and chemicals which are looked to by other sectors such as plastics and paper for collective bargaining strategies and concepts during wage rounds. They will orient themselves to the bargaining rounds in the leading sectors; they do not look to IG Metall, the metalworking union for guidance; the deadlines and contracts are completely different.⁶³ There is a certain amount of competition between the sectors, but not really coordination. The unions will look at what each other settles on, but not more than that.⁶⁴

III. Employer-backed Centralization and How the Union Became Tame: 1960s-1970s

Though opening clauses are a recent form of decentralization, decentralization is nothing new to the collective bargaining arena. The 1960s ushered in an era of radicalism for the union. IG BCE was considered radical because of its wage gains that were at the time higher than any other in German industry.⁶⁵ For example, while the average pay increase in West Germany was

⁶² Interview with IG BCE

⁶³ Interview with IG BCE

⁶⁴ Interview with IG BCE

⁶⁵ Markovits, p.296-287

8.6 percent for 1960 and 8.5 percent in 1961; the chemicals union has secured 11.5 percent and 13.2 percent for its workers during those two years.

Employers went on the offensive, even though at the time, their good market position was an advantage to labor's goals. Most notable, however, during these years was that employers strategy was vehemently opposed to any of the unions' plant-level collective bargaining proposals. BAVC insisted on increasing coordination and centralization of all their activities.⁶⁶ Here, we see that employers are not pushing for decentralized decision making, but rather against it.

The greater shift toward centralization ended up causing tensions within the union, specifically a split within the ideological camp of the union: accommodationist v radicalism. The next decade saw two periods: early and late 1970s. During the early 1970s, decentralization remained a strategy of the union and by the mid-1970s, it had see-sawed back to centralized bargaining. Over the entire decade, the employers association remained pro-centralization. 1971 saw the last and greatest strike in the chemicals union that secured a wage increase for labor via a decentralized approach. While wages increased, however, the union lost the strike. This changed things for the chemicals industrial relations, specifically the union's character.

By the end of the 1970s, the union had become one of the most accommodationist in all of West Germany. Its "radical" ideology was purged. This was the turning point for industrial relations in the chemicals industry. Many of the communist union leaders took jobs in the metalworking industry and IG Metall where the union has remained relatively radical and conflict-prone. In chemicals, however, once the radicalism was purged, the social partner

⁶⁶ Markovits, p.297

cooperation was all but predictable, considering that there was never a real divide among employers. 1971 would cement the new cooperative, conflict-averse partnership between the union and employers which lasts up to modern day.

Cooperation in chemicals industrial relations also stems from the educated workforce. Employers tell us that the chemicals industry is characterized by hiring specialized, very highly educated people. Workers deal with substances that might be hazardous or dangerous which means that there are hardly any unskilled workers who just do manual work such as repetitive work on an assembly line. A third of the employees in chemicals have a university degree or technical school training and school education via a *Fachhochschule* or college. The fact that the working population in this industry is highly educated means two things: first, they are highly paid, and second, they do not necessarily view themselves as their counterpart blue-collar workers in other industries.⁶⁷

In contrast to the metalworking industry which strikes with an almost predictable frequency, the chemicals industry does not. This in turn is for two reasons. First, the type of worker that the chemicals industry attracts for employment is not the type to stand on the street, waving red flags or starting fire in tin barrels during strikes.⁶⁸ The self-identification of someone in a chemicals firm such as BASF is remarkably distinct from a union worker in say the auto industry assembly line or construction industry. In short, it is just not their style, nor their shared philosophy among workers in chemicals to strike.

Second, in practice, a strike in the chemicals industry is actually very hard to do, so employers tend to negotiate without risking industrial action. At Siemens, for example, a

⁶⁷ Interview

⁶⁸ Interview

metalworking and electrical firm, a worker will strike by turning off his machine and stepping away for an hour or however long the discussed strike is. After the hour, the worker will return to his work place, turn on the machine and continue working. In chemicals, however, it is not so easy to walk away from a machine. Many plants are oil refineries and it can take four weeks to “switch on” an oil refinery. The moment workers would go on strike, the whole plant would have to be closed down. Further, some chemicals plants are built so that they cannot be stopped at all. They have to operate 24 hours a day, seven days a week because of continuous manufacturing processes going on. As such, there is no real room for conflict between the social partners, in the very least, it is avoided as much as possible.

The relatively conflict averse relationship between the employers association and the union is subsequently explained by another stylistic or cultural element. IG BCE tells us that there are so few strikes in the sector because the social partnership is made of different internal politics than in metalworking for example. The chemicals industry tries to achieve and reach results that are as comparable in a more peaceful negotiation room setting than they would be if the fight was taken to the streets. The benefit of protesting in the streets is not esteemed. It however does not mean that the bargaining results are better or worse than in metals, it is just a question of philosophy.⁶⁹ The chemicals industry prefers to keep the fighting behind closed doors, and outside of the public, the media and away from their employees. Still, IG BCE has a rather hefty strike fund that would allow for strikes in the big branches of the industry if needed.

IV. How Does Collective Bargaining Work in Chemicals?

⁶⁹ Interview with IG BCE

Collective contracts are at industry or federal level and during negotiations. The BAVC executes its proposal for a new collective bargaining round in a centralized fashion. First, at district level, BAVC bargaining committees discuss proposal with member firms. Small companies are invited to voice their particular needs. Second, German state, or *Land* employer associations send representatives to the Co-ordinating Council. Entrepreneurs are ensured majority within the 60 member Council by the BAVC and all types of companies, small, medium and large, plus different sectors of the industry are represented. The aim is to ensure that, once a settlement is reached within the union, BAVC can enforce it within its own ranks.⁷⁰ The big firms which hold the majority of top-level positions in BAVC, are ensured cohesion among employers by respecting democratic principles. Still, it is the biggest firms that dominate central decision-making.

Union districts negotiate wages. The wages set are minimum standards and the big companies pay bonuses on top of that. In balancing these interests, the IG BCE has developed internal mechanisms that mirror, to some extent those of the BAVC.⁷¹ Prior to a negotiation round, headquarters will develop a general framework that summarizes their bargaining aims. This framework is submitted to the unions 26 member executive council for more discussion. Then, the framework is sent to the union's districts. The districts will debate on the goals and submit recommendations to the national union. A final vote is taken after the national level staff structures the districts' recommendations and hands them to an elected bargaining commission. Bargaining commissions give representatives from small and medium sized firms a voice and a vote. Still, it is usually the same handful of big firm employees that fill the top positions in union representation.

⁷⁰ Behrens and Jacoby 2004, p.104

⁷¹ Behrens and Jacoby 2004, p.104

When the contracts are ready to be signed for each region, it is the regional level employers association members that must agree to the newly negotiated wages, but it the national level representatives that sign the contracts. In the case of an opening clause, the regional heads of the union and of the regional employers association sign off on the contract, not the firms who wish to use the clause and not the works councils. Works councils are there to implement any clauses and have the right to co-determination, but they are not delegated tasks that involve actual wage agreements, demands or raises. That work is the responsibility of the union alone, and the employers association. The works council has no power in that realm, nor can they negotiate opening clauses.⁷² While opening clauses are used, and this dissertation does not assert otherwise, the conventional claim that power and responsibility of works councils is increasing and replacing the union does not describe the chemicals industry reality.

For example, if Yara Rostock, a Norwegian based company specializing in sustainable agricultural products such as fertilizers and located in Rostock, Germany, wants to use an opening clause, they would call the regional employer association, which in this case in *Nordostchemie*. *Nordostchemie* represents chemicals employers in Berlin and Northeastern Germany. Then Yara would call the union branch that is responsible for that same area. The employer association would sit together with the union and discuss and negotiate the details of how the clause is to be used. At the end of the meeting, it is the regional heads of the *Nordostchemie* that would sign the agreement, not the CEO or President of the company Yara, and not the works council.⁷³ In this way, conflict is kept out of the firm and into the hands of an organization that is above and beyond the singular company.

⁷² Interview with IG BCE

⁷³ Interview

Overall, conflict is avoided. Between actual negotiations, the social partners will consult each other, discuss demands for major revisions in advance and try to be on the same page, so that essentially, there are no surprises at the bargaining table.⁷⁴ Also, the chemicals employers association tells us that bargaining rounds hardly appear in the media because their model of industrial relations is just so different than the highly publicized metalworking industry. The coordination in chemicals industry is remarkable and keeping conflict out of the workplace by delegating negotiations of opening clauses to the regional or national level social partners keeps aggression and personal conflict out of the companies.

V. 1990s: The beginnings of decentralization through opening clauses

The 1990s saw a period of trouble in the social partnership and doubts arised if the German model could survive pressing economic challenges. Mostly, the common European market increased competitive pressures. So, although many chemicals companies had been operating globally, smaller companies had not. Furthermore, German re-unification in 1990 and the transformation of eastern European countries gave firms opportunities to set up production sites elsewhere at substantially lower costs.⁷⁵

Decentralization of sectoral bargaining is the result of economic necessity caused by a changing economic environment.⁷⁶ It occurs because some issues are more adequately addressed at the company or plant level that at central or sectoral level. With the increasing pressures of globalization, decentralization of collective bargaining increased. The economic challenges gave way to economic differentiation among employers. As a result, many companies

⁷⁴ Behrens and Jacoby, 2004

⁷⁵ Behrens and Jacoby 2004, p.104

⁷⁶ Kamakura, p.17

became less willing to accept standard wages, hours and benefits, and many employers in East Germany completely withdrew from employer associations. This is known as association flight. Scholars saw this association flight as further evidence of erosion, or at the least, a changing industrial relations environment. To top it off, several East German firms simply violated the industry-wide agreement, and (illegally) negotiated their own contracts with their own works council.⁷⁷ The 1990s is then, when writing on the erosion of the German model of industrial relations began to fly off the shelves.

Given the changing economic environment, the social partners in chemicals had two new problems on their hands. First, BAVC and IG BCE had to add provisions to the industry wide collective agreements that could be adapted to the different abilities and situations of their firms to pay the standard wages. Second, the social partners felt that they had to actually save the collective bargaining agreement as a widely accepted tool for setting minimum standards.⁷⁸ The solution came in the form of opening clauses. The opening clauses provided a “safety valve” for companies under severe economic distress and pressure. Nevertheless, both social partners have to approve the application of the opening clause before exception was granted, “thereby underscoring the bilateral nature of the process.”⁷⁹

A. 1990: Reality v. Rhetoric

On February 5-6, 1999, IG BCE held a conference on Hannover, Germany with 270 local union members to evaluate the developments of the 1990s in collective bargaining for their industry. Since the mid-1990s, the union agreed to introduce opening clauses in its branch

⁷⁷ Jacoby 2000

⁷⁸ Behrens and Jacoby 2004, p.105

⁷⁹ Behrens and Jacoby 2004, p.105

collective agreements, which allowed companies to use under very specific conditions and to a certain extent, to modify or diverge from collectively agreed standards. The consensus was that there was actually a low take-up on opening clauses. Let's investigate.

The most popular opening clauses pioneered in the chemicals industry are the working time corridor and the wage corridor. The working time corridor allows companies to reduce or extend working time by 2.5 hours around the 37.5 hour working week. This was first introduced in 1993 as an option for some companies. The wage corridor allows companies to reduce remuneration by up to ten percent of the collective agreed rate in order to save jobs and/or competitiveness. This was introduced for the first time in 1997.

In order to use the opening clause, there are two conditions. First, the management and works council at company level have to reach an agreement on the deviation from the collective standards. And second, the works agreement has to be backed by both the union and the employer association at sector level, or centralized national level. Without this support, there is no using the opening clause. This is key. Because the clause is unusable unless permission is agreed to by both social partners, this should signal that the clause is not a free for all. It is not a liberalized tool that breaches the boundaries of the collective bargaining institution.

Decentralization is within the boundaries of collective bargaining, still. This is "regulated decentralization," or some call it "organized decentralization"⁸⁰. Even so, the relative low take-up of opening clauses shows that they remain an exception, focused on companies faced by economic woes, and has not led to an overall erosion of branch level agreements, as some critics assumed.⁸¹ Further, neither of the social partners wants to relinquish centralized and ultimate

⁸⁰ Traxler, 1995

⁸¹ Schulten Thorsten. DE9906202N, June 28, 1999. "Opening clauses in chemicals rarely used."

approval, even signing an agreement to follow regulated decentralization in the same conference in Hannover.

To be precise, the numbers published by the conference are the following⁸²: Of the 1700 companies with 590,000 employees covered by the sectoral agreement for West German chemicals industry, only 120 companies with 29,000 employees are currently using the working time corridor. A further 47 companies with 14,000 employees adopted the wage corridor for a particular department or group of employees. Of these companies, only 29 have made use of the adopted clause. This shows that just because there is an opening clause available, or even adopted, that does not by default mean that it will be put into use.

To be sure, the general claim that the frequency of opening clauses is increasing in Germany, while not inaccurate, must necessarily be dissected so as to avoid misunderstanding political economic reality. Even as late as 2004, Considering the (1600) BAVC members, exceptions to the collective agreement are not a landslide, though they do send a signal that bargains can be adopted for firms in temporary crisis.”⁸³ Overall, the social partners in chemicals keep centralized power and structures to keep opening clauses under control. What’s more, works councils do not wish to relocate collective bargaining from the sectoral to the company level.⁸⁴ It may be that the pressures for decentralization via the opening clause are stronger in construction, transport and communications sectors.⁸⁵

Let’s now take a look at the bargaining rounds starting in 2000. There is a research gap that needs to be filled with updated analyses of collective bargaining. The discussion should be

⁸² Protocoll 5/6 Februar Hannover IG BCE

⁸³ Behrens and Jacoby 2004, p.106

⁸⁴ DE0510202F, Heinner Dribbusch, October 24, 2005. “New Survey on...”

⁸⁵ Vogel, Sandra. DE0606019I. July 18, 2006. “Use of opening clauses...”

advanced and current. While the 1990s influenced many scholars⁸⁶ to write about the inevitable unraveling of the German model of industrial relations, that decade is now over and we have a new one to consider and measure against the prevailing wisdom. While opening clauses are certainly used in chemicals, they remain the exception rather than the rule. If anything, employers tell us that the opening clause is a way to make the collective wage agreement smarter and custom fit. In fact, employers do not agree that wage setting in the chemicals industry is on the way to becoming like the liberalized US model⁸⁷.

IG BCE tells us that the opening clause, admittedly used a lot, is a way to keep those employers within the branch level agreements while removing pressure from those that need it. Opening clauses are a way to maintain the custom of branch level agreements so that the union is not making an in- House agreement with every company.⁸⁸ Still, chemicals opening clauses are not as widely used as in metalworking and are on the decrease compared to 2009 when they were used to reduce for example personnel costs. Further, IG BCE does not view the opening clause as a sign of erosion, or danger thereof. Centralized collective bargaining has definite staying power in this industry. The social partners make the public aware of their cooperative relationship, as well. The following sections will demonstrate just this.

VI. A New Century Begins: 2000

The new decade put the chemical social partners on the map, in a positive light. The previous three decades had been a see-saw of internal union conflict, radicalism vs. accommodationist policies, and employer backed centralization offensives. But it also was

⁸⁶ Streeck et al, etc

⁸⁷ Interview

⁸⁸ Interview with IG BCE

witness to the highest wage gains this industry had ever seen, far above what any other sector in Germany had reached. The chemicals industry has only seen three strikes of varying degree. The first was during the Weimar era, the second in 1970 (localized strikes), and the third was a small strike in 2011 (largely peaceful, but effective mobilization). It is safe to say that industrial relations in chemicals is relatively conflict free. By 2000, industrial relations in chemicals had even reached a milestone. It was with this bargaining round, bringing in the new decade, that IG BCE and BAVC concluded new agreements that would serve as a pattern setter, simply because it was the first industry to come to an agreement.

Historically, the metalworking industry has been the pattern setter in sectoral negotiations for Germany. However, that changed in 2000 when the chemicals industry succeeded in being the first to conclude a new agreement. Since then, chemicals has become increasingly prominent, playing central role in such negotiations for the whole of German manufacturing.⁸⁹ Kamakura suggests that chemicals was the first to conclude a new agreement in 2000 because of the differences in the relationship atmosphere in different industries. Trade union negotiators in the chemicals sector are generally seen by employers as being more moderate than their counterparts in the metalworking sectors.

A. The 2000 bargaining round

The “chemicals collective bargaining alliance 2000” contained a package of collective agreements for the employees in western Germany that stated that both bargaining parties would strengthen competitiveness and investments in the German chemicals industry. Further, they would follow a long term collective bargaining policy in spirit of the German Alliance. The

⁸⁹ Kamakura, 2006, p.9.

German Alliance referred to the “Alliance for Jobs.” In 1998, representatives of central government, the employers' associations and the trade unions agreed, at a meeting chaired by the then German Chancellor Gerhard Schröder of the SPD, to work together in an Alliance for Jobs, Training and Competitiveness in order to reduce unemployment and raise the competitiveness of the German economy.⁹⁰ Perhaps most important was the reassurance that collective wage bargaining will remain free of government intervention”.⁹¹

In the 2000 negotiations, IG BCE was the only major trade union to not set a figure for its bargaining demands. Instead, the union used the Alliance recommendation: the overall volume of pay increase should be equal to the increase in productivity in the industry, which at the time was about 4.8 percent. Employers did not agree. The employer reaction was that the national productivity increase referred to the national average overall and predicted by the Council of Economic Experts to be closer to 2.6 percent.

Eventually, the pay increase agreed to was 2.2 percent followed by a further two percent the following June. As a precaution, an opening clause was introduced in order to avoid flight from any collective agreements. The clause was only valid if both union and employer association agreed to its use, which would mean only if safeguarding employment and improving competitiveness could a company diverge from a sectoral agreement, paying below the collectively agreed level. This is regulated decentralization. Decentralization was ultimately controlled by the social partners.

Overall, the bargaining round was regarded as a success of the Alliance for Jobs and generated positive public reactions. The course of the 2000 bargaining round for all of Germany

⁹⁰ http://www.eu-employment-observatory.net/ersep/imi66_uk/00030005.asp

⁹¹ *Ibid.*

was primarily determined by the chemicals sector, starting their negotiations three months before the expiration date the previous agreements, so that they could be the first to conclude a major agreement. This secured the role of “pattern-setter”, which actually extends beyond German borders. There is a European dimension to pay settlements made in Germany. They have been widely regarded as a kind of pattern-setter for the whole of Europe, with metals having carried that role until the break in 2000.⁹² While the agreement put pressure on the metals union IG Metall whose president declared that the real task of the Alliance for Jobs was essentially to “discipline the trade unions,”⁹³ IG BCE and BAVC came out looking cooperative, functional and fast.

B. The 2002 bargaining round

Like the 2000 bargaining round, the 2002 round of negotiations were the first set of major agreements to be signed in German industry and were assumed to have an important influence on the negotiations that continued in other sectors. A 3.3 percent pay increase for both west and east German workers, and an additional 0.3 percent increase as a result of the moderation of the pay framework agreement, plus a further adjustment of eastern to western German pay levels was signed into effect on April 18, 2002.⁹⁴

Still, an opening clause was formulated in this round. Under certain conditions, companies with significant economic problems could postpone to pay the pay adjustment meant to bring west and east German wages closer. Also, a performance related component was introduced to allow management and works councilors vary the annual bonus by about 20

⁹² DE0004255F, Schulten

⁹³ Thorsten Schulten, DE0004255F. April 28, 2000. “Agreements in chemicals and metalworking...”

⁹⁴ The bringing up of eastern German to western German pay levels has been an issue in united Germany since 1990. Nonetheless, it seems to have been a harder struggle in metalworking and construction than in chemicals.

percent in either direction of the collective agreed rate, depending on the company's performance. The union thought the opening clause was innovative while employers felt it was a good step toward performance related pay. Overall, both parties were satisfied and there was no industrial action or employer-union clash. The umbrella organization for employers couldn't help but notice.

Realizing the influence on then ongoing negotiations in other sectors, the president of the BDA, the Confederation of German Employers' Associations commented that the results of the chemicals agreements could not be transferred to other sectors, and president of the Confederation of German Industries had the same view- the chemicals deal could not be seen as a pace setter for other sectors. Yet, many employers representatives actually praised the fact that in comparison to the industrial conflict that was looming in metalworking, the social partners in chemicals were able to reach an agreement without industrial dispute. What was going on in the other sectors?

A month later, the metalworking union called a strike in its main district of Baden-Württemberg after the negotiation over a new collective agreement failed. Nearly 50,000 workers participated. At the time, the metalworking sectors were outperforming chemicals, but industrial dispute plagued metals. By the end of the 10 day strike, close to 200,000 employees in more than 100 establishments participated in industrial action in Baden-Württemberg alone. In construction, the scene was the same. In June 2002, after the failure of negotiations on a new pay agreement in construction, the union called for a strike. On the seventh day of the action, there were 32,600 workers on strike at 2,837 construction sites.⁹⁵

⁹⁵ <http://www.eurofound.europa.eu/eiro/2003/02/feature/de0302203f.htm>

No such conflict was seen in chemicals. Actually, the new collective agreements in chemicals achieved were the highest pay increases since 1995, and what was called the “special negotiating culture”⁹⁶ between collective bargaining parties allowed them to find acceptable bargaining compromise without major disputes. It is precisely this “special culture” that I stress throughout the chapter. Though it lacks a precise definition, it is a social, economic and political concept- the closely bound partners and industrial organization and is particular to this industry. Of the industries studied in this dissertation, the recent bargaining rounds actually reinforce the institutional resiliency of not only collective bargaining, but centralized collective bargaining.

C. The 2003 bargaining round

The next bargaining round was settled after three rounds. It included a new pay agreement, and an amendment to the working time agreement. In addition to a flat rate payment, wages and salaries increased by 2.6 percent increase for all workers. There was an opening clause in the agreement as well related to training, but not to pay. The chief negotiator of IG BCE⁹⁷, went into negotiations without a specific pay demand and considered the pay increase a good compromise, but was particularly proud of the provision for apprenticeship and training places. BAVC also saw the agreement as acceptable, believing that the provisions for training will help keep the industry competitive.⁹⁸

Chemicals was again the first industry to conclude agreements in 2003, at a time when other sectors had been much more conflictual. At the same time, eastern German branches of the metals union were in a four week strike over a 35 hour work week. Chemicals was a pioneer in

⁹⁶ DE0205204F

⁹⁷ Werner Bischoff, Eurofound

⁹⁸ Heiner Dribbusch, DE0307205F

the sense that it was the first industry to sign a collective agreement to increase apprenticeship and training places in the private sectors. Rather than haggling about places behind the decimal point, as other German unions do, the IG BCE often looks for benefits such as hiring of more trainees or improved pension plans (as we see in this round).⁹⁹

D. The 2004 bargaining round

The next bargaining rounds brought about another pay increase of 1.5 percent. This time, after only two rounds of talks, on May 14, in addition to a pay increase, the social partners signed a joint declaration on the utilization of flexibility (opening) clauses. In the declaration, the union and employer association underlined all provisions which would call for the utilization of these clauses such as weekly working time or extra leave. The point was to stress their commitment to these clauses. IG BCE welcomed the agreement as well as employers association, and the BDA, and even the Federal Minister of Economics and Labor- Wolfgang Clement. All agreed that the opening clauses proved that the bargaining parties in chemicals had a future as far as bargaining autonomy was concerned. The opening clause was to be an example that other sectors should follow. Here we see that instead of opening clause being a scary word, it is praised by the social partners and officials outside of the social partners.

While social partners in metals were struggling to retain a veto right to all works agreements, the chemicals sector was much more prepared to allow parties at company level room for maneuver.¹⁰⁰ Just as in previous years, the lack of confrontation was a notable feature of collective bargaining in chemicals. And while opening clauses are a form of decentralization, they are not necessarily malicious and corrosive. In chemicals, they are a form of adaptation to

⁹⁹ Williams, Dede, Eurofound

¹⁰⁰ DE 0406205F, Dribbusch, "New package..." June 22, 2004.

keep collective contracts flexible and in the sole domain of the social partnership so that bargaining remains free from government intervention. For example, employers and the union extended an existing clause allowing long-term unemployed workers and workers just starting their careers to be hired at 90-95% of union pay.¹⁰¹ While they may appear to be unfair, this type of clause actually allows for unemployment to be decreased and promotes new employment. Within the package goals, training positions were set to increase by seven percent to 25,000. These are paid positions. Opening clauses are hardly destructive, at least in the chemicals industry.

What led to the joint declaration? At the time, Germany industry had seen a process of increasing decentralization of collective bargaining during the previous decade of the 1990s that called into question whether bargaining could fulfill its basic function of placing wages outside competition at branch level.¹⁰² Adding to the insecurity was the widely public bankruptcy of giant Holzmann construction group which caused employers to worry that neither firms nor employees could not be rescued if they were not allowed to contravene collective agreements. By February 2004, at a conference organized by the Cologne Institute for Business Research, representatives of employers and some academics called for the reform of the system negotiating industry-wide collective agreements. The demand was reinforced by an IfD¹⁰³ poll which found that more than 80 percent of employers in metalworking considered it necessary to move away from rigid working time regulations in collective agreements, but that's just it, it's pointing to metalworking not chemicals.

¹⁰¹ ICB Chemical Business, 24 May 2004 "Industry Pay Raise agreed."

¹⁰² DE0002238F

¹⁰³ Institut für Demoskopie (Allensbach)

Nevertheless, Gesamtmetall admitted that serious problems existed and the symptoms are caused by waning support for industry wide collective agreements. Though they did not wish to abandon industry wide agreements, they wanted more flexibility within these arrangements. But let's take a closer look. The responses for the poll reflecting the mood among employers were provided by 500 managing directors in the metalworking and electrical sector, only.¹⁰⁴

Chemicals decided to make a move.

Later that year in November, the social partners in chemicals defended their autonomy in a joint press conference, speaking out against proposals from conservative and liberal opposition parties to decentralize the bargaining system.¹⁰⁵ At the time, a new and serious public debate had emerged in Germany about the future of the collective bargaining system. The Christian Democratic Union (CDU) and the FDP parties raised proposals to decentralize the collective bargaining system by way of new legal provisions on opening clauses in sectoral agreements. In other words, there was serious public pressure on the private sector about changing industrial relations legislation.

In the 2004 press conference, both the BAVC and IG BCE presidents defended the principle of collective bargaining and spoke against any plans and the bills drafted by SPD and FDP to introduce legal opening clauses in the Collective Agreement Act and Works Constitution Act, in order to permit deviations at company level from industry wide collective agreements without the final consent of the bargain parties. This demonstrates chemicals social partner commitment not only to each other, but to what they represent within the German model, especially in the face of possible legal challenges to an institution they have so long worked

¹⁰⁴ DE0403104F

¹⁰⁵ DE0412201N, Heiner Dribbusch, December 7, 2004. "Chemicals social partners defend collective bargaining autonomy"

within. The press conference also showed that if opening clauses are to be used, it should remain in the domain of the employers and the union, in a social partnership. Together, they showed that they had a proven ability to adopt flexible agreements in a changing environment to meet company demands. In contrast to the inexplicably unchallenged argument that employers are “quite unsure” of whether the alternatives to the current system would serve their interests¹⁰⁶, in chemicals, they seem to in fact know exactly what they want, even under pressure.

E. The 2005 bargaining round

In June of 2005, IG BCE and BAVC agreed on a 2.7 percent pay increase and a flat rate payment after two rounds of talks. There was however, an opening clause allowing the parties at company level to agree on deviations from the pay agreement as far as the flat rate as concerned. This included changing the date or cutting the payment overall. Though the partners did not reach consent on the demand that the union rose to introduce a bonus for trade union members, again, as in previous years, the lack of confrontation remained a key characteristic of bargaining in this industry.¹⁰⁷

That year however was not without upset. Later in November, Continental AG announced that it would close down its production site in Hannover-Stoecken at the end of 2006 and cut 230 jobs. Continental AG makes rubber tires for extremely high end automobiles such as Porsche. The upset was that the announcement was made despite an employment pact concluded between the company and the works council in May 2005 in which the company agreed to remain open in exchange for longer working hours without pay compensation. The

¹⁰⁶ Thelen in Iverson, Pontusson, Soskice, 2000. *Why German employers...*

¹⁰⁷ DE 0507202N Heiner Dribbusch, July 5, 2005.

union protested against the plans of the company; 23,000 workers took part in a rally the day after the plan was announced. IG BCE maintained that the contract should be honored.¹⁰⁸

The works agreement was based on an opening clause in the framework agreement which applied to Continental with the consent of the social partners “Under the terms of the plant agreement, in fact, management reserved the right to invoke layoffs under special conditions, in which case the position of the workforce is such as if the plant agreement had never existed. This results, above all, in subsequent crediting in full of the additional hours worked and backpayment of wages on the basis of the collective bargaining agreement. We do not conclude any agreement without this kind of re-opener clause that allows us to respond flexibly to unforeseen changes in market developments.”¹⁰⁹

The plant closed. Though the union said the decision was unacceptable and was the first time a company had not honored the agreement, Continental maintained that the decision was in the rights of the plant agreement made. Disagreements between employers and the union does happen in chemicals. The chemicals industry is not without incidences that, if they were to increase, or revoke the social partnership as the union argued in this case, collectively they could become a threat to the German model. At present, however, incidences such as with Continental do not appear to be commonplace in this industry.

F. The 2007 bargaining round

In March 2007, IG BCE and BAVC signed a new agreement that raised wages by 2.6 percent and provided for one time payments for fully qualified employees. Here an opening

¹⁰⁸ DE0512202N Heiner Dribbusch, December 13, 2005. “Continental want to close...”

¹⁰⁹ http://www.conti-online.com/generator/www/com/en/continental/pressportal/themes/press_releases/2_corporation/locations/pr_2005_11_22_1_en.html?ovMode=&dImKeyword=&ssanum=&DocId=3257914

clause allowed companies to annul or decrease the payment for economic reasons. The union felt that the new agreement was a reasonable compromise and that it reflected the economic situation of firms in the sector, also meeting needs of less profitable companies.¹¹⁰ Employers stated that while the chemicals industry had reached its upper limit with regard to the costs in the collective agreement, the opening clause would allow the burden to be eased for some companies.

The concluded talks in chemicals preceded the metalworking talks by about a week. Watching closely, and knowing that again chemicals could be seen as a pace setter, the metalworking sector employer association president shared some words. Gesamtmetall made clear that the terms agreed on in the chemicals industry may very well have been suited to the economic situation in that sector, making them inappropriate for his sector, metals and engineering. At the time, almost 30 percent of the firms in the metalworking sector were either in the red or just breaking even.¹¹¹ He then said that similar wage increases for metalworking employees to those seen in chemicals could simply not be expected.

After tough talks, it turns out that the 2007 metals bargaining round brought in the highest wage increase that sector had seen in over ten years of 4.1percent. The social costs however were strikes involving about 470,000 workers in over 1,900 establishments in Western Germany.¹¹² If this same strike were to have happened in chemicals, it would have meant that literally every single firm in the employer association would have faced a strike by its employees.

G. The 2008 bargaining round

¹¹⁰ DE070339I, April 27, 2007, Sandra Vogel, "New Agreement signed..."

¹¹¹ Eironline.de

¹¹² New Collective Agreement in metalworking industry, Dribbusch, July 7,2007

Labor relations in the German chemicals industry are nothing if not amicable.¹¹³ Again the new bargaining year was met with success, but not without a lesson learned. A union-proposed wage increase that employers deemed excessive led to some industrial action on the workers side. Eventually IG BCE backed down, but chemicals employers were apparently shaken by the prospect of what might have happened, had the action lasted longer than four weeks.¹¹⁴ In the end, both the union and the employers association expressed renewed gratitude for their social partnership and its value. For each social partner, this may represent two different things, but one is common: industrial peace.

In April 2008, the social partners signed collective agreements including a 4.4 percent pay increase and a further 3.3 percent increase after one year. The shining part of the agreement however was the settlement of working life and demography¹¹⁵, which although not wage related, was according to the employer association, “a demonstration of the creativity and proactive attitude of the social partners in the chemicals industry.”¹¹⁶ Through the collective agreement on "Work life and demography" (*Tarifvertrag "Lebensarbeitszeit und Demografie" - TV DEMO*), the chemicals industry became of the first industrial branches in Germany to conclude a collective agreement that tackled the consequences and challenges of demographic change and provided the companies with custom-built tools¹¹⁷. The chemicals industry, of the three in this dissertation, is the most affected by demographic challenges, mostly an ageing work

¹¹³ Williams, Dede. February 29, 2008. ‘Keeping it sweet.’
<http://www.icis.com/Articles/2008/03/03/9104683/harmonious-labor-relations-in-germanys-chemical-sector-face-challenges.html>

¹¹⁴ Ibid.

¹¹⁵ Working life and demography is a special issue area for chemicals. The chemicals industry faces an aging working population and while in the late 1990s, early 2000s kept many workers in their 40s and 50s and fired younger ones, today those older workers are about to retire and thus employers are constantly trying to hire people to work for chemicals, especially in eastern Germany.

¹¹⁶ DE0805029I, Oliver Stettes, June 3, 2008. “Social partners sign...”

¹¹⁷ The IG BCE collective agreement on "Work life and demography" Czichos, Frank.

population. Employers are constantly trying to come up with collective agreements that suit the needs of such population, while stressing the importance of training programs and extending the retirement age further and further back. Amongst the challenges, it seems that chemicals industry is able to strike rather innovative deals.¹¹⁸

H. The 2010 bargaining round

After the ink was dried on the 2008 contracts and before the 2010 negotiations began, the global recession had spread, ushering in a bad year for just about every sector. The German chemicals industry saw decreased output (except in pharmaceuticals), and implemented short time working. But a new attitude came about. Many German companies were now wary of opening clauses in the industry wide collective agreement, some even declining to use the flexibility at all, which allowed working time to be downscaled.¹¹⁹ The firms opted instead for straightforward pay cuts. Why? The opening clause in the chemicals industry could be leveraged for only a limited time and no one knew how long the recession would last.

By April 2010, a new collective agreement was concluded by the social partners. Though it included lump sum payments, the main concern was to safeguard employment and combat the recession. There was no measure for a pay increase.¹²⁰ For companies in economic distress, employers and works councils can reduce the lump sum payments through an opening clause. Employees in companies not greatly affected by the economic crisis receive an addition bonus of 200 Euros. What is important to note here relative to centralization of collective bargaining is that the employer and the works council both must agree to exercise these options in their

¹¹⁸ Kamakura, 2006

¹¹⁹ Williams, Dede. Insight: German chemicals in the doldrums. February 24, 2011. www.icis.com

¹²⁰ Sandra Vogel ID DE1006019I. Cologne Institute for Economic Research. Eiroline. "New collective agreement concluded in chemicals industry." 23-7-2010)

company. If there is a disagreement, the social partners at national level will decide. In other words, conflict at firm level is ultimately settled at centralized or national level, if need be. This shows centralization dynamics that work.

VII. Conclusion

This chapter has shown that collective bargaining in the chemicals industry is a case for institutional resiliency and its social partners remain solidly committed to centralized decision making. Industrial relations in the chemicals sector has evolved into one of the most stable micro- institutions in the German model. Via new models and even ground-breaking solutions, this industry shows that collective bargaining can work.¹²¹ While metals, also heterogeneous like chemicals, is much larger, its social partners lack the same type of cohesion. There is a tension in the metalworking industry that does not exist in chemicals, or at least, has not existed for a long time. Also, bargaining tendencies lean more toward decentralization, as the use of opening clauses in this sector is higher than in chemicals. The construction industry went so far as to enlist the help of the state in wage negotiations, but chemicals seems to run smoothly without public sector negotiating help.

Because decentralization of pay negotiations results in a greater diversity of wage settlements in the chemicals industry, this can erode or undermine the centralized aspects of the institution. Nevertheless, most bargaining overwhelmingly is still centralized, and still collective. Decentralized bargaining in chemicals is not the status quo, nor is it becoming the only way to handle wage or working hour agreements in this industry. The social partners are committed to collective bargaining and remain publically devoted to centralization efforts. When agreed and

¹²¹ Vogel, DE1006019I- New collective agreement concluded in chemicals. (2010 bargaining round) 23 July 2010

necessary, an opening clause can be used, but the institution of collective bargaining is neither eroding nor metamorphosing into a liberalized US style of capitalism. That the percentage of the use of opening clauses in this industry actually recently decreased, should quiet those that claim institutional decay for the whole of the German model.

Employers attitudes towards bargaining are significant. In comparison with the metalworking sectors, the employers in the chemicals industry are more favorable to sectoral negotiations.¹²² BAVC reaches agreements with workers with relatively little conflict. Kamakura argues that this is probably because they represent a wide range of interests, from large to smaller chemical firms, they take a realistic and pragmatic approach to dealing with the unions.¹²³ But metalworking represents an even wider variety of interests, still, they do not appear to maintain the level of cooperation that chemicals does. Nevertheless, German chemicals have made use of collective bargaining as a positive way of maintaining industrial peace, by including a peace agreement provision in the collective agreement for example. As a result, Kamakura sees that the chemical industry experiences fewer industrial disputes. Fewer disputes, however, is better explained by big firm control and stylistic bargaining elements as this chapter has shown.

Industrial relations systems in the advanced industrial countries are experiencing serious new strains as a result of intensified market competition and adjustment pressures.¹²⁴ We should acknowledge that change is happening in Germany, in their system of industrial relations. There is association flight and there are opening clauses in collective agreements, across German manufacturing, including chemicals. But it appears that there is more literature comparing

¹²² Kamakura, p.104

¹²³ Ibid

¹²⁴ Thelen, *Varieties of Labor Politics in the Developed Democracies*, 2001

Germany to other countries, rather than looking within Germany to see any differences. German manufacturing does not exhibit the same degree of strain across sectors. Employers and unions do not behave in the same fashion across sectors. As this chapter has shown, the chemicals industry is a strong example that supports this claim showing a moderate level of decentralization when compared to metalworking and construction.

Chapter 4:

The Construction Industry

Construction is the third largest manufacturing sector in Germany. German construction is particularly known for high quality work, craftsmanship, and skilled labor. From new skyscrapers to rebuilding monuments destroyed in war, German construction firms are responsible for both public and private works, big and small projects, and even specialized international services. According to the Federal Ministry of Transport, Building and Urban Development, the construction, housing and property industries are a key sector for growth and employment. With a workforce of around 3.8 million and gross value added of 400 billion euros, this industry has an international reputation for quality.¹

Of the three industries analyzed in this dissertation, construction has most departed from collective bargaining as usual. Under Germany's Basic law, the government is a non-party to wage setting regimes. But for the past several years, the social partners in construction have set wages with the help of the state. No other manufacturing sector in Germany does this. In fact, construction is also the only sector of the three to have a minimum wage, distinct from its collectively bargained wages.

What explains collective bargaining outcomes in the construction sector? There were two periods of large scale re-building in recent German history. The first period was after the second world war and the next period was after re-unification when massive re-construction of the former East Germany kept this industry booming. I contend that the influx of foreign labor and

¹ http://www.bmvbs.de/EN/BuildingAndHousing/building-and-housing_node.html

competition during these two periods has shaped collective bargaining in Germany as it is today; specifically in the building industry.

Foreign labor came in several forms over the past several decades to work in Germany, most of which entered the construction sector. EU political and economic integration ushered in a newly liberalized economy. When German firms could no longer handle the competition, the social partners in construction had no choice but to fight an economic battle with political power. A statutory minimum wage was put into effect. While a minimum wage in the United States is nothing new, for post war Germany, the statutory minimum wage was completely new. The legal change to wage setting and marked differences with the other sectors, make this giant industry is a clear choice for an-depth study on German industrial relations.

This chapter argues that the construction sector is responsible for the most centralized bargaining among the sectors in this dissertation. In the 1990s, when most studies were pointing to decentralization in the metalworking sector and questioning the survivability of the German model, the social partners in construction single handedly, without the initial support of its umbrella organization, instituted a sector wide minimum wage with the German government, thereby enacting extreme centralization of bargaining. The construction sector in Germany is predominantly studied by those who focus on immigration issues, but its impact on the German model is clear: the social partnership is viable here, decentralization is not the norm, and EU level political and economic integration ended up empowering firms and unions to stand up for themselves against unbridled European competition.

The chapter unfolds like this: Section one gives an overview of the construction industry and familiarizes the reader with its industrial structure. Section two explains the structure of the

social partnership and briefly recounts how wages are bargained. Section three starts with an historical background of industrial relations; foreign labor began entering Germany almost immediately after World War II. Section four details the second wave of foreign labor in 1989 and how the downward pressure on wages contributed to mounting competitive pressure for Germany. Section five shows that by the time the ink dried on the Treaty on European Union in 1992, construction firms in Germany called on their government for help. Section Six details the legislative response to the fierce competition from foreign firms which manifested itself in tripartite bargaining and a universally binding minimum wage for every single firm that wants to do construction on German soil. Section seven details the EU level response to the same issue, though the EU was not concerned with wages. Section eight analyses the bargaining rounds from 2000. Section nine concludes that the supply of foreign labor to the competitive structure of construction industry resulted in a new legal instrument that centralized wage-setting. While most sector collective bargaining in Germany is at the regional level, the construction industry bargains at national level.

I. Overview of Construction Industry

The construction industry is one of the most important sectors of the Germany economy.² Over half of the investments in Germany flow into this sector and approximately two million people have jobs in the construction industry proper and finishing trades. The construction industry proper consists of preparatory building site work, and structural and civil engineering such as road construction and insulation while finishing trades are building installation as well as other trades such as tile layering, flooring, plastering and wall painting. Because construction has close links with a number of other industries such as metalworking and chemicals, both upstream

² BMVBS- (German name) Federal ministry of Transport Building and Urban Development

and downstream, the construction industry has both economic and political importance in Germany. For example, construction is closely related to the building material and machine manufacturing sectors, and is often employed by the state in public works projects.

The German construction industry holds an EU market share of 21 percent, making it the largest in the European Union in terms of production value.³ While this industry does experience downturns, it is still one of the most stable economic sectors in the domestic economy. The total volume of building investments in 2010 was approximately 250 billion Euros.

In Germany today, there are over 330,000 construction companies in operation making it one of the country's largest employers.⁴ Quality is usually demanded over quantity in the construction industry, and is mainly provided by small to medium sized firms. This industry is not dominated by large employers, as we saw in chemicals. In 2010, SMEs, small to medium enterprises, held a market share of 56 percent. Competition is high among the numerous firms and entry is relatively easy provided that requirements are met. There are also specific regulations that assure quality and help promote fair competitive conditions.

The official name for this industry is *Baugewerbe*. There is an important distinction between the main trades (*Bauhauptgewerbe*) and the finishing trades (*Ausbaugewerbe*.) The term "industry" or *Industrie* is not normally used for the part of the German construction industry of mainly smaller firms, or craft enterprises belonging to the chamber of artisans. *Industrie* is reserved for the larger firms, but in English we use the word Industry to describe the whole construction industry, including the finishing trades.

³ Ibid.

⁴ German business portal – Construction industry

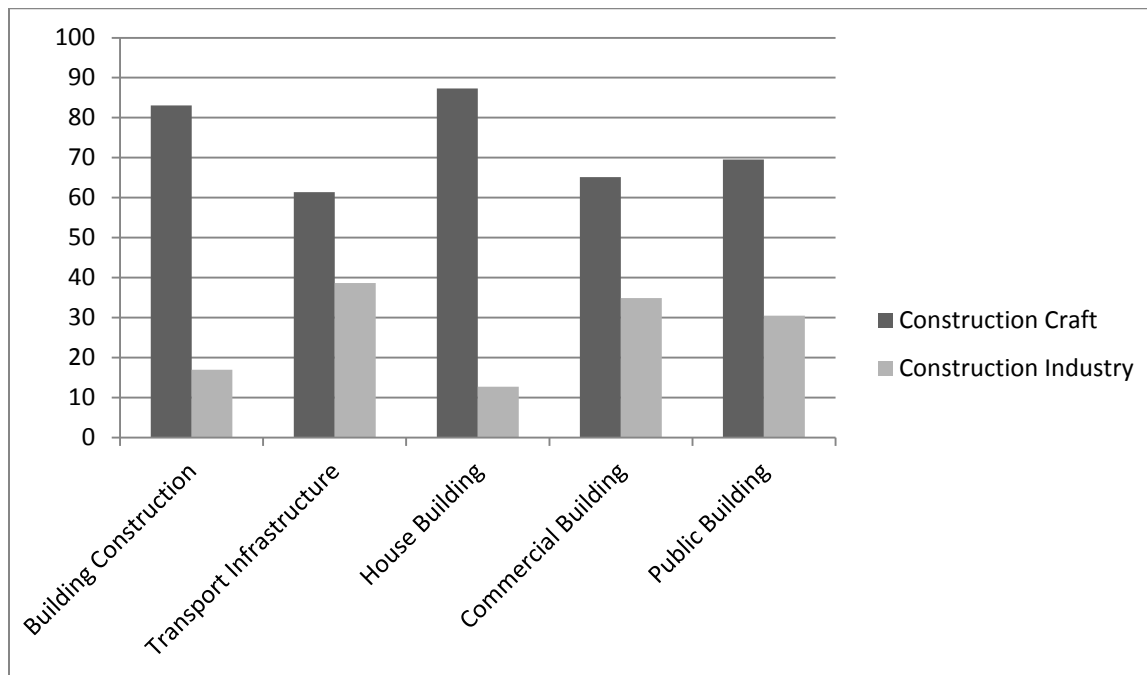
The following two tables show the division in the industrial structure. Table 1 shows the total number of firms, total number of employees and total revenue for the construction industry in 2009. It also shows the numerical and percentage breakdown of those totals with respect to small and medium sized firms and craft enterprises, or firms that are typical of the finishing trades.

Table 4.1 Craft enterprises influence in the construction industry, 2009

	Total	# of craft enterprises (percent of total)
Number of companies	73,944	51, 854 (68.8 %)
Number of Employees	715.062	527.347 (73.7 %)
Revenue (billion Euros)	82,215	55, 529 (66.0 %)

Source: ZDB, October 2010.

Table 2 shows the percentage comparison of working hours, according to type of project and construction sector (main versus finishing trades). From this we can see that the majority of work is performed by small to medium sized enterprises and craft enterprises, and not by the larger firms that would be typical of those that would be members of the employers association for larger firms.

Table 4.2 Working Hours, by percentage divided according to Main vs. Finishing Trades

Source: ZDB, June 2009.

The main way that firms can guarantee quality work to clients is by hiring qualified workers. In Germany, these are workers with professional qualifications, different from a university degree. Many professions in the construction sector are regulated skilled crafts and require a master craftsman diploma or equivalent qualification. In addition, these qualified laborers must by law be a member of the relevant mandatory professional chamber. Trades requiring vocational training and apprenticeship include model builder, bricklayer and concrete layer, woodblock maker, boat builder, stonemason, and parquet layer, for example.⁵ Skilled crafts are the most multi-faceted economic sector in Germany.⁶

⁵ http://www.zdh.de/fileadmin/user_upload/ZDH/0725-Berufe_englisch.pdf

⁶ <http://www.zdh.de/en/skilled-crafts-sector.html>

Construction has a long tradition in Germany including developing innovative practices, and a reputation for high quality work. As a result, Germany is among the world's leading exporters of construction and planning services. For example, large firms Hochtief and Bilfinger export services such as building airports, bridges, and moving ancient landmarks to safe ground. Nevertheless, the sector is mostly made up of small to medium enterprises with less than 50 employees. You can even spot workers in this industry from afar as many of them wear distinct clothing or colors specific to their vocations. For example, a training carpenter will wear a traditional black corduroy jumpsuit and construction workers will wear certain colored overalls based on their particular job.

II. Social Partnership and Bargaining Structure

Setting it apart from the other industries in this dissertation, the construction industry has two main employer associations. Together, these three organizations are the construction industry social partners that collectively bargain: IG Bau for workers, and ,ZDB and HDB for employers. There are other organizations in the construction industry, but they are not involved in directly collective bargaining.⁷

⁷ The peak national association is called the German Confederation of Skilled Crafts, ZDH, (*Zentralverband des Deutschen Handwerks*). The ZDH coordinates the collective bargaining interests of its multifaceted crafts sector. The ZDH is divided into three pillars. First is the German Association of Skilled Crafts Confederation (*Unternehmerverband Deutsches Handwerk*) or UDH. The UDH holds dual membership in the BDA and ZDH. UDH is the umbrella association for 38 confederations of guilds and 8 professional organizations. Though UDH and ZDH are not involved in collective bargaining directly, they inform their members of bargaining issues and developments and coordinate their interests. Second is the German Confederation of Chambers of Skilled Crafts, DHKT or *Deutscher Handwerkskammertag*. The DHKT consists of 54 chambers of skilled crafts which holds examinations and regulated vocational training. The DHKT functions are assigned by law. The German chamber system is a unique form of self-governance. The DHKT is not involved in collective bargaining but does represent the interests of the crafts sector. Third, there are other economic and scientific organizations. According to the ZDH, 967, 201 crafts or crafts related enterprises employing 4,806,000 employees were registered with the Chamber of Skilled Crafts in 2008.

The two main employer associations are the German Construction Confederation, ZDB (*Zentralverband des Deutschen Baugewerbes*) and the Main Association of the German Construction Industry, HDB (*Hauptverband der Deutschen Bauindustrie*). The German Construction Federation (ZDB) divides itself into three technical divisions: fitting and finishing, building construction and transport infrastructure. Small to medium enterprises realize 75 percent of all construction works in Germany.⁸

The Main Association of the German Construction Industry (HDB, short for *die Deutsche Bauindustrie*) represents the interests of 2,000 big and medium sized firms with over 250,000 employees. This is roughly equal to 34 percent of all German main construction.⁹ Thomas Bauer is the current President of the HDB.

HDB and ZDB have regional members located in the different German Laender. There are sixteen regional members in the HDB and sixteen regional members in the ZDB. The headquarters of both employer associations is Berlin, in different office buildings. As far as membership, the main difference between the two is that the ZDB supports and represents the interests of the skilled craft businesses and the HDB is an industrial organization. In practice, most of the smaller firms are members of the ZDB while the larger firms are members of the HDB. The majority of members of the ZDB have less than ten employees while the HDB represents firms that are typically in the category from 100 to over 500 employees. There are approximately eight firms total that are the really large companies with over 500 employees.

While HDB is the smaller association with 2,500 members, they represent the biggest industry concerns like Hochtief, the largest construction company in Germany and

⁸ <http://www.zdb.de/zdb.nsf/0/E1870F56F9D2D35CC12575B6002E9DD2>

⁹ <http://www.bauindustrie.de/uber-uns/allgemeine-informationen/werte-schaffen-werte-schutzen/>

Billfingerberger, a huge builder of hi-tech bridges. On the other hand, ZDB has about 30,000 members but they are smaller companies. Both the HDB and ZDB are directly involved in collective bargaining, and must coordinate their interests so that at the bargaining table they are on the same page. Sometimes this can be quite a feat as the two associations represent completely different types of companies. Neither employer association seems to be hugely concerned with membership loss. Of the xxxx thousand small to medium sized firms in the industry, about half of them are in the ZDB. Five years ago membership stood at 35,000 and ten years ago it was about the same. Membership in ZDB has been relatively stable, and the loss of members was largely between 1995-2005 because many members went bankrupt, not because they chose to leave the association.

There is one union for this industry, IG Bau, or *IG Bauen-Agrar-Umwelt*, (formerly *IG Bau-Steine Erden*). IG Bau represents the interests of workers in construction as well as engineering, building materials, building cleaning, facility management, gardening, forestry and agriculture. There are some 360,000 union members.¹⁰ In total, IG Bau will actually set wages for about 700,000 workers in the industry. The difference in numbers comes from something called *Allgemeinverbindlichkeitserklärung*, or Order Imposing Extension issued by the Ministry of Labor. The Order means that when collective wages are set, it is possible that the wages are extended to all workers, even non-Union members.

The precondition for an *Allgemeinverbindlichkeitserklärung* is that firms bound by the collective agreement in question should employ at least half all the employees working within the occupational and geographical area covered by the agreement (counting both those already bound by the agreement plus non-union members). In addition, the Order must be deemed to be

¹⁰ lgbau.de

in the public interest, notably because terms and conditions of employment in the area concerned would otherwise fall below the generally prevailing level. This is applied to the construction industry.

HDB and ZDB, the two employer associations are members of the BDA, or umbrella association for German industry. The BDA is important because it deals with issues such as labor law and protection against wrongful dismissal.¹¹ The relationship between them and the BDA is good, and mostly problem free. In addition, the relationship between the two employer associations and IG Bau appears to be quite consensual. It is professional, meaning conflictual if it has to be, but mostly consensual. It is more similar to the chemicals industry and perhaps different than the social partnership in metals”.¹² Since the second world war, there have only been two large strikes¹³, but otherwise, wage negotiations have been quite agreeable. If there has been industrial action, it is only about the question of pay because all other topics unite the three in “one boat”.¹⁴ This leads to a main point of cooperation between the social partners.

A huge part of what the social partners do in construction is something called *Soka-Bau*. *Soka-Bau* is unique to the construction industry and also helps explain the low rate of industrial action in this sector. This special feature, also helps to explain why there are centralized wage negotiations and why there is a common direction among social partners.. Neither metals nor chemicals have anything like this institution, which has existed since after the second world war. It is very important to the social partners in construction and at the end of the day; it forces the three parties to sit together.

¹¹ Interview

¹² Interview

¹³ The first nation-wide strike was in and the second was in 2002.

¹⁴ Interview

Soka-Bau has nothing to do with wages. It is a social fund worth about 4.8 billion Euros.¹⁵ It is a service provider and pension specialist for the German construction industry created by the social partners. *Soka-Bau* offers a vacation bundle that is in addition to the legal entitlements under German law; it finances a big part of the vocational training when a young person educates himself as a carpenter, or painter for example. *Soka-Bau* will pay for half of it. A third part of *Soka-Bau* is the employer financed pension system and the retirement benefits. These workers will get social security from the state plus what the *Soka-Bau* provides. To finance these benefits, all German construction businesses pay monthly into the fund. These include firms that are not part of the employer associations. *Soka-bau* is defended like the “holy grail.” It forces the social partners to come together. This fund along with a minimum wage and Order Imposing Extension (AVE) structurally sets the construction industry apart from metals and chemicals.

For decades in post war Germany, the social partners collectively bargained for wages and benefits. But as labor kept coming in from foreign countries, the social partners recently invited a third party to the bargaining table, out of necessity: the federal government. As of 1996, it is the two employer associations and the union that collectively bargain plus set the minimum wage with the collaborative help and power of the federal government. Currently, there are two main minimum wages, depending on skill level.

That the federal government involved itself in collective wage bargaining is out of the ordinary for Germany. The Basic Law spells out that the government is a non-interfering party to any collective bargaining negotiations. This is called free bargaining because by law, it is left in the hands of the social partners. The major exception to this is the construction industry. The

¹⁵ Ebd24.de Soka-bau

federal government holds regular talks with the social partners in construction. Thus, the Federal Government is an active party to arbitrations in collective bargaining in the construction sector.¹⁶ Currently, Wolfgang Clement is the arbitrator. Mr. Clement was the former Minister of Economics under former Chancellor Gerhard Schroeder.

The government also holds regular talks with the two employers associations and the union regarding social and labor law, building investments, and combatting illegal employment. The government is represented by the Federal Minister of Economics and Technology (*Bundesministerium für Wirtschaft und Technologie*) and the Federal Minister of Transport, Building and Urban Development (*Bundesministerium für Verkehr, Bau und Stadtentwicklung*).

The government's role is three fold in collective bargaining for this sector. All the roles are unique to construction. First is the role of arbitrator performed by Wolfgang Clement when called for when the social partners cannot come to an agreement by themselves. This is called a *Schlichtung*, or joint-dispute resolution procedure.¹⁷ Second is the afore mentioned *Allgemeinverbindlichkeitserklärung*, or Order Imposing Extension, issued by the Minister for Labor. This means that the applicability of an existing collective agreement can be extended to include employees and employers not bound by the agreement. Third is the minimum wage approval so that the newly set wages can legally come into effect.

How does collective bargaining actually work in this sector? The two employer associations are on the same side while the union is on the other side of the table. They employers talk with each other before negotiations about what the common negotiation goals are for the whole industry. The union will make its demands known, for example, a pay raise of 6

¹⁶ Sections six and seven explain how this exceptional situation came about.

¹⁷ <http://www.eurofound.europa.eu/emire/GERMANY/JOINTDISPUTERESOLUTION-DE.htm>

percent, and then the employer associations sit down again and talk through how far they can actually go, what their tactic is and then create a unified strategy to use at wage negotiations.

Also according to the employer association ZDB,¹⁸ if for example IG Bau wants a pay raise of 6 percent, and employers can only do 2 percent because the economic situation cannot bear more, the negotiators will go in and tell IG Bau that 2 percent is the offer. IG Bau will not agree. So this goes for about 5 or 6 rounds. The rounds start in February or March and usually last several weeks. Last year, it was settled in May or June. In recent years, it has been the case, like in the last bargaining round, that the social partners could not come to an agreement and the negotiations broke down after just two or three rounds. So then what happens? A strike? Not normally.

A particular feature of the construction industry is that when negotiations fail, there is not an immediate strike as in other branches like metals. In construction there is arbitration. They call in a *Schlichter*. Negotiations will resume and it actually works out really well according to ZDB. Mr. Wolfgang Clement will come and sit with the parties on the negotiations and after another two or three rounds at some point there is a compromise made. But if a three percent pay raise is agreed to, like in the last round 2011, it can be conflictual because not only do employers associations have to agree with the union, but employers have to agree internally. In the eyes of ZDB, because the HDB are the big firms and the ZDB are generally the small firms, above all for the big companies, and thus HDB, it is especially important that there is no industrial action because they have big projects with deadlines. If a strike were to occur, the big construction sites

¹⁸ interview

would likelier be more affected. Essentially, they (HDB) would be the ones to get the brunt of the strike effects while ZDB does not.¹⁹

ZDB has, according to this logic, less fear of strikes. Although ZDB has some members that are larger firms and mid-sized firms, if there would be a strike, not a lot would happen because a union cannot as easily organize a branch level strike in all of the thousands of small construction sites across Germany. Furthermore, union members would pick the large construction sites, because they do not have as many members as they used to. A strike by union members could do a lot of harm to HDB, but not as much to ZDB. Nevertheless, both employer associations are bound together and ZDB does not want the large construction industry to be disrupted by industrial actions. Employers want their peace.

There are other concerns of the construction industry however that are more specific to wages. The employer associations must see to it that the wages do not get too high because this can distort competition. Because this sector has a minimum wage, which is the lowest wage category, everything above the minimum wage is the collective wage that must be paid by the firms that are members. But, if each year, the members would have to give a huge pay raise, the companies that are not members would only have to pay the minimum wage and therein lies the problem. Firms that are not members are much cheaper than those that are. In construction, there are many companies that are not interested in the collective wages. The difference, for example, between a minimum wage of 11 euros and a collectively bargained wage of 16 or 17 euros an hour is a difference of about 5 or 6 euros per worker. This indicates a totally different competitive structure than for example in metals and chemicals...

¹⁹ interview

Employer associations do not want a huge wage differential between the minimum wage and the bargained wage, while the union, of course wants the highest wages possible. This leads to one of the few points of possible internal friction. For the HDB it is less of a concern because they do not have as many members as the ZDB. The big construction companies such as Hochtief are bound to the wage agreements anyway, and usually pay the same wages. But in the ZDB, competition is different and so they are less prepared to pay a high wage like in their counterpart employer association. Here it becomes critical according to ZDB because big and small firms have different interests and are entirely different companies. The challenge then is to get everybody under one roof. Other than that, however, on other topics the two employer associations are actually quite unified, the best example being their social fund.²⁰

III. Historical Background and First Wave of Foreign Labor

Like the metalworking and chemicals sectors, the social partners in construction have a history that goes beyond the modern day German model into Imperial Germany of the nineteenth century. For example, a lasting legacy in construction from pre WWII was “fund politics”, or *Kassenpolitik*. *Kassenpolitik* was a vacation fund created by the union and jointly administered by employers. This fund was still in existence up to 1986.

Another fund especially created for construction workers was the “bad weather compensation fund”, or *Schlechteswettergeld*. Bad weather has always been an issue for this sector because sometimes the weather can prevent outside work. Bad weather money was then a way to pay workers during inclement weather, usually winter, which also served to keep them in the sector. In 1943, “bad weather money” paid workers 60 percent of their hourly wages for up

²⁰ Interview

to 48 days in winter if they could not work due to bad weather. Although seven years later, the federal government annulled the law, it was put back into place and annulled again several times up until 1996 when it became *Winterausfallgeld*, or Winter Compensation. Today it is called *Saison-Kurzarbeitergeld*, or seasonal short-time worker money.

A social safety net, public or privately organized has always been a primary concern, as well as safety issues; but it is the influx of foreign labor that would inevitably change industrial relations and the way wages were set in this sector. The role of foreign labor began with the rebuilding effort that came in post WWII 1950s in West Germany. Germany was needy in two main ways related to the construction industry. First, much of the infrastructure and housing of the cities was destroyed in the war and this necessitated a massive re-building of urban areas. Second, the unusually high demand for reconstruction could not be filled using domestic labor only; so migrant labor became a West German reality. This rested on two circumstances: domestic full employment and loss of labor from war related deaths.

Given the impending labor market features, the large scale re-building of Germany began and the tone for industrial relations in this sector was set early on. In (month) 1950, the first post war collective agreement was signed for primary construction. But one month later, the “Bad Weather” money was cancelled by a budget-cutting German welfare state. This immediately sparked a discussion by the union to create a mutually funded substitute with employers.²¹

After two months, negotiations for the substitute fund broke down, employers refused to give in, and IG Bau went on their first post war strike in August 1950. IG Bau was unsuccessful. This point marks the beginning of non-confrontational policies with the employers’ associations.

²¹ Markovits, Andrei, *The Politics of the West German Trade Unions: Strategies of class and interest representation in growth and crisis*. Cambridge University Press, 1986.

IG Bau's failure was due to the fact that workers simply would not strike because they did not want to miss a check, in anticipation of the coming winter months when they knew that their income would decrease.

Employees feared losing workers to other industries because of difficult work conditions and labor faced a high turnover due to job completions and seasonal interruptions.²² In addition the fragmented structure of small scale ownership made solidarity on both sides hard to maintain. As a result, both employers and labor tried to consistently improve working conditions for construction workers.²³ Ideally, employers could provide competitive wages and try to lure workers from other sectors of the economy and the union could provide high wages as well. In the process, members would be committed to centralized collective bargaining, that is until the introduction of the Single European Market.

The most critical market feature of the construction industry which shapes industrial relations is the pressure on domestic wages by migrant labor. Migrant labor has a heavy tradition in post war Germany. Although Germany has emerged as one of the world's major destinations for immigrants; despite decades of immigration, Germany does not consider itself an immigration country.²⁴ Unfortunately, migration data is scarce and unreliable for some EU countries, but the case of Germany is exceptionally well documented and labor market data is available for the main sending countries too.²⁵

The first wave of foreign labor came with the *Gastarbeiter* Program. The German post-war labor "Guest worker" regime essentially imported foreign manual labor up until the early

²² Behrens and Jacobi 2004

²³ Behrens and Jacobi 2004

²⁴ Hoennekopp chapter, p.120

²⁵ Is migration into EU countries demand based? P. 25 Peter Fischer and Thomas Straubhaar.

1970s, an overwhelmingly large number of which entered the construction industry. This is the first wave of post-war foreign labor. A guest worker is a person who is not a citizen of a receiver nation but it admitted into a country under sponsorship terms to engage in a specific job with a specific employer, but is not necessarily eligible for immigration and naturalization. As employees of German firms, the guest workers were integrated into the German social security system and employed according to applicable collective bargaining provisions.²⁶

Gastarbeiter (Guestworkers) occupied about 22 percent of the construction workforce within four years. From 1950-1955, the total annual turnover in primary construction more than doubled and production rose by about 72.6 percent (p.330 see in M). The labor that went into producing such a turnover grew from 960,882 in 1950 to 1,386,210 by 1955, or an increase of 44 percent.

The German government made agreements with selected countries to admit yearly quotas of workers. Workers were initially men who were admitted for under two-year terms. The program was designed so that after the term was over, the worker would have to rotate out by law and allow another individual from their home country to be admitted. This was called the rotation clause. Eventually, the labor agreements grew to five-year terms and workers were allowed to bring their families. Although the workers had access to German social security benefits, they were not given citizenship.²⁷ What is most important here though, and what sets the guest workers apart from the next wave of foreign labor is that first, guestworkers were regulated on a quota system, second, they contributed to the social security fund of the German Welfare State, and third, they were paid under collective agreement terms set out by IG Bau and

²⁶ Kahmann 2006, p.184.

²⁷ In fact, children born to foreign nationals in Germany were not given automatic citizenship until 2000. Even then, the parents had to have lived in the country for at least 8 years. (get law)

the employer associations. It would be these three characteristics that would be absent in the “contract workers” starting in 1989.

Migration is largely demand determined, especially unskilled labor.²⁸ Aside from the limits on citizenship opportunities, post war Germany was a number one choice for immigrants around Europe. Between 1960 and 1973, some 18.5 million foreigners arrived in Germany and 4.7 million settled.²⁹ Bilateral recruitment agreements were signed, first with Italy in 1955, then with Spain in 1960, Greece in 1960, Turkey in 1961, Portugal in 1964 and Yugoslavia in 1968. In 1960, foreign workers made up 1.2 percent of the total German population, or 686,000.³⁰ At that point, it was the Italians who made up most of that percent.

To get a feel for what the program was like, let’s take a look at the Turkish *Gastarbeiter* program which began in 1961. According to one feature article, at the time, German firms were interested in semi-skilled and unskilled labor. These were mostly jobs for poorly paid positions on an assembly line or shift work. Turkish guest workers were between 18 and 45 years old, mostly recruited from poor regions of Turkey. After receiving vaccinations and passing a medical fitness exam, the workers boarded trains headed to Munich, Germany. Then, the guest workers were distributed among Germany’s industrial zones. The guest workers lived together in special dormitories and since most were basically illiterate, this made it hard for them to participate in German society.³¹ By 1964, the German-Turkish Treaty no longer contained the “rotations clause” to limit a foreign workers stay for two years. The BDA reported two main findings; first, that German industry was getting tired of training new workers, and two, the

²⁸ Hoenekopp, p.120

²⁹ Economics and European Migration Policy, edited by Dan Corry 1996. Institute for Public Policy Research p.94 Old and New labour Migration to Germany from Eastern Europe, Elmar Hoenekopp (ch6)

³⁰ Oezcan 2004

³¹ *Der Spiegel*, A Sorry history of Self-deception and Wasted Opportunists. Bartsch, Matthias, Brandt, Andrea and Steinvorth, Daniel. July 9, 2010.

Turks, for example, had become reliable workers making fewer demands than their German counterparts. Eventually, it became clear that the guest workers would not return home.

(Spiegel)

The consequence for workers that were German-nationals was not an inward flow, but an outflow flow into other sectors of the economy. Skilled domestic labor left in droves because of the low wages construction offered. Although contractual wages (*Tariflohne*) were among the highest in industry during the decades of the 1950s and 1960s, actual earnings were much lower. The wage gap was quite high. The wage gap is the difference between contractual hourly wages and actual hourly wages. For construction to have wages that were equal to those in other top industries, the contractual wages had to be considerably higher, which they were not. Considering the accommodationist policies of the union during those decades, higher wages were not an expectation.

Adding to the wage gap problem in the 1950s and 1960s was IG Bau's policy of narrowing the gap between skilled and unskilled labor. By doing so, the union was attempting to make membership more attractive. But it backfired. Certified German masters of individual trades and crafts were not very keen on a narrowing wage gap between what they built and what an "unskilled" person would produce. What happened instead was that even more skilled German labor left the construction sector, and subsequently the union, each year, by the thousands. Inviting foreign workers to help re-build Germany seemed to be an acceptable and logical solution to the labor shortage problem. Foreign workers however were unskilled and they did not join the union, nor did they feel national ties to Germany. For many of the Guest workers, working in Germany was a way to earn money in a much better environment than they had come from.

In hindsight, the Guestworker “problem” was hardly a problem at all relative to the new wave of labor from EU countries that would enter after 1992. At the very least, though wages were low in construction and many skilled Germans did leave the sector, the Guestworkers paid into the German social security system, something that in the future would have to be enforced by EU level law on “posted workers”. Also, Guestworkers never did undercut German competition the way future posted workers would from other EU countries. To understand collective bargaining in construction today, we should know that Germany has a particular history of foreign workers in this sector, which the other sectors did not experience as much; and which began in 1955, by invitation.

Regarding the union, IG Bau, though at times ambitious, was never really a confrontational union in, nor did it receive the reputation that IG Chemie has for being a “learned” accommodationist.³² It seems that IG Bau was, for the most part, at constant struggle to both keep and attract members since post war, but not really at constant struggle with the employer associations. Nevertheless, IG Bau remained for the most part a “weak” organization, with little increases in membership. Between 1957 and 1961, membership stagnated at around 425,000³³, even though employment increased by about 230,000 workers. At the time, those numbers put IG Bau as the weakest organizational representative of all unions in the DGB.

Between 1959 and 1966, construction was consistently one of the strongest sectors in the whole economy, during what is now known as the German “economic miracle”.³⁴ Sales more than doubled in primary construction between 1959 and 1965 and during the two biggest boom

³² Markovits, *ibid.*

³³ Markovits, p.348.

³⁴ The massive upswing starting in the 1950s German economy is generally referred to as a “miracle”.

years of 1960 and 1961, the volume of construction rose by over 40 percent.³⁵ Roughly five years after the Guest worker program started, construction prices increased by 16 percent. This was a result of new supply and demand dynamics ushered in by the newly erected Berlin Wall on August 13, 1961. The Berlin Wall overnight stopped inward eastern refugees who had been an important supply of labor since the 1950s. However, the labor shortage was not a lingering problem because *Gastarbeiter* continued to fill jobs in West Germany: close to 215,000, or 14.8 percent of primary construction workers were foreign in 1965.³⁶

The *Gastarbeiter* program lasted until 1973 when recruitment was stopped. The demand for foreign workers fell as Germany entered a period of recession brought on by the 1973 oil shock.³⁷ Now, employers took advantage of the economic downturn and diminished non-contractual pay of construction workers. By 1978, average actual earnings on construction fell to twentieth place from seventh in all of West German industry. Still, IG Bau remained accommodationist.

By then the foreign population in Germany grew to 6.7 percent of the total population, with 2.6 million foreign workers employed, a number so high it has not been approached since then. Turkey replaced Italy as the most important country of origin with 23 percent of all foreigners, followed by Yugoslavia (17 percent), Italy (16 percent), Greece (10 percent) and Spain (7 percent). Yugoslavia was the only communist country that West Germany signed agreements with.³⁸ While many of them left after the shock, high levels of immigration persisted due to family migration to Germany. Also, Italy now had the right to free cross-border

³⁵ Markovits, p.348

³⁶ Markovits, p.348

³⁷ The 1973 oil shock refers to the global oil crisis of 1973, see

³⁸ Shonick, Kaja 2009 (put in biblio) Shonick, Kaja. *Journal of Contemporary History* 2009 44: 719
Politics, Culture, and Economics: Reassessing the West German Guest Worker Agreement with Yugoslavia

movement brought by the European Community in 1968.³⁹ The number of foreign workers that then stayed was between 4 and 4.5 million people throughout the 1980s, albeit with decreasing participation in the labor force.⁴⁰

Gastarbeiter were not the only form of foreign labor in the German economy. Though not as numerous, leased labor became a factor. As skilled German labor left the sector, to be replaced by unskilled foreign labor, this gave employers an opportunity to “lease” labor. Labor leasing firms would rent unskilled labor for specific construction jobs. Because the labor was “leased” or rented out, they were not subject to collective contracts signed by IG Bau and the employers’ associations HDB and ZDB. This labor scheme lasted until 1981 when the federal government forbade labor leasing firms in construction despite vociferous opposition from employers.⁴¹

IV: Second Wave of Foreign Workers

As if it was this sector’s destiny, a new decade brought about renewed industrial relation’s challenges and more foreign labor; only this time, the rebuilding was focused in the former East Germany. Honestly, up until the late 1980s, relatively few construction projects in Germany were carried out by foreign firms. However, after 1989, that situation changed dramatically.⁴² The new *Laender* offered great opportunity for the construction industry as housing and infrastructure needed massive rebuilding and expansion. What occurred was a construction boom that the domestic building sector shared with both foreign enterprises and foreign workers.

³⁹ Greece and Spain were not original members of the EC.

⁴⁰ Oezcan 2004

⁴¹ Markovits, *ibid.*

⁴² Lubanski, N. 2009 p. 275.

A large number of workers from the former COMECON countries supplied foreign labor to the German market, much of which was in construction.⁴³ The Laender re-emerged as attractive destination as many of the Eastern Europeans already had political and cultural familiarity with East Germany. The opportunity to work in a Germany with open borders was a dream come true for some.

During the first few years after the fall of the Berlin Wall, the German market was able to co-exist with and handle the new competition, but gradually the competition became more fierce as prices fell, seriously affecting the German firms.⁴⁴ The foreign firms were in a position to submit more competitive bids due to the lower costs of hiring foreign workers. The German firms reacted by trying to assume control of the entire building and construction process while actually delegating work to foreign contractors.⁴⁵ This is called sub-contracting.

Sub-contracting was perfectly legal. West Germany had in the past concluded bilateral agreements with Hungary and Yugoslavia, on the posting of contract workers and when the borders opened up after 1991, further agreements were made.⁴⁶ These are known as the “agreements on the posting of workers in the basis of contracts for services.”⁴⁷ The agreements were aimed at promoting a closer relationship between the CEEC and Western Europe to stimulate commercial relationships, transmit know-how and prevent uncontrolled immigration in

⁴³ The former COMECON countries were under the hegemony of the former Soviet Union forming an Eastern Bloc of economic organization with other Communist states.

⁴⁴ Sorries 1997 (see), not yet in biblio

⁴⁵ Lubanski, p.276

⁴⁶ This system lasted up until the end of the 1980s, but it is important to note that permission for employment was only granted for skills that were unavailable on the German labor market. (see other books) (ILO 1995 p.64)

⁴⁷ Bosch, p.2

to Germany.⁴⁸ This new category of foreign labor was no longer a *Gastarbeiter*, rather, they were called “project bound workers”, or “project tied workers”.

By this time, there were four main types of workers that had been covered in bilateral agreements. The bilateral agreements signed between Germany and non-EU countries were in the spirit of transitioning the Eastern Europe, according to the German government. The four main types of workers were: guest workers, seasonal laborers, project-tied workers (*Wekvertragsarbeitnehmer*) and border commuters. Seasonal workers were outlawed in construction (get yr.) and guest worker programs ended by 1973. The project-tied workers however had a significant impact on industrial relations in that there were political controversies surrounding these workers and their numbers were high.

Project tied workers come to German on a *Wekvertrag* between a German company and a foreign sub-contractor.⁴⁹ This means that there is no labor contract between foreign workers and the German general contractor. The workers are paid by the foreign contractor and social insurance of the country of origin applies. Since subcontractors do not pay German social insurance contributions, they can cut wage costs by about 20 to 25 percent compared to German workers. This results in wages that are comfortably below German wages for project tied work.

In 1993, 40 percent of migrant workers came from Eastern Europe and the former USSR, 33 percent from Yugoslavia and 13 percent from Turkey, and 14 percent from the EU. The vast majority of the 40 percent were Polish workers, though decreasing in number by 1994. In 1994, the German government began to severely cutback the number of permits issued because of the

⁴⁸ Heyde, 1997, Faist, 1999. (see- not in biblio yet)

⁴⁹ Hofhansel, Claus. Germany Multilateralism and the Eastern Enlargement, Center for European Studies Working

rapid expansion in earlier years and the fact that the numbers had exceeded the quota in 1993.⁵⁰

In August 1991, the total number of Polish workers was 23,010 whereas by June 1994 the number had been reduced to 7,908. The second most numerous group was the Yugoslavians with 6416 followed by Hungary with 5100 in June 1994. The former Yugoslavians to Germany increased in number since 1991, up from 4387. As far as the union, however, these workers never became a part of it, nor did they feel that IG Bau would truly look after their interests as non-Germans.⁵¹

The project bound employees were supposed to be paid in accordance with German wages. But the reality was quite different. First, even if wages were paid equal to the German wage, social security payments were usually not. Since social security amounts to about 20 percent of the gross wage for construction workers, this gave foreign subcontractors a sharp advantage in terms of labor costs. Second, agreements on project bound migrants did not spell out any specific regulations and the working conditions. German collective agreements and German labor law apply these contracts only to a limited degree. So, the foreign employer in practice has authority over areas such as holiday pay and overtime. Wages were sometimes partly paid in German and partly in the country of origin. This makes for a very difficult oversight and control over wages. Moreover, oftentimes, “water-tight” sham agreements were submitted to the labor administration whereas actual employment was based on other hidden agreements.⁵²

Overall, the real labor costs of foreign subcontractors were much lower than those of German contractors with whom they compete. While a German subcontractor would pay DM 55-

⁵⁰ ILO p.64

⁵¹ Conversation with offspring of Gastarbeiter to Berlin from ex-Yugoslavia

⁵² ILO p.65

65, the figure for foreign firms would be about DM 30. In turn, if the lower wages are passed onto the customer, overall building costs could be reduced by up to 10 percent. This gives the foreign firms a distinct advantage in the market.⁵³ This advantage matters because most of the firms in German construction are small to medium enterprises and are not usually the firms to contract migrant labor.

Shady practices started to become obvious. Building sites revealed abuses of the project bound agreements.⁵⁴ For example, project bound workers were seemingly unskilled and did not belong to the permanent staff of the subcontractor, but rather were specifically recruited to be sent to Germany. As such, the main contractor would oftentimes have to take over the task of supervision in order to avoid serious delays in the building process. This technically put the project bound migrants in position of contract labor (instead of regulated subcontracting) which is illegal according to German law.

There were other problems. First, foreign workers wanted to work long hours, which meant that the hours of work on the German site were also increased. Coupled with poor qualifications, longer working hours meant that the observance of basic safety regulations was a challenge. Even though the foreign subcontractor was primarily responsible for safety regulations, the German contractor is also under some obligation to create and maintain a safe working environment.

Second, the number of workers flowing into Germany from Eastern Europe was much higher than believed to be legally employed and an underground economy developed. For Germany, this is culturally undesirable where transparency and faith in well-functioning political

⁵³ ILO p.65

⁵⁴ ILO

institutions is the norm. In some states such as Italy, the underground economy and official economy exist in parallel. But, in Germany, the underground economy is more or less considered to be an offense against the legal structure of society.⁵⁵ Undocumented labor is not looked upon sympathetically in Germany where the law traditionally requires clarity in the status of individuals working on site.⁵⁶ An individual on a construction site must either be an employee or an accredited master with genuine self-employed status, reflecting the time spent in an apprenticeship and recognition by the relevant guild.

Unsurprisingly, IG Bau saw project tied work in general as a threat to its collective bargaining autonomy and to the wages and jobs of domestic labor. (ILO p.66) Also, because migrant workers will work longer hours, their impact on the labor supply is much greater than their numbers suggested, according to IG Bau. IG Bau claimed that the project bound system was being used to employ low cost temporary foreign contract labor, which it termed wage or “social dumping.”⁵⁷ According to EUrofound, social dumping is a practice involving the export of goods from a country with weak or poorly enforced labor standards, where the exporter’s costs are artificially lower than its competitors in countries with higher standards, hence representing an unfair advantage in international trade. It results from differences in direct and indirect labor costs, which constitute a significant competitive advantage for enterprises in one country, with possible negative consequences for social and labor standards in other countries.⁵⁸ In other words, cheap unskilled foreign labor was not only unfair to German workers and firms,

⁵⁵ Haddinger, Bettina. Undocumented Workers Transitions, Migrations and Irregular Work in Europe. Work Package 3, October 2007.

⁵⁶ Drucker and Dupre: The Posting of Workers Directive

⁵⁷ ILO p.66

⁵⁸ <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/SOCIALDUMPING.htm>

it undermined collective wage system, and could bring harmful societal effects for a higher labor standard Germany.

Employers were also troubled. While some German firms took advantage of the project bound scheme, others, namely the small and medium sized firms were disadvantaged. The first initiative to confront the new competition was *Frankfurter Erklärung*. The Declaration of Frankfurt 1993 was an expression of both employers and unions to the German government. (March) IG Bau along with HDB and ZDB jointly demanded an end to the scheme and the re-introduction of guest workers status for East European migrant labor. They bluntly asked that the contract on outputs (*Werkvertrag*) be completely stopped. The social partners argued that allowing workers from Eastern Europe to enter into direct contract of employment with German building companies would give them parity with Germans as far as legal rights and collective agreements. The Federal government was thus asked to change the agreements with the Eastern European countries. Berlin did not comply.

The Federal government defended the project bound employment system as a political means of supporting the process of transition in Eastern Europe. (ILO p.66) The Eastern countries were interested in extending, or at least maintaining the quota. The Polish government in particular was opposed to any change that would limit the competitiveness of Polish construction companies. It would be inaccurate to say migrant workers in project-tied contracts flooded the domestic market. The German government did put quotas (*Kontingente*) on the number of workers allowed from each country. Nevertheless, political support for a transition process for Eastern Europe would test the limits of domestic collective bargaining institutions, in particular for the construction industry.

While some benefits of migrant labor was the transitional help given to CEECs, a negative effect was that German manpower becomes more and more difficult to attract to the construction industry based on a bad image of sub-standard conditions. The competitive pressure that had become increasingly unbearable was eased when political leaders revamped the project-tied program. Yet, even after the program revisions, the union and employer associations still wanted the whole project tied work scheme to be abolished. ⁵⁹

Both IG Bau and the two employer associations asked for the cancellation of agreements with the CEECs. The administrative board also took (*Bundesanstalt für Arbeit*) the same position. ⁶⁰ Oddly enough, the peak association of German employers (BDA) did not share the same solidarity. It would turn out that, in the near future, IG Bau and the two employer associations in the construction industry would support the effort of an EU directive while the German peak association for employers would not.

The German government took measures to restrict the negative effects of project bound employment in 19xx. First, though no agreements were cancelled, none were renewed after expiration. Second, other cases such as former USSR quotas were not concluded and special quotas for medium sized enterprises were set up along with regulations on their number in relation to German permanent staff. Third, the licensing fee was raised DM 2000 per contract and the possibility of employing construction workers as “seasonal” workers was done away with. Finally, even more personnel were assigned to fight illegal employment in various ways.

From 1991-2001, the German government set quotas for the number of workers allowed in Germany for project tied work from the CEEC countries. In 1992, 100,000 foreign workers

⁵⁹ Kuptsch Christiane and Oishi, Nana. Training Abroad, p.22 ILo Publication 1994

⁶⁰ Hofhansel, p.14

were allowed in to Germany on project tied work.⁶¹⁶² A contract worker's terms was laid out in the contract. For example, the contract workers had to have a residence permit and work permit in order to be able to work in Germany for a limited period. This period was usually two years, three years at most. Under the agreements, they were to be paid a net wage, including travel allowances, holiday pay and other, as stipulated under German collective agreements. In 1993 and 1994, the total quota was reduced to 50,000 in reaction to complaints from German firms of unfair competition.⁶³ Overtime, by 2001, the quotas for CEEC labor had been drastically reduced, even though a majority of the workers stayed in Germany.

To be sure, it was not the CEEC or project bound workers in the early 1990s that seriously challenged the collective bargaining institutions of the German model of industrial relations, rather the Treaty on European Union 1992 would test German collective bargaining to such an extent that the social partners lobbied for a new law, and a third party to mediate. European Union integration would be the biggest problem yet for German construction. Of the three unions in this dissertation, IG Bau has been the union that has been most confronted with the transnationalization of the EU labor market.⁶⁴

Up until now, IG Bau and the two employer associations worked within the paradigm given them under Basic Law. Soon, the bargaining process would be changed. One the one hand, such a drastic move would appear to be an erosion of collective bargaining in this sector, and in fact, many do agree. But a more sophisticated understanding reveals that it was not an erosion of

⁶¹ Hoennekopp, p.103 Ch 6 in Corry edited

⁶² See p.3 Bosch.

⁶³ Hoenekopp, p.103

⁶⁴ *The founding of the European Migrant Workers Union- A response to the limits of trade union action?* Marcus Kahmann, CLR news No3/2005, p.32

bargaining at all, but successful institutional adaptation to a rapidly changing political and economic environment.

V: Third Wave of Foreign Labor

In 1992, the EU was created by the signing of the Treaty on European Union in Maastricht. While the standard number of posted workers from the CEEC could be controlled via bilateral agreements, in the new European Union and earlier European agreements, it is not possible to limit the number of postings within the framework of freedom to provide services in the EU. What happened then was that construction firms from within the EU were actually out-ricing the companies from the CEEC. CEEC firms were obligated to pay their workers the wage equivalent to the collective agreed German wage, but the new EU competition was not. Thus, the non-German EU firms were able to pay their posted workers in accordance with the country of origin principle and since they mostly came from a low wage country such as Portugal, they had a competitive advantage over German and even CEEC companies.⁶⁵

In 1993, West Germany had the largest construction output of any nation-state in Western Europe. It was responsible for 26 percent of total construction output of the countries of the EU.⁶⁶ Largely responsible for this construction prowess was the significances of the construction market with regard to the developments in the new Laender where construction output grew by 36 percent in 1992, 20 percent in 1993 and 15 percent in 1994. The West German construction industry had 1,092,736 people employed in 1994, up from 1,042,681 in 1990.⁶⁷ Of the 2 million foreigners legally allowed to work in West Germany in 1992, 180,762, or 8.9

⁶⁵ See Worthmann/Zuhlke-Robinert 2002, not in b)

⁶⁶ ILO, 1995 not in biblio yet. International Labour organization. Social and labour issues concerning migrant workers in the construction industry. Geneva, 1995. P. 61

⁶⁷ ILO 1995, Construction

percent of them were employed in construction. The largest number of foreign workers came from outside of the EU- Yugoslavia, Turkey and the countries of Eastern Europe. From 1989 to 1993, the total employment in Germany and the employment of foreign workers increased, but the latter increased faster. Over the period, foreign workers increased by 51 percent.⁶⁸

EU liberalization was made possible by the Freedom Principle. The freedom of establishment, set out in Article 49 of the Treaty on European Union and the freedom to provide cross border services, set out in Article 56 are two of the “fundamental freedoms” which are central to the effective functioning of the EU Internal Market. According to the EU Commission, the principle of freedom of establishment enables an economic operator (whether a person or a company) to carry on an economic activity in a stable and continuous way in one or more Member States. The principle of the freedom to provide services enables an economic operator providing services in one Member State to offer services on a temporary basis in another Member State, without having to be established.⁶⁹ In the name of European integration, the Freedom to Provide Service principle turned out to be a headache for the domestic German construction industry.

The Freedom Principle was a guaranteed ticket for EU citizens to work in Germany. In 1996, there were a total of 188,000 postings, or 17 percent of total employment, almost 90 percent of them from other EU member states. This means that in the mid-1990s, one out of every 5 workers in German construction was employed by a company based outside of

⁶⁸ International Labour Organization, Sectoral Activities Programme. *Social and labour issues concerning migrant workers in the construction industry*. ILO Geneva, 1995.

⁶⁹ http://ec.europa.eu/internal_market/services/principles_en.htm

Germany.⁷⁰ The social tension grew so much that IG Bau felt the need to embark on an anti-racism campaign.⁷¹

The widespread use of subcontracting of posting firms by German construction firms and the lower costs of posted labor spurred a new debate on social dumping amongst workers, unions members and those employers who felt threatened by this development.⁷² Construction firms increasingly preferred posted workers to more costly domestic workers.⁷³ But the use of posted workers was uneven. Small to medium sized firms were the most vulnerable to the posting of foreign workers because they did not and could not subcontract like the larger firms. The spread of foreign labor also gave rise to the concerns about the production model in construction in general which had been characterized by high-qualification-high productivity high wage nexus.⁷⁴

By 1993, employers began to exit the regional construction employers' associations.⁷⁵ Sector specific collective bargaining was threatened. Increases in subcontracting and the use of temporary labor only enhanced the Common market even more, at great social cost to the German model of industrial relations, and to German labor. Though the increasing size of temporary labor never did substitute the domestic labor market, it challenged the labor market mechanisms already under stress by the transnationalization of markets.⁷⁶ The inevitable transnationalization of the German labor market brought on by political and economic

⁷⁰ Bosch, p. 5

⁷¹ (*Ohne Regeln geht es Nicht*)

⁷² Kahmann, p.186

⁷³ Krings, p.56

⁷⁴ Syben 1997, see in Kahmann)

⁷⁵ Faist p.4 Need to find out when HDB and ZDB left and then when came back. Have to put numbers for employer associations and structure.

⁷⁶ Faist p.5

integration of the EU would soon alter strategies of both unions and employers organizations in construction.

Subcontracting new EU labor replaced diminishing CEEC labor, but the competitive pressure from CEEC labor remained. Employers disliked unfair competition because equal access to quotas was not guaranteed.⁷⁷ The quotas undercut the free market and a firm who does not receive some of the quota is significantly disadvantaged because that firm cannot reduce costs.⁷⁸ According to German employers' organizations, it is thus almost impossible for a German firm to win a tender without CEEC subcontracting. For large companies, it is easier because they can keep their regular staff and subcontract out minor projects. But small firms lean toward not concluding subcontracts because it could damage their image in the local community.⁷⁹ Thus, small firms will feel the pressures of competition much more. Given the time it takes to secure a skill in Germany through apprenticeships and regulated guild memberships, a small firm who hires foreign labor would not want to risk upsetting their local German client base.

Something had to be done. The Freedom Principle continued to bring in waves of eager labor. The German construction industry was getting legally out priced by foreign competitors, both from within the EU, and the CEEC contracts still in operation. Furthermore, it was no secret to employers that the future accession of CEEC countries to Member State status was coming sooner than later. The geographical proximity of Germany to the CEECs would make it very easy for Eastern Europeans to swiftly migrate across the border to the West.

⁷⁷ *ibid*, p.21

⁷⁸ *ibid* p.21

⁷⁹ *ibid* p.22

The construction employers and the union together attempted to limit the influx of workers by urging the German government to use its right to postpone the freedom of movement for these countries. The concern was that Germany domestic labor market may not be able to absorb potentially large amount of incoming foreign labor. After negotiations at European level had initially failed, pressures grew and Member State Germany took matters into its own hands, unable to rely on EU level policy making. Again, the social partners had no choice but to speak as one.

VI: AEntG and the fight for the German Minimum Wage

Foreign construction companies paid their German site workers half of what German construction workers were getting paid. Foreign firms could actually undercut German competitors by about 25 percent. What's more, foreign companies were not obligated to comply with the collective agreed standards, including wages, even if they were declared generally applicable. Further, the foreign companies could take advantage of the good technical infrastructure in Germany. In essence, importing low wages to Germany equaled the exploitation of benefits of doing business in two different economies.⁸⁰ On the other side, it would be illegal if German firm tried to employ cheap labor directly, and undercut wages and social costs.

By 1995, the effects of EU enlargement were apparent in Germany. 150,000 workers from other EU member states operated on German construction sites. 140,000 German workers, (or about 10 percent of total employment in this sector) were unemployed, even in the post re-unification building boom.⁸¹ By 1995, 1000,000 additional German workers lost their construction jobs. The serious disparity in wage levels among Member States was brought to the

⁸⁰ Schlacter, p.12

⁸¹ Schlacter, p.12

attention of the German government by the one industry that seemed to suffer the most domestically.

Before the AEntG, there existed no legislative regulation, EU level or otherwise regarding the posted workers from companies registered in other EU countries, so the default home country principle applied. The home country principle regulation legally entitled foreign companies to perform work (in Germany) at the pay rate of their home country. So, firms based in other EU countries that had relatively low wages, social provisions and the non-wage overhead costs took advantage of this and competed to become subcontractors in Germany which was booming with new construction brought on by reunification.

Let's take an example. Portugal joined what is now the European Union in 1986.⁸² A Portuguese building company paid their workers the Portuguese wage, which at the time was 1/7 the level of the German wage; they were exempt from contributing to the German social security system, or having to adhere to German holiday regulation or working hours. Plus, the foreign workers did not join IG Bau, and so were not covered by industry wide collective agreements (*Tarifvertraege*) even though their German employers could very well have been members of either HDB or ZDB.

In construction, labor costs make up the bulk of expenses.⁸³ So, companies registered in Portugal, for example, could be subcontractors under German firms who in turn, by essentially importing labor, could save tons on projects costs. Pointed out earlier, it was the large German construction companies that managed to take advantage of this system the best because they

⁸² http://ec.europa.eu/enlargement/the-policy/from-6-to-27-members/index_en.htm

⁸³ Nienhauser-see Menz

could break up their larger construction projects into smaller sub-projects, and sub-contract them out. In a way, the German construction giants exited their own system of German wages.⁸⁴

The different wage rates for construction workers was a nightmare for German labor and even many firms. Keep in mind that the majority of firms in this industry are small to medium enterprises. While the bilateral agreements ensured a certain wage floor, the employment conditions of migrant workers from the rest of the EU did not. IG Bau was unable to stop the emergence of a wage differential between posted workers and German workers. So, the union tried to modify the EU Freedom principle by introducing a social clause that would guarantee local wages. They failed.

Amidst the high demand for construction projects, small to medium sized domestic construction companies were filing for bankruptcy.⁸⁵ While some of this should be attributed to the East German privatization program,⁸⁶ unemployment in Berlin peaked at 30 percent in 1996. That year, 20,073 German construction workers registered with the unemployment office, 18,000 in the surrounding area of Brandenburg, 172,000 overall in Germany were registered as unemployed in 1997. Clearly, unemployment was getting very costly for the German welfare state.

The 1996 *Arbeitnehmer Entsendegesetz* (AEntG)⁸⁷ confronted the social dumping that was clearly occurring in Germany. The new AEntG legislation under the Kohl-Blum government passed the Bundestag on February 26, 1996 and took effect on March 1 of that same year.⁸⁸ The

⁸⁴ *ibid*

⁸⁵ Menz, *ibid*.

⁸⁶ *Treuhand* program 1990-1994 (see MA thesis)

⁸⁷ Sometimes called the German Posted Worker Directive to distinguish it from the EU Directive

⁸⁸ Helmut Kohl was the Chancellor of Germany at the time; Blum was the Minister for Labor and Social affairs under Kohl. Both CDU party.

law provided that the social partners negotiate a minimum pay rate, which was to be declared generally binding for the entire construction industry. It also prescribed length of leave, holiday pay and additional holiday allowance. Aside from establishing regulation for a minimum wage (*Mindestlohn*), the AEntG made sure that if the foreign employer contributed to a social security in their country of origin, they would be exempted from contributing to the German system of social security. This wiped out the advantage of the foreign wage due to social security costs being eliminated from overall costs for the firm. However, the minimum wages introduced would lay below the collectively agreed wage by the social partners.

The minimum wage and the collectively agreed wage are not interchangeable terms; they are not the same thing. The minimum wage is the least possible wage you can pay a worker in construction whereas the collectively agreed wage is the wage for those workers bound by collective agreement.

The minimum wage levels were established for workers who were engaged by employers who were not part to the industry collective agreements. The minimum pay rate was a wage floor that could be extended with statutory support throughout the construction industry, but not other industries in Germany. This was the first minimum wage in German manufacturing.⁸⁹ The minimum wage set the standard for the workers in the East, where construction firms were less likely to be a member of an employers association; but collectively negotiated wage rates were not universally applicable in Germany. (Drucker and Dupre). The AEntG contained the benefit of the *Allgemeinverbindlichkeitsprinzip*, or Universal applicability. Of the three industries in this study, this law only pertains to the construction industry. German employers in other sectors

⁸⁹ There is a current debate about min wage for all of Germany that Merkel is considering...

staunchly resisted its extension, claiming that that a minimum wage would raise wages overall in Germany.

According to an essay by one union representative, IG Bau had to fight alone in the mid-1990s for generally applicable minimum wages in construction. Other sectors were still relying on collective agreements concluded in the framework of free collective bargaining. On the employer's side, while IG Bau concluded collective agreements with the two employer associations, the BDA peak association mobilized massive pressure against the generally applicable minimum wages. (Laux, p.28) In order to secure support from the BDA, IG Bau had to lower the minimum wages in the negotiations with the Kohl-Blum government, with only a degree of support from the Committee for Collective agreements of the DGB, peak union association.

In an interview with the ZDB, the Universal applicability was not easy to secure. Apparently, in 1997, there were considerable problems. The BDA simply did not want minimum wages, arguing that it cannot be that different wages would be put into practice. Above all, it was the metalworking industry, exercising the most influence on the BDA, that was strongly against the minimum wage. They had the fear that a worker for example on an assembly line would say, "Why I am earning 20 marks an hour when in construction, an unskilled construction worker is getting 25?" So there was a fear that the construction industry would raise the overall wages in Germany. At some point, according to ZDB, the umbrella association accepted it and since then they have been relatively few problems with the BDA. But the employers had to demonstrate that there are so many differences among the industries, make the BDA understand that construction is a unique branch and that without the universal applicability, things wouldn't work.

Let's put all of this now into institutional terms. Simply put, the institutional change is this: Before 1996, IG Bau, HDB and ZDB collectively bargained for wages. At some point in the negotiations, a mutually satisfactory wage was agreed upon and written into a new collective agreement. Sometimes, the new agreement contained an opening clause, and sometimes it did not. Also, there were various wage classes bargained for such as skilled and semi-skilled, eastern Germany and western Germany. Eventually, competition from non-German sourced labor became too much to handle. Though unfair, the subcontracted competition was perfectly legal. IG Bau, HDB and ZDB combined forces and brought the matter to the attention of federal powers Berlin. After six years of lobbying, the social partners secured legal sectoral minimum wages. These wages would apply to all firms in the construction industry, be they German or not. Now, any and all firms who take up construction work in Germany are legally required to pay at least the minimum wage. The government is then involved because it is the Federal Ministry of Labor and Social Affairs that must approve each newly bargained for minimum wage that the construction partners conclude, and it is ultimately the Ministry that enforces the law.

Some critics pointed to the law's incompatibility with the German Constitution, specifically § 9 which guarantees the fundamental rights of free collective bargaining. But the new law in fact did not infringe upon the Basic Law. The AEntG did however clearly break with the structure and practice of German industrial relations. In at least one sector, construction, collective bargaining became tripartite, with the Federal government as one of those parties.

VII: EU Level Response – The Posted Worker Directive

Taking a walk in Berlin during the late 1990s meant that you would've seen lots of construction sites. In particular, commercial construction was almost at every turn in the city

center, giving a very modern look to the low grayish skyline. Much of the reconstruction in the Laender was felt in the hearts and minds of the citizenry. An example of this would be the Dresden FrauenKirche. Building and re-building has been such a big part of Germany's modern history, so too, have immigrants. But it was not until renewed European political and economic integration in 1992 that German industry was seriously unable to cope with the new influx of labor. The Completion of the Single Market by 1993 weighed on German employers and workers.

German Reunification and the moving of the capital city back to Berlin necessitated considerable amounts of work that the construction industry would provide. Berlin was an attractive destination city for many and if you wanted to work there, EU liberalization paved the right path to get there. In 1996-1997, over 30 billion DM was invested on construction projects in Berlin alone. (see BZ 1997). In 1996, the total number of workers from other EU countries was 165,000. In early 1997, 30,000 construction workers from other EU countries were employed in Berlin. (see *Berliner Zeitung* in Menz) Comparing across years, in 1993, 20,000 workers from other EU countries worked on construction sites Germany and by 1995 that number jumped to 132,000. That is almost seven times the amount of labor in just two years.

Yet, even before the Treaty on European Union, adding new members to then European Community caused "Old Members States" to worry. This led to restrictions in the Act of Accession for Greece, Spain and Portugal for up to seven years. This was all Germany could ask for, because postponing the Freedom Principle was not an option. Postponing the applicability of the Fundamental Freedoms was crushed by the ECJ ruling in the *Rush Portuguesa* Case 1990.⁹⁰ According to *Rush Portuguesa*, the protective transition provisions on restricting free movement

⁹⁰ *Rush Portuguesa* C-113/89 [1990] ECR I-1417

of workers were not applicable in the case of posting workers. The freedom to provide services must not be rendered illusory nor must it be made subject to the discretion of national authorities.⁹¹ Therefore, Rush Portuguesa made the construction sector open to competition from low wage countries. The result was distortion of competition on the market of high wage Germany.⁹²

EU liberalization encouraged German construction companies to outsource their projects to non-German companies, which amounted to importing labor.⁹³ The inward flow of temporary labor created a segmentation of the labor market according to Menz, into three tiers. Each of these tiers are being compensated at three different wage levels.⁹⁴ The primary tier are those workers employed directly by domestic companies who received higher collectively agreed wages. The second tier are those workers that are subcontracted which are only subject to the minimum wage. The third tier is the illegal labor, though this study does not go into detail about the black market.

Soon a European level response to the new cross border provision of services had to be formulated. The German response was already in place so all Germany could do was enforce the AEntG and see if their new law would survive an EU Directive. In the European Union, the rulings of the ECJ and EU Directives trump Member State legislation.

⁹¹ <http://www.lawgazette.co.uk/news/free-movement-workers-rush-portuguesa-limitada-v-office-national-d039immigration>

⁹² Schlacter, Monika. The Posting of Workers Directive- German reaction and Perceptions., no 20 (2010). Formula, Research Council of Norway, p.7

⁹³ Menz 2001

⁹⁴ Menz, Georg. The Domestic determinants of National Response Strategies to EU induced liberalization....2001, Politique europeenne 2001/2 n.3, here p. 145-6 of p.137-165

By December 16 of the same year, under considerable pressure from Germany, the European Union approved the Posted Workers Directive⁹⁵ to sufficiently protect posted workers and coordinate laws for Member States. The Posted Workers Directive was the European level response to blatant social dumping that Germany needed recognized. IG Bau, HDB and ZDB supported a European level response while the BDA did not. The EU Directive was quite different from the German Act. The Directive was not at all concerned with collective bargaining, and only concerned itself slightly with Member State competency to develop its own social policy.⁹⁶

According to the EU, a posted worker is a worker who is employed in one EU member state but sent by his employer on a temporary basis to carry out his work in another member state.⁹⁷ For example, a Spanish service provider may win a contract in Germany. Then the Spanish employees go to Germany to carry out the contract. This trans-national provision of services, where employees are sent to work in another Member State other than the one they usually work is a new category of worker, namely, “posted workers.” This category does not include migrant workers to Member states who seek work there and are subsequently employed. *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*⁹⁸ covers employees being sent to another Member State. The idea, according to the EU, is that where a

⁹⁵ Directive 96/71 EC, also called the PWD

⁹⁶ Schlacter, p.32.

⁹⁷ <http://ec.europa.eu/social/main.jsp?catId=471&langId=en>

⁹⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:NOT>

Member State has certain minimum terms and conditions of employment, these must by law apply to workers posted to that State.⁹⁹

The Posted Workers Directive ensures employees' minimum protection in the country where it is performed. It guarantees the application of the host country's statutory and regulatory provisions relating to i) maximum work periods and minimum rest periods; minimum paid annual holidays; minimum rates of pay, including overtime; conditions of hiring out workers; health safety and hygiene at work; and other protective measures.¹⁰⁰ The Posted Worker Directive applies to all economic sectors, but pays particular attention to the construction sector. Important to note is that the AEntG predates the PWD and thus we can say that it was a Member State that took the posted worker matter into its hands faster than EU level legislation.

An important change to the German law in 1998 was that the scope of the law was extended to temporary agencies providing transnational employment. This change was important because under the previous law, temporary employment was not allowed in the construction sector. Second, the procedure for the general application of collective agreements was changed. (§ 1 III a AEntG) In order to prevent the BDA (peak association for all employers organizations) from interfering with results of collective bargaining in the construction sector when representatives of the industry applied for a declaration of general applicability, by Statutory Order, the Ministry of Labor was now allowed to extend collective agreements without needing to follow the previous procedure for declaration. This went against the previous procedure which gave bargaining parties freedom.

¹⁰⁰Bilous, Alexandre. Posted Workers and the Implementation of the Directive. TN9909201S. <http://www.eurofound.europa.eu/eiro/1999/09/study/tn9909201s.htm>

Now it became easier for the German Ministry of Labor to apply a collective bargaining agreement on minimum wages in the construction sector to all firms in the construction industry, regardless of whether or not they were party to the agreement.¹⁰¹ The changes in the law would soon be put into practice, benefitting the construction industry social partners at the expense of the BDA. In 1999, the two employer associations and the union agreed to a new minimum wage of 18.50 DM and 16.28 DM for Western and Eastern Germany respectively. The umbrella association for the employers refused to agree to the set wage level, so a renewed declaration of general applicability was not possible.

The German State, for the first time ever, used the instrument of statutory order on application of the collective bargaining partners representing the construction sector.¹⁰² The BDA heavily criticized this move, arguing that the wage level would be prejudicial (see news clipping) for other branches, leading to a potentially negative impact in construction projects in eastern Germany. The State stood firm and upheld the public interest to maintain conditions for fair competition and social standards in the German construction sector. The new minimum wage was to be in effect from September 1, 1999 until the end of August 2000. Since then, this method has been habitually employed.

VIII: Collective Bargaining Rounds 2000-2010

The previous sections have shown that wage setting in the German construction sector is both centralized and collective. While most collective bargaining in Germany is regional, bargaining in the construction industry is on the national level. The tendency to regionalize like in the metalworking sector is not seen in construction because of the Order imposing Extension

¹⁰¹ Hofhansel, p.12

¹⁰² Schlacter, p. 37

9AVE), the minimum wage and the tendency to use a State (Federal) level arbitrator. Also, Soka-Bau is a force that forces the employer associations and the union to work together. Soka-Bau is given a lot of value by the social partners, and thus strikes are also not a regular part of the bargaining ritual. The following section offers an analysis of each bargaining round since 2000. It shows centralized wage setting at work in which, industrial action has played a minor role.

A. 2000

This year would mark the beginning of a new decade with the west German construction industry settling on a wage agreement, while the east German Laender did not. IG Bau demanded that the terms of the collective agreement should be extended to east Germany, but employers had something else in mind. The east German construction industry was not prospering like in west Germany, so eastern employers froze wages.

Meanwhile, the two employers associations reached an agreement with IG Bau on March 30, 2000 that covered about 780,000 workers in the West German construction industry.¹⁰³ After IG Bau demanded a pay increase of 4.8 percent, employers and union agreed to a pay increase of 2 percent starting April 1, 2000 and another 1.6 percent increase the next year. The pay agreements lasted for 24 months. In addition, the agreement provided for an increase in the minimum wage of 2 percent. The two employer associations also asked the Federal Ministry of Labor that these minimum wages cover the non-organized employers and employees. This must be formally granted each bargaining round. This round shows the centralized bargaining procedure that is particular to construction.

¹⁰³ De0005259n

Eventually, an agreement was made for eastern Germany which was similar to the western German agreement, with the notable exception that the employees would have to wait one year for a pay increase. My research does not show any opening clauses in construction for this bargaining round. This would suggest that construction does not follow the trend, at least for this round with respect to opening clauses among the three sectors in this study. In chemicals, for example, an opening clause was agreed upon in the 2000 round that would allow pay below the collectively agreed standard. Because the chemicals industry settled on a collective agreement before the metalworking industry, 2000 marked the year in which the chemicals industry is seen to have overtaken the pattern setting role that metalworking normally assumes. Construction on the other hand, does not seem to fit the mold of pattern setter nor decentralized bargaining. This will subsequently show for the rest of the decade.

B. 2002

This year made history for the construction industry. IG Bau called for a nation-wide strike on June 17, 2002. It was the first nation-wide strike in their post war history. After over 100 hours of talks that started on June 1, IG Bau, with a 98.6 percent support rate for the strike, decided to use their legal right. Approximately 8,000 workers at over 400 construction sites went on strike after which industrial action extended to every region on Germany, all within a week. The union thought that their strike was going pretty good. By June 19, 16,000 construction workers at 1,034 sites participated. ¹⁰⁴By the seventh day, 32,600 workers participated at 2,837 sites.

¹⁰⁴ IG BAU: Auf fast 1200 Baustellen über 18.000 Bau-Beschäftigte im Streik
<http://www.baulinks.de/webplugin/2002/0536.php4>

Employers, on the other hand were not enchanted at all. Vice president of the HDB and leading negotiator for the employers said on June 3 before the strike, “Fifty years of industrial peace, and in the worst construction industry crisis in post war history, the first branch level labor dispute! IG Bau is playing with fire.”¹⁰⁵ Taking this view, the union was playing with over 50 years of achievements in the social partnership, including the social fund. The union was seen as risking that collective wage agreements become a “pile of shards” that even in several years could not be cemented together; HDB also commented that with such industrial action, IG Bau would be taking gigantic responsibility.¹⁰⁶

What has actually happening was that the union was playing east against west and large against small firms, an age old tactic, that left a bad taste to employers. Bauer urged his employers to not let the industrial dispute play companies against each other. The unity of employers was indispensable in order to come to an agreement. Bauer told employers that they needed a common solution for both eastern and western Germany so that there would be a common basis created in the construction industry for the future. In employers’ eyes, IG Bau needed to return to the negotiating table, as quickly as possible, in order to avoid even larger scale damage of the industry, its companies and also its workers.

Why did the union strike? They even chose an historical date to start the strike.¹⁰⁷ It turns out that the economic re-unification a decade earlier was still a problem for Germany. The strike was largely called because employers did not consent to an increase in the minimum wage for eastern Germany. At the time, eastern construction workers received about 80 percent of the

¹⁰⁵ Bauindustrie zur Urabstimmung über Streik: Die IG BAU spielt mit dem Feuer
<http://www.baulinks.de/webplugin/2002/0475.php4>

¹⁰⁶ Bauindustrie zur Urabstimmung über Streik: Die IG BAU spielt mit dem Feuer

¹⁰⁷“Die Firmen gehen kaput, die Löhne auch!” <http://www.spiegel.de/wirtschaft/a-201276.html>

minimum wage in the west, and according to the union, even the collectively agreed pay rates for the east were only at 89 percent of western German rates. It would seem that this was more a question of social equality than pay. In any case, it was enough to cause a strike in an industry that was considered largely peaceful.

In a more pessimistic point of view, a Berliner stone mason commented that the strike brings nothing because there are so many illegal workers and so few union members that many handworkers saw no reason to leave their workplace for the strike.¹⁰⁸ Illegal workers, however, is rather a question for customs¹⁰⁹, although the HDB does meet with authorities in Bonn to discuss the issue and how to control it.¹¹⁰

A deal was reached at the end of the strike week which stopped industrial action the following day. In the new collective agreement, a two stage pay increase of 3.2 percent and 2.4 percent starting on September and April 2003 respectively would also be supplemented by a lump sum payment. Minimum wages both in eastern and western Germany would follow the same rate of increase, including an IG Bau demand for a second rate for skilled workers. Now, there were four separate minimum wages: Two categories for skilled workers and two categories for unskilled workers. The categories are east and western Germany, and the increase in minimum wages for both eastern and western Germany became reality. Finally, the social partners agreed to modernize the central framework agreement, or *Rahmentarifvertrag*. The modernization according to IG Bau would not actually dismantle any part of the framework agreement, but rather adjust it. This shows consensual adaptation to allow the collective

¹⁰⁸ Spiegel 17.06.2002

¹⁰⁹ Interview

¹¹⁰ Interview

agreement to work for the actors that use it. It does not indicate erosion or disposal of collective bargaining.

C. 2003

This year, the two employer associations HDB and ZDB and IG Bau agreed to another new set of minimum wages. They also agreed to an increase in the working week from 39 to 40 hours. Negotiations were held at the Federal Ministry of Economics and Labor and the newly agreed wages were extended by way of ministerial decree for the entire construction industry, replacing the ones reached in 2002. The collective agreement was valid until August of 2006, or a total of about three years, something that would seem unlikely in the metalworking industry.

The year before, amidst the eastern- western dispute on wages, ZDB lost members to a new association called the ZVOB, (or Eastern German Building Association, *Zweckverbund Ostdeutscher Bauverbaende*) which was founded in 2002. It is made up of seven smaller organization in eastern Germany that do not collectively bargain, but do represent the interests of their members by way public support and lobbying. The ZVOB refused to sign the collective agreement of 2002 and vehemently rallied against extending the minimum wage provisions. Because the members of the ZVOB refused to sign the collective agreement, the intervention of the Federal Ministry was necessary. Recall that in German construction, the universal applicability is a ministerial decree. This means that whatever minimum wage rate the social parties agree to is generally binding for the entire industry, regardless of whether that firm is a member in an employer association or not.

Finally, the union agreed to make concessions to the collective agreement in exchange for a longer duration. The tricky part of the minimum wages lies in the pay differences actually used

of eastern and western industry. First, about 80 percent of all construction workers are classified as skilled. In western Germany, the minimum wage category of skilled workers is really of no consequence because they tend to get above the minimum wage anyway. But for eastern Germany, the minimum wage is much more critical. To illustrate, if an eastern German worker works on a site in western Germany, he will get paid the western rate. But if a western German worker works on an eastern site, then the home location of the employing company decides, although the principle established is that the most favorable rate should apply. So, making sure that the minimum wage rate of eastern German workers is as close to western as possible is important. This combined with the fact that there is less bargaining rate coverage in eastern Germany to begin with makes the minimum wage thus more important for eastern Germany.

On October 14, new wage minimum wage rates were set and two days later, new provisions on Christmas bonus were set. The bonus was set after a “joint-dispute resolution procedure” and included an opening clause. This is an example of decentralized bargaining, but in this case, it is restricted to a bonus, not a wage. The opening clause allowed for deviation from the bonus either through a voluntary works agreement between the employer and the works council, or if there is no works council, by way of an individual agreement between the employer and the worker.

Using the opening clause did not require that the company be in any sort of specific condition such as economic hardship, and deviations from the collective agreement did not require consent of the social partners. The Christmas bonus is only obligatory to firms that are part of the collective agreement, and this round, of those firms, only those in western Germany were bound the bonus.

Placing the construction sector amidst the trend for Germany, reveals a higher than national average for collective bargaining coverage, both in terms of firms and number of employees. The tables also show the same result to hold if we break in down into eastern and western Germany. Table 3 shows the bargaining coverage of establishments in 2004 in percentage, and table 4 shows the same, measured in bargaining coverage of employees. Sectoral collective bargaining remains the primary way of setting wages in the construction sector, covering 76 percent of workers in western Germany, while company level agreements are quite minor, covering just 3 percent of workers in Western Germany While the numbers are less favorable for eastern Germany, they also remain above the national average.

Table 4.3 Bargaining coverage of establishments in 2004 (in %)

Sector	Sectoral collective agreement		Company-level collective agreement		No collective agreement (of which, 'orientation' towards a collective agreement)	
	West	East	West	East	West	East
Construction	64	33	1	3	35 (46)	65 (56)
Total	41	19	2	4	57 (40)	77 (40)

Source: Adapted from IAB Betriebspanel 2004.

Sector	Sectoral collective agreement		Company-level collective agreement		No collective agreement (of which, 'orientation' towards a collective agreement)	
	West	East	West	East	West	East
Construction	76	40	3	8	22 (67)	52 (61)
Total	61	41	7	12	32 (50)	48 (47)

Source: Adapted from IAB Betriebspanel 2004.

D. 2007

This year, it took more than six months to make a deal. An initial deal reached at the end of March was rejected by eastern employers. So, HDB, ZDB and IG Bau called for help: another joint dispute resolution procedure in which the parties call an arbitrator. A couple of months later, on May 19, a deal was reached but this deal was ironically rejected by some western employers. Two northwestern German regions, Niedersachsen and Schleswig-Holstein

representing mostly small firms in the ZDB flatly said no to the second agreement. This then triggered IG Bau who called for a strike in the two regions because even after arbitration, employers refused to accept the sectoral agreement. This highlights the challenges that the two employer associations face in settling on a centralized collective agreement. The difference in competitive structure between the firms in HDB and ZDB becomes critical when employers cannot speak as one.

Lasting a total of 19 days, about 2000 construction workers went on strike at 300 sites. Compromises were made in July, and finally, the new collectively agreement was considered acceptable. A general pay increase of 3.1 percent starting June 1, a 1.5 percent raise in April of the next year and a 1.6 percent increase starting in September 2009 plus increases for minimum wages were set.¹¹¹ There were two opening clauses in the deal. The first was a general opening clause that allowed for lower wages by up to 8 percent via collective agreement at company level. The second clause provided for a deviation of the monthly lump sum payment via a works agreement, or *Betriebsvereinbarung*. The difference in execution is that the works agreement is a written agreement between the employer and the works council while the collective agreement at company level is not.

IG Bau was against employers refusing to accept the collective agreement and called a strike to defend what they had achieved together. It turns out that the head of IG Bau was not necessarily strike thirsty in the first place. IG Bau head Wiesehuegel saw a chance to solve the dispute without the need for industrial action in the two northwestern regions.¹¹² In the end,

¹¹¹ Dribbusch, Heiner. 2007 *collective bargaining round examined*. Institute of Economic and Social Research (WSI) March 10, 2008. De0709019i

¹¹² *WirtschaftsWoche* magazine. <http://www.wiwo.de/politik/deutschland/tarifrunde-2007-ig-bau-chef-streik-muss-nicht-sein-/5120204.html>

however, it did not work and indeed the union went on strike. On the other hand, while it can be said the employers are losing interest in collective bargaining, both the HDB and the ZDB solved the problem of the outliers within the confines of the new institution (the arbitration procedure) created to sustain it. The social partners are not without dispute when it comes to wage bargaining, but they have all three realized this and made an effort to get help via the arbitrator so that their collective bargaining regime can continue. This year, as well as last year, it appeared that ZDB experienced the most unrest, but not enough to not come to a final agreement. This shows the social partners are committed to centralized wage bargaining.

E. 2009

By the time 2009 came around, the effects of the global crisis were apparent, but unlike in other sectors, that did not stop the union from demanding an unusually and comparatively high wage increase of 6 percent and an equalization of wages for east and west Germany. Employers responded by saying that the demand was unjustified considering the economic climate and that the concern was really to safeguard employment. The wage equalization between east and west was not as much of an issue for employers, provided that there could be a differentiation between regions based on regional supplements.¹¹³ After three bargaining rounds that started March 5, the two employer associations and IG Bau called again for their arbitrator, Wolfgang Clement.

Through arbitration, the new agreement was accepted unanimously by both the HDB and ZDB and the union on May 23. The agreement called for a pay raise of 2.3 percent on June 1 and then a further 2.3 percent for the last year of the agreement. Second, the minimum wages were raised in four stages, and finally, the social partners agreed to form a committee that would

¹¹³ Stettes, Oliver. *New collective agreement reached in construction sector*. Cologne Institute for Economic Research. (IW Köln) July 21, 2009. De0906029i

ensure a uniform wage scale for all bargains districts by 2011. All in all, the agreement was valid for about 700,000 construction workers for two years. This round shows again that an actor at federal level helps ensure that centralized bargaining between the union and two employer associations can get over initial disputes and finalize an agreement amendable to all three parties. There was no industrial action in this round or in the previous two. This illustrates the relative industrial peace in the construction since 2002, which was an exception year.

IX: Conclusion

This chapter argues that the supply of legal foreign labor to Germany has dictated social partner strategies and shaped collective bargaining procedures today. At one point, soon after EU liberalization and the signing of Maastricht, the fierce competition from foreign firms became more than German firms could handle. Unlike in the chemicals, construction was particularly vulnerable to the posting of workers and bargaining practices changed between HDB and ZDB and the union.

This chapter explains that the labor market developments that the German construction sector experienced in 1955, 1989/1990 and 1993 were on a much larger scale by the mid-1990s, leading to a new legal instrument in collective bargaining: the minimum wage. With Eastward expansion, the flow of workers from low wage countries to Germany was all but guaranteed. EU level supranational powers continued to be more concerned with an enlarged EU market than with individual Member State markets.

Basically, there are now no restrictions on EU foreign labor to German markets,¹¹⁴ and although the threat of foreign competition is not nearly as high as it was before, the fight to keep competition fair has not been easy. For example, as late as 2005, Germany and France blocked the EU's proposed services directive which would have allowed Polish companies in Germany to adhere to Polish workplace laws.¹¹⁵

Overall, the strongest instrument against unfair competition be it domestic or foreign remains the minimum wages set by the two employer associations, the union and the State. The way minimum wages are set requires partner cooperation, and as such the continuation of bargaining. This new instrument represents a dramatic institutional change in collective bargaining and along with the universal applicability principle and the arbitration procedure option, makes construction different. Each special procedure reflects the particular needs of this industry; needs that are not shared by all three sectors in this study.

The history of competition caused the employers and the union to fight more as one voice, than as bitter enemies. What's more, employers have not always had the support of their umbrella association, but despite the internal differences between HDB and ZDB, the two employer associations remain on the same front. Interestingly enough, while bargaining in this sector remains overwhelmingly centralized; some speculate that the minimum wage could perhaps be the end to free collective bargaining in Germany. Probably not.

¹¹⁴ Workers from Poland, Hungary, the Czech Republic, Slovenia and Slovakia as well as Estonia, Latvia and Lithuania can all look for jobs in Germany without any restrictions as of May 1, 2011. Deutsche Welle. <http://www.dw-world.de/dw/article/0,,15042518,00.html>

¹¹⁵ Schroeder taking on Germany's Shadow Economy. April 13, 2005. <http://www.nytimes.com/2005/04/12/world/europe/12iht-dumping.html>

Chapter 5:

Conclusion

Recent scholarship suggests that the German model is eroding as a result of pressures to decentralize industry level wage setting to individual firm level, because it is thought that by doing so, firms will be better suited to compete in the globalized economy. For high wage Germany, this is an especially sensitive area because industry-wide wages set by collective contracts are often higher than those that are not. Is the German Model, in order to stay competitive, transforming into a liberalized model like we have in the United States?

The neoliberal convergence theory is often used to understand the developments in the German model. Supporters of this view present evidence that the original German economic system had many more features which contrasted with and were distinctive from the Anglo-American economic system. This is true; there are clearly some changes to the original system, namely employer-driven decentralization via opening clauses. At first glance, the theory fits the events taking place; until you venture outside of the most studied sector in German political economy.

In an empirical contribution, this dissertation re-examined the debate about the erosion of the collective bargaining using evidence from Germany's three largest manufacturing sectors. I set out to discover if Germany's institutions of political economy were being dismantled. Relying on narrow single sector studies, some authors have found this to be the case. I found this to not be the case, based on the evidence

presented in the preceding chapters. What I found instead were three very different cases of decentralization specific to each sector that are within the model itself.

Widening the industry sample allowed me to capture actors' behavior that had either gone unnoticed or been glossed over so that a more sophisticated understanding of German political economic reality was possible. A preliminary finding was that decentralization is nothing new to Germany's coordinated market economy. Indeed, taking historical trends and developments into consideration, a distinctive picture started to unfold. I learned that pressures to decentralize wage setting, as perceived in conventional wisdom, are both exaggerated and misunderstood as a monolithic and negative force. They are neither. Most importantly, decentralization via opening clauses in the German model should not be confused with liberalization. My study also implies that other coordinated market economies may need re-examining if they are prone to single sector representation.

My argument about the state of German industrial relations and collective bargaining applies central concepts in political economy: decentralization, coordination and liberalization. When collective bargaining is decentralized, it is moved out of the hands of centralized collective actors at industry level (in this case, unions and employer associations) and into the hands of the individual firms and employee. The evidence for modern decentralization in German industrial relations takes the form of any previously collectively negotiated wage or working condition agreement that is no longer at regional or federal level. In Germany, firm-employee wage setting this is not uncommon. There are several sectors in the service industry, that do not collectively bargain, as well as those numerous actors who, while not belonging to a union or employer association, use

the collective agreement as a model for their in house agreements, or *Haustarifvertraege*. These types of wage setting have always been part of the German model, and have existed side by side with those that do collectively bargain, which brings me to the next concept: coordination.

Some firms that use a collective contract as a guide are sometimes called free-riders because while they are not paying dues to an association, they are essentially riding on the efforts and the knowledge of actors that do negotiate agreements. This practice actually demonstrates the trust in adopting the collective agreement. The agreement holds a certain amount of influence in how wages are set, or workplace conditions are determined to firms outside of the collective bargaining regime. Using this view, this is a form of coordination. In a coordinated market economy, coordination among firms takes place largely through nonmarket means, such as negotiating collective agreements. Effective coordination relies on the effectiveness of the institutions that bargain. The outside influence of the collective bargaining agreement on actors outside of the institutions, combined with those inside actors that use the contract, shows that it remains an effective and operational institution.

I have argued that the German model is not eroding nor converging to a liberalized market economy such as we have here in the US, but rather adapting to suit the needs of the actors that use it. Furthermore, there would appear to be no solid reason, based on the evidence, why a coordinated market economy, such as Germany, cannot possess some elements of so-called liberalization, and still retain the characteristics and features of coordination. Just because some elements are liberalizing, does not mean that they outcome of those changes is a totally liberalized model. There is a difference

between process and outcome of liberalization. These descriptive concepts are not interchangeable terms.

While Germany exhibits wage setting liberalization, recent behavior, in its largest manufacturing sector was decisively that of a coordinated market economy. The following example illuminates that difference in the context of the international economy. If increasing globalization pressures make firms sensitive to short term profitability, it is thought that as a result, Germany would be pressured to loosen commitments to the labor force to maintain profitability in economic downturns. The metalworking industry is a case study of how the impact of globalization may not always follow neo-liberal theoretical implications or predictions.

During the economic downturn in 2008, German employers kept the bulk of their labor force rather than firing them. Why? The coordinated market economy's idea of employment protection, which goes against the neoliberal conception of fluid labor markets, is that in the highly skilled metalworking industry, firms preferred not to break up work-teams, thereby favoring employment protection. The normal course of business, in a liberal market economy such as the United States, would dictate that the workforce would have lost their jobs. In Germany, this was not the case of 800,000 workers that kept their jobs while firms kept their teams uninterrupted. Today, the metalworking sector has almost returned to pre-recession levels of production and avoided mass layoffs along the way.

To answer my original research question, I also needed to observe the development of and the status quo of the actors that collectively bargain. In Germany,

these actors are called social partners. The union and employer associations are engaged in what Germans call “*soziale Partnerschaft*”. The social partnership lost a considerable chunk of its perceived credibility and resilience in the 1990s when decentralization as liberalization and the subsequent erosion of the pillars of social partnership became a commonplace theme for those that write on German political economy.¹ Re-examining the argument, and broadening the data set, I found that the viability of the social partnership, as it stands today, is underestimated.

Recognizing that the social partnership is key to upholding Germany’s institutions of political economy; and this means that employer associations and unions do need each other; it became clear that it is precisely the social partnership that is missing in a liberal market economy, but has a strong presence in Germany, and is thus arguably the single largest institutional difference in industrial relations between the two. Why is this important?

While decentralization is often employer driven, in all three industries, and in all cases of decentralization via opening clauses, the approval process to use said clauses never fully escaped the hands or oversight of the social partners. This is not my opinion, this is regulatory fact. This fact is, more often than not, lost in the literature that resists the notion of a coordinated market economy that can actually persevere as a coordinated market economy amongst the pressures of a globalized world. Instead, the literature that sees liberalization, contends that the social partnership is crumbling, taking the German model of industrial relations down with it.

¹ See Anke Hassel and Streeck

It would be naïve of me to argue that there has been no change at all in the German model, and I have addressed that change in this dissertation. It would also be negligent of me as a scholar to purport that the German institutions of political economy has not gone through severe challenges, as outlined in chapters two, three and four. But the challenges to the model, that have resulted in decentralized bargaining do most certainly vary across sectors, and even across regions. It is by this that I mean that decentralization is neither monolithic, nor for that matter, inherently negative. The following points spell out the argument I have attempted to advance in my dissertation.

First, the three industries are subject to different pressures. Political economic literature focusing on the globalization pressure faced by metalworking does not tell the whole story. Different pressures mean different trajectories of change. For example, in metalworking, under-performing firms in eastern Germany validated the use of opening clauses, the first one being the hardship clause pioneered in 1993. The hardship clause allowed for firms facing bankruptcy to deviate from collective agreed standards for a specified time in order to increase their competitiveness and not have to go bankrupt. Another pressure unique to metals is the need to accommodate a very large number of different sized firms with varying needs, which is neither in chemicals or construction. Industrial organization in the chemicals sector is controlled a handful of the largest firms, and the construction sector manages their pressures via two employer associations, one for smaller firms and one for larger firms. Overall, industry-wide collective agreements in metalworking became less and less a one-size fits all, resulting in a different trajectory of change for metalworking than the other industries, and the most decentralization of all sectors.

In chemicals, like in metals, pressures to decentralize are based on the need to custom fit agreements to firms, but deviations from collective agreements are not as radical nor are they as common. The main pressure that the chemicals industry faces is actually demographic: shrinking employment pool, and an ageing work population. Unlike metals, decentralized collective bargaining this sector is not a defining feature of how collective bargaining is done. Unlike metals, agreements in this sector are concluded on a federal branch level, and not on a regional level. Bargaining in this sector is more centralized than in metals, even if you just look at that one structural difference. For those actors that do employ opening clauses in the chemicals sector, this means that deviations are made from the federal agreement signed by the federal level employers association. Once this is decided, the opening clause is approved by and signed at regional level between the regional heads of the union and employer association, and not the firms' management or works council. This would suggest that even moderate decentralization in chemicals is not a completely liberal practice.

The construction industry shows the most change of all sectors, but the least decentralization. Pressures facing the construction sector are truly unique in the sense that it is the only sector to face certain globalization pressure from within. By this, I mean that the pressures from EU firms operating in Germany as a result of EU integration ushered in cheap labor and services with which the German firms could not successfully compete. As a result, the construction industry had no choice but to set a minimum wage (a first in Germany) with the official help of the State, in co-existence with the collective wage agreements. Bargaining in this sector is highly centralized, and is tripartite, unlike the other two industries.

Second, and related to the first point, is that there are different kinds and types of decentralization in each sector. For example, decentralization in the metalworking sector, in its most radical form is a permit, under certain verifiable circumstances, to deviate from any subject matter in a collective agreements, be it wages or working conditions or otherwise. The co-called Pforzheim agreement however, is not an opening clause, and it still requires union consent. While Pforzheim and hardship clauses are typically regarded as something that is “bad;” it is in reality not bad at all. It allows certain firms the opportunity to inject a large amount of conditional flexibility in what is essentially a controlled environment. Thus the speculation about Pforzheim and opening clauses being a threat to the German model is misguided. Deviations form collective agreements in metalworking should not be construed as something that it is not: liberalization of German industrial relations. This leads to the next point.

Finally, decentralization is not the same as liberalization. A liberalized market economy does not typically have powerful unions as we saw in Germany. Also, its firms rely heavily on competitive market forces which dictate wages which in turn leads to less wage equality and much higher employee turnover. Put simply, the way that firms set wages depends on coordination forces that are market based rather than non-market based. This also means that in a liberalized economy, workers are more likely to leave a job to seek higher wages at another firm because their skills are general and transferrable. In contrast, a typical German chemicals industry worker, for example, who is highly specialized and trained in long apprenticeships paid for by the firms is not likely to be poached by another firm because the wage difference between two firms is not that great.

This is a main difference in industrial relations between a liberal and a coordinated market economy.

How can we decipher decentralization? Traxler contends there are two types of decentralization, organized and disorganized. Intensified market competition, according to Traxler, has magnified the need for flexibility of bargaining to company level. Yet, intensified market competition has also given rise to growing interdependencies among all actors. This fosters bargaining coordination. Organized decentralization can be seen as an effort to reconcile the conflicting requirements for decentralization and coordination of bargaining. This is what is happening in German manufacturing. Whereas some countries have taken the road to fully decentralized, un-coordinated bargaining such as USA, others have not. Germany's pattern of industrial relations in manufacturing belongs to that set of countries that has sustained multi-employer bargaining at either central or industry level and has embarked on organized decentralization.

The most compelling piece of evidence for this is that decentralization via opening clauses is in the hands of the social partners. Opening clauses in a coordinated market does not mean that that economy is no longer a coordinated market economy. It does not mean that opening clauses are putting the brakes on the German model and liberalizing its institutions. Organized decentralization is not liberalization. I contend that when the social partnership is abolished or abandoned by its members, when collective bargaining has completely lost its appeal, when the majority of manufacturing firms, as central actors, are no longer competitive using a collective agreement to set wages, or when the state removes institutional components of the German model by force of law, is where the line is crossed and Germany is most likely on the trajectory to liberalization.

My study has illustrated that the German model of industrial relations demonstrates more institutional resilience than given credit for in the conventional wisdom of today. Collective bargaining is dynamic and most recently, deliberately being adapted to suit the changing needs of the actors that use it. This is not new behavior within the German model. My study presented evidence that most studies have failed to include: Before the 1990s, the social partners injected flexibility into bargaining arrangements when collectively agreed standards of wages or working hours became too rigid. Employers and unions are indeed aware that the institution in which they are operating may need some change from time to time, in order to continue serving their interests and ultimately survive. Decentralization, in an organized fashion, is not a threat to the German model, but it is a matter of fact that permits the continuation of collective bargaining.

Still, what looks like erosion via decentralization should be taken for what it is seriously. The most conspicuous element of decentralization in the German model, as we saw, was actually created in 2004. I am referring to the “OT” category of membership for the metalworking employers association which releases firms of the obligation to follow the collective contract while still allowing them the remaining benefits of association. The significance of the new membership category is that it allows firms to set wages at firm-individual level like in the United States.

In 2010, there were 2,700 firms with OT membership (vs. 4,000 member firms who are bound to the collective agreement). A statistic such as this one, can lead an observer to believe that the association is in decline or falling apart. My research revealed that in the 2,700 firms in OT, there are only 300,000 employees. This is a small share of

the labor force. Still, supporters of the erosion thesis will point to fact that a mere 4,000 firms are bound today by a collective contract, a minority compared to the 23,000 firms in the entire metalworking industry. Again, taking a look closer shows that in those 4,000 firms is a labor force of 1.9 million under collective contract, or more than half of the entire metalworking population (3.6 million).

My study brings forth a structural feature of German industrial relations that most studies have largely discounted. The fact is that decentralized bargaining in the US looks almost nothing like it does in Germany. Just the mere fact that co-determination (dual representation) via works councils, a constitutional right made precisely for the German workplace, and which distinguishes it from other coordinated market economies in Europe, speaks to the point of a drastically different decentralized firm level wage setting environment from the United States. This structural feature is not part of liberalized wage setting in the US where wages are mostly set between a firm's management and the individual. Furthermore, the discretion of negotiating said wage or working conditions, holiday pay, etc is in the hands of the firm's management and the individual. Based on the evidence I have presented, liberal can have different meanings, so context should probably be taken into consideration.

Looking at the chemicals and construction industries, collective bargaining and the social partnership is arguably much better than its reputation set by the decline literature on the metalworking industry. The chemicals industry shows a moderate amount of change and decentralization while the construction industry shows the most amount of change and the least amount of decentralization. The case for liberalization is weakest in these two sectors. Centralized, federal level collective bargaining is the most

common way wages are set for chemicals, which means that liberalized wage setting is not a core feature of this industry. In the construction industry, with the introduction of the minimum wage and federal level collective wage setting, centralized bargaining is the norm.

Employer associational membership and union density membership have nevertheless declined since the “heyday” of the German model in the 1970s and 1980s and an increase in associational dropout is a clear threat to its survivability. If unions and employers actors stop believing in the benefits of collective bargaining and their social partnership, this will be the biggest and most damaging threat to the German model. Until then, it is the metalworking sector, of the three industries analyzed, that poses the greatest risk to the model, but also the greatest support, by sheer virtue that it has the greatest absolute number of employees that are covered by collective contract in the entire manufacturing sector, even if associational density has declined.

Concentrated efforts by both unions and employers, as we have seen, show a willingness and capacity given to them to change and adapt the institutions they are in as they see fit. Going against the grain of those perceptions of the German model that use a small amount of change to build a case for entire institutional decline or decay, this dissertation has made that case that a vetted interest and commitment to the model remains. Pressures to decentralize bargaining do not decrease the value that actors assign to collective bargaining. The lesson learned should be that decentralization and collective bargaining are not mutually exclusive. Decentralized collective bargaining is still collective bargaining.

While my dissertation has contributed to scholarship on Germany and varieties of capitalism, I encountered several problems during my analysis and data collection. First, it may have been better to ask the research question from two sides instead of one: western Germany vs. eastern Germany, and then compare the two pictures. Most of German manufacturing industry is located in the West, which directly affects purchasing power parity, a huge concern for both embattled unions and those firms that do struggle with employment in the east.

Second, obtaining data on opening clauses is not as simple as I predicted. While some research institutions, namely the IAB prepare and publish data on the use of opening clauses, more often than not, data is *not* divided according to industry sector, but mostly according to firm size, such as under 10 employees, over 100 employees, etc. Those public data sets that were divided according to industry sector were either very hard to find or almost always from the same source, or did not provide data in a year by year comparison. It was then that I questioned if opening clauses were in fact the right thing to be looking at when asking the question about the erosion of the German model. Perhaps a better question may have been to figure out if the pillars of social partnership were eroding and not the centralized collective contract via opening clauses.

Third, I encountered challenges with speaking for the model as whole. Most studies use the term “German model” to mean the entire model of German capitalism, when in fact they are only looking at the industrial relations component of the model. What is referred to as the German model is much more than the industrial relations component of the model. While my study attempted to produce knowledge on the model’s industrial relations, by looking at the three largest sectors in manufacturing, there

are other components of the model that warrant investigation. These components include corporate governance, vocational training and education, inter-firm relations, firm-bank relationships, the welfare state and social policies. The defining question then inevitably becomes, can one or more components of a coordinated market economy liberalize while the overall model of capitalism remains coordinated?

Based on the evidence, I must conclude that the German model of industrial relations is not eroding or converging to a liberalized model. The trajectory of the model reveals that there are some elements of the model that appear to be liberalized, but in fact remain part of a coordinated market economy. No one system is better than the other. The US and Germany continue to have very different models of wage setting and types of capitalism. With respect to how unions are generally viewed by employers and vice versa, they are worlds apart. The social partnership for Germans means social dialogue. Unions and employers in Germany today appear to have more points of common interest than of division.

Globalization brings tremendous pressure to adjust national and local institutions², such as those political economic institutions in the German model, to internationally agreed upon standards and procedures supported by neo-liberalism. This directly implies that the future of German model is a liberal market-style economy, resulting from a conscious shedding of the current coordinated market economy. In other words, surviving globalization means that Germany will have to change to and is heading toward the US style of capitalism. While such theoretical implications and rhetoric is widely accepted to describe the fate of Germany's variety of capitalism, this dissertation

² Mayer and Schweishelm, The Modernization

argues that the political economic reality is that Germany remains indeed a coordinated market economy, and that the trajectory of the German model does not indicate erosion. While decentralized wage bargaining in Germany is a matter of fact, and as this dissertation shows, does vary across sectors, decentralization, as it is now, is neither destructive, nor new to the German model. Put simply, neo-liberalism does not seem to have triumphed over the German model.

Appendix A

Methodology and Data

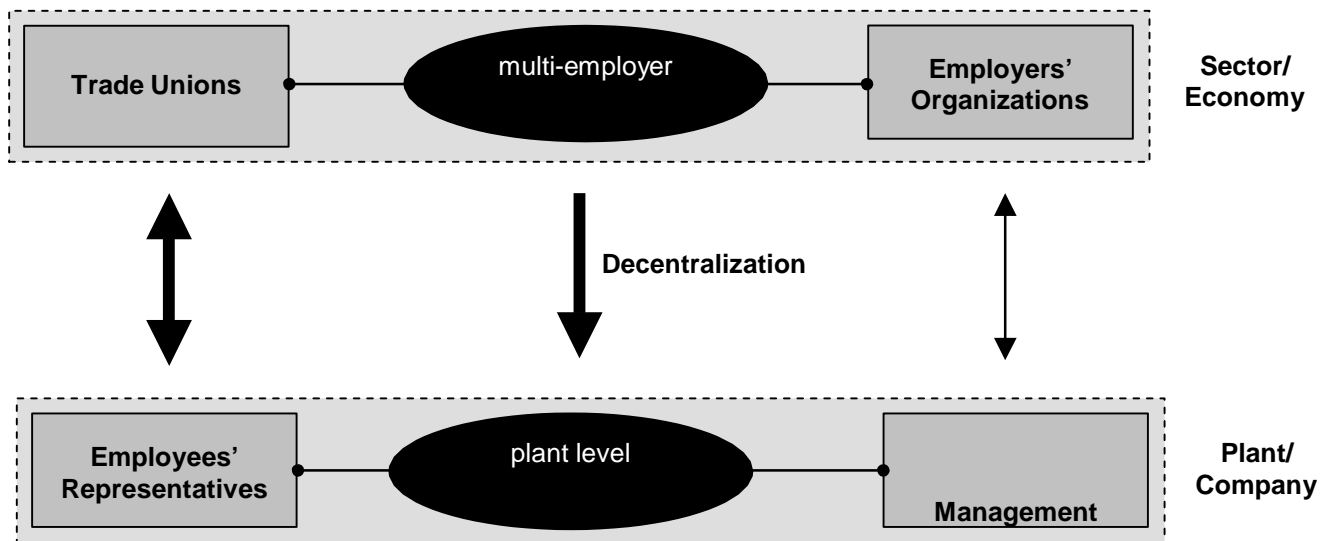
Industry specific data on the use of opening clauses, union membership rates, employers' association rates and levels of collective bargaining coverage. Some of this can be found for free online in websites of the OECD, Federal Ministry of Economics and Technology, European Industrial Relations Online, German Federal Statistics Office, and German Federal Labor Office Statistics. When available, most of this information is best gathered by compiled data banks by the IAB Research Institute for Federal Employment in Nuremburg. Other sources that regularly publish on industrial relations: academic journals such as British Journal of Industrial relations, social partner websites, and reports from the six major German economic research institutes that pertain to my topic will help investigate the industries over the years in terms of industrial relations trends and historical insight. For industry specific information such as names of leading firms and their products, I relied on a combination of newspaper articles and annual reports on company specifics, though much of this information can be found on sites such as Germany: Trade and Invest, the national foreign trade and investment agency. The European Union (via European Commission) and the International Labor Organization (ILO) reports on industry give pan-European comparisons of industry trends were also helpful. These analytic reports based out of Belgium give updated analyses on the use of opening clauses and the latest in industry trends, though much of their data for Germany is based from the IAB in Nuremburg. Finally, in November 2011, I conducted several interviews in Berlin with key representatives in each of the three sectors.

APPENDIX B

Decentralization Graph

Source: Wergin, Neils. "The Decentralization of Collective Bargaining and its Consequences for Trade Unions: An Anglo-German Comparison" Research Workshop: European University Institute, Florence, Italy, 2002.

Decentralization of Collective Bargaining



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